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1951-65

(INCLUDING CASE-LAW OF 1950)

VOL.

4

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27. Marginal marking of all points.
28. Cases cited in judgment listed at the beginning of each judgment, with the number of the paragraph where it occurs for facility of reference.
29. Cases reversed, overruled and dissented clearly shown at the end of a point.
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THE FIFTEEN YEARS' DIGEST 1951–1965

(Civil, Criminal & Revenue)

[Including the cases of 1950]

BY

D. V. CHITALEY, B.A., LL.B., *Advocate.*

AND

S. APPU RAO, B.A., B.L.,
Advocate, High Court of Madras.
Chief Editor, "The All India Reporter"
Authors of A. I. R. Commentaries and A. I. R. Manual)

Volume 4

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TO

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PREFACE

(REPRODUCED FROM VOLUME I)

We have great pleasure in placing before the public this digest which covers the case law of India for the entire post-Constitution period from 1950 to the end of 1965, and which, therefore, is really a *sixteen* years' digest although it is named "THE FIFTEEN YEARS' DIGEST" as distinguished from the "Fifty Years' Digest" which comes up to the end of 1950.

The Digest covers a very important period in the development of Indian law as it relates to the period immediately following the commencement of the Constitution and thus includes the decisions of the Supreme Court and of the High Courts bearing upon the interpretation of the Constitution in its earliest stage of growth. The judgments of the Supreme Court during this period on the interpretation of the Constitution are comparable in importance to those of Chief Justice Marshall and other eminent Judges of the American Supreme Court in the early years of the American Constitution. This Digest will serve as a key to all these important decisions.

The post-Constitution period has also seen other important developments bearing on the growth of Indian law. Firstly, Independence has heralded a period of unprecedented legislative activity to give effect to the policy of bringing into existence a welfare State. A mass of subordinate legislation has also come into existence in the wake of the same policy.

The number of High Courts in the post-Constitution period is also about double of the number of High Courts in the previous period. This together with the fact that the distinction between "Indian India" and "British India" has been done away with and that the Courts in the erstwhile Native States are no longer "foreign Courts" vis-a-vis India, makes the decisions of all the High Courts in India "authorities" *throughout* the country, though they may not be binding precedents outside the States of the particular High Courts. All these factors have not only contributed to an enormous growth in the volume of the case-law but have added a new significance to the case-law of this period.

In this connection, special mention has to be made of the position of the Supreme Court under the Constitution. Previously to the Constitution also, appeals lay to the Privy Council in England and thus there was a Court of ultimate resort for the whole of India superior to the High Court. But although the Supreme Court of India may in one sense be regarded as having only succeeded to the position of the Privy Council in India, its importance from the point of view of the development of the Indian law is incomparably greater. This can be seen from the very fact that, while previously the Privy Council volume of the A. I. R. used to contain only about 200 pages for the whole year, the decisions of the Supreme Court reported in the A. I. R. each year now occupy two stout volumes of about two thousand pages on the whole. The importance from the juristic point of view, of the case-law reported in these pages cannot also be exaggerated. The Supreme Court occupies a unique position under the Constitution as a "sentinel on the qui vive" in respect of the fundamental rights granted by the Constitution and all the important pronouncements of the Supreme Court bearing on the fundamental rights will be found epitomized in this Digest. Moreover, the jurisdiction of the Supreme Court is much wider than that of the Privy Council and practically every branch of law is now covered by the decisions of the Supreme Court. This Digest will afford a key to all these decisions.

Further, the centre of gravity in law has shifted during this period and a new type of litigation has come into existence after the commencement of

the Constitution. The emphasis has now shifted to Constitutional law, taxation law, company law, industrial and labour laws, etc., and a new body of jurisprudence is rapidly coming into existence. The whole of this new body of law in India will be found enshrined in the judgments digested in these volumes. A special body of law both as to principles and practice has been forming round the writ jurisdiction of the Supreme Court and the High Courts, and new and novel forms of remedy unknown before have come into force.

Thus, it will be seen that this Digest is of more than ordinary significance from the point of view both of lawyers and Judges and its importance can hardly be exaggerated.

As regards the special features of this Digest, they contain all the important features of the law digests hitherto published by the A. I. R. Among them may be mentioned the fact that it is a *digest of full headnotes* and not of mere catch-words or short notes. The points are arranged under appropriate headings and sub-headings and synopsis given under all the headings so as to facilitate the task of reference. The cases under each heading and sub-heading are arranged in the order of the Courts, the cases of the Supreme Court being given first. Where a case is reversed or overruled by a subsequent decision, it is mentioned under the particular point itself in the Digest. This is a unique feature in a digest and it will save the labour of the lawyer in trying to find out whether the case is still good law by referring to a separate index of cases judicially noticed. Each headnote will also indicate whether a previous decision has been reversed or overruled by the particular case. The last volume will also contain a list of overruled and reversed cases. Another very useful feature is that the Supreme Court, Full Bench and Special Bench cases are marked with a thick dot at the beginning of the point so that on each topic one can pick out such decisions without wading through the whole mass of case-law appearing under that heading.

The system followed is, as usual, that of *statutory headings* as the basis wherever possible. But in the last volume we are giving a table of topical headings in alphabetical order with the corresponding statutory heading for each topical heading, so that the lawyer can, by using this topical index find out easily the correct statutory provision under which the cases on that topic have been given. This topical index will be useful not only for the purpose of this Digest but also generally for finding out the *statutory* provisions dealing with the particular legal topics.

Another most important feature which must be mentioned here is that each point of a case reported in the A. I. R. will give the page and the paragraph of the report where the point occurs. Where a point is relevant under other statutory headings, cross-references are given to such headings. Separate points in a case have been digested separately under separate headings and not mixed up together under the same heading. When a case contains more than one point, the Digest will indicate the number (A), (B), (C), etc. of the particular point in the headnote of the report in the A. I. R.

We are sure that the legal profession will appreciate the several improvements made in this Digest and extend to it its full support and encouragement.

In conclusion we wish to place on record our appreciation and thanks for the co-operation given by our colleagues on the editorial staff of the A. I. R. both in the preparation of the manuscripts of this Digest and also in seeing it through the press.

15th August 1966.

D. V. C.
S. A. R.

ABBREVIATIONS

(i) Relating to Journals and Reports.

A. I. R. 1914 All., Bom., etc. ... All India Reporter, Allahabad, Bombay, etc., sections of the respective years.

A. M. L. J. ... Ajmer-Merwara Law Journal.

All. or **I.L.R. All.** ... Indian Law Reports, Allahabad Series.

All. L. Jour. ... Allahabad Law Journal.

All. W. R. ...Allahabad Weekly Reporter.

I. L. R. Andhra (Andh. Pra.) ... Indian Law Reports, Andhra (Andhra Pradesh) Series.

Andh. L. T. ... Andhra Law Times.

Andhra (or Andh.) **W. R.** ... Andhra Weekly Reporter.

I. L. R. Assam ... Indian Law Reports, Assam Series.

B. L. J. or Bihar L. J. R. ... Bihar Law Journal Reports.

Bom. or I. L. R. Bom. ... Indian Law Reports, Bombay Series.

Bom. L. R. ... Bombay Law Reporter.

Cal. or I. L. R. Cal. ... Indian Law Reports, Calcutta Series.

Cal. L. Jour. ... Calcutta Law Journal.

Cal. L. R. ... Calcutta Law Reports.

Cal. W. N. ... Calcutta Weekly Notes.

Com. Cas. ... Company Cases.

Com. L. J. ... Company Law Journal.

Cr. or **Cri. L. Jour.** ... Criminal Law Journal.

I. L. R. Cut. ... Indian Law Reports, Cuttack Series.

Cut. L. T. ... Cuttack Law Times.

E. P. or East Punj. ... East Punjab.

I. L. R. E. P. or East Punj. ... Indian Law Reports, East Punjab Series.

F. C. R. ... Federal Court Reports.

F. L. J. ... Federal Law Journal.

F. J. R. ... Factories Journal Reports.

I. L. R. Guj. ... Indian Law Reports, Gujarat Series.

Guj. H. C. R. ... Gujarat High Court Reporter.

Guj. L. R. ... Gujarat Law Reports.

Him. Pra. ... Himachal Pradesh.

Hyd. ... Hyderabad.

I. L. R. Hyd. ... Indian Law Reports, Hyderabad Series.

Ind. App. ...Law Reports, Indian Appeals.

Ind. Cas. ... Indian Cases.

I. T. J. ... Income-Tax Journal.

I. T. R. ... Income-Tax Reports.

Jab. L. J. ... Jabalpur Law Journal.

J. & K. ... Jammu & Kashmir.

J. & K. L. R. ... Jammu & Kashmir Law Reports.

J. L. R. or **Jaipur L. R.** ... Jaipur Law Reports.

Kar. L. J. ... Karnatak Law Journal.

I. L. R. Ker. (or Kerala) ... Indian Law Reports, Kerala Series.

Ker. L. J. ... Kerala Law Journal.

Ker. L. R. ... Kerala Law Reports.

K. L. T. or **Ker. L. T.** ... Kerala Law Times.

Lab. L. J. ... Labour Law Journal.

Law Rep. ... Law Reports (Mys).

Luck. or **I. L. R Luck.** ... Indian Law Reports, Lucknow Series.

Madh. B. or **M. B.** ... Madhya Bharat.

I. L. R. Madh. B. ... Indian Law Reports, Madhya Bharat Series.

Madh. B. L. J. ... Madhya Bharat Law Journal.

Madh. B. L. R. ... Madhya Bharat Law Reporter.

I. L. R. Madh. Pra. or **M. P.** ... Indian Law Reports, Madhya Pradesh Series.

M. P. C. ... Madhya Pradesh Cases.

M. P. L. J. ... Madhya Pradesh Law Journal.

Mad. or **I. L. R. Mad.** ... Indian Law Reports, Madras Series.

Mad. L. Jour. ... Madras Law Journal.

Mad. L. Tim. ... Madras Law Times.

Mad. L. W. ... Madras Law Weekly.

Mad. W. N. ... Madras Weekly Notes.

Mah. L. J. ... Maharashtra Law Journal.

M. L. R. or **Marwar L. R.** ... Marwar Law Reporter.

Mys. ... Mysore.

I. L. R. Mys. ... Indian Law Reports, Mysore Series.

Mys. H. C. R. ... Mysore High Court Reports.

Mys. L. J. ... Mysore Law Journal.

I. L. R. Nag. ... Indian Law Reports, Nagpur Series.

Nag. L. Jour. ... Nagpur Law Journal.

Orissa J. D. ... Orissa Judicial Decisions.

I. L. R. Patiala ... Indian Law Reports, Patiala Series.

Pat. or **I. L. R. Pat.** ... Indian Law Reports, Patna Series.

Pepsu L. R. ... Pepsu Law Reports.

I. L. R. Punj. ... Indian Law Reports, Punjab Series.
Pun. L. R. ... Punjab Law Reporter.
Raj. ... Rajasthan.
I. L. R. Raj. ... Indian Law Reports Rajasthan Series.
R. L. W. or Raj. L. W. ... Rajasthan Law Weekly.
R. D. ... Revenue Decisions.
Sau. ... Saurashtra.
Sau. L. R. ... Saurashtra Law Reporter.
S. C. A. ... Supreme Court Appeals.
S. C. C. ... Supreme Court Cases.
S. C. D. ... Supreme Court Decisions.
S. C. J. ... Supreme Court Journal.
S. C. R. ... Supreme Court Reports.
S. C. W. R. ... Supreme Court Weekly Reports.
Trav.-Co. or T. C. ... Travancore-Cochin.
I. L. R. Trav.-Co. or T. C. ... Indian Law Reports, Travancore-Cochin Series.
T. C. L. R. or Trav-Co. L. R. ... Travancore-Cochin Law Reports.
T. L. J. or Trav. L. J. ... Travancore Law Journal.
Vind. Pra. or V. P. ... Vindhya Pradesh.

(ii) Other Abbreviations.

Appr. ... Approved.
Art. or A. ... Article.
B. R. ... Board of Revenue.
Civ. ... Civil.
Cl. ... Clause.
Cons. ... Considered.
Cr. ... Criminal.
Diss. ... Dissented.
Dist. ... Distinguished.
D. B. ... Division Bench.
Expl. ... Explained.
F. A. ... First Appeal.
F. B. ... Full Bench.
F. C. ... Federal Court.
Foll. ... Followed.
Illus. ... Illustrations.
Jour. ... Journal.
L. P. A. ... Letters Patent Appeal.
O. ... Order.
Over. ... Overruled.
P. ... Page.
Pr. or P ... Para.
Pt. ... Point.
P. C. ... Privy Council.
Pre. ... Preamble.
R. ... Rule.
Ref. ... Referred or Reference.
Regn. ... Regulation.
Rel. on. ... Relied on.
Rev. ... Revenue.
S. ... Section.
S. B. ... Special Bench.
S. C. ... Supreme Court.

● at the beginning of the point indicates a case of Supreme Court, Privy Council, Federal Court, Special Bench or Full Bench.

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CONSTITUTION OF INDIA (1950)—contd.

ARTICLE 19

SYNOPSIS

(Constitution of India (1950), Art. 19)

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- **(b) Suspension of fundamental right.**
- **(c) Waiver.**

See also Ibid, Note 7.

2. "Police powers."

3. This article and Art. 21.

See also Ibid, Note 41.

4. This article and Art. 31.
- **(a) Illustrative cases.**

5. Rights which are not fundamental.

6. Conflicting rights.

7. Contracting out of fundamental rights.

See also, Ibid, Note 1 (c).

8. Infringement of right by private individuals.

9. Construction of laws restricting fundamental rights.

10. Citizens.
- **(a) Corporations and companies.**
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12. Who can raise question of unconstitutionality.

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15. Restrictions on the fundamental rights.
- **(a) Reasonableness of restrictions — Tests.**
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16. "Interests of the general public."

See also Ibid, Note 15.

17. "Public order."

18. "Restriction" — Meaning of.

See also Ibid, Note 15.

19. "Existing law."

See also Ibid, Art. 254.

20. Clause (1) (a) — (General).

21. Freedom of the press.

See also Ibid, Notes 22, 26, 27, 28.

22. Pre-censorship.

23. Security of the State.

See also Ibid, Note 25.

24. Sedition.

25. Promoting enmity between classes.

26. Decency or morality.

27. Contempt of Court.

28. Defamation.

29. Incitement to offence.

30. The film as a medium of expression.

31. Loudspeakers, ban of.

32. Picketing, prohibition of.

33. Right to make demonstrations.

34. Restrictions on freedom of speech and expression — Miscellaneous examples.

35. Clause (1) (b) — (General).

36. Right to take out procession along highway.

37. Clause (1) (c) — (General).

38. Labour and trade unions.

39. Right of businessmen to form combinations.

40. Supersession of local board, municipality etc.

41. Clause (1) (d) — (General).

See also Ibid, Notes 3 and 45.

42. "Throughout the territory of India."

43. Externment and internment orders.

44. Restrictions on entry into India.

45. Clause (1) (d) — Illustrative examples.

46. Clause (1) (e).

47. Clause (1) (f).

48. "Property."

See also Ibid, Note 4.

49. "Acquire."

See also Ibid, Note 4.

50. "Hold."

51. Taking away right of management of property etc.
    (a) Religious Endowments and Charitable Trusts Act.
    (b) Court of Wards Acts.
52. Control of accommodation and rents.
53. Tenancy laws.
54. Pre-emption.
55. Acquisition of lands.
    See also Ibid, Note 4.
56. Restraint on alienation.
    See also Ibid, Note 54.
57. Evacuee property legislation.
58. Debt laws.
59. Clause (1) (f) — Illustrative examples — Valid restrictions.
60. Clause (1) (f) — Illustrative examples — Invalid restrictions.
61. Prohibition law.
62. Clause (1) (g)—(General).
63. Practice any profession.
64. Carry on any occupation, etc.
65. Legal profession — Restrictions as to.
    See also Ibid, Note 73.
66. Licence, requirement of.
67. Trade restrictions.
    (a) By Shops and Establishments Acts.
        See Ibid, Note 70.
    (b) By Municipal and Local Boards Acts.
    (c) By Control Orders.
    (d) By Agricultural Produce Markets Acts.
    (e) By Police Acts.
    (f) By other statutes.
68. Price control.
69. Monopolies.
    See also Ibid, Note 74.
70. Labour laws.
    See also Ibid, Note 71.
    (a) Employees' Provident Funds Act (1952).
    (b) Minimum Wages Act (1948).
    (c) Shops and Establishments Acts.
    (d) Other Acts.
71. Industrial Disputes Acts.
72. Clause (1) (g) — Illustrative examples.
73. Clause (6) (i) — Professional or technical qualifications.
    See also Ibid, Note 65.
74. Clause (6) (ii) — Transport business — General.
    (a) Motor Vehicles Act (1939).
    (b) State Acts and Rules.
75. Taxation laws — General.
    (a) Income Tax Acts.
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76. Right to strike.

1. Scope and applicability.
    (a) Infringement of fundamental rights — Remedy.
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1. Scope and applicability.

● —— **Art. 19** — (Mad.) Vexatious Litigation (Prevention) Act (Mad. Act 8 of 1949)—Validity—Right of citizens to seek redress in a Court of law not affected —Act does not contravene Arts. 14 and 19—See Ibid, Art. 14. **AIR 1965 S C 1827.**

● —— **Art. 19 (1) (g)**— Confiscation of imported goods and penalties imposed by order made under S. 167 (8), Sea Customs Act, 1878 — Order passed by authority with jurisdiction under valid Act — Order cannot be challenged as being repugnant to Art. 19 (1) (f) and (g) on sole ground that it is based on misconstruction of provision of law—Petition questioning validity of order does not lie under Art. 32. See Ibid, Arts. 226 and 32. **AIR 1963 S C 734.**

● —— **Art. 19**—Scope — The fundamental rights guaranteed under Art. 19 (1) of the Constitution are not absolute rights but are subject to the restrictions placed in the subsequent clauses of Art. 19. A I R 1952 S C 196, Rel. on. Babulal Parate v. State of Maharashtra, (1961) 1 S C J 524 : (1961) 1 Andh W R (S C) 154 : (1961) 1 Mad L J (S C) 154 : (1961) Mad L J (Cr) 297 : 1961 (2) Cri L J 16 : (1961) 2 S C A 497 : 1961 S C D 597 : 1961 Andh L T 610 : (1961) 2 Ker L R 327 : AIR 1961 S C 884 (890) (Pt E) (Pr 24).

● —— Art. 19—Scope —If controls Art. 194—Art. 194 not subject to Art. 19. See Ibid, Art. 194. **AIR 1959 S C 395.**

● —— **Art. 19 and Art 31** — Act of State — No State Government has a right to do anything in the nature of an Act of State. Virendra Singh v. State of U. P., 1954 S C J 705 : 1955 S C R 415 : 1954 S C A 686 : (1954) 2 M L J 369 : AIR 1954 S C 447 (449) (Pt B) (Prs. 5, 6).

[Overruled on another point in AIR 1964 S C 1043.]

● —— **Art. 19—Interpretation of - Article guarantees to citizens enjoyment of civil liberties while they are free.**

Per Patanjali Sastri, J.—Read as a whole and viewed in its setting among the group of provisions (Arts. 19-22) relating to "Right to Freedom," Art. 19 pre-supposes that the citizen to whom the possession of these fundamental rights are secured retains the substratum of personal freedom on which alone the enjoyment of these rights necessarily rests. But where, as a penalty for committing a crime or otherwise, the citizen is lawfully deprived of his freedom, there could no longer be any question of his exercising or enforcing the rights referred to in Cl. (1). Deprivation of personal liberty in such a situation is not, within the purview of Art. 19 at all but is dealt with by the succeeding Arts. 20 and 21. In other words, Art. 19 guarantees to the citizens the enjoyment of certain civil liberties while they are free, while Arts. 20-22 secure to all persons—citizens and non-citizens — certain constitutional guarantees in regard to punishment and prevention of crime.

Per Das, J.—The freedom of the person is not the result of Art. 19. Article 19 only deals with certain particular rights which, in their origin and inception, are attributes of the freedom of the person but being of great importance are regarded as specific and independent rights. It does not deal with the freedom of the person as such. Article 19 (1) (d) protects a specific aspect of the right of free locomotion, namely, the right to move freely throughout the territory of India which is regarded as a special privilege or right of an Indian citizen and is protected as such. The protection of Art. 19 is co-terminous with the legal capacity of a citizen to exercise the rights protected thereby, for sub-cls. (a) to (e) and (g) of Art. 19 (1) postulate the freedom of the person which alone can ensure the capacity to exercise the rights protected by those sub-clauses. A citizen who loses the freedom of his person by being lawfully detained, whether as a result of a conviction for an offence or as a result

of preventive detention loses his capacity to exercise those rights and, therefore, has none of the rights which sub-cls. (a) to (e) and (g) may protect. A. K. Gopalan v. State of Madras, (1950) 2 Mad L J 42 : 63 Mad L W 638 : 1950 S C J 174 : 51 Cri L J 1383: 1950 S C R 88 :1950 Mad W N (Cri) 127 : AIR 1950 S C 27 (69, 70, 113, 114) (Pt K) (Prs. 102, 225).

● —Arts. 19, 20 to 22— Interpretation of—Article 19 gives list of individual liberties, while Arts. 20 to 22 primarily deal with penal or other laws.

Per B. K. Mukherjea, J.—Article 19 of the Constitution of India gives a list of individual liberties and prescribes in the various clauses the restraints that may be placed upon them by law, so that they may not conflict with public welfare or general morality. On the other hand, Arts. 20, 21 and 22 are primarily concerned with penal enactments or other laws under which personal safety or liberty of persons could be taken away in the interests of the society and they set down the limits within which State control should be exercised. Article 19 uses the expression 'freedom' and mentions the several forms and aspects of it which are secured to individuals, together with the limitations that could be placed upon them in the general interests of the society. Articles 20, 21 and 22 on the other hand do not make use of the expression 'freedom' and they lay down the restrictions that are to be placed on State control where an individual is sought to be deprived of his life or personal liberty. A. K. Gopalan v. State of Madras, (1950) 2 Mad L J 42 : 63 Mad L W 638 : 1950 S C J 174 : 51 Cri L J 1383 : 1950 S C R 88 : 1950 Mad W N (Cri) 127 : AIR 1950 S C 27 (93) (Pt L) (Pr 171).

—Art. 19 — Scope — U. P. Police Regulations, para. 228 — Power under — Not unchartered or unregulated — Opening of history sheet — When affects Art. 19.

Power under para. 228 of U. P. Police Regulations is justified because the exercise of such a power is necessary in the interest of society. The power cannot be said to be unchartered or an unregulated power which is capable of being used chimerically by the police. Prima facie neither the opening of any history sheet, nor having surveillance of, a citizen can affect the freedom of speech and expression, nor can it touch the citizen's right to acquire, hold and dispose of property, nor even his right to practise any profession or to carry on any occupation, trade or business.

A bona fide opening of history sheet in accordance with the provisions of the Police Regulation is not per se invasion on the freedoms guaranteed to a citizen. Where, however, the police publicises the fact that they had opened a history sheet of a certain citizen or had put a certain citizen under surveillance, the citizen should have the adequate remedy, but where the police maintained a history sheet in accordance with the provisions of the police regulations then such maintenance of a history sheet cannot be said to affect that reputation of the citizen which the law thinks just and proper to protect. AIR 1962 All 216, Approved. ILR (1963) 1 All 289 : 1963 All L J 590 : 1963 (2) Cr L J 241 : AIR 1963 All 408 (410, 411) (Pt B) (Prs 8, 13) (DB).

—Art. 19—Direction by Chief Justice, if contravenes the article. See U. P. High Courts (Amalgamation) Order (1948), Cl. 8 (2), Second Proviso, Cl. 18. AIR 1962 All 391 (DB).

● —Art. 19—Applicability — Income-tax Act, S. 34 (1-A)—Proceedings under —Subjective satisfaction of authority concerned necessary for purpose of initiating proceedings—Art. 19 cannot apply at initial stage, See Ibid, Art. 14. AIR 1960 All 19 (FB).

—Art. 19—Applicability — Infringement of fundamental right — Effect of. See Sales Tax — U. P. Sales Tax Act (15 of 1948), S. 28 (3). (1957) 8 S T C 795 (All).

— Arts. 19 and 14—U. P. Pure Food Act (1950), S. 10 — U. P. Pure Food Rules (1952), R. 18 — Presumption under S. 10 not conclusive but rebuttable — Section does not contravene Art. 14 or Art. 19—(Evidence Act (1872), Ss. 3, 4) See U. P. Pure Food Act (32 of 1950), S. 10. AIR 1956 All 520.

—Art. 19—Scope—Freedom of speech or movement —Preventive Detention Act (1950), S. 3.

Right of freedom of speech or movement or any right under Art. 19 of the Constitution is exercisable only if the same has not been curtailed or obviated pursuant to some lawful order. If, therefore, the detention is lawful under the Preventive Detention Act, rights of speech or movement under Art. 19 ceases : (1950) 2 M L J 42 : 1950 S C J 174: AIR 1950 SC 27, Relied on. 63 Punj L R 242 : 1961 (2) Cr L J 547 (551) (Pt D) (Pr 9).

—Art. 19—Central Excises and Salt Act (1944), Sch. I. Item 9 (1)—Unmanufactured tobacco other than flue cured—Levy of duty—Stage at which it can be levied—Reduction of duty ex-gratia—Art. 14 or 19 of Constitution not applicable. 61 Pun L R 154 : AIR 1959 Punj 357 (359, 360) (Prs 8, 13).

—Art. 19—Scope.

Article 19 of the Constitution which guarantees the seven freedoms in the citizens of India was not intended to lay down any new or novel rules of Government but simply embodies the principles which have crystallised themselves into fundamental law by the lapse of time. 58 Punj L R 464 : 1957 Cri L J 88 : 1957 All W R (Supp) 21 : ILR (1957) Punj 218 : AIR 1957 Punj 1(3) (Pt A) (Pr 8) (DB).

1 (a). Infringement of fundamental rights—Remedy.

● —Art. 19—Khorposh grants to junior members of the family of Rulers of Native States first in the shape of lands but ultimately assuming shape of money allowances payable at regular intervals—States merging in Dominion of India— Before coming into force of the Constitution Government by their order stopping the grants — Junior members entering into prolonged correspondence with Government insisting upon their rights under the grants by the former Rulers—Members realising only in 1957 that revision of the Government's policy cannot be hoped for. Held that every periodic deprivation of money allowance would give such members a right to approach the Court for relief. See Ibid, Arts. 226 and 32. AIR 1962 S C 1288.

● —Art. 19—Scope—Interference with fundamental rights to property by executive action without any authority of specific rule of law—Issue of writ—Person building on State land with permission of Government— Position of. See Ibid, Arts. 226 and 32, AIR 1961 S C 1570.

● —Art. 19 — Petition challenging constitutionality of Madras Act 32 of 1955 on ground of infringement of fundamental rights under Art. 19 (1) (f) and Art. 31 (1) — Dispute held not to be of private nature — Petition maintainable. See Ibid, Arts. 226 and 32. AIR 1959 S C 725.

● —Art. 19 — Applicability — Respondent, whether can complain of violation of fundamental right.

A respondent cannot be allowed to complain of a violation of his fundamental right, apart from and independently of the appellant where all along the

line, the respondent has preferred to sail with the appellant, but figuring as a respondent only. Sewpujanrai Indrasanrai Ltd. v. Collector of Customs, 1958 Cr L J 1355; 1958 S C J 1199 : 1958 M L J (Cr) 929 : 1959 S C R 821 : AIR 1958 S C 845 (856, 857) (Pt J) (Pr 26).

——**Art. 19** — Applicability — Mandamus — Police opening history sheet and watching movement of petitioner — Action in accordance with Police Regulation — Not a violation of freedom guaranteed by Art. 19 — Court will refuse to interfere with the action of police as such interference would be putting in jeopardy the safety of the community at large in the locality. See Ibid, Art. 226. **1963 (2) Cr L J 201 (All).**

——**Arts. 19 (1) (f) and (g) and 226** — Confiscation of petitioner's property under R. 151 (c) of Central Excise Rules — Confiscation unlawful—Restriction in exercise of fundamental right — Cognizance of writ petition though other remedies are available — Central Excise Rules (1944), R. 151 (c) — (Central Excises and Salt Act (1944), S. 36). See Ibid, Art. 19 (1) (g). **AIR 1960 All 402.**

——**Art. 19** — Deprivation of personal liberty under Statute by preventive or punitive detention — Constitutionality of Statute, if can be challenged on ground of infringement of Art. 19. See Ibid, Art. 226. **AIR 1955 All 193 (DB).**

——**Art. 19** — Section 3, Essential Supplies (Temporary Powers) Act, 1946, declared as constitutional by Supreme Court — High Court cannot enter into question of validity of S. 3 (4), even on grounds not alleged before Supreme Court. See Essential Supplies (Temporary Powers) Act (1946), S. 3 (4). **AIR 1955 NUC (All) 3594.**

——**Art. 19 — Restrictions on the right of free movement — Justiciability — Assam Opium Prohibition Act (23 of 1947), S. 17.**

The validity of the legislation permitting restrictions on the right to move freely throughout the territory of India is justiciable. It is open to the Courts to consider the reasonableness of the restrictions. It is also open to the Court to examine the procedure to be followed before any restrictions on the right to move freely throughout the territory of India can be imposed. AIR 1950 S C 211, Foll. **52 Cri L J 966 : ILR (1951) 3 Assam 181 : A I R 1951 Assam106 (117) (Pt K) (Pr 70) (DB).**

——**Art. 19 (1) (g)** — Right to apply under. See Ibid, Art. 226. **AIR 1962 Andh-Pra 363.**

——**Art. 19 (1) (g)** — Fundamental rights violated — Question of alternative remedy as a bar does not arise. See Ibid, Art. 226. **AIR 1965 Cal 236.**

——**Art. 19 (1) (f)** — Form of and contents in petition under Art. 226 — Allegation of infringement of fundamental right under Art. 19 (1) (f) — Omission to mention is immaterial. **AIR 1953 Him-Pra 95 (99) (Pt C) (Pr 16).**

——**Arts. 19 (1), 32 and 226**—Infringement of fundamental right—Remedy other than one under Art. 226 is not open. **AIR 1953 Him.Pra 8 (10) (Pt B) (Pr 13).**

——**Arts. 19 (1) (f) and (5)** — Right to hold property — Unauthorised interference by executive — It is actionable wrong. **AIR 1953 NUC (Hyd) 417.**

——**Arts. 19 (1) (f), 32 and 226** — Rights to property — Executive interference — Powers of High Courts and Supreme Court indicated. **AIR 1955 NUC (Hyd) 417.**

——**Art. 19 — Applicability — Validity of Notification — Notification not properly interpreted by Registering authority — Remedy is against officer and not under Art. 19.**

The notification published in the daily newspaper 'Sandesh' Jammu on 25th April, 1959 cannot be construed to mean that the motor vehicles which are under repair in the petitioner's garage are to leave the garage without the repairs having been executed. The fact that the officer is not carrying out the directions in the notification properly would not make the notification liable to be challenged. **AIR 1959 J and K 141 (143) (Pt B) (Prs 17, 18) (DB).**

——**Arts. 19 (1) (g) and 226** — Discretion of High Court under Art. 226 — Petitioner after enjoying right to vend meat under auction (of such right by local body) for full term challenging validity of auction under Art. 19 (1) (g) in writ petition — High Court not justified in exercising its discretion under Art. 226 in petitioner's favour. Observations of Bhagwati, J., in AIR 1959 S C 149, Rel. on. AIR 1957 Ker 85, Disting. **1961 Ker L T 159 : AIR 1961 Ker 289 (290) (Pr 4).**

——**Art. 19** — Scope of—Cancellation of gun licence — Effect on fundamental right of citizen to hold property—Application under Art. 226—Competency, See Ibid, Art. 226. **AIR 1957 Mad 692.**

——**Art. 19** — Scope—Revision petitioner questioning order under S. 144 which was against public generally on the ground of trespass on his fundamental rights under Art. 19 of Constitution — Powers of High Court. See Criminal P. C. (1898), S. 144. **1961 (1) Cr L J 676 : AIR 1961 Manipur 12.**

——**Arts. 19 (1) (g) and 226** — Mandamus — Writ can issue prohibiting authority to do certain thing — Infringement of fundamental right to carry on trade by stopping movement of foodgrains - Issue of mandamus. See Ibid, Art. 226. **AIR 1956 Manipur 13.**

——**Art. 19**—Citizen deported—Compliance required within 3 days—Writ application, if can be entertained —Another remedy, under Foreigners Act or Citizenship Act. See Ibid, Art. 226. **AIR 1959 Punj 261.**

——**Arts. 19, 226, 301—Articles in transit seized by police officer - Articles suspected to be stolen property—Arts. 19 and 301 do not apply — High Court will not interfere under Art. 226.**

Article 19 of the Constitution does not apply in the case of articles seized under S. 550, Criminal P. C., the articles being suspected to be stolen property and found being taken away out of one district to another in the night. Freedom of trade does not extend to protect actions which are suspected to be offences. Nor does Art. 301 of the Constitution authorise what is sought to be justified by the petitioner whose articles were seized. And as none of the conditions calling for an exercise of inherent or extraordinary jurisdiction exist in such a case the High Court will not interfere with the order of seizure of the articles by issuing any writ under Art. 226 of the Constitution. AIR 1960 S C 866, Applied. **1963 Raj L W 30.**

——**Arts. 19 (1) (f) and 226**—Mandamus—Petitioner wrongfully deprived of his property by executive authority — Mandamus against executive. See Ibid, Art. 226. **AIR 1956 Tripura 9.**

1 (b). Suspension of fundamental rights.

● ——**Art. 19**—Scope—Emergency proclaimed— Suspension of provisions of Art. 19— Scope of Art. 358. See Ibid, Art. 358. **AIR 1963 Assam 94 (FB).**

1(c). Waiver.

See also Ibid, Note 7.

——**Arts. 19, 31, 226**—Government order contravening fundamental right—Conduct acquiescing in the

order—Order challenged as ultra vires as contravening the right — Waiver of fundamental right—See Ibid, Art. 31. AIR 1953 Pepsu 9.

——Art. 19—There can be no waiver of fundamental rights by a party and mere laches will not deprive him of that right. 62 Pun L R 612: AIR 1960 Pun 439 (444) (Pt E) (Pr 10).

2. "Police powers."

● ——Art. 19—Reasonable restrictions.

Cls. (2) to (6) of Art. 19 of the Constitution may be said to be a somewhat partial codification of the police powers known to the American Constitutional Law. The expressions 'reasonable restrictions' and 'in the interests of the general public' in Cl. (5) of Art. 19 undoubtedly enable the Courts to construe the rights conferred by sub-Cls. (d), (e) and (f) of Cl. (1) of the article in such a manner as to make them accord with social needs and economic and other interests of the community at large. S. Sant Singh v. State of J & K. AIR 1959 J & K 35 (47) (Pt F) (Pr 35) (FB).

3. This Article and Art. 21.

See also Ibid, Note 41.

● ——Arts. 19 (1) (d) and 21—U. P. Police Regulations, Reg. 236, Cl. (b)—Domiciliary visits—Meaning of—Such visits do not affect fundamental right under Art. 19 (1) (d) but they affect personal liberty contemplated by Art. 21.

Domiciliary means 'of a dwelling place'. A domiciliary visit is a visit of officials to search or inspect a private house. It is clear that having regard to the plain meaning of the words 'domiciliary visits', the police authorities are authorised to enter the premises of the suspect, knock at the door and have it opened and search it for the purpose of ascertaining his presence in the house.

Per Majority—The intrusion into the residence of a citizen and the knocking at his door with the disturbance to his sleep and ordinary comfort which such action must necessarily involve, does not constitute a violation of the freedom guaranteed by Art. 19 (1) (d). But they are a deprivation of the personal liberty guaranteed by Art. 21, as an unauthorised intrusion into a person's home and disturbance caused to him thereby, is as it were the violation of a common law right of a man an ultimate essential of ordered liberty, if not of the very concept of civilisation.

Per Subba Rao and Shah, JJ.—The freedom of movement in Cl. (d) of Art. 19 (1) must be a movement in a free country, i.e., in a country where a citizen can do whatever he likes, speak to whomsoever he wants, meet people of his own choice without any apprehension, subject of course to the law of social control. The petitioner suspect under the shadow of surveillance is certainly deprived of this freedom. He can move physically, but he cannot do so freely, for all his activities are watched and noted. Hence, the entire Regulation 236 offends also Art. 19 (1) (d) of the Constitution. Kharak Singh v. State of U. P., (1964) 2 S C J 107 : (1964) 1 S C R 332 : 1963 All L J 711 : 1963 (2) Cr L J 329 : AIR 1963 S C 1295 (1303, 1306) (Pt A) (Prs 22, 32).

● ——Art. 19 (1) (d) and Art 21—Freedom of movement and personal liberty — Scope of these provisions—Their relation inter se.

Per Majority : In Art. 21 of the Constitution of India as contrasted with the 4th and 14th Amendments in the U. S., the word 'liberty' is qualified by the word 'personal' and therefore its content is narrower. But the qualifying adjective has been employed in order to avoid overlapping between those elements or incidents of 'liberty', like freedom of speech, or freedom of movement, etc., already dealt with in Art. 19 (1) and the 'liberty' guaranteed by Art. 21—and particularly in the context of the difference between the permissible restraints or restrictions which might be imposed by sub cls. (2) to (6) of the Article on the several species of liberty dealt with in the several clauses of Art. 19 (1).

The words 'personal liberty' in Art. 21 are used as a compendious term to include within itself all the varieties of rights which go to make up the 'personal liberties' of man other than those dealt with in the several clauses of Art. 19 (1). In other words, while Art. 19 (1) deals with particular species or attributes of that freedom, 'personal liberty' in Art. 21 takes in and comprises the residue.

Per Subba Rao and Shah, JJ.—The provisions in Art. 19 (1) (d) and Art. 21 are distinct fundamental rights. No doubt the expression 'personal liberty' is a comprehensive one and the right to move freely is an attribute of personal liberty. Both are independent fundamenal rights though there is overlapping. The fundamental right of life and personal liberty have many attributes and some of them are found in Art. 19. If a person's fundamental right under Art. 21 is infringed, the State can rely upon a law to sustain the action; but that cannot be a complete answer unless the said law satisfies the test laid down in Art. 19 (2) so far as the attributes covered by Art. 19 (1) are concerned. In other words, the State must satisfy that both the fundamental rights are not infringed by showing that there is a law and that it does amount to a reasonable restriction within the meaning of Art. 19 (2) of the Constitution, Kharak Singh v State of U P. 1963 All L J 711 : 1963 (2) Cr L J 329 : (1964) 2 S C J 107 : (1964) 1 S C R 332 : AIR 1963 S C 1295 (1301, 1302, 1305) (Pt G) (Prs 15, 17, 30).

● ——Arts. 19, 21 and 31 — Interpretation — 'Law' —Meaning of—Articles are not in pari materia.

In (1950) 2 Mad L J 42 : 1950 S C J 174 : AIR 1950 S C 27 the Supreme Court rejected the plea that law made under Art. 21 shall not infringe Art. 19 (1). But the word 'law' as used in Art. 31 (1) cannot be interpreted in the way it was interpreted in construing Art. 21 in that decision, for there is no analogy between Art. 21, as interpreted by the Supreme Court in that decision and Art. 31 (1). Arts. 19, 21 and 31 are not in pari materia and they differ in their scope and content. There is material difference not only in the phraseology but also in their setting. Art. 19 cannot be construed on the basis of the construction placed upon Art. 21 in AIR 1950 S C 27. Both Arts. 19 (1) (f) and 31 (1) deal with the same subject, namely, property. While under Art. 19 (1) (f), a citizen has the right to acquire hold and dispose of property, Art. 31 (1) enables the State to make a law to deprive him of that property. Such a law directly infringes the fundamental right given under Art. 19 (1) (f). Art. 31 (1) does not exclude the operation of Art 19 (1). AIR 1950 S C 27, Dist Kochuni v. States of Madras and Kerala, 1960 Ker L J 1077 : 1960 Ker L T (S C) 31 : (1960) 2 S C A 412 : (1960) 3 S C R 887 : (1961) 2 S C J 443 : AIR 1960 S C 1080 (1092, 1093) (Pt G) (Prs 25, 26).

● ——Arts. 19, 21, and 22 — Scope of—Detention of persons for preventing them from making speeches prejudicial to maintenance of public order — Legality — Public Safety — Preventive Detention Act (1950), S. 3.

Although personal liberty has a content sufficiently comprehensive to include the freedoms enumerated in Art. 19 (1) and its deprivation would result in the extinction of those freedoms, the Constitution has treated these civil liberties as distinct, fundamental rights and made separate provisions in

Art. 19 and Arts. 21 and 22 as to the limitations and conditions subject to which alone they could be taken away or abridged. A law which authorises deprivation of personal liberty does not fall within the purview of Art. 19 and its validity is not to be judged by the criteria indicated in that Article but depends on its compliance with the requirements of Arts. 21 & 22.

Article 19 clearly means that the legislation to be examined must be directly in respect of one of the rights mentioned in the sub-clauses. If there is a legislation directly attempting to control a citizen's freedom of speech or expression, or his right to assemble peaceably and without arms, etc., the question whether that legislation is saved by the relevant saving clause of Art. 19 will arise. If, however, the legislation is not directly in respect of any of these subjects, but as a result of the operation of other legislation, for instance, for punitive or preventive detention, his right under any of these subclauses is abridged, the question of the application of Art. 19 does not arise. The true approach is only to consider the directness of the legislation and not what will be the result of the detention otherwise valid, on the mode of the detenu's life.

It therefore clearly follows that the order of detention under S. 3 of the Preventive Detention Act, 1950, preventing certain person from making speeches prejudicial to the maintenance of the public order is valid even though it has the result of abridging his right under Art. 19 (1) (a) by such detention. AIR 1950 S C 27, Foll. AIR 1950 S C 124 and AIR 1950 S C 129, Ref. Ram Singh v. State of Delhi, **1951 Mad W N 765 : 52 Cri L J 904 : 1951 S C J 374 : 1951 All L J (S C Supp.) 111 : 1951 Mad W N Cr 233 : 1951 S C R 451 : AIR 1951 S C 270 (272) (Pt A) (Prs 5, 6).**

● **——Arts. 19 and 21 — Art. 19 is a separate complete article.**

Per Kania C. J. — It is improper to read Art. 19 as dealing with the same subject as Art. 21. Article 19 gives the rights specified therein, only to the citizens of India while Art. 21 is applicable to all persons. The word 'citizen' is expressly defined in the Constitution to indicate only a certain section of the inhabitants of India. Moreover, the protection given by Art. 21 is very general. It is of "law" — whatever that expression is interpreted to mean. The legislative restrictions on the law-making powers of the legislature are not here prescribed in detail as in the case of the rights specified in Art. 19. Therefore Art. 19 should be read as a separate complete Article. A. K. Gopalan v State of Madras, **(1950) 2 Mad L J 42 : 63 Mad L W 638 : 1950 S C J 174 : 51 Cri L J 1383 : 1950 S C R 88 : 1950 Mad W N (Cri) 127: AIR 1950 S C 27 (37) (Pt N) (Pr 12).**

● **——Art. 19—Preventive detention, whether article applies to.**

Per Kania, C. J., B. K. Mukherjea and Das, JJ. — Article 19 has no application to a legislation dealing with preventive or punitive detention as its direct object. A K. Gopalan v. State of Madras, **(1950) 2 Mad L J 42 : 63 Mad L W 638 : 1950 S C J 174 : 51 Cri L J 1383 : 1950 S C R 88 : 1950 Mad W N (Cri) 127 : AIR 1950 S C 27 (36, 96, 113, 114) (Pt O) (Prs 8, 176, 225).**

● **——Arts. 19 and 21 — Articles are not complementary to each other.**

Per B. K Mukherjea, J.—Article 19 cannot be said to deal with substantive law merely, nor Art. 21 with mere matters of procedure. It cannot also be said that the provisions of Art. 19 (1) (d) read with cl. (5) and Art. 21 are complementary to each other. The contents and subject-matter of the two provisions are not identical and they proceed on totally different principles. There is no mention of any 'right to life' in Art. 19, although that is the primary and the most important thing for which provision is made in Art. 21. A. K. Gopalan v. State of Madras, **(1950) 2 Mad L J 42 : 63 Mad L W 638 : 1950 S C J 174 : 51 Cri L J 1383 : 1950 S C R 88 : 1950 Mad W N (Cri) 127 : AIR 1950) S C 27 (94) (Pt P) (Pr 172).**

——Arts. 19, 21 and 22 — Constitution, recognition by, of personal liberties.

Per Das, J. — The Constitution has recognised personal liberties as fundamental rights. It has guaranteed some of them under Art. 19 (1) but put restraints on them by Cls. (2) to (6). It has put checks on the State's legislative powers by Arts. 21 and 22. It has, by providing for preventive detention, recognised that individual liberty may be subordinated to the larger social interests. A. K. Gopalan v. State of Madras, **(1950) 2 Mad L J 42 : 63 Mad L W 638 : 1950 S C J 174 : 51 Cri L J 1383 : 1950 S C R 88 : 1950 Mad W N (Cri) 127 : A I R 1950 S C 27 (108, 109) (Pt Q) (Pr 215).**

● **——Arts. 19 and 21—"Personal liberty", connotation of.**

Per Das, J. — The Constitution has in Art. 21 used the words "personal liberty" which have a definite connotation in law. "Personal liberty" does not mean only liberty of the person but it means liberty or the rights attached to the person (jus personarum). The expressions "freedom of life" or "personal liberty" are not to be found in Art. 19 and it is straining the language of Art. 19 to squeeze in personal liberty into that Article. In any case the right to life cannot be read into Art. 19. There is no reason to suppose that in Art. 21 of the Constitution the expression 'personal liberty' has been used in the restricted sense in which Blackstone used it in his Commentaries. Article 19 protects some of the important attributes of personal liberty as independent rights and the expression 'personal liberty' has been used in Art. 21 as a compendious term including within its meaning all the varieties of rights which go to make up the personal liberties of men. A. K. Gopalan v. State of Madras, **(1950) 2 Mad L J 42 : 63 Mad L W 638 : 1950 S C J 174 : 51 Cri L J 1383 : 1950 S C R 88 : 1950 Mad W N (Cri) 127 : A I R 1950 S C 27 (110, 111) (Pt R) (Prs 219, 220).**

● **——Art. 19 (1) (d), Art. 19 (5) and Art. 21—Deprivation of movement whether includes restriction on movement.**

Per Kania, C. J. — Deprivation (total loss) of personal liberty, which is sought to be protected by the expression "personal liberty" in Art. 21, is quite different from restriction (which is only a partial control) of the right to move freely (which is relatively a minor right of a citizen) as safeguarded by Art. 19 (1) (d). Deprivation of personal liberty has not the same meaning as restriction of free movement in the territory of India. Therefore, Art. 19 (5) cannot apply to a substantive law depriving a citizen of personal liberty. The contention that the word 'deprivation' includes within its scope 'restriction' when interpreting Art. 21 is not acceptable.

Per Fazl Ali, J. Contra. — Preventive detention amounts to a complete deprivation of the right guaranteed by Art. 19 (1) (d). It is highly technical to argue that deprivation of a right cannot be said to involve restriction on the exercise of the right. Having regard to the context in which the word 'restriction' has been used, there is no antithesis between that word and the word 'deprivation'. Restraint on the right to move can assume a variety of forms and restriction would be the most appropriate expression to be used in Cl. (5) of Art. 19 so as to cover all those forms ranging from total to various kinds of partial deprivation of freedom of movement. A. K. Gopalan v. State of Madras, **(1950) 2 Mad L J 42 : 63 Mad L W 638 : 1950 S C J 174 : 51 Cri L J 1383 : 1950 S C R 88 : 1950 Mad W N (Cri) 127 : AIR 1950 S C 27 (37, 51) (Pt T) (Prs 12, 51).**

●——Arts. 19, 21 and 22—Articles whether supplemental or exclusive.

Per Kania, C. J.—Article 21 has to be read as supplemented by Art. 22. Reading in that way, the proper mode of construction will be that to the extent the procedure is prescribed by Art. 22 the same is to be observed; otherwise Art. 21 will apply.

Per Fazl Ali, J. — Article 22 does not exclude the operation of Arts. 19 and 21, and it must be read subject to those two articles, in the same way as Arts. 19 and 21 must be read subject to Art. 22. The correct position is that Art. 22 must prevail in so far as there are specific provisions therein regarding preventive detention, but, where there are no such provisions in that article, the operation of Arts. 19 and 21 cannot be excluded.

Per Mahajan, J. — Article 22 is self-contained in respect of the laws on the subject of preventive detention. Article 19 (5) is a saving and an enabling provision. It empowers Parliament to make a law imposing reasonable restriction on the right of freedom of movement while Art. 22 (7) is another enabling provision empowering Parliament to make a law on the subject of preventive detention in certain circumstances. If a law conforms to the conditions laid down in Art. 22 (7), it would be a good law and it could not have been intended that that law validly made should also conform itself to the provision of Art. 19 (5). One enabling provision cannot be considered as a safeguard against another enabling provision. Article 13 (2) has absolutely no application in such a situation. A. K. Gopalan v. State of Madras, **(1950) 2 Mad L J 42 : 63 Mad L W 638 : 1950 S C J 174: 51 Cri L J 1383: 1950 S C R 88: 1950 Mad W N (Cri) 127 : AIR 1950 S C 27 (40, 61, 82, 83) (Pt ZC) (Prs 22, 78, 137, 138).**

——Art. 19 and Art. 22—Article 19 does not apply to preventive detention — Articles 21 and 22 are complete in this matter. **AIR 1955 N U C (Cal) 4507.**

——Arts. 19 (1) (d), (5) and 21 — Validity of Section 7, Police Act (1861).

Article 19 (1) (d) has to be read with Article 21 which lays down that a person may be deprived of his personal liberty according to procedure established by law, which means valid law. Section 7 of the Police Act 1861 is valid law being saved by Article 19 (5). The restriction imposed by S. 7 is reasonable and is necessary in the interest of the general public. AIR 1950 S C 27, Foll. **I L R (1955) 2 Cal 28 : 58 C W N 18 : AIR 1954 Cal 60 (64) (Pt H) (Pr 53) (DB).**

● ——Arts. 19 (1) (d), 21—Refusal of passport amounts to an unauthorised deprivation of personal liberty—Passport Act (1920), S. 3. AIR 1954 Mad 240, held no longer good law in view of AIR 1959 S C 1315.

There is no statute in India governing the issue of a passport or a refusal thereof. There is, however, a statute requiring passports from persons entering India, the Indian Passport Act, 1920 and the Indian Passport Rules, 1950, framed under S. 3 of that Act.

The right to travel except to the extent provided in Art. 19 (1) (d) of the Constitution, is within the ambit of the expression 'personal liberty' as used in Art. 21 of the Constitution. A passport is essential for the enjoyment of that right, therefore the denial of a passport amounts to a deprivation of that right. Article 21, no doubt, permits a deprivation by 'procedure established by law' but no such procedure is laid down by the Union of India. The expression 'procedure established by law', means procedure laid down by statute or procedure prescribed by the law of the State. In the absence of any procedure prescribed by the law of this country sustaining the refusal of a passport to a person, its refusal amounts to an unauthorised deprivation of the personal liberty guaranteed by Art. 21 and the appropriate authority must be directed to reconsider the refusal and grant a passport. AIR 1954 Mad 240, held no longer good law in view of A I R 1959 S C 1315.

Per Raman Nayar, J. — Confinement is but a particular form of restraint. Section 340 of the Indian Penal Code describes wrongful confinement as wrongfully restraining any person in a manner to prevent him from proceeding beyond certain circumscribing limits. Consequently, if freedom from confinement is a personal liberty within the meaning of Art. 21, freedom of movement to any particular direction of one's choice is also a personal liberty. AIR 1963 S C 1295 and AIR 1950 S C 27, Rel. on. Francis Manjooran v. Govt. of India, Ministry of External Affairs, New Delhi. **1965 Ker L J 919 : 1965 Ker L T 1076 : I L R (1966) 2 Ker 663 : AIR 1966 Ker 20 (21, 24, 25, 26, 32) (Prs 2, 3, 25, 27, 28, 36, 37, 55) (FB).**

——Art. 19—Refusal to issue passport — Interference with right guaranteed by Article. See Ibid, Art. 14. **(1953) 2 M L J 413 : AIR 1954 Mad 240 (DB).**

[Held in AIR 1966 Ker 20 (FB) to be no longer law in view of AIR 1959 S C 1315.]

——Arts. 19 (1) (d), (2) and 22 — Interpretation — Liberty of persons —Arts. 19 (5), 21 and 22 providing for restriction — Interest of the general public or of the interests of any scheduled tribe — "Procedure established by law"—Scope of Art. 22 (7).

Article 19 (1) (d) creates the right in all citizens of India to freedom of moving throughout the territory of India and it is qualified by the provision in Art. 19 (5) for reasonable restrictions in the interest of general public or for the protection of the interest of any schedule tribe.

Article 21 provides against deprivation of life or personal liberty except "according to procedure prescribed by law."

The expression "according to procedure prescribed by law" is clarified in the Constitution; it means legislative enactment passed either by the Parliament or the State legislature which does not offend or is not revolting to, notions and ideas of the dignity of the human being and is neither indecent, unconscionable or repugnant to civilized beliefs. Article 22 prescribes one of the modes of depriving the personal liberty and it should be read as a proviso to Art. 21 If the same is followed in letter and spirit the Court cannot question the detention, otherwise the detention is unlawful.

"Any law" in Art. 22 (7) prima facie refers to only protective legislation and not to a "law in force" or "existing law" and the power of the Parliament (and that of the President under Art. 373) relate only to detentions under any law enacted in pursuance of and conformity with Art. 22 of the Constitution and not to detentions under any law existing prior to the Constitution. **1952 Cr L J 170 : AIR 1951 Mad 1015 (1025, 1040) (Pts H, I, J) (Prs 13, 19, 63) (DB).**

——Art. 19 (1) — Applicability to preventive detention legislation.

The principle of reasonable restriction or reasonableness of law imposing restriction upon the liberty of citizens has no application to the laws prescribing preventive detention. **17 Cut L T 109 : 52 Cri L J 679 : I L R (1951) Cut 387 : AIR 1951 Orissa 251 (254) (Pt B) (Pr 13) (DB).**

——Art. 19 (1) (d) and (e), and (5) — Public Safety—Orissa Maintenance of Public Order Act (10 of 1950), Ss. 2 (1) (b) and 3 —Provisions, if void under Arts. 13 (2) and 21 of Constitution. See Ibid, Art. 13 (2). **AIR 1951 Orissa 86 (DB).**

——Arts. 19, 21 and 22—Relative scope of — Preventive Detention Act (4 of 1950) —If void as inconsistent

with fundamental rights guaranteed by Constitution. See Preventive Detention Act. ('50) 29 Pat 502.

——Art. 19 — Scope — If concerned with personal liberty.

Per Meredith C. J. — Article 19 is not concerned with personal liberty at all. It is not concerned with the right of every one to personal liberty, which is separately laid down for every person in Art. 21. It is concerned only with the additional rights of citizens—rights described on the presupposition that they are at liberty. It is describing the rights of citizens who are legally at liberty, and not of those who may be imprisoned under a procedure established by law. Article 21 does not say that no person shall be deprived of his personal liberty except according to procedure established by a reasonable law. The limitation is in respect of laws, meaning all valid laws validly enacted and not merely such laws as the Courts decide to be, in their opinion, reasonable. **I L R 29 Pat 461 : 52 Cri L J 610 : A I R 1950 Pat 332 (336) (Pt B) (Pr 9) (DB).**

4. This article and Art. 31.

(a) Illustrative cases.

4. This article and Art. 31.

● ——Arts. 19 (1) (f) and 31 (1) — Art. 19 applies both to concrete and abstract rights of property—Such construction given to Art. 19 (1) (f) does not make Art. 31 (1) otiose.

The phraseology used in Art. 19 (1) (f) is wide and prima facie it takes in its sweep both abstract and concrete rights of property. To suggest that abstract rights of a citizen in property cannot be infringed by the State, but his concrete rights can be, is to deprive Art. 19 (1) (f) of its real content. It would mean that the State could not make a law declaring generally that a citizen cannot acquire, hold and dispose of property, but it could make a law taking away the property acquired or held by him and preventing him from disposing it of. Though there is no final expression of opinion by Supreme Court on this question, yet the Supreme Court and the High Courts all through since the date of promulgation of the Constitution proceeded on the assumption that Art. 19 applied to both the rights. It may, therefore, be held that Art. 19 applies both to concrete as well as to abstract rights of property. A I R 1951 S C 41 and A I R 1954 S C 282, Rel. on.

Such a construction given to Art. 19 (1) (f) does not make Art. 31 (1) otiose. Article 31 (1) is couched in a negative form. It says that no person shall be deprived of his property save by authority of law. In effect, it declares a fundamental right against deprivation of property by executive action, but it does not either expressly or by necessary implication take the law out of the limitations implicit in Art. 19 (1) (f) of the Constitution. The law in Art. 31 (1) must be a valid law and to be a valid law it must stand the test of other fundamental rights. A law, therefore, depriving a person of his property would be bad unless it amounts to a reasonable restriction in the interest of the general public or for the protection of the interests of Scheduled Tribes. Swami Motor Transport, Ltd. v. Sri Sankaraswamigal Mutt, **(1964) 1 S C J 530 : (1964) 1 Mad L J (S C) 146 : (1964) 1 Andh W R (S C) 146 : (1963) Supp 1 S C R 282 : A I R 1963 S C 864 (872, 873) (Pt B) (Prs 28, 29).**

● ——Art. 19 (1)—Scope—If excluded by Art. 31 (1).

After the Constitution (Fourth Amendment) Act (1955), Art. 31 (1) and (2) cannot be held as dealing with the same subject-matter but they deal with two different subjects ; Art. 31 (2) and (2-A) with acquisition and requisition and Art. 31 (1) with deprivation of property by authority of law. After that Act, 1955 S C J 10 : A I R 1955 S C 41 no longer holds the field and Art. 31 (1) does not exclude the operation of Art. 19 (1). A I R 1955 S C 41 and A I R 1954 S C 92, Dist. Kochuni v. States of Madras and Kerala, **1960 Ker L J 1077 : 1960 Ker L T (SC) 31 : (1960) 2 S C A 412 : (1960) 3 S C R 887 : (1961) 2 S C J 443 : A I R 1960 S C 1080 (1093, 1094) (Pt I) (Pr 27).**

● ——Arts. 19 (1) (f) and 31 (1)—These do not provide protection against private actions.

Neither Art. 19 (1) (f) nor Art. 31 (1) on its true construction was intended to prevent wrongful individual acts or to provide protection against merely private conduct. The language and structure of Art. 19 and its setting in Part III of the Constitution clearly show that the article was intended to protect those freedoms against State action other than in the legitimate exercise of its power to regulate private rights in the public interest. Violation of rights of property by individuals is not within the purview of the article.

The position is no better under Art. 31 (1). Even assuming that Cl. (1) of Art. 31 has to be read and construed apart from Cl. (2), it is clear that it is a declaration of the fundamental right of private property in the same negative form in which Art. 21 declares the fundamental right to life and liberty. There is no express reference to the State in Art. 21. But it cannot be suggested on that account that that article was intended to afford protection to life and personal liberty against violation by private individual. The words "except by procedure established by law" plainly exclude such a suggestion. Similarly, the words "save by authority of law" in Cl. (1) of Art. 31 show that it is a prohibition of unauthorised governmental action against private property, as there can be no question of one private individual being authorised by law to deprive another of his property. Quaere : Should Cl. (1) of Art. 31 be construed in isolation from the rest of the article ? 1950 S C R 869, Ref. Shamdasani P. D. v. The Central Bank of India Ltd., **1952 S C A 36 : 1952 S C J 29 : 1952 Mad W N 102 : 1952-1 Mad L J 423 : 65 Mad L W 357 : 1952 S C R 391 : 54 Pun L R 190 : 54 Bom L R 403 : A I R 1952 S C 59 (60) (Pr 5).**

——Arts. 19 (1) and 31 (1)—(As amended in 1955)—Applicability—Whether mutually exclusive.

After the Constitution (Fourth Amendment) Act, 1955, Art. 31 (1) does not exclude the operation of Art. 19 (1), and even though the provisions of the impugned statute may not contravene Art. 31, yet they may still be unreasonable and contravene the provisions of Art. 19 (1). A I R 1960 S C 1080, Foll.; A I R 1955 S C 41, held no longer good law after the amendment of the Constitution in 1955. **A I R 1962 All 521 (534) (Pt E) (Pr 47) (DB).**

——Arts. 19 (1) (f) and 31 — Relative scope and distinction.

Articles 19 (1) (f) and 31 deal with different subjects and cover different fields. Article 19 (1) (f) postulates the existence of a property which can be enjoyed and over which rights can be exercised. If there is no property which can be acquired, held or disposed of, no restrictions can be placed on the exercise of the right to acquire, hold or dispose of it. If the law is valid and saved under Art. 31 (5) the acquisition of the property will be justified under the law and once the property is acquired there is no property in respect of which the petitioner can claim the fundamental right to acquire, hold or dispose of it, nor can there be any occasion for placing any restriction on such a right. Clause (5) contains no provision for the payment of any compensation and while Art. 19 applies only to citizens, Art. 31 protects all persons

from being deprived of their property save by authority of law. The acquisition of property is not subject of Art. 19 (1) (f) but of Art. 31. A I R 1958 All 126 (132, 133) (Pt I) (Prs 16, 18).

● ——Art. 19 (1) (f) — If contravened by the U. P. Zamindari Abolition and Land Reforms Act (1 of 1951).

The acquisition of property is not the subject of Art. 19 (1) (f) of the Constitution but of Art. 31. If a person loses his property by reason of it having been compulsorily acquired under Art. 31 he loses his right to hold the property and cannot complain that his fundamental right under Art. 19 (1) (f) has been infringed. The provisions of Art. 19 (1) (f) are not contravened by the U. P. Act (1 of 1951). Suryapal Singh v. Government of Uttar Pradesh, 1951 All W R (H C) 317 : I L R (1952 2 All 46 : 1951 All L J 365 : A I R 1951 All 674 (690) (Pt P) (Pr 80) (FB).

——Arts. 19 (1) (f) and 31 (1)—Articles are different in scope and content — Art. 19 (1) (f) gives citizen right to acquire, hold and dispose of property — Art. 31 comes into play not only in case of citizen of India but in case of any person and only after property is acquired or held—Person acquiring rights of occupant before order cancelling patta – Art. 19 (1) (f) does not apply — (Bhopal Land Revenue Act (4 of 1932), S. 38). AIR 1955 NUC (Bhopal) 1784.

——Art. 19 (1) (f) and (5), Art. 31 — Applicability — Landlord served with notice under municipal law to pull down building—Tenants challenging validity of municipal law — Compentency — (Municipalities — Bombay Municipal Corporation Act (III of 1888), Ss. 354, 66 (1) (c)—Constitutional validity of S. 354.

The landlord of the plaintiffs in occupation of a building was served with a notice under S. 354, Bombay Municipal Corporation Act, requiring him to pull down the house. The plaintiffs brought a suit saying that by reason of the notice their rights to hold the property as tenants under Art. 19 (1) (f) of the Constitution were affected and the restriction sought to the placed by S. 354 of the Bombay Act was not reasonable.

Held (i) that the right of the plaintiffs as tenants was the right to hold the property and not the right to dispose of the property,

(ii) In view of the fact that the property had been ordered to be pulled down, the case was one of deprivation of property. Art. 19 (1) (f) could not clearly apply because the question of the applicability of Art 19 (5) would arise only in cases where the applicability of Art. 19 (1) (f) would arise. In point of fact, Art. 19 (1) (f) was controlled by Art. 19 (1) (5). Art. 19 (1) (f) had therefore no application and Art. 31 would apply. Appeal No 67 of 1955, dated 20th April, 1956 (Bom.), Foll.

(iii) The restriction imposed was a reasonable restriction in the interests of public safety. S. 354 was not, therefore, open to challenge in view of Art. 19 (5) of the Constitution. The view of the authority acting under S. 354 was also open to correction under S. 66 (1) (c) of the Bombay Municipal Corporation Act. Spl. Civ. App. No. 233 of 1956, dated 18-9-1956 (Bom), Rel. on. 60 Bom L R 515 : I.L R (1958) Bom 824 : AIR 1959 Bom 332 (337, 338, 339, 341, 342) (Pt B) (Prs 16, 17, 18, 30) (DB).

● ——Arts. 19 (1) (f), 31—Deprivation of property—Article applicable is Art. 31 and not Art. 19 (1) (f).

When property is requisitioned, the person against whom the order is made is deprived of his property, and in the case of deprivation of property the proper Article to consider is not Art. 19 (1) (f) but Art. 31 (1) or 31 (2). AIR 1951 Bom 121, Foll ; AIR 1954 SC 447, Considered. Kaikhusroo Phirozshah Doctor v. State of Bombay, I L R (1955) Bom 69 : 57 Bom L R 24 : AIR 1955 Bom 220 (224) (Pt C) (Pr 7) (FB).

——Arts. 19 (1) (f), 31 (1), (2)—Scope of.

Article 31 (1) and (2) must be read in conjunction with Art. 19 (1) (f). The rights guaranteed by Art. 19 (1) (f) can only be enjoyed provided the citizen is in a position to enjoy those rights, and provided those rights can be enjoyed although he has been deprived of his property under Art. 31 (1) or his property had been acquired or taken possession of under Art. 31 (2). It would be impossible for a citizen to say that he has a right to hold and dispose of property if that property has been validly taken away from him under Art. 31 (1) or 31 (2). Therefore the proper and the logical approach to the subject must be first to consider whether the effect of the legislation is either to deprive the subject of his property under Art. 31 (1) or to acquire or take possession of it under Art. 31 (2). If the answer to either of these querries is in the affirmative, then the only question that would remain to be considered would be whether, after deprivation of his property or taking possession or acquiring of his property and rights remain in the citizen which can be asserted under Art. 19 (1) (f). 53 Bom L R 218, Rel. on. 53 Bom L R 621 : I L R (1952) Bom 378 : AIR 1951 Bom 440 (448) (Pt G) (Pr 11) (DB).

——Art. 19 (1) (f) and Art. 31—Scope of.

The right to acquire, hold and dispose of property guaranteed to the citizen under Art. 19 (1) (f) would only be operative in the case of those whose property has not been taken away under Art. 31. If a man has been deprived of property under Art. 31 (1) or (2) no question of his acquiring, holding and disposing of that property could possibly arise under Art. 19. This right can only be made justiciable provided the Legislature has not validly taken action under Art. 31 and it is only then that the question might arise whether any restrictions placed upon that right under sub-cl. 5 of Art. 19 are reasonable restrictions or not. 53 Bom L R 218 : I L R (1951) Bom 473 : AIR 1951 Bom 86 (89) (Pt B) (Pr 5) (DB).

[Reversed on another point in AIR 1954 S C 119.]

——Arts. 19 and 31—Only some of the rights interfered with—Effect.

If the totality of the rights are not acquired or taken possession of but only some of the rights are interfered with, then clearly, the subject can ask for the assistance of the Court under Art. 19 (1) (f) of the Constitution, because without an acquisition or taking possession of the totality of rights the interference with some of the rights of ownership would result in restrictions upon ownership and whether those restrictions are reasonable or not would have to be determined by the Court. 53 Bom L R 218 : I L R (1951) Bom 473 : AIR 1951 Bom 86 (90) (Pt E) (Pr 6) (DB).

[Reversed on another point in AIR 1954 S C 119.]

● ——Arts. 19 (1) (f), 19 (1) (g) and 31 — Scope — If mutually exclusive — Article 19 (1) (f) and (g) on the one hand and Art. 31 on the other deal with different subjects and cover different fields. They are mutually exclusive—If Art. 31 applies, Art. 19 cannot be invoked — AIR 1955 S C 41, Rel. on. Paschim Banga Malbahi Cycle Mazdoor Union v. Commr. of Police, Calcutta, 65 Cal W N 213 : AIR 1961 Cal 125 (133, 144) (Pt L) (Prs 27, 77) (SB).

——Arts. 19 (1) (f) and 31 — Applicability — West Bengal Land (Requisition and Acquisition) Act (II of 1948), S. 3—Validity.

The right to hold property is guaranteed under the Constitution. Any reasonable restriction upon the right which is in the public interest would be valid.

But there must be certain safeguards. Firstly, the person whose property is being taken away must have an opportunity of making representations. The person responsible for making the order must be a qualified person and he should not be a law unto himself and there should be an appeal. The power should not be naked and arbitrary. Such being the limitations, if they are to be applied to Act (II of 1948), then there is little doubt that it must be struck down.

Where property is acquired by the State, then it must be held that Art. 31 applies and not Art. 19. Article 19 applies when the citizen has a right to property. Once it is compulsorily acquired, the right to property is gone and there can be no question of invoking the fundamental right to hold property which is guaranteed by the Constitution. Where it is not a case of acquisition but a case of requisition, there is only a partial acquisition of property and consequently what the State acquires is only some of the bundle of rights which go to constitute the 'property' of the citizen. The compulsory requisition of any land under S. 3 of W. B. Act II of 1948, which may be followed by compulsory acquisition amounts to a substantial deprivation of the rights to property, and therefore what applies is Art. 31 and not Art. 19. The provisions contained in S. 3 of the West Bengal Land (Requisition and Acquisition) Act, 1948 (Act II of 1948) are intra vires and valid. **63 Cal W N 101 : AIR 1959 Cal 402 (409, 412, 413) (Pt E) (Prs 31, 45, 46).**

——Arts. 19 (1) (f), 31 (1) — Land in possession of individual — State as owner giving him notice to quit — Application for writ of mandamus — Art. 226 —Maintainability—Right to property—If affected.

The fundamental right of holding property is to guarantee such a right to the citizen against the State. Art. 19 grants right to the citizens and not to the State. But this does not preclude the State from holding property, and when the State holds property, it exercises all rights relating thereto, as are given by law. In such a case, the provisions of Art. 31 do not come to be considered. Where, therefore, the State purports to exercise its own right of property, the ordinary law applies and the remedy of a high prerogative writ is not available.

Held, that on the facts, the petitioner had not been able to establish any grounds for the issue of a high prerogative writ or any order and direction under Art. 226. What has been purported to be exercised is an ordinary right under the ordinary law. If the service of the notice to quit is at all an 'executive action', it is an action which is still within the precincts of the law and it could not be construed as a threat that law will be violated. If it is found later on that the right to possession did not exist, there might then arise all kinds of civil or criminal liability. AIR 1955 Cal 601 and (1920) 1 K B 720, Rel. on. **AIR 1956 Cal 437 (441, 442, 443) (Pt A) (Prs 12, 13, 14, 15).**

——Arts. 19 and 31 — Applicability — Act dealing with proprietary right—Test of validity.

As a matter of construction, Art. 31, which deals specifically with proprietary rights must govern legislation directly concerning the right to property. Art. 19 (1) similarly relates to legislation directly concerning personal rights as set forth in the different clauses of Art. 19 (1). If the impugned legislation is not directly in respect of any of the subjects in the several clauses of Art. 19, the clauses have no application although the effect of the legislation may abridge the rights referred to in Art. 19.

In normal cases of acquisition of properties under the W. B. Land Development and Planning Act the preparation of a development scheme precedes a declaration under S. 6. The only variation which the legislature intended to make in case of urgency is to entitle the State Government under S. 7 to take possession although no development scheme has been prepared. The mere fact therefore, that the Government has taken possession in case of an emergency does not mean that the Collector need not frame a development scheme. The Collector is required to prepare a scheme and an opportunity is thus afforded to the dispossessed proprietor to raise objections when the development scheme is in course of preparation. In fact there is the statutory duty as provided by S. 8 to proceed with the acquisition and to make an award as provided in the Land Acquisition Act.

The section therefore does not suffer from any constitutional invalidity under Art. 31 (2). Further the impugned Act cannot be said to impose unreasonable restrictions on the right of a citizen to acquire, hold and dispose of his property and the legislation, even if Art. 19 (1) (f) were applicable, would be saved under Art. 19 (5) of the Constitution. (Test of reasonableness indicated.) AIR 1952 S C 196; AIR 1951 Cal 111. Ref. AIR 1954 Cal 248 (250) (Pt A) (Prs 10, 12) (DB).

[Reversed on another point in AIR 1961 S C 16.]

——Arts. 19, 31—Scope.

A legislative enactment empowering Government to acquire property of a citizen compulsorily for a public purpose, attracts Art. 31 and not Art. 19. Where it is a composite piece of legislation the Court has to distinguish that part of it which deals with acquisition from the rest. Case law discussed. ILR (1955) 1 Cal 401 : 57 C W N 397 : AIR 1953 Cal 548 (553) (Pt D) (Pr 28).

——Arts. 19, 31 — Legislation falling under Art. 31 —Art. 19 does not apply.

If the legislation is one falling under Art. 31 of the Constitution, there is no scope for the applicability of Art. 19 to such legislation and the question of reasonableness becomes immaterial. Gopalan's case (AIR 1950 S C 27) and Charanjitlal's case (AIR 1951 S C 41), Rel. on; 55 C W N 463, Ref. AIR 1952 Cal 870 (874) (Pt F) (Pr 17).

——Arts. 19, 31 (2) — Applicability to provisions as to compensation — West Bengal Land Development and Planning Act (21 of 1948), S. 8, Proviso (b).

Where an Article deals specifically, as Art. 31 (2) does, with the compensation to be paid, then the provisions as to compensation contained in a statute must be considered with reference to that specific Article and not with reference to any general provisions such as Art. 19. **55 Cal W N 778 : AIR 1951 Cal 111 (116) (Pt D) (Pr 43) (DB).**

——Art. 19 (1) (f), (5) — Statute providing for compulsory acquisition — West Bengal Land Development and Planning Act (21 of 1948), S. 8.

The term "reasonable restriction" might well cover deprivation of property. A statute empowering a State compulsorily to acquire property can be said to impose a restriction on the right to hold property. A statute dealing with compulsory acquisition would have to comply with Cl. (5) of Art. 19 and if it imposes on the citizen a restriction that was more than necessary in the interest of the general public then such a law would be void. **55 Cal W N 778 : AIR 1951 Cal 111 (116) (Pt E) (Prs 45, 47) (DB).**

——Arts. 19 and 31 — Legislation dealing with acquisition of property—It should satisfy requirements of both articles. See Constitution of India, Art. 31. AIR 1951 Cal 97.

——Arts. 19 and 31—Scope.

If the legislation is not directly in respect of any of the subjects mentioned in Art. 19 but as a result of the operation of other legislation any rights guaranteed by the sub-clauses in Art. 19 (1) are abridged the question of the application of Art. 19 does not arise. The contents and subject-matters of Arts. 19 and 31 are not the same and they proceed to deal with the rights covered by their respective words from totally different angles. Art. 19 should be read as a separate complete Article. Hence the contention that a legislation dealing with acquisition or taking possession of property should not only satisfy the requirements of Art. 31 but also Art. 19 (5) of the Constitution cannot be accepted. AIR 1950 S C 27 : AIR 1951 S C 41 and 87 C L J 140, Rel. on. **55 Cal W N 463 : A I R 1951 Cal 97 (99) (Pt F) (Pr 16).**

——Arts. 19 (1) (f) and 31—Scope.

Persons have the right to hold the land in exercise of the fundamental right guaranteed to them by Art. 19 (1) (f), unless the right has ceased to exist by reason either of their having been deprived of the property by authority of law under Cl. (1), or of the property having been acquired or taken posssession of under Cl. (2) of Art. 31, of the Constitution. In other words, if there has been expropriation of property under either of the aforesaid provisions of Art. 31, the question of enforcement of the fundamental right under Art. 19 (1) (f), does not arise.

Where therefore the petitioners continued to be recorded as proprietors of the land in the latest Jamabandi prepared before the institution of the petitions by the revenue officials in the employ of the respondent.

Held, that it was for the respondent State to prove the alleged acquisition by its predecessor-in-interest. That onus not having been discharged by the respondents, the petitioners were not expropriated under Art. 31, and the action of the respondent State in retaining possession of the land without paying any rent since 1938, and on the mere ground that it was needed for a public purpose, without taking any step to acquire it according to law, amounted to a clear infringement of the fundamental right of the petitioners under Art. 19 (1) (f).

(Writ of mandamus issued to direct the State to acquire the property according to law; on failure of this public duty, for restoration of possession to the petitioners); AIR 1950 S C 27; AIR 1952 Cal 65; AIR 1951 Bom 86, Ref. **AIR 1953 Him Pra 95 (99, 100, 101) (Pt E) (Prs 18, 19, 24).**

——Arts. 19 (1) (f) and 31—Scope.

Article 19 (1) (f) is not restricted to abstract rights and capacity of the citizen to acquire, hold and dispose of property. It applies equally to concrete rights. AIR 1954 S C 282, Foll.

Per Ansari, J.—The guarantees contained in Art. 19 relate to the status of a citizen and the rights of private property are separately dealt with by Art. 31. Observations of Patanjali Sastri, C. J., in AIR 1954 S C 92, Foll. **ILR (1955) Hyd 337 : AIR 1955 Hyd 82 (84, 91) (Pt B) (Prs 6, 39).**

——Arts. 19 (1) (f), 31 (1) and 226 — Executive fiat — Unauthorised sale of property by Collector — Deprivation of property — Writ by High Court — (Bombay Land Revenue Code (5 of 1879), S. 187).

Articles 31 (1) and 19 (1) (f) have to be read together. A person is entitled to hold property till he can be deprived of it in due course of law. To put to sale property of a person, the effect of which is to put its purchaser in possession of it, is to deprive that person of it. What Art. 31 (1) aims at is that no person shall be deprived of his property by any executive act or fiat.

When a Collector without any authority of law puts the property of a person to sale for recovery of Government dues, his act amounts to depriving that person of his property which he is entitled to hold. And as such an act of the Collector tends to deprive a person of his property without any authority of law, it is an executive act or fiat. A writ under Art. 226 can be issued against such an unauthorised act which has the effect of depriving a person of his property save by authority of law. AIR 1952 S C 59, Rel. on. **AIR 1954 Kutch 11 (13) (Pt B) (Pr 6).**

——Arts. 19 (1) (f) and 31—Applicability.

If a person is deprived of his rights to property under Art. 19 (1) (f), the proper Article to be considered is Art. 31. Art. 19 (1) (f) applies only so long as a person is not deprived of his property by a law enacted by a competent legislature. **1952 Mad W N 299 : 1952-1 Mad L J 557 : AIR 1952 Mad 613 (633) (Pt I) (Pr 31) (DB).**

——Arts. 19, 31—Distinction.

Article 31 of the Constitution covers a ground quite different from that covered by the provisions of Art. 19 of the Constitution and Cl. (1) of Art. 31 has got to be read along with Cl. (2) of the same Article. A I R 1954 S C 92 and AIR 1954 S C 119, Foll. Ramchandra v. Janardan, **ILR (1955) Nag 378 : AIR 1955 Neg 225 (229) (Pt B) (Pr 16) (FB).**

——Arts. 19, 31 — Scope of — Rights over property conferred by Art. 19 are subject to Art. 31. AIR 1955 N U C (Nag) 1341.

——Arts. 19 (1) (f), 31 — Private recognized High School — Supersession of Managing Committee by appointment of ad hoc Committee under R. 182, Bihar Education Code — Whether infringement of Art. 19 (1) (f) and Art. 31.

Where the Board of Secondary Education, Bihar, appointed an ad hoc Committee in supersession of a Managing Committee of a private recognized High School, and it was contended that the members of the Managing Committee had been deprived of their right to hold the property of the School and the action of the Government amounted to an acquisition of the property by the State and thus there was infraction of the fundamental rights guaranteed under Art. 19 (1) (f) and Art. 31.

Held, that no question of infringement of the fundamental right guaranteed by the Constitution was involved.

The property in fact belongs to the public of the locality and the management of the property for the time being vests in the Managing Committee. No individual member can claim any vested right in the property. The Managing Committee is liable to reconstitution from time to time according to the rules in vogue in that school. If, it is the Managing Committee in which vests the property of the school, then there is the ad hoc Committee, in which the property will be deemed to have vested after the supersession of the old Managing Committee. Once it is assumed that this ad hoc committee is a legally constituted body the contention loses all its force. **1956 B L J R 33 : AIR 1956 Pat 81 (87, 88) (Pt C) (Pr 10) (DB).**

——Arts. 19, 31 — Act transferring A's property to B — Validity.

From the examination of the Arts. 19 (1) (f) read with Cl. (5) thereof and Art. 31 Clauses (1), (2) and (3) it is clear that no property can be acquired or taken possession of, nor any restraint, reasonable or otherwise, imposed on the proprietary right of any person

in the interest of any individual or individuals. In other words, the State cannot deprive a person of his proprietary right or impose a restraint (reasonable or not) on his right of enjoyment to benefit an individual or individuals. It follows, therefore, as a necessary corollary, that if by any legislative enactment property of A is transferred to B, such enactment cannot be said to be valid and constitutional and must be ignored as if it did not exist, because the Constitution does not empower the legislature to make such a law. **30 Pat 1085 : A I R 1952 Pat 166 (171) (Pt E) (Pr 26) (D B).**

● **——Arts. 19 (1) (f) and 31—Relative scope—Latter it exception to fundamental rights declared in former — Statute containing general as well as special provisions — Statute with inconsistent provisions — Rule of construction.**

Per Sinha, J.—Article 31 of the Constitution cannot be read as an exception to the fundamental rights as declared in Art. 19 (1) (f). But certainly the two articles have to be read together in order to give full effect to the intention of the Constituent Assembly. According to the well-established rule of interpretation, where the same statute makes general provisions in respect of a subject-matter and also makes specific provisions with respect to a special category, the latter must prevail over the former. It is also well-settled that different provisions of the same statute which are apparently inconsistent with each other should be so construed as to give effect to all the provisions so as to avoid a repugnancy. Kameshwar Singh v. Province of Bihar, **29 Pat 790 : A I R 1950 Pat 392 (418, 430, 431) (Pt R) (Prs 39, 81, 84) (S B).**

——Arts. 19 (1) (f) and 31 — Correlation — Property lawfully acquired in terms of Art. 31 — It cannot be contended that right granted by Art. 19 (1) (f) must all the same remain inviolable. See ibid, Art. 31. AIR 1955 Pepsu 148.

——Arts. 19 and 31—Applicability.

Articles 19 and 31 have no application to a case, where there is no question that any fundamental right of the applicant is taken away, or the applicant is being deprived of any property. **1956 Raj L W 50 : I L R (1955) 5 Raj 324 : A I R 1955 Raj 166 (167) (Pt D) (Pr 7) (D B).**

——Art. 19 (5) — Marwar Land Revenue Act (1949), Section 231 — State takes possession of surface of land and there is no question of imposing restrictions — Case falls under Art. 31 of the Constitution and not under Art. 19 (5) — Section does not offend against Art. 31 (2). See Marwar Land Revenue Act (40 of 1949), S. 231. AIR 1953 Raj 173.

——Arts. 19 (1) (f) and 31 — Article 19 (1) (f) has no application in a case where Art. 31 is also invoked for challenging a particular law as void. 1951 Raj L W 467 : ILR (1951) 1 Raj 674 : 1952 Cri L J 732 : AIR 1952 Raj 74 (76) (Pt B) (Pr 7) (DB).

● **——Arts. 19 (1) (f) and 31 —Distinction between.**

Articles 19 (1) (f) and 31 do not overlap and it is not possible to take shelter under both of them at the same time.

Article 19 (1) (f) read with Cl. (5) postulates the existence of property which can be enjoyed and over which right can be exercised. When there is a substantially total deprivation of property which is already held and enjoyed, one must turn to Art. 31 to see how far that is justified. Substantial deprivation means the sort of deprivation that substantially robs a man of those attributes of enjoyment which normally accompany rights to or an interest in property, leaving behind, if at all, just a 'mere husk' or an 'illustory phantom' of title. It is only in such cases that Art. 31 is attracted. AIR 1955 S C 41, Foll. Jamath Mosque v. Vakhan Joseph, **1955 Ker L T 406 : ILR (1955) Trav-Co 428 : A I R 1955 Trav-Co 227 (229) (Pt E) (Pr 9) (F B).**

——Arts. 19, 31 and 226 — Seizure of goods without authority of law—Remedy.

The law is settled that seizure of goods from the possession of any person without the authority of law amounts to an infringement of his fundamental rights both under Art. 19 and Art. 31 of the Constitution and relief must be granted to him under Art. 226 of the Constitution. A I R 1954 S C 415, Rel. on. **1955 Cri L J 747 : A I R 1955 Vin-Pra 17 (18) (Pt A) (Pr 8).**

4 (a). Illustrative cases.

● **——Arts. 19, 31, 32** — Khorposh grants to junior members of the family of Rulers of Native States first in the shape of lands but ultimately assuming shape of money allowances payable at regular intervals — States merging in Dominion of India — Before coming into force of the Constitution, Government by their order stopping the grants — Junior members entering into prolonged correspondence with Government insisting upon their rights under the grants by the former Rulers — Only in 1957 such members realising that they had no hopes of any revision by Government of their policy — Held that every periodic deprivation of money allowance would give such members a right to approach the Supreme Court for relief under Art. 32 and it could not be held that rights guaranteed by the Constitution could not be founded upon in respect of cause of action which arose before the Constitution. See Ibid, Art. 226. **AIR 1962 S C 1288.**

● **——Arts. 19 (1) (f) and 31 (2)** —Mysore House Rent and Accommodation Control Order (1948), Cl. 3 (2), (4) and (6) — Allotment order made before Constitution came into force — Applicability of Arts. 19 (1) (f) and 31 (2). See Houses and Rents — Mysore House Rent and Accommodation Control Order (1948), Cl. 3 (2), (4) and (6). **AIR 1952 S C 339.**

● **——Arts. 19 (1) (f), 31 (2)** — Assam Assessment of Revenue Free Waste Land Grants Act (24 of 1948), S. 3 — Land held free of land revenue — Such land assessed to land revenue — Right to enjoy interest in such land is not acquisition of property. See Ibid, Art. 31 (2). **AIR 1956 Assam 33 (SB).**

——Arts. 19 (1) (f) and 31—Income-tax Act, S. 49-EE —Validity — S. 49-EE does not infringe fundamental rights guaranteed under Arts. 14, 19 (1) (f) and 31. See Income-tax Act (1922), S. 49-EE. **AIR 1960 Bom 353 (DB).**

——Art. 19 (1) (f) — Applicability to West Bengal Land Development and Planning Act — (West Bengal Land Development Planning Act (21 of 1948), S. 1.

The Land Development Act being a legislation which deals with compulsory acquisition of property the application of Art. 19 (1) (f) is excluded and therefore the question of reasonableness of the provisions cannot be gone into in considering the question of the validity of the Act. **56 Cal W N 183 : AIR 1952 Cal 874 (876) (Pt B) (Pr 11).**

——Arts. 19 and 31 — West Bengal Land Development and Planning Act (21 of 1948) — Validity — West Bengal Land Development and Planning Act (21 of 1948).

If the legislation purports to be a legislation relating to acquisition of property under Art. 31 of the Constitution, then the application of Art. 19 is excluded, and the question of reasonableness of the provisions becomes immaterial. Further the West Bengal Act being an Act passed in furtherance of a

public purpose, that is, in the interest of the general public, the objection of unreasonableness must fall to the ground. The settlement of immigrants being a public purpose, Art. 19 (5) must come into play and the restriction must be deemed to have been imposed in the interest of the general public. 55 C W N 463, Rel. on; AIR 1950 S C 27 and AIR 1951 S C 41, Foll. **89 Cal L J 301 : A I R 1952 Cal 679 (681, 682) (Pt F) (Pr 4).**

——Arts. 19, 31—West Bengal Premises Requisition and Control (Temporary Provisions) Act (5 of 1947) —Validity.

Article 19 (1) (f) has no application to cases where a State or any person is empowered to deprive another of his property. The relevant Article is Art. 31. If a validly enacted law gives the State or a person a right to deprive another of his property, then such deprivation would be in accordance with Art. 31. Clause (2) of Art. 31 clearly allows legislation of the type of Act 5 of 1947. This statute does comply with the provisions of Cl. (2) as to compensation. **I L R (1951) 2 Cal 86 : 87 Cal L J 140 : AIR 1952 Cal 65 (67) (Pt D) (Prs 19, 21, 24) (DB).**

——Arts. 19, 31 (2) — Applicability to provisions as to compensation — West Bengal Land Development and Planning Act (21 of 1948), S. 8, Proviso (b).

Where an Article deals specifically, as Art. 31 (2) does, with the compensation to be paid, then the provisions as to compensation contained in a statute must be considered with reference to that specific Article and not with reference to any general provisions such as Art. 19. **55 Cal W N 778 : A I R 1951 Cal 111 (116) (Pt D) (Pr 43) (DB).**

——Art. 19 (5) — Municipalities — Bombay District Municipal Act (3 of 1901), S. 90 (5) — Constitutional validity—If violates—Art. 19 (1) (f) and Art. 31 of the Constitution. See Municipalities — Bombay Municipalities Act (3 of 1901), S. 90 (5). **A I R 1962 Guj 25 (DB).**

——Art. 19 (1) (f) — Grant of land by former Indian Ruler—Revocation of - Legality of. See Ibid, Art. 31 (1). **AIR 1954 Him Pra 84.**

● **——Arts. 19 (1) (f), 13 (2), 14 and 31—(Hyderabad) Wali-ud-Daula Succession (Decision of Disputes) Act (Hyderabad Act 16 of 1950), Ss. 2 (1) and 3 — Act if ultra vires.** See (Hyderabad) Wali-ud-Daula Succession (Decision of Disputes) Act (Hyderabad Act 16 of 1950), S. 2 (1). **AIR 1951 Hyd 1 (FB).**

——Art. 19 (5) — Arms Act (1878), S. 14 does not infringe fundamental rights — (Constitution of India, Arts. 19 (1) (b), (f), 19 (5) and 31). See **Arms** Act (1878), S. 14. **AIR 1953 Madh Bha 236.**

——Arts. 19, 31 — Madras Inams (Assessment) Act (40 of 1956) — Inam, its concept and effect indicated — Assessment does not amount to resumption — Act, whether colourable legislation — Act though inconsistent with rights under Art. 14 or 19 or 31, is saved by Art. 31A—Act is not invalid. See Madras Inams (Assessment) Act (40 of 1956). **A I R 1964 Mad 90.**

——Arts. 19, 31 — Madras Aliasanthana Act (9 of 1949), S. 36—Section 36 does not violate Arts. 19 and 31. See Ibid, Art. 31. **AIR 1956 Mad 642.**

——Art. 19 (1) (f) — Settlement of certain tribe in a village under private agreement — Order of S. D. O. asking them to move away under threat of prosecution—Legality — Order held not covered by Ss. 60 to 64 of Hill Peoples Regulation and infringing rights under Arts. 19 (1) (f) and 31 — Interference with administrative order — Jurisdiction of High Court — Abolition of right of appeal—Effect—Writ of mandamus issued. See Ibid, Art. 226. **A I R 1961 Manipur 21.**

——Arts. 19 (1) (f) and 31—Orissa Act, 11 of 1954 — Validity—If contravenes Art. 19 (1) (f) or 31 (2). See Orissa Shri Jagannath Temple (Administration) Act (14 of 1952), S. 2 (1), Expl. **A I R 1959 Orissa 17 (DB).**

——Arts. 19 (1) (f) and 31 — Bihar Koshi Area (Restoration of Lands to Raiyats) Act (30 of 1951) — Act does not violate Art. 19 (1) (f).

Article 31 applies to a case where there is a complete and total deprivation of property and Art. 19 (1) (f) does not apply to such a case. A I R 1955 S C 41, Rel. on. Hence Bihar Koshi Area (Restoration of Lands to Raiyats) Act (30 of 1951) cannot be said to violate the guarantee under Art. 19 (1) (g) of the Constitution of India. **1956 B L J R 760 : 1956 Pat L R 540 : I L R 35 Pat 847 : A I R 1957 Pat 44 (51) (Pt I) (Pr 20) (DB).**

5. Rights which are not fundamental.

● **——Arts. 19(1) (g), 14—**Petitioner holding contracts for supply of milk to Government Hospital — Petitioner's tender for certain year accepted but later on cancelled—Applicability of Articles. See Ibid, Art. 14. **AIR 1959 S C 490.**

● **——Art. 19 (1) (f) and (g) —** Scope — Fundamental right — Unregistered document granting right to cut trees in forest —Subsequent vesting of forest in State —Grantee stopped from cutting trees — Fundamental right—Whether infringed. See Ibid, Arts. 226 and 32. **AIR 1958 S C 532.**

● **——Arts. 19 (1) (f) and 31 (1)—Scope —Contract to grant licences to catch fish in lake in estate—Subsequent vesting of estate in State — State refusing to recognise contract — No question of infringement of fundamental rights under Art. 19 (1) (f) and Art. 31 (1) arises.**

The petitioner had entered into a contract with the ex-proprietor of an estate prior to its vesting in the State of Orissa and obtained from the latter on payment of certain sum, licences to catch and carry away fish from specific portions of the lake lying in the estate in respect of a period subsequent to the vesting of the estate. The State of Orissa refused to recognise these licences and were about to re-auction the rights when the petitioners filed the present petition seeking writs under Art. 32 on the ground that their fundamental rights under Arts. 19 (1) (f) and 31 (1) were, or were about to be, infringed.

Held, that even assuming that contract is 'property' within the meaning of Arts. 19 (1) (f) and 31 (1), no question under Arts. 19 (1) (f) and 31 (1) could arise because the State by simply refusing to recognise the existence of the contract had not confiscated or acquired or taken possession of the contract as such. Ananda Behera v. State of Orissa, **22 Cut L T 101 : (1955) 2 S C R 919 : 1956 S C J 96 : (1956) 1 M L J (S C) 69 : 1956 S C C 70 : I L R (1956) Cut 425 : 69 Mad L W 872 : AIR 1956 S C 17 (19) (Pt C) (Pr 13).**

● **——Arts. 19 (1) (g), 32—Printers and Publishers of books including school text books — No right that their books should be approved as text books by Government—Government taking up selection, printing and publishing of text books — Private publisher's fundamental right under Art. 19 (1) (g) not affected.**

There is no fundamental right in the publishers of books including school text books that any of the books printed and published by them should be prescribed as text books by the school authorities or if they are once accepted as text books they cannot be stopped or discontinued in future.

The utmost that could be said is that there was merely a chance or prospect of any or some of their books being approved as text books by the Government. On the other hand, the Government had the undisputed right to adopt any method of selection they liked and if they ultimately decided that after approving the text books they would purchase the copyright in them from the authors and others provided the latter were willing to transfer the same to the Government on certain terms, the right of the publishers to carry on their trade or business cannot be said to be affected by it. Nobody is taking away the publisher's right to print and publish any books they like and to offer them for sale but if they have no right that their books should be approved as text books by the Government it is immaterial so far as they are concerned whether the Government approves of text books submitted by other persons who are willing to sell their copyrights in the books to them, or choose to engage authors for the purpose of preparing the text books which they take upon themselves to print and publish.

As the publishers have no fundamental right in the present case which can be said to have been infringed by the action of the Government, their petition under Art. 32 is bound to fail on that ground. Ram Jawaya Kapur v. State of Punjab, **1955 S C J 504 : (1955) 2 M L J (S C) 59 : 57 P L R 444 : 1955 Mad W N 973: 1955 S C A 577 : AIR 1955 S C 549 (557, 558) (Pt B) (Prs 20, 21).**

● **——Art. 19—** Right to stand as a candidate and contest an election is not a common law right. It is a special right created by a statute and can only be exercised on conditions laid down by statute. State of Uttar Pradesh v. Seth Jagmanda Das, **AIR 1954 S C 683 (688) (Pr 5).**

——Arts. 19 (1) (f), 31, 132 (1) and 226 — Scope — Right to obtain mining lease whether fundamental right —Substantial question of law as to interpretation of Constitution —U. P. Mining Concession and Mineral Development Rules (1940).

Per M. L. Chaturvedi, J. —A mere right to obtain a mining lease under 1940 Rules does not have the status of a fundamental right and is not one which is sought to be protected under Art. 19 (1) (f) or Art. 31. Further Art. 31 has no application where the State Government is not acquiring the alleged right of the petitioner to obtain the lease. Where, therefore, the petitioner's claim for the issue of a writ of a mandamus to the State Government to grant a mining lease is disallowed, the case cannot be said to involve substantial questions of law as to the interpretation of the Constitution. A I R 1956 S C 17, Foll. **ILR (1958) 1 All 318 : AIR 1958 All 621 (624) (Pt A) (Prs 6, 9, 10) (DB).**

——Art. 19—Applicability—Right to challenge election, if fundamental right —Infringement of — Effect. See Representation of the People Act (1951), S. 117. **AIR 1958 All 587 (DB).**

——Art. 19—Scope —Fundamental right — Right to concessional rates as newspaper under Post Office Act.

The right to concessional rates as arising under the provisions of Post Office Act and the rules made thereunder is not a fundamental right under Art. 19 of the Constitution. **62 Bom LR 832 : 1960 Nag L J 717 : AIR 1961 Bom 105 (110) (Pt B) (Pr 23).**

——Art. 19 (1) (g)—No fundamental right to carry on business of stevedoring at Docks owned and controlled by Port Commissioners — Bye-laws creating statutory right to carry on such business by grant of licence — No new fundamental right is created thereby when there is no pre-existing fundamental right.

A citizen of India has no fundamental right under Art. 19 of the Constitution to carry on the particular business of stevedoring at the Docks owned and controlled by the Port Commissioners. The general right to carry on business is certainly there. It is also a fundamental right, but the moment the claim is made to carry on a special or particular type of business available only within a particular area which is under the ownership and control of an individual or a statutory corporation such as the Port or the Fort, then such claim cannot be regarded as a claim to assert the fundamental right to carry on the business within the meaning of the Constitution. 1954 S C J 246 : A I R 1954 S C 220, Rel. on ; A I R 1961 Cal 365, **Reversed.**

A statute or a bye-law may create a statutory right but cannot create for the first time a fundamental right within the meaning of the Constitution. The bye-law may infringe a pre-existing fundamental right and when it does so will be constitutionally invalid. But when there is no fundamental right for a citizen to carry on the business of stevedoring in the Dock owned and controlled by the Calcutta Port Commissioners, a new fundamental right cannot be created because the Bye-law was made by the Port Commissioners to regulate by licence or otherwise people to work in that port as Stevedores. **AIR 1962 Cal 530 (533, 534, 535, 536) (Pt A) (Prs 10, 11, 13, 17, 24, 25) (DB).**

——Arts. 19, 309—Unreasonable restriction—Fundamental right of obtaining employment under Government — If any — Rights and duties of Government servants.

There is no fundamental right of a person to obtain employment under the Government. The moment he enters Government service he becomes bound by the conditions of service and rules which regulate such employment.

The Government servants form a class by themselves with certain rights, privileges and disabilities attached to their service. So if a certain standard of conduct is expected from them and certain rules are framed for the purpose of regulating such conduct or for compelling the Government servants to conform to such standard of conduct, these can hardly be regarded as unreasonable restrictions on the fundamental rights guaranteed to such servants in their capacities as citizens of the Indian Union. **61 Cal W N 459 : (1957) 2 Lab L J 260 : I L R (1958) 1 Cal 40.**

——Art. 19 (1) (g) and (6) — Right to be defended by lawyer is not a fundamental right. 95 Cal L J 309: AIR 1956 Cal 476 (478) (Pt A) (Prs 4, 5).

——Art. 19—Right to office—Not a fundamental right —Held, there was no deprivation of property. See Ibid, Art. 226. **AIR 1957 Him Pra 49.**

● **——Art. 19 (1) (f)—**Appointment of Commission to inquire into succession—No breach of fundamental right of claimants. Tahira Begum v. State of Hyderabad. **AIR 1953 Hyd 105 (110a 110b) (Pt D) (Prs 12, 13) (FB).**

● **——Art. 19—Fundamental right—Lessor and lessee —Breach of condition in lease—Forfeiture of lease—Fundamental right of possession of lessee — Jammu and Kashmir Constitution Application Order, Art. 32 (2-A).**

Where it is found that the lessees have committed a breach of the terms of the lease so as to entitle the lessor to re-enter the premises, the right to remain in possession thereafter cannot be termed to be a fundamental right so as to attract the provisions of Art. 32 (2-A) of the Jammu and Kashmir Constitution Appli-

cation Order. Bhagat Rajinder Kumar Sawhney v. State of J. & K., A I R 1950 J & K 50 (51, 52) (Pt C) (Pr 3) (FB).

——Art. 19 — No violation of Art. 311 — There is no fundamental right to be continued in employment of State. See Ibid, Art. 311. **AIR 1965 Ker 19.**

● **——Art. 19 (1) (g) — Right to carry on trade — Fundamental right.**

Tobacco is almost as deleterious as liquor and there is no fundamental right to carry on a trade in a commodity like tobacco. T. K. Abraham v. State of Trav-Co , 1957 Ker L J 1146 : I L R (1958) Ker 148 : (1957) Mad L J (Cr) 155 : 1957 Ker L T 1184 : 1958 Ker 129 (132, 133) (Pt D) (Prs 15, 17) (F B).

[Reversed on another point in A I R 1962 S C 922.]

——Art. 19—Right to carry on a trade or business— No fundamental right of persons to insist upon Government or any other individual for doing business with them. (M. P.) Forest Manual Vol. II, pp. 134 to 140. See Ibid, Art. 14. **1965 M P L J 108.**

——Art. 19 – Sales Tax – Mysore Sales Tax Act (25 of 1957), Ss. 5, 6—Rules framed under Act, R. 25—Validity—No abdication of legislative power—Right of appeal is not fundamental right—Persons imposed of sales tax and those imposed of licence fee—Differentiation justified—Rule retrospective. See Sales tax—Mysore Sales Tax Act (25 of 1957), S. 5. **(1963) 14 S T C 84 (Mys) (DB).**

6. Conflicting rights.

——Arts. 19 (1) (a), (b), (d), 19 (2), (3) and (5)— Rights granted under Art. 19 do not include right to interfere with liberty of another citizen — Criminal Law (Amendment) Act (1932), S. 7 (1)—Prohibitions in, are not ultra vires the Constitution—'Loitering', when made punishable under S. 7 — Restrictions imposed are reasonable.

The whole of S. 7 of the Criminal Law (Amendment) Act, 1932 is intra vires of the Constitution. Even if it is held that portions of sub-clauses (a) and (b) of S. 7 (1) which deal with loitering are ultra vires of the Constitution they are severable from the rest ; AIR 1956 All 56, Foll. AIR 1960 S C 633, Dist. Article 19 does not grant the right to interfere with the liberty of another citizen. On this basic ground alone the prohibitions contained in S. 7 of the Criminal Law Amendment Act, cannot be held to be ultra vires of the Constitution. That the State should prohibit the citizens from creating chaos and anarchy and to that extent limit their liberty must be held to be a reasonable restriction in the interests of the community. Even the alleged peaceful picketing can be danger to public order when it is, resorted to 'en masse'.

Under Cls. (a) and (b) of S. 7 (1) plain and simple loitering has not been made punishable and it is only that loitering which amounts to coercion which has been made an offence. Section 7 ceases to be an encroachment on any rights but really becomes a safeguard for the protection of those very rights. **1961 All W R (H C) 64 : 1961 All L J 15 : 1961 All Cr R 28 : 1961 (2) Cri L J 586 : ILR (1961) 1 All 33: AIR 1961 All 531 (534, 535, 536) (Pt A) (Prs 8, 9, 13, 16) (DB).**

——Art. 19—Scope of.

Article 19 does not give a carte blanche to a citizen so as to entitle him to exercise any of the rights mentioned therein even though they might encroach upon similar rights of other citizens. **AIR 1952 Him Pra & Bilaspur 41 (42) (Pt C) (Pr 5).**

——Art. 19 (1) (a) — Scope of — Student circulating handbill containing serious and defamatory allegations against College authorities—Order of Principal rusticating him for one year—If infringes his fundamental right of expression of opinion.

Apart from the qualifications enumerated in Cls. (2) to (6) of Art. 19 of the Constitution, the fundamental rights mentioned in Cl. (1) of that article are subject to another qualification, namely, that the exercise of these rights by a citizen should not infringe the rights of others.

The relationship between a pupil and a teacher has always been held to be sacred in India, and it is in the interests of students as well as of the entire body of the citizens that discipline amongst students is insisted upon. If students are allowed to condemn their teachers openly and with impunity, teacher will not be able to discharge the sacred duty with which he is entrusted. It is for this reason that in every civilized State, heads of educational institutions have been given ample and in some cases drastic powers to deal with cases of proved breach of discipline. Where a student publishes and circulates a handbill which condemns the Principal and the heads of departments of the College as not only antinationalists, but selfish, evil-minded, morally degenerate and given to intrigue, subversive and heinous activities and victimization of innocent students, he commits not only a grave breach of discipline but also infringes the ordinary law of the land inasmuch as the handbill is highly defamatory to the Principal and the heads of departments of the College. Truth of the allegations cannot be a defence in a case of this kind, because, if the student believes that he has a genuine grievance the proper course for him is to approach the higher educational authorities and the government rather than to bring out a handbill. In these circumstances an order of the Principal rusticating him for one year is justified and does not violate the fundamental right of expression of opinion guaranteed under Art. 19 (1) (a) of the Constitution, and consequently no writ of any kind can be issued to the Principal. **2 Pepsu L R 506 : 52 Cri L J 403 : A I R 1951 Pepsu 59 (60, 61) (Pr 5).**

7. Contracting out of fundamental rights.

See also Ibid, Note 1 (c).

——Art. 19—Fundamental rights may be waived by contract — No service contract by Government servant—He is governed by Government Servants Conduct Rules—But there is no waiver of fundamental rights—He can challenge validity of rules.

The Government Servants Conduct Rules apply to all Government servants whether they have a written contract of service or not. Everybody is presumed to know the law, and as such acknowledgment by the servant that he has read the Rules is really superfluous.

Where there is no contract of service, the applicability of the Rules does not mean that he has waived his fundamental rights, though there may be cases where the servant may waive his rights by entering into a service of contract accordingly. **58 Cal W N 1026 : AIR 1955 Cal 76 (80) (Pt B) (Pr 22).**

——Art. 19 (1) (g) — Service agreement — Agreement not to serve any other person during particular period —Not void under Art. 19 (1) (g) — But injunction to restrain servant from serving other person offends Art. 19 (1) (g), and cannot be granted. **(1963) 2 Lab L J 522: AIR 1964 Guj 215 (218, 219) (Pt B) (Prs 10, 11, 13).**

——Art. 19 (1) (g)—Unreasonable restriction on employee's right to follow occupation of his choice— Contract of personal service — Breach of—Power of Court to issue injunction to prevent breach of contract of personal service.

A remedy in law, which is not challenged on any ground of constitutionality to prevent a breach of a contract of service or its enforcement by a judicial proceeding cannot be considered as contravention of Art 19 (1) (g) or a restriction in violation or excess of Cl. (6) of that Article. (1961) 2 S C J 323: A I R 1961 S C 1016, Foll. In case of a valid contract of personal service containing a positive and a negative covenant, the power of the Court to issue an injunction to prevent breach of the negative covenant contained therein under S. 57, Specific Relief Act cannot be called an unreasonable restriction on the contractor's fundamental right to follow the occupation of his choice when initially he had entered into the contract of his own free will. AIR 1961 S C 1016, Rel. on. **(1963) 4 Guj L R 795 : I L R (1963) Guj 891 : A I R 1964 Guj 115 (121, 122) (Pt B) (Prs 9, 10).**

——Arts. 19 and 13 — Punjab Civil Services Rules (1959). Vol. 1, R. 3.26 (d)—Validity—Government servant has no absolute right to retire at a particular date and the Government has the power to continue him in service in the circumstances as given in R. 3.26 (d)—Petitioner entering into service with express condition that he was to be governed by rules of service from time to time—It cannot be held that on attaining the age of 55 years he was to become a free man on retirement with restoration of full freedom to exercise all his fundamental rights under Art. 19 and by retention of him in service beyond that date under R. 3.26 (d) all such rights are curtailed so that the rule is bad as conflicting with fundamental rights and thus void under Art. 13. A I R 1963 Punj 298 (315) (Pt X) (Pr 26) (DB).

——Art. 19 — Obligations arising out of contract entered into by party — Party whether can contend that restrictions imposed by contract offend fundamental right.

Where a person's legal status and responsibility as also his obligations arise out of a contract entered into between him and the Government, it is futile for such person to try to avoid the restrictions imposed upon him under the clauses and rules of his contract by saying that they offend the Constitution of India which recognised "fundamental rights" in favour of the citizens of the country. Such restrictions, far from being infringement of a fundamental right, are of a fundamental obligation arising out of a formal contract entered into by the person with the Government. It is not the object of the Constitution of India to enable the citizens of India to break obligations arising under formal contracts entered into by them under the guise of that obligation being something that is repugnant to the recognition of a fundamental right. Such an idea is foreign to the Constitution of India. **1951 Ker L T 329 : A I R 1952 Trav-Co 287 (289) (Pt B) (Pr 8) (DB).**

8. Infringement of right by private individuals.

——Arts. 19 and 31 (1) — Dispute between two individuals regarding their respective civil rights.

When the dispute is not between an individual on the one hand and the State on the other but is between two persons regarding their respective civil rights there is no question of invasion of the fundamental rights. A I R 1952 S C 59 and A I R 1956 S C 108, Rel. on. **23 Cut L T 403 : I L R (1957) Cut 501 : AIR 1958 Orissa 15 (17) (Pt B) (Pr 11) (DB).**

● ——Art. 19 — Scope of — Infringement by citizen and by State.

Article 19 is a mixed Article where certain rights are guaranteed to the citizens of India, subject to certain restrictions which may be imposed by the State. This Article does not say that a citizen will have no remedy if the right guaranteed under this Article is infringed by other citizens. It may be that if the rights are infringed by other citizens the remedy would lie in the ordinary law Courts while if the infringement is by the State the remedy may lie both in the ordinary law Courts and in the High Court or the Supreme Court under Arts. 226 and 32 of the Constitution. A I R 1952 S C 59; A I R 1950 S C 27, Disting. Panch Gujar v. Amarsingh, **I L R (1954) 4 Raj 84: 1954 Raj L W 204: AIR 1954 Raj 100 (103) (Pt D) (Pr 19) (FB).**

9. Construction of laws restricting fundamental rights.

● ——Art. 19 (6) (as amended by Constitution (First Amendment) Act (1951)) — Scope — Provision to be interpreted liberally — State monopoly in respect of any trade or business must be presumed to be reasonable and in the interests of general public so far as Art. 19 (1) (g) is concerned.

In attempting to construe Art. 19 (6), it must be borne in mind that a literal construction may not be quite appropriate. In interpreting such a provision, it is essential to bear in mind the political philosophy underlying the Provisions in question, and that would necessarily involve the adoption of a liberal and not a literal and mechanical approach to the problem. The theory underlying the amendment in so far as it relates to the concept of State monopoly, does not appear to be based on the pragmatic approach, but on the doctrinaire approach which socialism accepts. The amendment clearly indicates that State monopoly in respect of any trade or business must be presumed to be reasonable and in the interests of the general public so far as Art. 19 (1) (g) is concerned. Article 19 (6) (ii) clearly shows that there is no limit placed on the power of the State in respect of the creation of State monopoly. It is not correct to say that the creation of a State monopoly must be justified by showing that the restrictions imposed by it are reasonable and are in the interests of the general public. Akadasi Padhan v. State of Orissa, **(1964) 1 S C A 187 : (1964) 2 S C J 37 : (1963) Supp 2 S C R 691 : A I R 1963 S C 1047 (1053, 1054) (Pt A) (Prs 14, 15).**

● ——Art. 19 (1) (f)—Reasonableness—Courts have to decide the question of the reasonableness of the restriction for themselves and whatever opinion a legislature expresses on the matters is not of much relevance for this purpose. (Per Sarkar, J.). Bhau Ram v. Baij Nath Singh. **(1963) 1 S C A 411 : (1962) Supp 3 S C R 724 : 1962 Jab L J 676 : A I R 1962 S C 1476 (1491) (Pt C) (Pr 47).**

● ——Art. 19 (1) (a) — Drugs and Magic Remedies (Objectionable Advertisements) Act (1954), S. 3 — Prohibition of advertisements under—Article 19 (1) (a) of the Constitution not violated.

The advertisements affected by the Act do not fall within the words freedom of speech in Art. 19 (1) (a). The scope and object of the Act, its true nature and character is not interference with the right of freedom of speech but it deals with trade or business. There is no direct abridgement of the right of free speech and a mere incidental interference with such right would not alter the character of the law. A I R 1951 S C 270 and AIR 1958 S C 578, Ref.

It is not the form or incidental infringement that determines the constitutionality of a statute in reference to the rights guaranteed in Art. 19 (1) but the reality and substance. The Act read as a whole does not merely prohibit advertisements relating to drugs and medicines connected with diseases expressly mentioned in S. 3 of the Act but they cover all advertisements which are objectionable or unethical and are used to promote self-medication or self treat-

ment. This is the content of the Act. Viewed in this way, it does not select any of the elements or attributes of freedom of speech falling within Art. 19 (1) (a) of the Constitution. Hamdard Dawakhana v. Union of India, (1960) 1 S C A 314 : 1960 Cri L J 735 : 1960 S C J 611 : 1960 Mad L J (Cri) 358 : (1960) 2 Mad L J (SC) 1 : (1960) 1 Ker L R 746 : (1960) 2 S C R 671 : (1960) 2 Andh W R (SC) 1 : AIR 1960 S C 554 (564, 565) (Pt D) (Prs 20, 21).

●——Art. 19—Interpretation of.

Per Kania C. J. — Article 19 has to be read without any pre conceived notions So read, it clearly means that the legisla ion to be examined must be directly in respect of one of the rights mentioned in the sub-clauses. If there is a legislation directly attempting to control a citizen's freedom of speech or expression, or his right to assemble peaceably and without arms, etc., the question whether that legislation is saved by the relevant saving clause of Art. 19 will arise. If, however, the legislation is not directly in respect of any of these subjects, but as a result of the operation of other legislation, for instance, for punitive or preventive detention, his right under any of the sub-clauses of Art. 19 is abridged, the question of the application of Art. 19 does not arise. The true approach is only to consider the directness of the legislation and not what will be the result of the detention otherwise valid, on the mode of the detenu's life. A. K. Gopalan v. State of Madras, (1950) 2 Mad L J 42 : 63 Mad L W 638 : 1950 S C J 174 : 51 Cri L J 1383 : 1950 Mad W N (Cri) 127 : 1950 S C R 88 : A I R 1950 S C 27 (35) (Pt J) (Pr 7).

——Art. 19 (2) — Validity of Act — Test — Duty of Court.

Where a section of an Act is impugned as violating Art. 19 of the Constitution, the Court should approach the impugned statute from the point of view that Art. 19 (1) as framed guarantees the right of freedom of speech and expression as a vital necessity for the democratic processes in the Constitution and it is in that spirit that it should approach the question whether the impugned section falls within the limits laid down in clause (2) of Art. 19. A I R 1950 S C 124, Rel. on. 62 Bom L R 206 : 1960 Nag L J 244 : ILR (1960) Bom 305 : 1960 Cri L J 1192 : A I R 1960 Bom 399 (400) (Pt G) (Pr 6) (DB).

——Art. 19—Validity of legislation — Duty of Court. See Ibid, Art. 13. A I R 1956 Bom 304.

——Arts. 19 (1) (f), 19 (5)—Interpretation of statutes — Duty of Court — Restriction upon fundamental right.

If the principle underlying the legislation and its object are constitutional, then it is not for the Court to question the policy underlying that legislation. It is not for the Court to sit in judgment upon what the Legislature has decided and to weigh the pros and cons of the policy which led the Legislature to pass a particular legislation. Further, any restrictions upon the fundamental rights of the subject which are necessary for effectuating the object and purpose of the legislation must be considered to be reasonable restrictions. The function of the Court is to look at the legislation, to look at its purpose and object and then to consider what restrictions are placed upon the citizens and to decide whether in reference to the purpose and object in the light of what the legislation is intended for are those restrictions reasonable or are they excessive and unnecessary and going beyond the purposes for which the legislation has been placed on the statute book. A I R 1951 S C 118, Foll. A I R 1951 Bom 440 (450, 451) (Pt J) (Pr 17) (DB).

——Art. 19 (1) (g)—Act valid when enacted does not become invalid when another Act, increasing the burden on public is enacted. See Constitution of India, Art. 13. A I R 1954 Mad 621 (DB).

——Art. 19 — Judicial review of legislation — Principles. See Ibid, Art. 13. 1957 Cri L J 1173 : A I R 1957 Punj 244.

——Art. 19 — Constitutionality of legislation Presumption as to — Possibility of abuse If ground for striking down a provision See Ibid, Art. 13 1957 Cri L J 1173 : A I R 1957 Punj 244.

——Art. 19 (1) (g), (6) Section 7 (1) of Punjab Trade Employees Act Validity – (Punjab Trade Employees Act (10 of 1940), S. 7) – (Interpretation of statutes – Preamble and title)—(Civil P. C. (1908), Pre.)

The legislative purpose of an enactment should be ascertained from that which the legislature has chosen to enact either in express words or by reasonable or necessary implication, It must be presumed that legislature intends that which is the necessary effect of its enactment and such intention is the purpose and object of the Act. It is true that the title and the preamble of an enactment are indicative of the intention of the legislature and throw light thereon, but these two sources cannot be considered and have never been considered to be conclusive of that intent. Section 7 (1) of the Punjab Trade Employees Act, 1940, cannot be held as violating Art. 19 of the Constitution merely on the ground that it travels beyond the purpose of the Act as indicated in its preamble and title. Section 7 (1) of the Trade Employees Act imposes a reasonable restriction on the traders as it protects and preserves the health of all the traders and businessmen and thereby promotes welfare of the people of this country. 58 Pun L R 528 : ILR (1957) Punj 155.

——Art. 19 — Scope — Restriction or curtailment of fundamental right — Possibility of abuse by officer enforcing same in particular manner — Effect on legality of restriction.

The scheme of Art. 19 of the Constitution is to provide a balance between the security of the State and the interest of the general public on the one hand and the fundamental rights guaranteed to the citizen on the other. The fundamental rights may, in the larger interest of the State and the general public, be curtailed or restricted. If the restriction is imposed in the interest of the general public and is not unreasonable, the Court will not go further and inquire whether the manner in which the restriction is likely to be imposed by the officer charged with its enforcement may act unreasonably or may amount to an abuse of the provision. AIR 1950 S C 21; AIR 1950 Bom 363, Ref. ILR (1951) T C 496 : 1951 K L T 158 : AIR 1951 T C 197 (200, 201, 203) (Pt C) (Prs 8, 9).

10. Citizens.

(a) Corporations and companies.
(b) Foreigners and foreign companies.
(c) Citizenship Act and Rules thereunder.

10. Citizens.

——Art. 19 (1) (d), (e) — Protection under, who can claim.

(Per Thadani, C. J.) : — A citizen, who has committed an offence or who is a delinquent in the eye of the law and whose crime or delinquency has rendered him liable to certain penalties or disabilities which can be and have been imposed upon him according to the procedure established by law, cannot claim the protection of rights stated in Arts. 19 (1) (d) & (e) of the Constitution, if, as a result of such penalty or disability he has been deprived wholly or partially of those rights—rights

which are given to a citizen, and not to a citizen who has committed a crime or is a delinquent in the eye of law. 52 Cri L J 966 : ILR (1951) 3 Assam 181 : AIR 1951 Assam 106 (120) (Pt N) (Pr 93) (DB).

——Art. 19 — Applicability — Non-citizen if can challenge legislation affecting fundamental rights. See Ibid, Art. 14. 1959 Cr L J 439 : AIR 1959 Cal 237.

——Arts. 19 and 31—Applicability— Deity—Citizen of India.

Article 19 will not apply to the deity as it applies to the citizens of India and the deity cannot be called a citizen of India. But Art. 31 does not refer to the citizen of India, but says that no person shall be deprived of his property save by authority of law. Even a Hindu deity is juridical person capable of owning and possessing property and hence the deity will also come within the ambit of Art. 31. AIR 1960 Manipur 20 (25) (Pt B) (Pr 23).

——Art. 19 — Application of Act — Act applies to citizen of India in Pakistan — Petitioner coming to India on temporary permit — Period expiring — Petitioner claiming to be Indian citizen and applying for restraining Government from taking action — Act is not rendered void by Art. 19 (1) to render restraint against Government possible — Petitioner declaring himself to be Pakistani national cannot now contend that statement was false — See Influx from Pakistan Act, S. 1. 1952 Nag L J (Notes) 13.

10 (a). Corporations and companies.

——Art. 19 –Corporations and Companies, not being citizens cannot petition under Art. 32—In such a case the doctrine of lifting the veil of corporation cannot be allowed. See Ibid, Arts. 226 and 32. AIR 1965 S C 40.

——Art. 19 — Applicability — Citizen — Includes only natural persons and not juristic persons like corporation — Citizen in Art. 19 has same meaning as that in Part II—State Trading Corporation a company registered under Companies Act, 1956 – Not a citizen —Cannot maintain petition under Art. 32 for enforcement of fundamental right under Art. 19 — State Trading Corporation whether a department of Government. AIR 1953 Raj 188; AIR 1961 Cal 258; AIR 1959 Cal 45 and AIR 1953 Assam 177, impliedly Overruled. See Ibid, Art. 5. (1963) 2 S C J 605 : AIR 1963 S C 1811.

——Art. 19—'Citizen'—Includes only natural persons —Companies are not citizens : AIR 1963 S C 1811, Foll. 15 S T C 505 : AIR 1965 All 86 (91) (Pt D) (Pr 29) (DB).

——Art. 19 — Citizen — Corporation is not citizen. AIR 1953 Raj 188, Dissent from. See Ibid, Art. 5 (c). AIR 1955 All 595.

——Arts. 19 and 5 to 11—Citizen—Association registered under Societies Registration Act — Andhra Pradesh N. G. Os' Association — Right to benefit of Art. 19 Rule governing its recognition prohibiting agitation through press — Right of association to challenge validity of Rule.

The Andhra Pradesh N. G. Os' Association, registered under the Societies Registration Act, is a juristic personality, which cannot be treated as a citizen under Arts. 5 to 10 or under any enactment passed by Parliament under Art. 11, since no such enactment has yet been passed. Therefore, as the rights guaranteed by Art. 19 can be claimed only by citizens, its challenge to the validity of a rule, subject to which it was recognised by Government, on the ground that the rule offended Art. 19 (1) (a) by prohibiting it from ventilating its grievances through the press will not be entertained by the Court because it is not entitled to the benefit of Art. 19: AIR 1953 Raj 188 and AIR 1951 Bom 1, Dissent. from; AIR 1951 Mad 974, AIR 1951 Mad 979, AIR 1952 Punj 9 and AIR 1951 Cal 397, Rel. on; AIR 1951 S C 41, AIR 1957 S C 699 and AIR 1955 S C 661; AIR 1958 S C 578, Ref. to. (1960) 1 Lab L J 156 : ILR (1959) Andh Pra 1368.

——Art. 19 (1) (f) — Assam Land (Requisition and Acquisition) Act (25 of 1948) — Validity — Act does not conflict with Art. 19 (1) (f) of the Constitution — See Assam Land (Requisition and Acquisition) Act (25 of 1948) Preamble. AIR 1953 Assam 177.

(This was a petition under Art. 226 of the Constitution for enforcement of fundamental rights by a corporation. It was assumed by the High Court that Corporation could enforce rights under Art. 19 (1) (f). But it was held in AIR 1963 S C 1811 that a Corporation not being a citizen cannot claim fundamental rights. In this view the Assam H. C. should not have entertained the Corporation's petition—Ed.)

——Art. 19 (1) (f) and (g) — Applies to citizens as well as to corporations.

The fundamental right guaranteed to every citizen under Art. 19 (1) (f) and (g) is guaranteed as much to a citizen as to a corporation, where all the share-holders are Indian citizens, and all the directors are Indian citizens. If a case arises where the share-holders are not citizens or the directors are not citizens then the Court may well consider whether the particular corporation is a citizen or not. AIR 1951 S C 41, Rel. on. ILR (1955) Bom 680 : 57 Bom L R 288 : AIR 1956 Bom 1 (19) (Pt Q) (Pr 47) (DB).

[Reversed on another point in AIR 1957 S C 699.]

——Art. 19 (1) (g)—Company incorporated in India more than five years preceeding 26-1-1950—Rights of, to benefits—Arts. 5 and 367.

Under Art. 5, every person who has his domicile in the territory of India and who has been ordinarily resident in the territory of India for not less than 5 years immediately preceding the commencement of the Constitution, shall be a citizen of India. The word 'person' has not been defined in the Constitution and under Art. 367, the definition in the General Clauses Act, 1897, would apply. Thus, a company incorporated in India would come within the definition of 'person' and as such within the provisions of Art. 5 (c) of the Constitution. A company is said to be domiciled or ordinarily resident at a place where it has its head office or from where it can be said to be controlled. A company which has been ordinarily resident in India for 5 years preceding the commencement of the Constitution, namely, 26-1-1950 would be a citizen, and would continue to be a citizen. Such a company being a citizen, is entitled to all the fundamental rights granted under Art. 19, or at least those which can be reasonably applied to a corporation or a company. Such a company can claim the privileges granted by Art. 19 (1) (g) of the Constitution. A I R 1951 S C 41, Rel. on.

(Obiter .— Under the Citizenship Act, a company incorporated after the commencement of the Constitution is not a citizen.) (1961) 31 Com Cas 714 : 65 Cal W N 1142 : A I R 1961 Cal 258 (260, 261, 266) (Pt A) (Prs 5, 17).

[Impliedly overruled in AIR 1963 S C 1811].

——Art. 19—Applicability — Corporation's claim to fundamental right—Sustainability.

A corporation is not entitled to the fundamental rights granted under Art. 19, which are only available to a citizen. AIR 1951 Mad 979 and AIR 1952 Punj 9, Rel. on. 63 Cal W N 574 : A I R 1959 Cal 397 (399) (Pt B) (Pr 7).

——Art. 19 (1) (g) — Applicability.

Art. 19 (1) (g) applies only to a citizen, and a corporation cannot be a citizen. (1959) 10 S T C 241 (Cal).

——Arts. 19 and 367—Right of Corporation to claim fundamental rights — Art. 5 — General Clauses Act (1897), S. 3 (42).

Obiter : A corporation which is a person within the meaning of the Constitution by virtue of S. 3 (42), General Clauses Act read with Art. 367 of the Constitution is a citizen and eligible for the rights like those in Art. 19 (1), in particular those in Cls. (f) and (g) thereof. AIR 1951 S C 41 and AIR 1955 S C 33 and AIR 1957 S C 478 and A I R 1958 S C 328 and AIR 1958 S C 578, Rel. on. 1961 Ker L J 72 : 1961 Ker L T 54 : I L R (1961) 1 Ker 166 : (1961) 31 Com Cas 154 : A I R 1961 Ker 268 (280) (Pt E) (Pr 34).

——Art. 19 (1) (f)—Applicability to company.

Art. 19 (1) (f) applies only to "citizens" and a company incorporated under the Companies Act does not satisfy the requirements of the definition of citizen in Art. 5 C. M. P. 4652 of 1951, Rel. on. (1951) 21 Com Cas 297 : 1951 Mad W N 677 : 1951-2 Mad L Jour 277 : AIR 1951 Mad 979 (985) (Pt G) (Pr 16) (DB).

[Reversed on another point in AIR 1954 S C 251].

——Arts. 19 and 5 — Whether a limited company incorporated under the provisions of the Indian Companies Act can be deemed to be a citizen, under Art. 19 read with Art. 5 (Quaere). See Ibid Art. 5. AIR 1951 Mad 974 (DB).

——Art. 19—Company—It is an artificial person—It cannot raise contention under Art. 19—AIR 1963 S C 1811, Foll. I L R (1964) 2 Punj 681 : AIR 1964 Punj 492 (497) (Pt B) (Pr 22) (DB).

——Art. 19—Corporation, if a citizen within Art. 19—Constitution of India, Arts, 5, 6, 8, 39.

The question whether a corporation is a citizen within the particular statute depends upon the intent to be gathered from the context and general purpose of the statute.

A perusal of Arts. 5, 6, 8, 9 and 39 makes it clear that a corporation is not a citizen within Art. 19, Constitution of India. That being so, the Companies against whom notice under S. 52A of the Insurance Act has been served cannot raise the question that the impugned legislation takes away or abridges the rights conferred by Art. 19 (1) (f) and (g), Constitution of India.

Per Soni, J.—Art. 5 applies to natural born persons and not to artificial persons like a company. 1952-22 Com Cas 33 : ILR (1952) Punj 11 : AIR 1952 Punj 9 (18, 24) (Pt F) (Prs 54, 55, 104) (DB).

——Art. 19 (1)—"Citizens"

Fundamental rights guaranteed by the Constitution to citizens are available to corporations as well, except where the language of the provision and the nature of the right compels an inference to the contrary. A I R 1951 S C 41, Foll.; A I R 1952 Punj 9, Diss. from. ILR (1953) 3 Raj 363 : 1953-RL W 569 : AIR 1953 Raj 188 (192) (Pt F) (Pr 22) (DB).

[Impliedly Overruled in AIR 1963 S C 1811].

10 (b). Foreigners and foreign companies.

● **——Art. 19 (1) (f) — Applicant not a citizen of India—Not entitled to claim fundamental right.**

Foreign companies whose vessels have contravened S. 52-A of the Sea Customs Act and in respect of which penalties have been imposed under S. 167 (12-A) read with S. 183, are not entitled to claim the fundamental right guaranteed under Art. 19 (1) (f) of the Constitution. The Shipping Corporation of India, Ltd., cannot claim to be a citizen of India, and as such is not entitled to rely upon Art. 19 (1) in support of its case that S. 52-A is ultra vires. A I R 1963 S C 1811, Rel. on. AIR 1964 S C 1140, Foll. British India Steam Navigation Co. Ltd. v. Jasjit Singh, Addl. Collector of Customs, Calcutta. (1964) 1 S C W R 463 : (1964) 34 Com Cas 689 : (1964) 2 S C J 543 : (1965) 1 S C A 424 : A I R 1964 S C 1451 (1453, 1454) (Pt A) (Prs 9, 10).

● ——Art. 19 — Sea Customs Act (1878), S. 52 A — Validity — Foreign Company whose vessel has been confiscated is not entitled to challenge validity of S. 52-A as being ultra vires Arts. 14, 19 and 31 (1). See Sea Customs Act (1878), S. 52-A. AIR 1964 S C 1140.

● ——Art. 19—Applicability — Foreign company — Right under Art. 19—See Ibid, Art. 5. 1958 Cr L J 1355 : AIR 1958 SC 845.

——Art. 19 — Foreigner though he has no fundamental right under Art. 19 has locus standi to claim legal right under Art. 226 — Held, petitioner having not even any legal right under S. 39, Calcutta Police Act, for renewal of licence, petition must be dismissed — Decision of Calcutta High Court in Order No. 24 of 1963, Affirmed. See Ibid. Art. 226. 1965 (1) Cr L J 679 : AIR 1965 Cal 312 (DB).

——Art. 19 (1) (g)—'All citizens'— Interpretation of —Only citizens of India can claim fundamental rights under Art. 19—Extent of rights of foreigner—Pakistan citizen on his Commonwealth citizenship cannot claim fundamental rights under Art. 19, through doors of Citizenship Act, 1955 —Nor Constitution (Declaration as to Foreign States) Order, 1950, make him Indian citizen for purposes of Art. 19.

Though Article 19 uses only the words 'All citizens' and not 'Citizens of India,' the fundamental right guaranteed by that Article is not open to a person who is not a citizen of India. Article 19 is a fundamental right under the Constitution of India and deals specifically and expressly with the 'right to freedom.' That Constitutional right is open only to Indian citizens and none else. Other persons may have rights in respect of the matters mentioned in Art. 19 of the Constitution; but those rights are not constitutionally guaranteed fundamental rights and for that purpose if such persons were not citizens of India they have to seek them as ordinary legal rights independently of the Constitution. Again, Part III itself of the Constitution dealing with these fundamental rights makes a distinction between the types of fundamental rights open and available only to citizen of India and others open to all persons. A fundamental right to freedom is open only to a citizen of India. But such other fundameatal rights as right to equality under Art. 14 of the Constitution, or right to life or personal property under Art. 21 of the Constitution (which also is one of the fundamental rights under the right to freedom) or fundamental right to freedom of religion as under Art. 25, or fundamental right to property as under Art. 31, are open to a person irrespective of the fact whether he is a citizen of India or not and that is for the obvious reason that all civilized countries recognise and protect certain basic human freedoms. AIR 1955 S C 367 and AIR 1950 S C 27 and AIR 1956 Madh B 211, Rel. on.

No doubt an alien or a Commonwealth citizen is entitled to certain civic rights and protection; but the ordinary legal right of a foreigner in a foreign country or of a person who is not a citizen of that

country are vexed questions of law. A foreigner or a Commonwealth citizen or a person not a citizen of India can only come to India on a passport. The passport is the origin of his entry and presence in India. The passport does not make the visitor a citizen of the country which he visits. The actual terms of the request are to allow him to pass freely without let or hindrance and secondly to afford him every assistance and protection to which he may stand in need. This passport does not by itself and by its terms allow a foreigner or a person who is not a citizen of India to carry on trade or business in India.

Article 19 does not include a Commonwealth citizen within the meaning of words 'all citizens' in the Article. The Citizenship Act cannot override the Constitution. The object of the preamble of the Citizenship Act, 1955, is to provide for the acquisition and termination of Indian Citizenship which suggests that a Pakistani citizen as a Commonweath citizen cannot claim to come within Art. 19 of the Constitution through the doors of Citizenship Act, 1955. Again Pakistan may not be a foreign state by virtue of Cl. 2 of the Constitution (Declaration as to Foreign State) Order 1950; that does not mean that a citizen of Pakistan becomes a citizen of India. The Order does not mean that the citizens of a Commonwealth country are Indian citizens even for the purpose of those Articles of the Constitution which contain the words 'foreign state.' The words 'foreign state' occur in Art. 19 (2) of the Constitution but that is only when considering the reasonableness of any restriction on the otherwise available fundamental right under Art. 19 in connection with friendly relations with foreign states. The citizen of a Commonwealth has a status in between a foreigner and a citizen of India. He has more rights than a foreigner but less rights than a citizen of India. A Commonwealth citizen does not by virtue of that alone become a citizen of all the different individual states composing the Commonwealth. The Foreigners Act 1946 itself clearly defines a foreigner by S. 2 (a) as meaning a person who is not a citizen of India. S. 3 (a) of the Foreigners Act, 1946 provides power to exempt the citizens of Commonwealth countries and other persons from application of the Foreigners Act in certain cases. It expressly lays down that the Central Government may by order declare that all or any of the provisions of this Act or of any order made thereunder shall not apply or shall apply only in such circumstances or with such exceptions or modifications or subject to such conditions as may be specified in the order in respect of (a) the citizen of any such Commonwealth country as may be so specified, or (b) any other individual foreigner or class or description of foreigner. But since Foreigners Exemption Order 1959 issued in exercise of powers under S. 3 (a) of the Foreigners Act, 1946, does not include Pakistan in the list of exempted countries a citizen of Pakistan cannot be regarded as a citizen of India. Indian citizen alone is capable of asserting a right under Art. 19 of the Constitution. A I R 1957 Madh B 1 and A I R 1961 Pat 112, Rel. on. **1965 (1) Cr L J 679 : AIR 1965 Cal 312 (319, 320, 321, 328) (Pt F) (Prs 21, 24, 26 to 28, 38, 39).**

——**Arts. 19 (1), 14**—Sea Customs Act (1878), S. 52A — Constitutional validity — Law operating against non-citizens only—Not violative of Art. 14 –S. 52-A Sea Customs Act, can be enforced against citizens and non-citizens alike—Does not violate Art. 14. See Ibid, Art. 14. **AIR 1962 Cal 303.**

——**Art. 19 (1) (d) and (e) –Citizen of Pakistan cannot claim rights under Art. 19 (1) (d) and (e) — (Citizenship Act (1955), Ss. 11 and 12).**

No doubt under S. 11 of the Citizenship Act, a citizen of Pakistan has the status of a Commonwealth citizen. But as a Commonwealth citizen he can have only those rights which the Central Government may, under S. 12 of the Citizenship Act by order notified in the Gazette, confer In the absence of any such notification he cannot claim the fundamental rights under Art. 19 (1) (d) and (e). Article 19 does not apply to foreigners. A I R 1 55 S C 367, Rel. on. **1956 M B L R (Civ) 412 : 1956 M B L J 893 : A I R 1957 Madh B 1 (3) (Pt E) (Pr 5) (DB).**

——**Art. 19 (1) (d) and (e) Scope — Commonwealth citizen—Rights of (Citizenship Act (1955), S. 12).**

In the absence of any notification under S. 12 (1), Citizenship Act, Commonwealth citizens cannot claim that they have the rights under Art. 19 (1) (d) and (e). Nor can they claim the fundamental rights conferred by Art. 19 as Pakistan citizens. That Article confers certain fundamental rights on the citizens of India and not on persons who are not citizens of India. All that is guaranteed to non-citizens is protection of life and liberty in accordance with the law of the land. **1956 Madh B L J 870 : Madh B L R 1956 Civ 535 : A I R 1956 Madh B 211 (213, 214) (Pt C) (Pr 8) (DB).**

——**Art. 19—Applicability—Passport Act and Rules thereunder whether repugnant to Art. 19 - Citizen of Pakistan cannot raise such contention (Passport Act (1920), S. 3) –(Passport Rules (1950), Rr. 3 and 5).**

A person, who is not an Indian citizen but a citizen of Pakistan, having no fundamental rights under Art 19 cannot contend that the Passport Act and the Rules thereunder in so far as they prohibit the entry into India of a foreigner except under a valid passport are repugnant to Art 19 **1956 Madh B L J 870 : Madh B L R 1956 Civ 535 : AIR 1956 Madh B 211 (214) (Pt E) (Pr 9) (DB).**

——**Art. 19**—Person migrated from India to Pakistan after 1 3-1947—Not a citizen of India—Art. 19 has no application—He cannot challenge Administration of Evacuee Property Ordinance as being inconsistent with Art. 19. **1951 Mad W N 477 : (1951) 2 Mad L J 1 : AIR 1951 Mad 930 (932) (Pt A) (Pr 12).**

10 (c). Citizenship Act and Rules thereunder.

● ——**Art. 19 (1) (e)** –Citizenship Act (1955), S. 9 (2) —Validity—Citizenship not a fundamental right. See Citizenship Act (1955), S. 9 (2). **AIR 1962 S C 1052.**

——**Art. 19** - Parliament was competent to enact S. 9 of the Citizenship Act and to make rules of evidence. See Ibid Art. 11. **1962 (2) Cr L J 166 : AIR 1962 All 383 (DB).**

——**Art. 19 (1) (e)**—Citizenship Act (1955), S. 9 (2)— Citizenship Rules, Rule 30, Sch. III, Cls 3 and 5— Cls. 3 and 5 making the obtaining of Pakistan passport, a conclusive proof of acquisition of Pakistani citizenship are null and void, by virtue of Art 13 (2) read with Art. 19 (1) (e) of the Constitution of India. See Citizenship Act (1955), S. 9 (2). **AIR 1961 All 507.**

——**Art. 19 (1) (d)**—Citizenship Rules (1956), Sch. III, Cl. 3 — Validity. See Citizenship Act (1955), S. 9. **AIR 1960 All 637.**

[**Overruled** in AIR 1962 S C 1052].

——**Art. 19**—Rules under Sch. 3 of Citizenship Act, 1955 — R. 3 — Validity. See Citizenship Act (1955), S. 18. **AIR 1957 Andh Pra 1047.**

[**Overruled** in AIR 1962 S C 1052.]

——**Art. 19** - Rules under—S. 18, Citizenship Act, 1955 —Rule 30 — Constitutionality. See Citizenship Act (1955), S. 9 (2). **AIR 1957 Andh Pra 1047**

——**Art. 19 (1) (e)** Citizenship Act (1955), S. 18 — Rules under—Citizenship Rules (1956), Sch. III, Cl. 3

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—Whether ultra vires —(Constitution of India, Art. 19 (1)(d)(e))—Cl.3 of Sch III of Citizenship Rules, 1956, is not ultra vires Art. 19 of the Constitution AIR 1957 Andh Pra 1047 Diss. from. See Citizenship Act (1955) S. 18. **AIR 1959 Bom 192.**

——Arts. 19 (1) (d), (e), (5), 11, Sch. 7, List 1, Entry 17 — Question whether person is citizen of India is outside scope of Art. 19 —Citizenship Rules (1956, Sch. III - Validity —Rules contained in Sch III are valid. ILR (1960) Mad 697 : (1960) 2 Mad L J 290 : AIR 1961 Mad 129 (136) (Pt A) (Pr 20) (DB).

——Art. 9 - Citizenship Act, S. 9 Validity Not violating Arts. 14 and 19. See Citizenship Act (1955), S. 9. AIR 1960 Pat 98 (Dis).

11. "Rights."

——Arts. 9 and 226 Applicability — Fundamental right—Supply of electrical energy.

There is no fundamental right or any right whatever to get supply of electrical energy even from an electrical concern run by the State. It all depends upon the terms of the contract between the consumer and the electrical concern and in the absence of any definite legal right, it is not possible for the High Court to issue any writ directing the consumer's premises to be reconnected or quashing the claim put forward by the State by virtue of the notices of demand served on the consumer. AIR 1952 S C 115 and AIR 1958 S C 956 Disting. 1959 Raj L W 439 : ILR (1959) 9 Raj 786 : AIR 1959 Raj 275 (277) (Pt B) (Prs 6, 7) DB).

12. Who can raise question of constitutionality.

● —Art. 19 (1 (f) — Infringement of fundamental right—Who can apply under Art 226—Title to hold property in dispute and subject of adjudication—Complaint about infringement of right to hold property is premature. See Ibid, Art. 226. AIR 1963 S C 516.

● — Art 19—Citizen not possessed of fundamental right He cannot claim relief under Art. 13 (1) See Constitution of India, Art. 13 (1). **AIR 1952 S C 339.**

——Art 19—Right to challenge validity of Act.

Where a person receives a benefit under an Act and acquiesces in it, it is not open to him to challenge the validity of that Act. AIR 1939 Nag 44, Rel. on. (1959) 2 Andh W R 53 : ILR (1959) Andh Pra 254 : AIR 1959 Andh Pra 471 (475) (Pt E) (Pr 28) (DB)

Art. 19 (1) (f) —Jadavpur University Act — Validity Life member of National Council of Education - Right to challenge Act—(Jadavpur University Act (33 of 1956), S. 1)

Under the rules of the National Council of Education a life member has no right of property in the assets held by the Council. There was no basis for the applicant's claim for any fundamental right under Art 19 (1) (f), of the Constitution, and hence no right of the applicant thereunder was infringed by the Jadavpur University Act. ('59) 63 Cal W N 914 : ILR (1960) 2 Cal 311 : AIR 1960 Cal 120 (122) (Pt D) (Pr 11).

13. Retrospective effect.

●——Art. 19 ( ) (f) — Madras Hindu Religious Endowments Act (II of 1927) — Scheme framed under Act for a math and executive officer appointed — Courts of law upholding validity of scheme on challenge by Mathadhipathi Property rights of Mathadhipathi are taken away thereby — Court will not examine the validity of the scheme in the light of fundamental rights guranteed under Art. 19 (1) (f) merely because implementation of the scheme has been delayed till after Constitution due to litigations and obstruction by Matadhipathi — Fundamental rights are not retrospective in operation. AIR 1955 S C 624, Disting. Jagadguru Kari Basaru Rajendraswami of Govimutt v. Commr. of Hindu Religious and Charitable Endowments, Hyderabad, (1965) 1 S C A 429 : 1965 S C D 209 : (1965) 1 S C J 697 : (1965) 1 Andh W R (SC) 128: (1965) 1 Mad L J (SC) 128 : (1965) 1 Andh L T 326 : (1964) 8 S C R 252 : AIR 1965 S C 502 (506, 507) (Pt B) (Pr 13).

● ——Arts. 19 (1) (f) (g) and 246 — Scope and extent of legislative power — Law passed making its provision retrospective — Effect of retrospective operation changing character of legislative competence. Rai Ramkrishna v. State of Bihar, (1963) 50 I T R 171 : AIR 1963 S C 1667 (1673) (Pt D) (Pr 11).

● ——Art. 19 (6) — As amended by the Constitution (First) Amendment Act, 1951—Retrospective effect.

Impugned Act passed prior to Constitution Amendment Act — Validity of impugned Act, is not to be decided by applying new clause introduced by Amendment Act — A statute void for unconstitutionality is dead and cannot be vitalised by a subsequent amendment of the Constitution removing the constitutional objection but must be re-enacted. Saghir Ahmad v. State of U. P., 1954 S C J 819 : (1954) 2 M L J 622 : ILR (1955) 1 All 211 : 1954 S C A 1218: 1955 All W R 23 : 68 Mad L W 8 : 1955 All L J 38 : 1955 S C R 707 : AIR 1954 S C 728 (735, 738) (Pt C) (Prs 15, 23).

——Art. 19 — Scope — Right extinguished before Constitution — If revived. See Ibid, Art. 13. **AIR 1959 Andh-Pra 471 (DB).**

——Art. 19 — Retrospective operation.

The Constitution has no retrospective effect and the fundamental rights became operative only from the date of the Constitution. Any act done prior to the Constitution, even if it was in violation of the rights guaranteed to a citizen under Chap III, is not affected by it. Though effect is sought to be given to an order after the inauguration of the Constitution, the Constitution cannot be called in aid because that was only in consequence of an act done or an order passed prior to the Constitution coming into being : AIR 1951 S C 128; AIR 1952 S C 339, Rel. on. **(1957) 1 Andh W R 228 : AIR 1957 Andh-Pra 373 (374, 375) (Pt A) (Prs 5, 6) (DB).**

Art. 19 — Sugar (Temporary Excise Duty) Act (9 of 1947), S. 3 — Validity — Article 13 (1) of the Constitution has no retrospective effect — Section is valid for all past transactions and for enforcing all rights and liabilities accrued before the date of the Constitution. 57 Cal W N 216 : AIR 1953 Cal 508 (509) (Pt A (Prs 4, 6) (DB).

——Arts. 19 and 132 (1) — Substantial question of law

Where the decision in question relates to whether the provisions of Art. 19 were retrospective in their application, the matter involves a substantial question of law as to the interpretation of the Constitution. **AIR 1953 Him Pra 77 (78) (Pt B) (Pr 4).**

——Arts. 19 (1) (g) and 226 (1) — Infringement of fundamental right — Right non esse before Constitution — Acquiescence in infringement — Retrospective operation of Art. 19 — (Evidence Act (1872), S. 115). **AIR 1953 Him Pra 8 (9, 10, 11) (Pt A) (Prs 9, 11, 12, 16).**

●——Art. 19—Retrospective effect. See Ibid, Art. 13. **AIR 1955 Nag 225 (FB).**

● ——Arts. 19 (1), (2) and 13 — Retrospective operation — Press (Emergency Powers) Act (1931), S. 19. See Ibid, Art. 13. **AIR 1951 Pat 75 (SB).**

● ——Art. 19 — Retrospective effect—Order under S. 99-A, Criminal P. C.

When the order of prescription under S. 99A, Criminal P. C., was made long before the Constitution came into force, it cannot be interfered with by virtue of Art. 19 of the Constitution. Premi Khem Raj Sharma v. Chief Secretary, **52 Cri L J 600 : 1951 Raj L W 86: AIR 1951 Raj 113 (116) (Pt G) (Pr 16) (SB).**

[Overruled on another point in AIR 1961 SC 1662].

14. Onus.

● ——**Arts. 19 (1) (g) and (6), 13 — Presumption as to constitutionality of legislation—Burden of proof.**

There is undoubtedly a presumption in favour of the constitutionality of a legislation. But when an enactment on the face of it is found to violate a fundamental right guaranteed under Art. 19 (1) (g), it must be held to be invalid unless those who support the legislation can bring it within the purview of the exception laid down by Cl. (6) of the Article. Saghir Ahmad v. State of U. P., **1954 S C A 1218 : (1954) 2 M L J 622 : 1954 S C J 819 : 1955 All W R 23 : 68 Mad L W 8: 1955 All L J 38 : 1955 S C R 707 : AIR 1954 S C 728 (738) (Pt F) (Pr 23).**

——**Art. 19 (6) — Reasonableness of restrictions — Burden of proof.** See Ibid, Art. 304 (b). **AIR 1956 Bom 1.**

● ——**Art 19 (5) — Reasonable restrictions—Reasonableness — Onus of proof.**

Per Meredith C. J.—Where there has been a prima facie infringement of a fundamental right, and prima facie no State law can infringe that right, the burden is on the State to bring that law within the exception contained in Art. 19, cl. (5) which alone can save it. Brajnandan Sharma v. State of Bihar, **ILR 29 Pat 461: 52 Cri L J 610: AIR 1950 Pat 322 (325) (Pt E) (Pr 8) (FB).**

● ——**Arts. 19 (1) (f), 19 (5) — Reasonableness of restrictions — Determination of — Onus of proof (Interpretation of Statutes — Constitutional Law) — (C. P. Code (1908), Pre.).**

It is for the Courts to decide whether the restrictions are reasonable. AIR 1950 Bom 363 and AIR 1950 Pat 322, Ref.

The presumption is always in favour of the constitutionality of an enactment, and the burden is upon him, who attacks it, to show that there has been a clear transgression of the constitutional principles, AIR 1951 Cal 85 and AIR 1951 S C 41, Rel. on; AIR 1950 Pat 322, Expl.

The statement of objects and reasons accompanying the impugned Act, can be referred to for the purpose of determining the reasonableness of the restriction imposed by it on the fundamental right. Raj Sahiban Shersingh v. State of Rajasthan, **ILR (1954) 4 Raj 365 : 1954 Raj L W 296 : AIR 1954 Raj 65 (69, 70) (Pt E) (Prs 21, 22, 27) (FB).**

15. Restrictions on the fundamental rights.

(a) Reasonableness of restrictions — Tests.
(b) Article 19 (2).
(c) Article 19 (3).
(d) Article 19 (4).
(e) Article 19 (5).
(f) Article 19 (6).

15. Restrictions on the fundamental rights.

● ——**Art. 19** — Legislative power of legislature—Taxing statute — Limitation and restriction imposed on Legislature to enact—Limitation prescribed by Arts. 14 and 19 and reasonableness prescribed by Art. 304 (b) can be considered by Court. See Ibid, Art. 246. **AIR 1963 S C 1667.**

● ——**Art. 19—Reasonableness of restrictions — Procedural provisions of a statute also enter into the verdict as to its reasonableness. AIR 1952 S C 196,** Rel. on. Kishan Chand Arora v. Commr. of Police, Calcutta, **(1961) 2 S C A 150 : (1961) 2 S C J 309 : (1961) Mad L J (Cr) 541 : (1961) 3 S C R 135 : AIR 1961 S C 705 (710) (Pt B) (Pr 5).**

● ——**Art. 19 — Reasonable restrictions — Test of reasonableness.**

In order to be reasonable a restriction must have a rational relation to the object which the Legislature seeks to achieve and must not go in excess of that object: AIR 1951 S C 118, Rel. on. The test of reasonableness should be applied to each individual statute impugned, and no abstract standard, or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict ; AIR 1952 S C 196, Foll. M. C. V. S. Arunachala Nadar v. State of Madras, **1959 S C J 297 : (1959) 1 M L J (S C) 133: (1959) 1 An W R (S C) 133 : (1959) Supp (1) S C R 92 : AIR 1959 S C 300 (303) (Pt A) (Pr 5).**

● ——**Art. 19—'Restrictions'—Meaning of—(Quaere.)**

Whether the word 'restrictions' in the various clauses of Art. 19 is used in the sense of limitation or extinction or in other words means and includes total deprivation of the right as well? 1896 A C 88; AIR 1950 S C 27; AIR 1952 Orissa 42 and AIR 1954 S C 220; Ref. to. Saghir Ahmad v. State of U. P., **1954 S C J 819; (1954) 2 M L J 622; ILR (1955) 1 All 211: 1954 S C A 1218 : 1955 All W R 23 : 68 Mad L W 8 : 1955 All L J 38 : 1955 S C R 707 : AIR 1954 S C 728 (737) (Pt D) (Pr 21).**

● ——**Art. 19—Interpretation of —Rights mentioned in, whether are absolute rights.**

Per Das J.—A perusal of Art. 19 makes it abundantly clear that none of the seven rights enumerated in cl. (1) is an absolute right, for each of these rights is liable to be curtailed by laws made or to be made by the State to the extent mentioned in the several cls. (2) to (6) of that Article. Those clauses save the power of the State to make laws imposing certain specified restrictions on the several rights. A. K. Gopalan v. State of Madras, (1950) 2 Mad L J 42 : 63 Mad L W 638 : 1950 S C J 174 : 51 Cri L J 1383 : 1950 S C R 88 : 1950 Madh W N (Cri)127 : AIR 1950 S C 27 (109) (Pt M) (Pr 216).

——**Art. 19— Indirect infringement of freedom— Legality.**

No law can infringe a freedom guaranteed under Art. 19; this means that no law can infringe it directly or indirectly. Infringement of the freedom is excused on certain grounds mentioned in Art. 19 (2) to (6) and if a law infringing any of the freedoms is to be sustained, it can be sustained on any of the grounds of Art. 19 (2) to (6) and not on the ground that the infringement is not the main object of the law but only an incidental effect of enforcement of its provisions. AIR 1954 Cal 248 Ref. **1957 All L J 509 : 1957 All W R (H C) 573 : AIR 1957 All 561 (573, 574) (Pt M) (Pr 26) (DB).**

——**Art. 19—Reasonable restrictions — Scope of.** See Madras Preservation of Private Forests Act (27 of 1949). **AIR 1958 Andh Pra 93 (DB).**

——**Arts 19, 226, 245—Bombay Police Act (22 of 1951), S. 37 (3)—Validity.**

The validity of a statute must be judged on the assumption that those who are called upon to exercise those wide powers will exercise them honestly and bona fide. It would be erroneous to suggest that in

every case where a fundamental right is sought to be taken away by the administrative order, the provision of the law would be bad because it did not give the citizen the right to make a representation with regard to the deprivation of that right. The order that has got be made under S. 37, Bom. Police Act is clearly an administrative order and it would be erroneous to import into the consideration of an administrative order the principles of natural justice.

Sub-section (3) of S. 37 is a restriction imposed by the Legislature in the interests of public order and in the interest of the general public upon the freedom guaranteed to the citizen under Art. 19 (1) (b) and (d) of the Constitution and that restriction is a reasonable restriction and therefore this provision of the law cannot be said to contravene the provisions of the Constitution so as to render it void. 58 Bom L R 418: ILR (1956) Bom 753 : 1956 Cr L J 598 : AIR 1956 Bom 300 (301, 302, 303) (Pt A).(Prs 4, 5, 12) (DB).

——Art. 19—Restrictions in procedural part—Reasonableness.

Whether a statute imposes restrictions which are reasonable or unreasonable in the interest of the general public must depend not only upon the substantive provisions in the impugned piece of legislation, but also upon the procedure contemplated in the legislation. Reasonable substantive provisions might well be rendered wholly unreasonable by the procedure which an Act prescribes. 1950 S C R (C W N Supplement) 258, Foll. 55 Cal W N 778 : AIR 1951 Cal 111 (116) (Pt F) (Pr 48) (DB).

——Art. 19 (5) — Reasonable restrictions—Test of reasonableness—It must mean that the restriction imposed must not be greater than what is necessary to meet the requirement of the case or the mischief it is intended to prevent. 55 C W N 433 : AIR 1951 Cal 85 (88) (Pt B) (Pr 33) (DB).

[Reversed on another point in AIR 1954 S C 92.]

——Arts. 19, 13 — Validity of statutory provision impugned — Court how will proceed —Reasonable restriction.

In considering the validity of an impugned statutory provision, the Court proceeds on the basis that the statutory authority will exercise the power reasonably and that such a power will not normally be abused. All the same to widen by an amending Act the scope of a statutory power already held invalid by the Court does not help to establish the reasonableness of the restriction imposed by the same amending Act. 69 Mad L W 337 : (1956) 1 Mad L J 532 : AIR 1956 Mad 491 (495) (Pt C) (Pr 8) (DB).

——Art. 19 (5)—'Reasonable' meaning of.

The expression "reasonable" is so wide and elastic that a Court should not ordinarily strike down any restrictive provision as void as being not reasonable, unless it appears to the Court that a different view could not be taken with any justification. (1953) 1 M L J 561 : 66 Mad L W 197 : 1953 Mad W N 224 : 1953 Cri L J 1174 : ILR (1953) Mad 937 : AIR 1953 Mad 664 (670, 671) (Pt D) (Pr 16) (DB).

——Art. 19 (5) – Reasonable restrictions — Meaning of.

Reasonable restrictions on the exercise of the right conferred by Art. 19 may contain substantive as well as precedural provisions. The possibility of the favour being abused in the hands of the executive may not be altogether irrelevant. 1950 S C J 328 and 571, Rel. on. 1952 Mad W N 299 : 1952-1 Mad L J 557 : AIR 1952 Mad 613 (636) (Pt K) (Pr 35) (DB).

——Arts. 19, 25, 26 — Bihar Hindu Religious Trusts Act (1 of 1951), S. 28 (2) (s)—Validity.

The possibility that a power may be abused is not a proper test in examining the constitutional validity of a law. As S. 28 (2) (s) of the Bihar Act of 1951, stands, there is no reason to hold that the provision is in any way unreasonable or that there is encroachment on the guarantee of religious freedom under Arts. 25 and 26 of the Constitution. ILR 33 Pat 682 : AIR 1957 Pat 615 (617) (Pt D) (Pr 5) (DB).

——Art. 19 — Fundamental rights — Restrictions on —Reasonableness—Court's power to enquire into.

There is no doubt that the proper Court can scrutinize the restrictions imposed on fundamental rights under Art. 19 in a statute to see whether they are reasonable. ILR 34 Pat 855 : 1957 Cr L J 648 : AIR 1957 Pat 252 (255, 257) (Pt C) (Pr 8) (DB).

——Arts. 19, 31—Deprivation of right.

When an enactment deprives a person of a right, it cannot be regarded as the law placing restrictions upon the enjoyment of that right. Case-law rel. on. ILR (1954) Patiala 433 : AIR 1953 Pepsu 161 (167) (Pt B) (Pr 17) (DB).

[Reversed on another point in AIR 1962 S C 222.]

——Art. 19—Reasonableness of restrictions—Statutes vesting discretionary powers on executive authority —When can be attacked.

Statutes which confer discretionary powers on executive officers without prescribing rules for guidance can be successfully attacked on the ground that they confer arbitrary and uncontrolled powers which render them invalid; but there are certain cases in which this general rule does not apply. In the first place, the validity of statute cannot be called into question where, for example, it vests arbitrary power in a public servant when it is difficult or impracticable to lay down a definite or comprehensive rule. Secondly statutes conferring discretion on public servants to grant or to deny applications for licences have been upheld where the discretion was to be exercised with respect to the personal fitness of the applicant. Thirdly, the Courts are reluctant to invalidate a statute when the arbitrary or uncontrolled power relates merely to matters involving the exercise of discretion as to details in enforcing valid statutes. Fourthly, arbitrary discretion as to the granting of licences may be delegated to public officials without prescribing definite rules of action where such discretion relates to a business the carrying on of which is harmful to the public and has been given in order to protect the welfare of the public, such as business in the purchase and sale of intoxicating liquors. 58 Punj L R 426 : ILR (1957) Punj 166 : AIR 1957 Punj 20 (22, 23) (Pt C)(Prs 6, 7, 8, 9, 10) (DB).

——Art. 19—Reasonable restrictions.

It is open to the legislative authority of a country to subject both persons and property to restraint in order to secure the general comfort, health, welfare and prosperity of the people of the State. If these restraints are reasonable and are imposed in the public interest, the validity of the law by which they are imposed cannot be called into question. 56 Punj L R 403 : ILR (1955) Punj 331 : AIR 1954 Punj 247 (249) (Pt A) (Pr 7) DB).

[Overruled on another point in AIR 1963 Punj 9.]

15 (a). Reasonableness of restrictions—Tests.

——Arts. 19 and 14—Restrictions on fundamental rights under Art. 19—Reasonableness of restrictions —Scope of enquiry—Tests of rational classification adopted for Art 14—If can be called in aid.

When the denial of equality before the law is based on the ground that the power vested, say, in an administrative authority to affect rights guaranteed

to a citizen is arbitrary, being unguided or uncanalised the vesting of such a power would also amount to the imposition of an unreasonable restriction on the exercise of the guaranteed right to trade or carry on a business, etc. Where the legislation is challenged on the ground that the law with the definite guidance for which it provides has outstepped the limits of the Constitution by imposing a restraint which is either uncalled for or unreasonable in the circumstances, the scope and content of the enquiry is far removed from the tests of conformity under Art. 19 (5) or (6) to rational classification, adopted for judging whether the law has contravened the requirements of equal protection under Art. 14. Collector of Custom, Madras v. Sampathu Chetty (962) 1 S C J 68 : 1962 Mad L J (Cr) 1 : (1962) 1 Mad L J (S C) 43 : (1962) 1 Andh W R (S C) 43 : 1962 (1) Cr L J 364 : (1962) 3 S C R 786 : AIR 1962 S C 316 (325) (Pt C) (Pr 16).

● —Art. 19 — Restrictions on fundamental right under—Tests of reasonableness —American decisions on 'due process' clause of American Constitution — Use of.

Though the tests of 'reasonableneas' laid down by Cls (2) to (6) of Art. 19 might in great part coincide with that for judging of 'due process' under the American Constitution it must not be assumed that these are identical, for it has to be borne in mind that the Constitution framers deliberately avoided in this context the use of the expression 'due process' with its comprehensiveness, flexibility and attendant vagueness, in favour of a somewhat more definite word 'reasonable', and caution has, therefore to be exercised before the literal application of American decisions AIR 1957 S C 297. Foll. Collector of Customs, Madras v. Sampathu Chetty, (1962) 1 S C J 68 : 1962 Mad L J (Cr) 1 : 1962) 1 Mad L J (SC) 43: (1962) 1 Andh W R (S C) 43 : 1962 (1) Cr L J 364 : (1962) 3 S C R 780 : AIR 1962 S C 316 (328) (Pt D) (Pr 23).

● —Art. 19 (1) (b) Reasonable restrictions — Who is to decide reasonableness. M H. Quareshi v. State of Bihar, 1958 S C A 783 : 1958 S C J 975 : (1958) Mad L J (Cri) 727 : AIR 1958 S C 731 (744) (Pt J) (Pr 21).

● —Arts. 19 (1) (a), 19 (1) (g), 19 (2), 19 (6)—Reasonableness of restrictions — Test of — Validity of Ss. 2 and 3 Punjab Act (38 of 1956) — (Punjab Special Powers (Press) Act (38 of 1956), Ss. 2, 3 (1)).

No abstract standard or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby etc., should all enter into the judicial verdict. AIR 1952 S C 196, Rel. on.

It is certainly, a serious encroachment on the valuable and cherished right to freedom of speech and expression if a newspaper is prevented from publishing its own views or the views of its correspondents relating to or concerning what may be the burning topic of the day. Our social interests ordinarily demand the free propagation and interchange of views, but circumstances may arise when the social interests in public order may require reasonable subordination of the social interest in free speech and expression to the needs of our social interest in public order. The Constitution recognizes this necessity and has attempted to strike a balance between the two social interests. It permits the imposition of reasonable restrictions on the freedom of speech and expression in the interest of public order and on the freedom of carrying on trade or business in the interest of the general public. Therefore, the crucial question must always be : Are the restrictions imposed on the exercise of the rights under Arts 19 (1) (a) and 19 (1) (g) reasonable in view of all the surrounding circumstances?

The power under S. 2 of the Punjab Act cannot, in view of the attending circumstances, be characterised as unreasonable and outside the protection given by Art. 19 (2) or Art. 19 (6). Section 2 must be held to have imposed reasonable restrictions on the exercise of the rights guaranteed by Arts. 19 (1) (a) and 19 (1) (g) in the interest of public order and of the general public and is protected by Arts 19 (2) and 19 (6). There is provision made for any representation being made to the State Government The absence of the safeguards in S. 3 clearly makes its provisions unreasonable and hence, ultra vires the State Legislature. Virendra v State of Punjab, (1958) S C J 88 : 1958 S C C 1 : 1958 S C A 891 : 1958 S C R 308 : AIR 1957 S C 896 (900, 902) (Pt C) (Prs 10, 15, 19).

● —Art. 19—Reasonableness of restrictions—Test.

The test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby the disproportion of the imposition, prevailing conditions at the time, should all enter into the judicial verdict. In evaluating such elusive factors and forming their own conception of what is reasonable, in all the circumstances of a given case, it is inevitable that the social philosophy and the scale of values of the judges participating in the decision should play an important part, and the limit to their interference with legislative judgment in such cases can only be dictated by their sense of responsibility and self-restraint and the sobering reflection that the Constitution is meant not only for people of their way of thinking but for all, and that the majority of the elected representatives of the people have, in authorising the imposition of the restrictions, considered them to be reasonable. State of Madras v Row V. G. 1952 Mad W N 397 : 1952 Mad W N Cri 101 : 65 Mad L W 420 : 1952 S C J 253 : 1952 Cri L J 966 : 1952-2 Mad L J 135 : 1952 S C R 597 90 Cal L J 218 : (1952) S C A 399 : AIR 1952 S C 196 (199) (Pt B) (Pr 15).

● —Arts. 19 and 14 — Tests of reasonableness in Art. 14 and Art 19 are not the same. See Ibid, Art. 14. AIR 1961 Cal 578 (SB).

—Art. 19 — Reasonable restrictions—West Bengal Oriental Gas Company Act (15 of 1960)—Validity.

Reasonable restrictions have to be considered from the standpoint of the interest of the public and not from the point of view of persons upon whom restrictions are imposed. Reasonableness has to be judged in an objective manner. The restrictions imposed under the State Act, XV of 1960, show that it was necessary for a public purpose to requisition the company for purposes of management and control and it was necessary to remedy the evil of low supply of gas. It was therefore in the interest of the general public that the State should restrict the management of the company in order to secure and control the supply of gas. It was in public utility and purpose that the restriction on management was reasonable. The Act was not ultra vires Art. 19 of the Constitution. AIR 1958 S C 731 and A I R 1952 S C 196 and AIR 1952 S C 252 Rel. on. 65 Cal W N 545 : AIR 1961 Cal 267 (284) (Pt G) (Pr 40).

[Reversed on another point in AIR 1962 S C 1044].

—Art. 19 (5)—Reasonable restriction—Restriction on fundamental right guaranteed by Art. 19 (1) (f)—Test of "reasonableness".

"The phrase 'reasonable restriction' connotes that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature beyond what is required in the interests of the public. The word 'reasonable' implies intelligent care and deliberation, that is, the choice of a course which reason dictates ; AIR 1951 S C 118 (119), Foll The reasonableness of the restrictions which may be placed upon the fundamental right guaranteed by Art. 19 (1) (f) must be adjudged in the light of the character and the extent of that right and general interest of the public which may be served by the restrictions. A close and strict scrutiny into the matter of reasonableness of the restrictions is necessary when the restriction amounts to total deprivation of property. AIR 1960 S C 430, Rel on. 1964 Jab L J 527: 1964 M P L J 874 : AIR 1965 Madh Pra 77 (82, 83) (Pt F) (Pr 13) (DB).

——Art. 19—Test of unreasonableness.

In testing the unreasonableness of restrictions for the purposes of Art. 19, the procedural provisions of the statute should also be looked into along with the substantive provisions. I L R (1957) Cut 71: 23 Cut L T 67: AIR 1957 Orissa 56 (62) (Pt G) (Pr 20) (DB).

——Art. 19 (5)—Test of reasonableness.

The test of reasonableness under Art. 19 (5) cannot be laid down in an abstract or universal manner. The test must depend upon the subject-matter of the statute which is challenged in each particular case. AIR 1952 S C 196, Foll. 1956 B L J R 210 : 1956 Cri L J 640 : ILR 35 Pat 102: A I R 1956 Pat 137 (141) (Pt B) (Pr 15) (DB).

——Art. 19 (5)—Test of reasonableness.

There is no uniform standard, no uniform pattern of reasonableness which can be laid down in the abstract. The test of reasonableness prescribed under Art. 19 (5) must depend upon the scope, the subject-matter and the context of each individual statute which is impugned. AIR 1952 S C 196 and AIR 1950 S C 211, Rel. on. 33 Pat 198 : A I R 1954 Pat 340 (345) (Pt F) (Pr 7) (DB).

● ——Art. 19—Reasonable restrictions — Test of — Duty of Court.

In determining whether a particular thing is reasonable the Court is called upon to consider the question of right and wrong, justice and fairness. What is reasonable is primarily for the decision of the legislature and ultimately for that of the Court. If the Court is satisfied that the restriction is reasonable it should have no difficulty in upholding the validity of the statute. If it is in doubt the Court must resolve the doubt in favour of the validity of the statute If, however, the Court comes to entertain the view that the restriction is unreasonable beyond a reasonable doubt or if it is satisfied that the statute is manifestly in contravention of the Constitution it would plainly be the duty of the Court to interfere. Sardha Ram v. Haji Abdul Majid, 62 Punj L R 201 : A I R 1960 Punj 196 (199) (Pt D) (Prs 10, 11) (FB).

[Overruled on another point in A I R 1962 S C 1476].

15 (b). Article 19 (2).

● ——Art. 19 (1) (a) (b), (2) (3)— Reasonable restrictions —Order under S. 144, Criminal P. C.

Some of the objects for securing which an order under S 144 Criminal P. C. can be passed are 'to prevent obstruction, annoyance, injury' etc. No doubt, the prevention of such activities would be in the 'public interest' but it would be no less in the interest of maintenance of 'public order' within the meaning of Art. 19 (2) and (3). Babulal Parate v. State of Maharashtra, (1961) 1 SCJ 524 : (1961) 1 Andh (S C) 154 : (1961) 1 M L J (S C) 154 : 1961 Mad L J (Cr) 297 : 1961 (2) Cr L J 16 : (1961) 2 S C A 497 : 1961 Andh L T 610 : (1961) 2 Ker L R 327 : AIR 1961 S C 884 (888) (Pt A) (Pr 16).

● ——Art. 19 (2 to (6)—Scope — Clauses (2) to (6) of Art 19 do not require the making of a law solely for the purpose of placing the restrictions mentioned in them —S 144, Criminal P. C, can serve the purpose. Babulal Parate v. State of Maharashtra, (1961) 1 S C J 524 : (1961) 1 An W R (S C) 154 : (1961) 1 M L J (S C) 154 : 1961 2) Cr L J 16 : 1961 S C D 597 : 1961 M L J (Cr) 297 : (1961) 2 S C A 497 : 1961 An L T 610 : (1961) 2 Ker L R 327 : AIR 1961 S C 884 (888) (Pt B) (Pr 17).

● ——Art. 19 (1) (a) (b), (2) (3)— S. 144, Criminal P. C. —Validity.

Though there is no express mention anywhere in S. 144, Criminal P. C. that the order of the magistrate should be preceded by an enquiry, we must construe the section as a whole. The latter part of sub-S. (1) of S. 144 specifically mentions that the order of the magistrate should set out the material facts of the case which is not possible unless he makes an enquiry. Clearly, therefore the section does not confer an arbitrary power on the magistrate in the matter of making an order. Babulal Parate v. State of Maharashtra, (1961) 1 SCJ 524 : (1961) 1 Andh W R (S C) 154 : (1961) 1 M L J (S C) 154 : 1961 Mad L J (Cr) 297 : 1961 (2) Cr L J 16 : (1961) 2 S C A 497 : 1961 Andh L T 610 : (1961) 2 Ker L T 327 : 1961 S C D 597 : AIR 1961 S C 884 (888) (Pt C) (Pr 18).

● ——Art. 19 (1) (a), (b), (2), (3)— S. 144, Criminal P. C. —Validity.

Wide though the power under S 144, Cr P C. appears to be, it can be exercised only in an emergency and for the purpose of preventing obstruction annoyance or injury to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquillity or a riot, or affray These factors condition the exercise of the power and it would consequently be wrong to regard that power as being unlimited or untrammelled. Further no one has a right to cause obstruction, annoyance or injury etc. to anyone. Since the judgment has to be of a Magistrate as to whether in the particular circumstances of a case an order in exercise of these powers should be made or not, the Court is entitled to assume that the powers will be exercised legitimately and honestly. The section cannot be struck down on the ground that the Magistrate may possibly abuse his powers. Babulal Parate v. State of Maharashtra, (1961) 1 S C J 524 : (1961) 1 An W R (SC) 154 (1961) 1 M L J (S C) 154 : 1961 M L J (Cr) 297 1961 (2) Cr L J 16 (1961) 2 S C A 497 : (1961) Andh L T 610 : (1961) 2 Ker L R 327 : 1961 S C D 597 : AIR 1961 S C 884 (889) (Pt D) (Pr 20).

● Art. 19 (1) (a), (b), (2), (3)—Reasonable restrictions— S 144 Criminal P. C —Validity.

The satisfaction of the Magistrate as to the necessity of promulgating an order under s 144, Cr P. C., is not made entirely subjective by the section. Even where an ex parte order is made the person or persons affected thereby have a right to challenge the order of the Magistrate. Under sub-sec. (5), where such a challenge is made the Magistrate has to give an early opportunity to the person concerned, of appearing before him and showing cause against the order. The decision of the Magistrate in such a proceeding would undoubtedly be a judicial one and he will have to set aside the order unless he comes to the conclusion that the grounds on which it rests are in law sufficient to warrant it. Since the propriety of the order is open to challenge it cannot be said that by reason of the wide amplitude of the power which S. 144 confers on cer-

tain Magistrates it places unreasonable restrictions on certain fundamental rights. Again, though no appeal has been provided in the Code against the Magistrate's order under S. 144, the High Court has power under S. 435 read with S. 439 of the Code to entertain an application for the revision of such an order. The conferral under S. 144 of a power on a Magistrate to place restrictions on the rights to which sub-cls. (a) and (b) of Art. 19 relate is therefore reasonable. Babulal Parate v. State of Maharashtra, (1961) 1 S C J 524 : (1961) 1 An W R (S C) 154 : (1961) 1 M L J (S C) 154 : (1961) Mad L J (Cr) 297 : (1961) 2 S C A 497 : (1961) Andh L T 610 : (1961) 2 Ker L R 327 : 1961 (2) Cr L J 16 : 1961 S C D 597 : AIR 1961 S C 884 (889, 890) (Pt G) (Prs 22, 23).

● —Arts. 19 (2), 19 (6), 19 (1) (a) —Rights under— Difference between total prohibition and restriction— Ss. 2 and 3 of the Punjab Special Powers (Press) Act (38 of 1956) Validity. Virendra v. State of Purjab. 1958 S C J 88 : AIR 1957 S C 896 (899) (Pt A) (Pr 8).

● —Art. 19 (2) — Reasonableness of restrictions — Test of —Validity of Ss. 2 and 3 of the Punjab Act (38 of 1956)—Virendra v. State of Punjab. 1958 S C J 88 : AIR 1957 S C 896 (900 to 903) (Pt C) (Prs 10, 15, 19).

● —Arts. 19 (1) (a) and 19 (2) — Applicability — S. 295-A, Penal Code, if protected by Art. 19 (2).

Section 295-A, Penal Code falls well within the protection of Cl. (2) of Art. 19, as being a law imposing reasonable restrictions on the exercise of the right to freedom of speech and expression guaranteed by Art. 19 (1) (a). The language employed in the amended Cl. (2) of Art. 19 is "in the interests of" and not "for the maintenance of" and the expression "in the interests of" makes the ambit of the protection very wide. A law may not have been designed to directly maintain public order and yet it may have been enacted in the interests of public order. The right to freedom of religion assured by Arts. 25 and 26 is expressly made subject to public order, morality and health. Clause (2) of Art. 19 protects a law imposing reasonable restrictions on the exercise of the right to freedom of speech "in the interests of public order", which is much wider than "for maintenance of" public order. If, therefore, certain activities have a tendency to cause public disorder, a law penalising such activities as an offence cannot but be held to be a law imposing reasonable restriction "in the interests of public order" although in some cases those activities may not actually lead to a breach of public order.

The language employed in section 295-A is not wide enough to cover restrictions both within and without the limits of constitutionally permissible legislative action affecting the fundamental right guaranteed by Art. 19 (1) (a) and consequently the question of severability does not arise. Ramji Lal Modi v. State of U. P., 1957 S C R 860 : 1957 S C J 522 : (1957) 2 Andh W R (S C) 65 : (1957) 2 M L J (S C) 65 : 1957 Cri L J 1006 : 1957 S C C 334 : 1957 All L J 773 : 1957 M P C 653 : 1957 B L J R 723 : 1958 S C A 157 : 1957 M L J (Cr.) 771 : 60 Punj L R 11 : 1957 All W R (H C) 626 : A I R 1957 S C 620 (622, 623) (Prs 7, 8, 9).

● —Art. 19 (2) — Reasonable restriction — When Justifiable.

In order to justify a restriction on freedom of speech imposed under the purported authority of Art. 19 (2) of the Constitution, there must be in the activity a tendency to cause public disorder, if not a calculated tendency. Ram Nandan v. State, 1959 All Cri R 1 : I L R (1958) 2 All 84 : 1958 All L J 793 : 1958 All W R (H C) 796 : 1959 Cri L J 128 : A I R 1959 All 101 (111, 114) (Pt C) (Prs 27, 42) (FB).

[Reversed on another point in AIR 1962 S C 922.]

—Art. 19—Reasonable restrictions—Criminal P. C. (1898), S. 144 — Whether imposes unreasonable restrictions on fundamental rights guaranteed by Art. 19.

Under S. 144 of the Code a Magistrate can direct a person to abstain from doing any of the acts the right to do which is guaranteed under Art. 19. Therefore, S. 144, through an order passed under it by a Magistrate imposes restrictions upon the rights guaranteed by Art. 19. If the acts are likely to cause obstruction, annoyance etc., they must be prevented. The Magistrate is required to state material facts to justify his passing the order.

The reasonableness of an order passed under S. 144 can be challenged before the same Magistrate or a superior Magistrate or according to one view before the High Court, or in prosecution under S. 188, Penal Code for disobedience of the order. In a prosecution there is a regular trial with a right of appeal and the Court is not merely permitted to test the reasonableness of the order; it is required to be satisfied by the prosecution that the disobedience of the order caused or tended to cause obstruction, annoyance, etc. The law has fixed a maximum period which cannot be said to be unreasonable and the person to whom the order is addressed has been given a right to show cause against it. A Magistrate is given wide powers to pass any order under S. 144. The provisions are meant to be applied in all sorts of emergencies. A large volume of discretion had to be conferred upon the Magistrate. When the section lays down the conditions that immediate prevention or speedy remedy is desirable and that the directions proposed to be issued are likely to prevent obstructions, etc., it cannot be said that the section empowers the Magistrate to pass arbitrary or unrasonable orders or orders of an excessive nature. The constitutionality of an enactment must be tested in the light of the interpretation placed upon it by the High Court. There is nothing unreasonable in the substantive law or in the procedural law in respect of the restrictions imposed by S. 144 on the rights guaranteed under Art. 19. (Tests of reasonableness discussed with reference to case law). 1956 All L J 671 : 1956 Cri L J 1026 : A I R 1956 All 481 (484, 485) (Pt D) (Pr 7) (DB).

—Arts. 19 (1), (2) and (3) and 13 — Criminal P. C. (1898), S. 144 - Constitutionality — Restrictions imposed by S. 144 on fundamental right whether within permissible limits in Art. 19 (2) and (3).

The permissible limits of restrictions under Art. 19 (2) and (3) that can be imposed upon the rights guaranteed vary from right to right whereas permissible limits for imposing restrictions under S. 144 do not vary from act to act. Secondly, the permissible limits for imposing restrictions on any act mentioned in Art. 19 (1) under S. 144 are different from those for imposing restrictions under Art 19 (2), (3). Not only are they different but also S. 144, allows a much wider field for imposing restrictions than Art. 19 (2), (3). Restrictions on any of the acts mentioned in Art. 19 (1) (b) can be only in the interests of public order, but S. 144 allows restrictions not only in the interests of preventing a disturbance of the public tranquillity but also in the interests of preventing obstruction, annoyance or injury, to human life, health or safety. The restrictions that can validly be imposed on the freedom of speech and expression are those in the interests of public order, decency or morality or in relation to incitement to an offence. Similar is the case with other acts mentioned in Art. 19 (1). It cannot be doubted that at least to the extent that S. 144 permits restrictions in excess of those permitted by Art. 19 (2), (3) it is void under Art. 13. The provision in S. 144 empowering a Magistrate to direct a person to abstain from a certain act or to

take certain order with certain property in his possession or under his management, imposes restrictions permitted by Art. 19 (2) and (3) upon the rights guaranteed by Art. 19 (1) (a) and (b). 1956 All L J 671 : 1956 Cri L J 1026 : AIR 1956 All 481 (485, 486) (Pt E) (Prs 8, 11) (DB).

——Art. 19 (1) (a) and (2) — Freedom of speech and expression—Limitations on.

Whatever limitations exist on the freedom of speech in this country are those mentioned in sub-Cl. (2) of Art. 19 and no other. If there were any doubt on the point it is removed by the latest amendment to sub-Cl. (2) by which the words 'incitement to an offence' have been added. Art. 19 (1) must therefore, be taken as a command of the broadest scope that explicit language, read in the context of sub-Cl. (2) will allow.

The restrictions in Art. 19 (2) being in the nature of exceptions to the general rule of the absoluteness of freedom of speech and expression are to be directly construed. Moreover, since the exceptions to the absolute freedom of speech and thought are specifically and expressly laid down in the Constitution, there can be no other exceptions than those which are so specifically and expressly mentioned. If the liberty of a citizen is curtailed by any law then it must be shown that the law falls within the four corners of these exceptions and it must also be shown that the restrictions are reasonable.

The freedoms, as enumerated in Art. 19 (1), are made subject to the succeeding clauses of the same Article, and when judging the constitutionality of an Act the Courts in India have to judge those Acts according to the provisions of the Constitution itself. 1955 Cri L J 623 : ILR (1955) 1 All 355 : A I R 1955 All 193 (203, 204 214, 217) (Pt D) (Prs 12, 50, 67) (DB).

——Art. 19 (1) (a), (2) (as amended in 1951) — Validity of S. 144, Criminal P. C. See Criminal P. C., S. 144. A I R 1954 All 738.

——Art. 19 (2) (before amendment) — Law relating to—Meaning—(Words aad Phrases).

The expression 'law relating to' contemplates that the relation must be real, reasonable and proximate and not far fetched or problematical. A I R 1950 S C 87 and A I R 1951 S C 118, Rel. on. 1954 All W R (H C) 334 : 1954 Cri L J 1212 : A I R 1954 All 562 (567) (Pt D) (Pr 8) (DB).

——Art. 19 (1) (a), (2)—Order under S. 144, Criminal P. C.—(Criminal P. C. (1898), S. 144).

The question whether there was apprehension of the breach of the peace must be left to the Magistrate. Unless the order passed by a Magistrate under S. 144, Criminal P. C., is on the face of it absurd or is mala fide there is no reason for the High Court to interfere. 1953 Cri L J 1358 : 1953 All L J 419 : 1953 All W R (H C) 499 : A I R 1953 All 577 (578) (Pr 3) (DB).

——Art. 19 — Reasonable restrictions. See Public Safety—Assam Maintenance of Public Order Act (5 of 1947) S. 2 (1). A I R 1953 Assam 209 (DB).

——Art. 19 (2) — Police (Incitement to Disaffection) Act (1922), S. 3—Validity — Restriction imposed by S. 3 not unlimited and so not unreasonable.

In view of the Explanation to S. 3 and of S. 4, it cannot be held, that the restriction imposed by S. 3 of the Act is unlimited or that it would include in its purview even innocent expressions of disapprobation against Government or its measures or the conditions of service of the constabulary. Hence the restriction is not 'unreasonable'. A I R 1950 S C 124, Expl.; A I R 1959 All 101 (F B), Disting.; A I R 1954 Pat 254, Rel. on. 62 Bom L R 206 : 1960 Nag L J 244 : I L R (1960) Bom 305 : 1960 Cri L J 1192 : A I R 1960 Bom 399 (402) (Pt B) (Pr 13) (DB).

——Art. 19 (2)—Scope of Art. 19 (2) after its amendment stated. A I R 1955 N U C (Cal) 4507.

——Art. 19 (2) (As amended in 1951)—Retrospective effect.

The amendment of Art 19 (2) by S. 3 (a) of the Constitution First Amendment Act, 1951, is not retrospective in its effect: 1951 S C J 182, Rel. on. 55 Cal W N 745 : 52 Cri L J 1422 : A I R 1951 Cal 176 (178) (Pt B) (Pr 25) (DB).

——Arts. 19 (2), 309 — Government Servants Conduct Rules, 1950 (Trav-Co), Rr. 70 and 72 — Taking part in politics and elections — Prosecution and dismissal of Government servant for violation of these rules — Rules not being framed under Art. 309 of the Constitution are not 'law' and hence not competent to impose restrictions on fundamental rights — Proceedings vitiated. 1963 Ker L J 463 : (1963) 1 Ker L R 455 : 1963 Ker L T 508 : (1963) 2 Lab L J 211 : I L R (1963) 1 Ker 622 : A I R 1964 Ker 227 (232) (Pt A) (Pr 22).

——Art. 19 (1) (b), (c) and (d) — Nature of rights guaranteed by Art. 19—Permissible limits of restriction—Test of reasonableness — Some important considerations in applying test — Criminal P. C. (1898), S. 144 (6)—Power conferred under sub-s. (6) violates Art. 19 (1) (b), (c) and (d) of the Constitution and is unconstitutional.

The guarantee of fundamental rights under Art. 19 of the Constitution is not absolute. The rights and powers under the Constitution are largely means of protection of important social and individual interests.

The test of reasonableness for determining the permissible limits of restriction in Cls. (2) to (6) should be applied to each individual statute impugned. It is not possible to lay down any abstract standard of reasonableness as applicable to all cases. Some of the important considerations in applying the test of reasonableness are the nature of the right alleged to have been infringed and the underlying purpose of the restrictions imposed. A I R 1952 S C 196, Foll.

Section 144 (6), Criminal P. C., confers wide amplitude of power on the State Government to deprive a citizen of his right of movement and the right of association for an indefinite period of time. The citizen affected has no right to make any representation to the state Government. He has no right of appeal or revision to any higher authority from the order of the State Government. The absence of these important safeguards makes the enactment of S. 144, sub-s. (6), Criminal P. C., unconstitutional, and there is violation of the guarantee conferred by Art. 19 (1) (b), (c) and (d) of the Constitution. A I R 1957 S C 896, Rel. on; A I R 1956 Bom 300, Dissent. from and held not authoritative in view of Supreme Court decision in A I R 1957 S C 896. 1962 B L J R 236 : 1962 (2) Cri L J 203 : I L R 41 Pat 871 : A I R 1962 Pat 292 (295, 296) (Prs 7, 9) (DB).

——Art. 19 (2) — Reasonable restriction — Criminal P. C. (1898), S. 144 is not unreasonable.

Section 144 is covered by the provisions of Cl. (2) of Art. 19, for if the impugned restrictive law is examined in its substantive and procedural aspects it would be found to be not wanting in the attribute of reasonableness. It is true that the authority to decide whether a particular order should or should not be passed has been vested in the District Magistrate, but the vesting of authority in a particular officer to take prompt action under emergent circumstances entirely on his own responsibility or personal satisfaction is not necessarily unreasonable. 58 Pun L R 464 : 1957

Cri L J 88 : 1957 All W R (Sup) 21 : I L R (1957) Punj 218 : A I R 1957 Punj 1 (4) (Pt F) (Prs 11, 12) (DB).

——Art. 19 (2)—Test of reasonableness—Order under S. 144, Criminal P. C.—Enquiry into propriety.:

A Court which is required to pronounce upon the propriety of an order passed under S. 144, Criminal P. C., should enquire whether the "words used are used in such circumstances and are of such a nature" that a reasonable man would anticipate the evil result. This enquiry should be made in the light of the following principles, viz.,

(1) that the Constitution has given an honoured place to the great democratic freedoms secured by Art. 19 ;

(2) that the power of the State to abridge freedom of speech is the exception rather than the rule ;

(3) that the character of the right, not of the limitation, determines the propriety of the restrictions, and

(4) that however complete may be the right of the press to state public things and discuss them, that right, as every other right enjoyed by human society, is subject to the restrictions which separate right from wrong doing. **58 Punj L R 464 : 1957 Cri L J 88 : 1957 All W R (Sup) 21 : I L R (1957) Punj 218 : A I R 1957 Punj 1 5) (Pt H) (Pr 14) (DB).**

——Art. 19 (1) (a), (c) and (2) — Rajasthan Government Servants' and Pensioners' Conduct Rules. R. 23 —Constitutional validity—Rules prohibiting Government Servants from becoming members of association not recognised by Government—Question of recognition left to arbitrary discretion of Executive — Rules are ultra vires the Constitution as denying fundamental rights of Government servants including members of the police force as a class. See Ibid, Art. 309. 1963 (2) Cri L J 50 : A I R 1963 Raj 136 (DB).

15 (c). Article 19 (3).

——Art. 19 (3) - Right to assemble under Art. 19 (1) (b) — Not an absolute right — Jammu and Kashmir Security Rules R. 50 - Validity of — Rule is not ultra vires the Constitution — Prohibition of public meetings not unreasonable restriction — Rule does not constitute delegated legislation, in view of preamble to Ordinance 1 of Smt 2003 and heading of the rule. See Ibid, Art. 19 (1) (b). AIR 1964 J & K 23 (DB).

——Art. 19 (1) (b) and (3) — Criminal Procedure Code, S. 144 Jurisdiction — Section 144 is not ultra vires and imposes reasonable restrictions.

Reading all the words of S. 144, Criminal Procedure Code together it is clear that the section comes within the provisions of clause (3) of Art. 19, Constitution of India and the restrictions imposed by S. 144, Criminal P. C., are reasonable restrictions. **1951 Nag L J (Notes) 117.**

——Art. 19 (1) (c)—Public Safety—Preventive Detention Act (1950), S. 3 (1) — Public order — Trying to organise meetings, processions and hartals, is covered by Cls. (b), (c) and (d) of Art. 19 (1) — So long as there is no violence, disturbance of public order or tranquillity does not come in—Constitution of India, Art. 19 (1) (b) (c) and (d)—See Public Safety—Preventive Detention Act (1950), S. 3 (1). A I R 1955 Raj 6.

——Art. 19 (3)—Reasonable restrictions, if amount to total prohibition. See Travancore-Cochin Police Act (2 of 1952), S. 26. A I R 1954 Trav Co 47 (DB).

15 (d). Article 19 (4).

——Arts. 19 (4) and 19 (1) (c) — Citizen complaining that his right to form association has been violated or unduly restricted —Court cannot surrender its own judgment in favour of any other organ of State. (1959-60) 17 F J R 290 : (1960) 1 Lab L J 745 : AIR 1960 All 45 (50, 51) (Pt D) (Pr 18).

——Art. 19 (4)—Restriction whether unreasonable—While deciding question Court has to consider "prevailing conditions at the time".

It is the duty of the Court when it is called upon to decide whether a particular statute imposes unreasonable restriction on any fundamental right to take into consideration the prevailing conditions at the time. The words "prevailing conditions" include the state of affairs in the realm in all their aspects, political, social, economic, as well as the urgent needs of the society and the public interest at any given time. **(1959-60) 17 F J R 290 : (1960 1 Lab L J 745 : A I R 1960 All 45 (50, 51) (Pt E) (Pr 18).**

● **——Art. 19 (4)—"Reasonable restrictions" — How to be determined.**

What restrictions are reasonable is for the Court to decide. There can be no absolute standard of reasonableness. In deciding on the reasonableness of the restrictions, it is not possible to think only in the abstract. Several circumstances must be taken into consideration, in particular, the purpose of the Act, the conditions prevailing in the country at the time, the duration of the restriction, its extent and nature. Further, in deciding on the reasonableness or otherwise of the restrictions imposed by law, the substantive as well as the procedural provisions of the law should be examined. Rao, V. G. v. State of Madras, **52 Cri L J 515 : (1951 1 Mad L J 628 : A I R 1951 Mad 147 (179) (Pt F) (Pr 90) (FB).**

● **——Art. 19 (1) (c) & (4)—Reasonableness—Test.**

As for the test of reasonableness it is well settled that the Court is to be the Judge of reasonableness. In deciding on the reasonableness or otherwise of the restrictions imposed by a law the substantive as well as the procedural provisions of the law should be examined. A I R 1950 S C 27, A I R 1950 S C 211, Foll. George Chandagamury v. State **1952 Ker L T 178 : 1952 Cri L J 1066 : I L R (1952) Trav Co 1 : AIR 1952 Trav-Co 217 (223) (Pt E) (Prs 14, 15) (FB).**

15 (e). Article 19 (5).

● **——Art. 19 (5) — Law depriving person of his property—Invalid if it infringes Art 19 (1) (f) —State can establish that the law depriving person of his fundamental right amounts to reasonable restriction. See Constitution of India, Art. 31 (1). AIR 1960 SC 1080.**

● **——Art. 19 (1) (f) and (5) — Madras Marumakkathayam (Removal of Doubts) Act (32 of 1955) — Validity.**

As between citizens, the individual proprietary rights are ordinarily respected unless a clear case is made out for imposing restrictions thereon. There must, therefore, be harmonious balancing between the fundamental rights declared by Art. 19 (1) and the social control permitted by Art 19 (5). The restrictions sought to be imposed must not be arbitrary but must have reasonable relation to the object sought to be achieved and must be in the interests of the general public. AIR 1952 S C 196; (1869) 14 Law Ed. 510 and (1872) 22 Law Ed. 455, Rel, on

The tests laid down in S. 2 (a), (b) and (c) of the Madras Marumakkathayam (Removal of Doubts) Act (32 of 1955) are arbitrary. In effect the Act in the guise of applying certain tests seeks to convert certain sthanams into tarwads. The Act is only a legislative device to take the property of one and vest it in another without compensation, and therefore, on its face stamped with unreasonableness. In short, the Act is ex-proprietary in character and is directly hit by Art. 19 (1) (f). The reform introduced by the Act

is also not in the public interest and the Act is not saved by Art. 19 (5). A I R 1952 Cal 273 (FB), Approved. Kochuni v. States of Madras and Kerala, **1960 Ker L J 1077 : 1960 Ker L T (SC) 31 : (1960) 2 S C A 412 : (1960) 3 S C R 887 : (1961) 2 S C J 443 : A I R 1960 S C 1080 (1097, 1098, 1099, 1104, 1105) (Pt N) (Prs 35, 41, 52, 53, 55).**

● **—Arts. 19 (5) and 19 (6) — Reasonableness of restrictions—Comparison with corrosponding provision of English Act—Not proper test.**

It is not a proper method of judging the reasonableness of the restrictions to compare every section of the Act with the corresponding English Act and then to hold it unreasonable merely because the corresponding section of the two Acts are different. Hamdard Dawakhana v. Union of India, **(1960) 1 S C A 314 : 1960 Cri L J 735 : 1960 S C J 611 : (1960) 2 M L J (SC) 1 : (1960) 2 Andh W R (SC) 1 : 1960 M L J (Cri) 358 : (1960) 1 Ker L R 746 : (1960) 2 S C R 671 : AIR 1960 S C 554 (565) (Pt F) (Pr 25).**

● **—Arts. 19 (5) and 19 (6) — Reasonable restrictions—Test of reasonableness.**

The test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard, or general pattern of reasonableness can be laid down as applicable to all cases. It is the duty of the Court to decide whether a particular statute satisfies the objective test of 'reasonableness'. A I R 1952 S C 196, Rel. on.

Whenever discretionary power is conferred on a State Government or the Union Government by law, the said law does not necessarily operate as a reasonable restriction on a fundamental right. Minera-Development, Ltd. v. State of Bihar, **(1960) 1 S C A 297 : (1960) S C J 643 : (1960) 2 Andh W R (SC) 16 : (1960) 2 Mad L J (SC) 16 : 1960 B L J R 460 : (1960) 2 S C R 609 : A I R 1960 S C 468 (470, 471, 472) (Pt A) (Prs 6, 9).**

● **—Arts. 19 (5), 19 (6)—Reasonable restrictions — If include prohibition.**

It is reasonable to think that the makers of the Constitution considered the word 'restriction' to be sufficiently wide to save laws inconsistent with Art. 19 (1), or taking away the rights conferred by the Article, provided this inconsistency or taking away was reasonable in the interests of the different matters mentioned in the clause. There can be no doubt, therefore that they intended the word 'restriction' to include cases of prohibition also. When, the restriction reaches the stage of prohibition, special care has to be taken by the Court to see that the test of reasonableness is satisfied. Narendra Kumar v. Union of India, **1960 S C J 214 : (1960) 2 S C R 375 : AIR 1960 S C 430 (435, 436) (Pt B) (Pr 18).**

● **—Arts. 19 (1) (f), 19 (5)—Reasonable restriction—What is. See Imports Control Order (1955), S. 9 (a). AIR 1960 S C 415.**

● **—Art. 19 (5)—Reasonable restriction—Test of—Examination of other laws—Relevancy.**

Majority view, Subba Rao J., dissenting—The Court in judging the reasonableness of a law will necessarily see, not only the surrounding circumstances but all contemporaneous legislation passed as part of a single scheme. The reasonableness of the restriction and not of the law has to be found out, and if restriction is under one law but advantages are created by another law passed as part of the same legislative plan, the Court should not refuse to take that other law into account. (1953) A C 514, Rel. on.

The existence of such other law is not difficult to establish. The Courts can take judicial notice of it. AIR 1939 P. C. 53, Rel. on.

Subba Rao, I.—The validity of an Act shall not be made to depend upon another Act unconnected with the impugned Act or power conferred thereunder, which might, if properly exercised, offset the evil tendency or the vice of the impugned Act. To unravel a plan of fraud on powers, it would be necessary to scrutinize all the documents, which help to ascertain the truth. It may also be necessary to look into another Act to ascertain the pith and substance of an impugned Act. But the same principle cannot be invoked for ascertaining the reasonableness of legislative restrictions on fundamental rights. Lord Krishna Sugar Mills, Ltd. v. Union of India, (1960) 1 S C R 39: (1960) 1 S C A 549 : 1960 S C J 1119 : A I R 1959 S C 1124 (1132, 1133, 1136, 1137, 1138) (Pt B) (Prs 26, 27, 42).

● **—Art. 19—Reasonableness of restrictions.**

The determination of the question as to whether the restrictions imposed by a legislative enactment upon the fundamental rights of a citizen enuniciated in Art. 19 (1) (d) of the Constitution are reasonable or not within the meaning of Cl (5) of the Article would depend as much upon procedural part of the law as upon its substantive part. **A I R 1952 S C 221,** Foll. Hari Khemu Gawab v. Deputy Commissioner of Police, Bombay, **58 Bom L R 995 : 1956 S C R 506 : 1956 Cri L J 1104 : 1956 S C J 399 : 1956 S C A 1046 : 1956 Pat L R (S C) 203 : AIR 1956 S C 559 (565, 566) (Pt A) (Pr 7).**

● **—Art. 19(5)—Reasonable restriction.**

When a law deprives a person of possession of his property for an indefinite period of time merely on subjective determination of an executive officer, such a law can on no construction of the word "reasonable" be described as coming within that expression, because it completely negatives the fundamental right by making its enjoyment depend on the mere pleasure and discretion of the executive, the citizen affected having no right to have recourse for establishing the contrary in a Civil Court. Raghubir Singh v. Court of Wards, Ajmer, **1953 S C R 1049 : 1953 S C J 505 : 1954 Mad W N 433 : 1953 S C A 629 : A I R 1953 S C 373 (375) (Pt C) (Pr 9).**

● **—Art. 19 (5)—Reasonableness of restrictions upon right of free movement.**

The determination of the question as to whether the restrictions imposed by a legislative enactment upon the fundamental rights of a citizen enunciated in Art. 19 (1) (d) of the Constitution are reasonable or not within the meaning of Cl. 5 of the Article, would depend as much upon the procedural part of the law as upon the substantive part, and the Court has got to look in each case to the circumstances under which and the manner in which the restrictions have been imposed. Gurbachansing v. State of Bombay, **1952 Cri L J 1147 : 1952 S C J 321 : 1952 S C R 737 : 54 Bom L R 849 : (1952) S C A 452 : AIR 1952 S C 221 (224) (Pt C) (Pr 7).**

● **—Art. 19 (5)—Reasonable restrictions—Meaning—Power of Court.**

Per Kania C. J.—Clause (5) of Art. 19 must be given its full meaning. The question which the Court has to consider is whether the restrictions put by the impugned legislation on the exercise of the right are reasonable or not. The question whether the provisions of Act provide reasonable safeguards against the abuse of the power given to the executive authority to administer the law is not relevant for the true interpretation of the clause. The Court, on either interpretation, will be entitled to consider whether the restrictions on the right to move throughout India, i. e., both as regards the territory and the duration, are reasonable or not. The law providing

reasonable restrictions on the exercise of the right conferred by Art. 19 may contain substantive provisions as well as procedural provisions. While the reasonableness of the restrictions has to be considered with regard to the exercise of the right, it does not necessarily exclude from the consideration of the Court the question of reasonableness of the procedural part of the law. It is obvious that if the law prescribes five years externment or ten years externment, the question whether such period of externment is reasonable, being the substantive part, is necessarily for the consideration of the Court under Cl. (5). Similarly, if the law provides the procedure under which the exercise of the right may be restricted, the same is also for the consideration of the Court, as it has to determine if the exercise of the right has been reasonably restricted. By this interpretation the scope and ambit of the word "reasonable" as applied to restrictions on the exercise of the right, is not in any way unjustifiably enlarged. It seems that the narrow construction sought to be put on the expression, to restrict the Court's power to consider only the substantive law on the point, is not correct.

Per B. K. Mukherjea J.—Though in cl. (5) the adjective 'reasonable' is predicated of the restrictions that are imposed by law and not of the law itself, that does not mean that in deciding the reasonableness or otherwise of the restrictions, the Courts have to confine themselves to an examination of the restrictions in the abstract with reference merely to their duration or territorial extent, and that it is beyond their province to look up to the circumstances under which or the manner in which the restrictions have been imposed. It is not possible to formulate an effective test which would enable the Courts to pronounce any particular restriction to be reasonable or unreasonable per se. All the attendant circumstances must be taken into consideration and one cannot dissociate the actual contents of the restrictions from the manner of their imposition or the mode of putting them into practice. The question of reasonableness of the restrictions imposed by a law may arise as much from the substantive part of the law as from its procedural portion. Dr. N. B. Khare v. State of Delhi, **1950 Mad W N 440 : 86 Cal L J 83: 1950 Mad W N (Cri) 120 : 1950 Raj L W 398 : 52 Cri L J 550: 1950 All L J 506 : 1950 S C J 328 : 1950 All W R 514 : 1950 S C R 519 : AIR 1950 S C 211 (213, 214, 217) (Pt A) (Prs 4, 24).**

——Arts. 19 (1) (f), 19 (5)—Sanction for construction of building accorded with certain conditions and restriction — Fundamental rights not infringed — Restrictions held reasonable in public interest — Municipalities —Hyderabad Municipal Corporations Act, 1955 (2 of 1956), Ss. 397, 399.

The right to acquire, hold and dispose of property enshrined in Art. 19 (1) (f) is not by any means an absolute right. It is subject to restrictions which the State may impose in exercise of its police power in the interests of the public generally, under Cl. (5) of Art. 19. By design the Hyderabad Municipal Corporations Act vests in the Commissioner the power to sanction or withhold sanction or give sanction subject to conditions with respect to buildings in the municipal area. Any regulation on hygenic grounds is a regulation in the interests of the public and therefore would constitute a reasonable restriction on the right of property enshrined in Art. 19 (1) (f). **AIR 1961 Andh Pra 489 (491) (Pt C) (Pr 5).**

——Arts. 19 (1) (f) and 19 (5) — Reasonable restrictions — Principles and tests of.

All citizens of India have a fundamental right to acquire, hold and dispose of property. But this right is subject to control permitted by Cl. 5 of Art. 19 of the Constitution. The reasonableness of a restriction depends upon the nature of the right claimed, the object to be achieved by the Act, the means employed and the limitations imposed. Their validity should be tested by the yard-stick whether they were conceived and enacted in the interests of the general public. The machinery provided by the restrictions should not confer an unregulated and arbitrary discretion on a single individual and the power conferred should not be far in excess of what is required in the interests of the public and for achieving the object for which the particular legislation was enacted. Even if a statute does not in terms enjoin on the officer to give reasons for his order, it is implicit in the exercise of judicial or quasi-judicial power that the person or tribunal exercising that power should give reasons that is, should act judicially, particularly when his order is subject to an appeal. **(1957) 2 Andh W R 272 : 1957 Andh L T 735 : ILR (1957) Andh Pra 580 : AIR 1958 Andh Pra 93 (97) (Pt A) (Pr 11) (DB).**

[Reversed on another point in AIR 1962 S C 1687.]

——Art. 19 (5) — Reasonable restrictions—What are — Restriction imposed by S. 20 of Suppression of Immoral Traffic in Women and Girls Act are reasonable.

'Reasonable' is an objective expression and its objective is to be determined judicially by the Court of law. There is no limit placed upon the power of the Court to consider the nature of the restrictions. The Court must look upon the restrictions from every point of view. It being the duty of the Court to safeguard fundamental rights the greater is the obligation upon the Court to scrutinise the restrictions placed by the legislature as carefully as possible. In order to decide whether a restriction is reasonable or not the Court must look at the nature of the restriction, the manner in which it is imposed, its extent both territorial and temporal, and if after considering all this the Court comes to the conclusion that the restriction is unreasonable, then the resrtiction is not justified and the Court will not uphold that restriction. AIR 1950 Bom 363 (FB), Foll.; AIR 1951 S C 118 and AIR 1952 S C 196, Rel. on.

Provisions of the Suppression of Immoral Traffic in Women and Girls Act show that though total prohibition of prostitution is not intended, it is intended to be discouraged. Mereover, the purpose is to prevent any one acting in such a way as to influence others and tempt them into falling in the vocation. There being necessity for controlling and even preventing prostitution it cannot be said that the restrictions imposed by S. 20 are unreasonable. **64 Bom L R 526 : 1962 Nag L J 639 : 1963 (1) Cri L J 148 : AIR 1963 Bom 17 (19, 20) (Pt C) (Prs 12, 13) (DB).**

[Overruled on another point in AIR 1964 S C 416].

——Art. 19 (1) (f) and (j) — Sea Customs Act (7 of 1878), S. 178 A—Restrictions imposed are reasonable and hence intra vires the Constitution. ILR (1959) Bom 1771.

[Reversed on another point in AIR 1962 S C 1559].

——Art. 19 (5)—Reasonable restrictions.

In considering whether the restrictions are or are not reasonable, it is now well settled that the procedure prescribed for imposing such restrictions may also be taken into account and the procedure must also be reasonable **56 Bom L R 966 : AIR 1955 Bom 271 (272) (Pt A) (Pr 3).**

●——Art. 19 (5)—Proviso—Rights conferred under Art. 19 (1) (d) and (e) — Restrictions on — Power of Court to scrutinize restrictions — Reasonableness — Test.

Per Chagla C. J.—The Legislature has been given the power under the Proviso to sub-cl. (5) of Art. 19 to impose restrictions on the exercise of the rights conferred under Art. 19 (1), sub-cls. (d) and (e) but those restrictions have to be reasonable restrictions. It is not for the Legislature to determine whether the restrictions are reasonable or not. It is for the Court of law to consider the reasonableness of the restrictions imposed upon the rights. "Reasonable" is an objective expression and its objectivity is to be determined judicially by the Court of law. There is no limit placed upon the power of the Court to consider the nature of restrictions. The Court must look upon the restrictions from every point of view. It being the duty of the Court to safeguard fundamental rights, the greater is the obligation upon the Court to scrutinize the restrictions placed by the Legislature as carefully as possible.

In order to decide whether a restriction is reasonable or not, the Court must look at the nature of the restriction, the manner in which it is imposed, its extent both territorial and temporal, and if after considering all this the Court comes to the conclusion that the restriction is unreasonable, then the restriction is not justified and the Court will not uphold that restriction. The Court must lean in favour of fundamental rights and must place the restrictions imposed upon the Legislature in as narrow an ambit as possible.

"Interest of general public" is a very wide expression, much wider indeed than any of the expressions used in sub-cls. (2), (3) and (4). "Interests of general public" embraces public security, public order and and public morality, and therefore much wider power is given to the Legislature under sub-cl. (5) to restrict the right given under the Constitution under Art. 19 (1), sub-cls. (d) and (e).

Per Shah J.—The question whether the restrictions contemplated to be imposed by an impugned statute are "reasonable" within the meaning of Art. 19 (5) of the Constitution of India will have to be judged with reference not to any individual cases which may arise or any hardship which may be caused by reason of of the application of the provision of the statute, but by reference solely to two considerations : (1) whether the restriction is a restriction on the exercise of the right which has been conferred by Art. 19 and (2) whether the restriction itself is reasonable having regard to the interests of the general public.

The scheme of Art. 19 is to provide a balance between the security of the State and the interest of general public on the one hand and the fundamental rights guaranteed to the citizens on the other. That article provides for the enunciation of the fundamental rights which would normally be exercised by the citizens but which in the larger interest of the State and the general public may be curtailed or restricted. If the Court is satisfied that the restriction is imposed in the interest of the general public and the restriction is not unreasonable, the Court has no jurisdiction to enquire whether the manner in which the restriction is likely to be imposed by the officer charged with the duty of enforcing it may possibly act unreasonably. The possibility of an abuse of provision enacted in the interest of the security of the State or in the interests of the general public cannot be a ground for holding the provision as void. The remedy lies with the Legislature to remove the lacuna, if any, which permits that abuse. Jeshingbhai Ishwarlal v. Emperor, 52 Bom L R 544 : ILR (1950) Bom 539 : 52 Cri L J 120 : AIR 1950 Bom 363 (366, 367, 372) (Pt C) (Prs 7, 21) (FB).

——**Art. 19 (5) — Reasonableness of statute — Power of Court to determine — West Bengal Act (21 of 1948), S. 7 — Validity—(West Bengal Land Development and Planning Act (21 of 1948), S. 7.**

Ordinarily it is not open to a Court of law to go into the question of reasonableness of the provisions of a statute or to declare a statute as ultra vires on the ground of hardship or unreasonableness. In other words the Court has no power to question the wisdom or the policy of the legislature. But in view of Art. 19 of the Constitution the Court can go into the question of reasonableness to the extent it is permitted by that Article.

W. B. L. D. Act, purports to make acquisition for a public purpose that is, in the interest of and for the benefit of the public, viz., the settlement of immigrants and as the rehabilitation of refugees is an urgent matter and demands speedy acquisition of lands, the restriction put by S. 7 of the Act at once becomes a reasonable restriction and the provision becomes a valid provision under Art. 19 (5). AIR 1952 Cal 870 (874) (Pt G) (Prs 17, 18).

——**Art. 19 (5)—"Reasonable restrictions"—Courts must take broad view of circumstances existing when legislation was passed.**

Whether a piece of legislation imposes reasonable or unreasonable restrictions on a fundamental right in the interests of the general public might be a matter of very great difficulty and the courts must take a broad view of the circumstances existing when such legislation was passed. Legislation which appears to have been arbitrary and based on no reason would clearly be ultra vires the Constitution. The phrase 'reasonable restriction' connotes that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature beyond what is required in the interests of the public. The word 'reasonable' implies intelligent care and deliberation, that is, the choice of course which reason dictates. Legislation which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness and unless it strikes a proper balance between the freedom guaranteed in Article 19 (1) (g) and the social control permitted by Cl (6) of Art. 19, it must be held to be wanting in that quality. Iswari Prosad v. Sen, N. R., 55 Cal W N 719 : A I R 1952 Cal 273 (279) (Pt F) (Pr 34) (FB).

[Reversed on another point in AIR 1953 S C 148.]

——**Art. 19 (1) (f), (5) — Reasonable restriction — West Bengal Bargadars Act (2 of 1950), S. 5 (1).**

The unreasonableness of the restriction to hold property has to be judged in relation to the social, economic and the political context in which the restriction is imposed. The whole idea of the Act 2 of 1950 is to preserve the lands already under cultivation and not to permit them to be withdrawn from agriculture and to be used for any other purpose for a certain time to meet a situation of great economic gravity. Though the provision in S. 5 which requires an order of the Board for termination does infringe the constitutional right to hold property because right to hold property must include in its amplitude the right to hold it in any manner that the owner chooses freed from the right of Bargadars or other interests, the restriction on the right to hold imposed by S. 5 (1) is a reasonable restriction within the Constitution and permissible. 89 Cal L J 15 : 56 Cal W N 325 : A I R 1952 Cal 184 (185, 186) (Pt A) (Prs 7a, 10, 10a, 12) (DB).

——**Arts. 19 (1) (d), 19 (5) — Reasonable restrictions — Court's power.**

Whether a particular restriction imposed by the Legislature is reasonable or not in the interests of the general public has to be considered by the Court

The Court is not precluded from considering the reasonableness of the substantive as well as the procedural part of the law imposing the restrictions. **55 C W N 94 52 Cri L J 327 : AIR 1951 Cal 322 (323) (Pt A) (Pr 11) (DB).**

——Art. 19 (5) — Applicability — Statute empowering compulsory acquisition of property.

A statute empowering a State compulsorily to acquire property can be said to impose a restriction on the right to hold property. If that be so, a statute dealing with compulsory acquisition would have to comply with Art. 19 (5) of the Constitution and if it imposed on the citizen a restriction that was more than necessary in the interest of the general public then such a law would be void. Whether a statute imposes restrictions which are reasonable or unreasonable in the interest of the general public must depend not only upon the substantive provisions in the impugned piece of legislation but also upon the procedure contemplated in the legislation. Reasonable substantive provisions might well be rendered wholly unreasonable by the procedure which an Act prescribes. **55 C W N 778 : A I R 1951 Cal 111 (116, 117) (Pt F) (Pr 48) (DB).**

——Art. 19 (5) — Restriction under S. 45, Madras Hindu Religious and Charitable Endowments Act on trustee, is not unreasonable.

A trustee under the Madras Hindu Religious and Charitable Endowments Act, cannot complain of unreasonable restrictions on his rights, because the rule is well established that persons committing breaches of trust should be removed from the office. The exercise of the power is not without any control, for there is the right of appeal against the actions under S. 45 (4). There is the further safeguard by the issuance of certiorari, against the action being vitiated by excess of jurisdiction, or want of jurisdiction, or by disregard of the fundamental principle of natural justice, or by error apparent on the face of the record. The general superintendence over Tribunals exercising quasi-judicial powers, which is vested in the High Court under Art. 227, affords sufficient scrutiny by courts and makes the actions authorised by S. 45, reasonable restrictions in the interests of the general public for the purposes of Art. 19 (5). Therefore the challenge to the constitutionality of S. 45 is not justified. AIR 1954 S C 119 and AIR 1956 S C 432 and AIR 1959 S C 942 and AIR 1951 S C 118 and A I R 1952 S C 196 and A I R 1959 S C 300, Rel. on. **1960 Ker L T 1007 : ILR (1960) Ker 1259 : 1960 Ker L J 1445 : AIR 1961 Ker 87 (90, 91) (Pt B) (Pr 7) (DB).**

——Art. 19—Finance Act (1951), S. 7 (2) (b)—Section if unreasonable — Section 7 (2) (b) does not come within the mischief sought to be guarded against in Art. 19 (5). See Finance Act (1951), S. 7 (2) (b). **A I R 1952 Nag 139 (DB).**

——Art. 19 — Houses and Rents — C. P and Berar Accommodation (Requisition) Act 63 of 1948, S. 3 — **Reasonability of provision —** Court, whether can question. See Houses and Rents — C. P. and Berar Accommodation Requisition Act (63 of 1948), S. 3. **AIR 1951 Nag 33.**

——Art. 19 (5) — Orissa Court of Wards Act (26 of 1947)—Validity.

Though in so far as the management passes from the hands of the proprietor to the Court of Wards it amounts to a serious restriction on the absolute power of the proprietor to manage the estate in any way he chooses it is a reasonable restriction when public interests warrant it. **ILR (1952) Cut 529 : AIR 1953 Orissa 121 (149) (Pt S) (Pr 57) (DB).**

——Art. 19 (5) — "Reasonable restrictions"—Test to decide. See Ibid, Arts. 13 (2), 19 (1) (d) and (e) and 21. **AIR 1951 Orissa 86.**

——Art. 19 (1) (d) — Reasonable restriction — Bihar Maintenance of Public Order Act, S 9 (2)—Validity — Section 9 (2) of Bihar Act 3 of 1950 does not impose unreasonable restriction. See Public Safety—Bihar Maintenance of Public Order Act (3 of 1950), S. 9 (2). **1959 Cr L J 1100 : AIR 1959 Pat 425 (DB).**

——Art. 19 (1) (d) & (e) & (5) - Reasonable restrictions in the interests of general public—(Public Safety — Bihar Maintenance of Public Order Act 1949 (3 of 1950), S. 2—Validity).

The test under Art. 19 (5) is a twofold test : firstly, the restrictions imposed must be reasonable; secondly, they must be in the interests of the general public. The reasonableness of the restrictions has to be considered both with regard to substantive and procedural provisions. In the Bihar Maintenance of Public Order Act, there are provisions for communicating the grounds of the order to the externee. The externee has a right to make a representation, and the representation has to be considered by an Advisory Board. There are all safeguards which fulfil the test of reasonableness. The existence of a provision which prevents externment of a person from his usual place of residence is not an essential criterion for fulfilling the test of reasonableness. There may be good and valid grounds for keeping a person out from his usual place of residence as he may be doing greater mischief at that place than elsewhere The expression "in the interests of the general public' is wide enough to cover serious and aggravated forms of public disorder which are calculated to endanger the security of the State as also other breaches of the peace of a purely local significance which endanger the public order. Public order is not excluded from the purview of cl. (5) of Art. 19. Thus the provisions of the Bihar Maintenance of Public Order Act, so far as they permit the passing of an order of externment, impose reasonable restrictions in the interests of the general public on the exercise of the rights conferred by cls. (d) and (e) of Art. 19 (1) of the Constitution. AIR 1950 S C 211, Foll. 55 C W N 94, Rel. on. AIR 1950 S C 124, Disting. **1952 Cri L J 1361 : AIR 1952 Pat 376 (377, 378) (Prs 5, 6) (DB).**

——Art. 19 (5)—Principle of.

The underlying principle of cl. (5) of Art. 19 is that the individual right of full enjoyment of proprietary interest may be restricted in the larger interests of the general public or for the protection of the interests of any Scheduled Tribe, provided the restrictions imposed are reasonable. If therefore, a law imposes any restriction which is not in the interests of the general public or for the protection of the interests of any Scheduled Tribe, such a law must be held to be unconstitutional even if reasonable. **30 Pat 1085 : AIR 1952 Pat 166 (171) (Pt D) (Pr 22) (DB).**

——Art. 19 (5) — Bihar State Management of Estates and Tenures Act (21 of 1949) - Reasonableness.

The Bihar State Management of Estates and Tenures Act imposes restrictions of the most far-reaching and drastic kind on the power of proprietors and tenure-holders to deal with their property and it cannot fairly be said that these restrictions are either "reasonable" or "imposed in the interests of the general public" Kameshwar Singh -v. Province of Bihar, **ILR 29 Pat 790 : AIR 1950 Pat 392 (401, 419, 430) (Pt F) (Prs 7, 40, 80) (SB).**

——Art. 19 (5) - Public Safety—Bihar Maintenance of Public Order Act (3 of 1950), S. 2 (1) (b)—Reasonable restrictions — Courts excluded from applying

objective test of reasonableness—S. 2 (1) (b) is not reasonable. See Public Safety—Bihar Maintenance of Public Order Act (3 of 1950), S. 2 (1) (b). 52 Cri L J 610 : AIR 1950 Pat 322 (FB).

● ——Art. 19 (5)—'Reasonable restrictions'—Expression refers to law and not to order passed under it—Order cannot be considered on merits.

The wording of Art. 19 (5) makes it quite clear that the words "reasonable restrictions" refer to the law itself, and not to orders passed under the law. The clause speaks of any existing law in so far as it imposes reasonable restrictions, and the making of a law imposing reasonable restrictions. The Courts, of course, on general principles, can always upset an order on the ground of mala fides. But when Art. 19 (5) prevents the Courts from going into the merits of the order it is for all practical purposes impossible to consider whether the order is in fact bona fide or mala fide. On the other hand, if the restrictive provisions in the Act are void, quite obviously the order made thereunder is void. Brajnandan Sharma v. State of Bihar, ILR 29 Pat 461 : 52 Cri L J 610 : AIR 1950 Pat 322 (324) (Pt A) (Pr 4) (FB).

● ——Art. 19 (5) — Reasonableness of restriction—Power of Court to decide.

(Per Meredith C. J., Shearer J. Contra.)— When the Constitution says that the restrictions must be reasonable, obviously it is for the Court to decide whether restrictive provisions are reasonable or not. The argument that the legislature itself is the sole judge of reasonableness and that if it makes a provision the Courts must accept it as reasonable, if accepted, renders the word 'reasonable' in cl. (5) completely nugatory.

Shearer J.—The criterion to be adopted by Courts to decide the validity of a legislation is whether the restrictions are reasonably necessary in the interests of the general public or in other words, "Is the extent to which the rights of individuals are, or are liable to be, interfered with no more than is reasonably necessary for the protection of the public?" If that is the criterion to be adopted, then it is immaterial that there may be ancillary provisions in the statute which may lead to hardship in individual cases. Whether such provisions are reasonable or not is a matter for the legislature to determine and the judiciary cannot now sit in review over what the legislature has done. Brajnandan Sharma v. State of Bihar, ILR 29 Pat 461 : 52 Cri L J 610 : AIR 1950 Pat 322 (327) (Pt C) (Pr 15) (FB).

● ——Art. 19 (5)—'Reasonable restrictions'—Tests of reasonableness — Subjective and objective tests explained.

The Courts do not apply any subjective test. There can be an objective test of reasonableness, and that is what the Courts apply. They do not ask themselves, whether they as individuals, feel satisfied that the restrictions are reasonable. But, would that fictitious individual, "the reasonable man," that is to say, the normal average man, regard them as reasonable? That is a well-recognised legal means of examining the question of reasonableness, and it is essentially an objective test : AIR 1946 P C 123, Rel. on Brajnandan Sharma v. State of Bihar, ILR 29 Pat 461 : 52 Cri L J 610 : AIR 1950 Pat 322 (324) (Pt D) (Pr 7) (FB).

—— Art. 19 (1) (f) and (5)—Patiala and East Punjab States Union Abolition of Biswedari Ordinance (23 of 2006), S. 10 — Restriction under, was reasonable—AIR 1951 S C 118, Foll.; A I R 1952 Cal 273 (FB), Rel. on. ILR (1954) Patiala 433 : A I R 1953 Pepsu 161 (173) (Pt G) (Pr 33) (DB).

[Overruled on another point in AIR 1963 S C 222.]

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——Art. 19 (1) (f) and (g), (5) and (6)—Restrictions—Reasonableness—Test of — Essential Commodities Act (1955), S. 3 (2) (c) and (f) and (3)—Validity.

The restrictions on the fundamental rights enumerated in Art. 19 (1), Cls. (f) and (g) of the Constitution have to be imposed, if at all, with care and deliberation and in the interest of the public. The test of reasonableness is that there is no lack of due care and attention and that it strikes a balance between the fundamental right of the individual and the control necessitated by the demand of the community. A statute under the guise of protecting public interest cannot arbitrarily interfere with private business and impose harsh and restrictive regulations upon lawful use of property or freedom of trade and commerce and there should be a reasonable nexus or correlation between the purpose which the Act has in view and the restriction which is sought to be imposed.

Section 3 (2) (c) and (f) and (3) of the Essential Commodities Act cannot be held to offend against Art. 19 (1) (f) and (g) of the Constitution and is definitely saved under clauses (5) and (6) of that Article. A I R 1951 S C 119 and AIR 1954 S C 465 and AIR 1954 S C 634 and AIR 1957 Madh Pra 179 (FB), Foll. I L R (1959) 9 Raj 740 : 1959 Raj L W 702 : AIR 1959 Raj 206 (208, 209) (Pt B) (Pr 4) (DB).

● ——Art. 19 (5) — Law giving authority to executive to encroach on fundamental right — Test of reasonableness—Procedural part of law.

It cannot be laid down as an inflexible rule that every law which gives authority to the executive to encroach on a fundamental right must necessarily give an opportunity to the person concerned to be heard before any order is made to his prejudice. The question will depend on the nature of the legislation and the extent to which the fundamental right is contravened. A legislation providing for an emergency like a sudden outburst of an epidemic or a natural calamity like an earthquake or a flood may defeat its purpose if it lays down an elaborate enquiry with opportunity of being heard as a prerequisite to taking action in the interests of the general public. On the others hand where there is no compelling necessity to act urgently, the legislation should ordinarily prescribe a procedure observing the principles of natural justice which require that a person should not be condemned or deprived of his rights without an opportunity of being heard. A I R 1950 S C 222; AIR 1951 Mad 419, A I R 1951 Orissa 86 and 53 Bom L R 142 Ref. Jayantilal Laxmishankar v. State of Saurashtra, AIR 1952 Sau 59 (64) (Pt B) (Pr 13) (SB).

● ——Art. 19 (1) (f) and (5) — "Reasonable restriction"—Meaning—Restrictions imposed by Ss. 1 and 2 of Cochin Proclamation No. 6 of 1124 whether reasonable—(Cochin Proclamation (6 of 1124), Ss. 1 and 2).

The phrase "reasonable restrictions" in respect of right to acquire, hold and dispose of property conferred by Art. 19 (1) (f) connotes that the limitation on a person in enjoyment of the right should not be arbitrary or of an excessive nature beyond what is required in the interests of the public. The word 'reasonable' implies intelligent care and deliberation, that is, the choice of a course which reason dictates.

What we have to ask ourselves is not whether we, as individuals feel satisfied that the restrictions are reasonable but whether the normal, average reasonable man would regard them as reasonable or not.

The burden of proving the reasonableness of any restriction on fundamental rights will be on those who seek to support the restriction.

The question of reasonableness alone is justiciable.

In the light of the Preamble to the Cochin Proclamation No. 6 of 1124 the restrictions embodied in Ss. 1 and 2 of the Proclamation are not only reasonable but necessary to safeguard the interests of the tenants until the proposals contemplated are passed into law.

The restrictions cannot be said to acquire an unreasonable character for lack of a specified and definite period of operation. Jamath Mosque v. Vakhan Joseph, 1955 Ker L T 406 : I L R (1955) T.-C. 428 : A I R 1955 Trav-Co 227 (229, 230) (Pt E) (Prs 12 to 16) (FB).

15 (f). Article 19 (6).

● ——**Arts. 19 (1) (g), (6), 226—Restrictions on right to carry on trade — Reasonableness—S. 39, Calcutta Police Act—Validity—Order of Commissioner under S. 39 is administrative and not judicial or quasi-judicial — Absence of provision for hearing person applying for licence and for reasons for refusal to grant licence does not make section unconstitutional.**

(Per majority; Sinha C. J., and Subba Rao, J., Contra). The exercise of the discretion under S. 39 of the Calcutta Police Act depends upon the subjective satisfaction of the Commissioner as to whether the person applying for a licence satisfies the three conditions mentioned in it. Though the Commissioner is expected to act reasonably there is no duty cast on him to act judicially. The fact that no hearing is required to be given by the Commissioner before he decides to grant or refuse a licence would not make the provisions as to licensing in S. 39 unreasonable restrictions on the fundamental right of carrying on a trade. For the same reasons, though the reasons for refusal are not communicated to the person applying, that would not make the licensing provision unconstitutional. If the Commissioner has acted unreasonably in rejecting his application the aggrieved party can apply to the High Court under Art. 226. AIR 1958 S C 398 and 1951 A C 66 and AIR 1958 S C 578, Rel. on. Kishan Chand Arora v. Commr. of Police, Calcutta, (1961) 2 S C A 150 : (1961) 2 S C J 309 : (1961) 3 S C R 135 : (1961) M L J (Cr) 541 : AIR 1961 S C 705 (709, 710) (Pt C) (Pr 5).

●——**Art. 19 (6) — Reasonableness of statute—How determined—Principles—Duty of Court.**

The test of reasonableness should be applied to each individual statute impugned and no abstract standard, or general pattern, of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict : A I R 1958 S C 731 and AIR 1952 S C 196, Rel. on. Legislation which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness and unless it strikes a proper balance between the freedom guaranteed in Art. 19 (1) (g) and the social control permitted by clause (6) of Art. 19, it must be held to be wanting in that quality ; A I R 1951 S C 118 Rel. on. Acts innocent in themselves may be prohibited and the restrictions in that regard would be reasonable, if the same were necessary to secure efficient enforcement of valid provisions. Abdul Hakim Quraishi v. State of Bihar. (1961) 1 S C A 73 : 1961 (1) Cr L J 573 : 1961 All W R (HC) 216 : 1961 All Cri R 95 : (1961) 2 S C R 610 : (1962) 2 S C J 523 : AIR 1961 S C 448 (454, 455, 459) (Pt A) (Prs 7, 9, 27).

●——**Art. 19 (1) (g), 19 (6) — Drugs and Magic Remedies (Objectionable Advertisements) Act (1954), S. 3 — Prohibition of advertisement under — Not unreasonable restriction — Tests of reasonableness—Art. 19 (1) (g) of the Constitution not violated.**

The test of reasonableness of restriction is to decide whether the statute under the guise of protecting public interests arbitrarily interferes with private business and imposes unreasonable and unnecessarily restrictive regulations upon lawful occupation. AIR 1951 S C 118, Rel. on.

The prohibition of certain kinds of advertisements under S. 3 of the Act does not, under the guise of protecting public interest arbitrarily interfere with private business or impose unreasonable restrictions. As the true intention of the Act is, to stop objectionable and unethical advertisements for the purpose of discouraging self-medication no question of unreasonable restrictions arises.

Further, the provisions in the Constitution touching fundamental rights must be construed, broadly and liberally in favour of those on whom the rights have been conferred. The interpretation should be such as to subserve the protection of the fundamental rights of the citizen but that is subject to limitations set out in Art. 19 itself which are for the general welfare of all citizens taken as a whole and are therefore for the interest of the general public. So interpreted, it cannot be said that the restrictions imposed by S. 3 of the Act are either excessive or disproportionate or are not in the interest of the general public. AIR 1954 S C 119, Rel. on. Hamdard Dawakhana v. Union of India, (1960) 1 S C A 314 : (1960) 2 Andh W R (S C) 1 : (1960) 2 Mad L J (S C) 1 : 1960 S C J 611 : 1960 Mad L J (Cr) 358 : (1960) 2 S C R 671 : 1960 Cri L J 735 : AIR 1960 S C 554 (566) (Pt G) (Pr 28).

● ——**Art. 19 (6) — Reasonableness of restriction — Test.**

In applying the test of reasonableness, the Court has to consider the question in the background of the fact and circumstances under which, the order was made taking into account the nature of the evil that was sought to be remedied by such law, and the ratio of the harm caused to individual citizens, by the proposed remedy, to the beneficial effect reasonably expected to result to the general public. It will also be necessary to consider in that connection whether the restraint caused by the law is more than was necessary in the interests of the general public. Narendra Kumar v. Union of India, 1960 S C J 214 : (1960) 2 S C R 375 : AIR 1960 S C 430 (436) (Pt C) (Pr 19).

● —**Art. 19 (1) (g) and (6)—Reasonable restrictions —Power to decide reasonableness.**

Clause (6) of Art. 19 protects a law which imposes in the interest of the general public reasonable restrictions on the exercise of the right conferred by sub-cl. (g) of Cl. (1) of Art. 19. Quite obviously it is left to the Court, in case of dispute, to determine the reasonableness of the restrictions imposed by the law. The Court cannot proceed on a general notion of what is reasonable in the abstract or even on a consideration of what is reasonable from the point of view of the person or persons on whom the restrictions are imposed. What the Court has to do is to consider whether the restrictions imposed are reasonable in the interest of the general public. That the legislature is the best Judge of what is good for the community, by whose suffrage it comes into existence should be the proper approach for the Court but the ultimate responsibility for determining the validity of the law must rest with the Court. AIR 1954 S C 92 and AIR 1954 S C 229 and AIR 1952 S C 252, Foll. Mahomed Hanif Quareshi v. State of Bihar, 1958 S C A 783 : 1958 S C J 975 : (1958) Mad L J (Cr) 727 : 1959 S C R 629 : AIR 1958 S C 731 (744) (Pt J) (Pr 21).

● —**Arts. 19 (6) and 19 (1) (g) — Freedom to carry on business—Reasonable restrictions—Test.**

The phrase "reasonable restriction" connotes that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature, beyond what is required in the interests of the public. Legislation which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness and unless it strikes a proper balance between the freedom guaranteed in Art. 19 (1) (g), and the social control permitted by clause (6) of Art. 19, it must be held to be wanting in that quality. AIR 1951 S C 118, Foll.

The Court should consider not only factors such as the duration and the extent of the restrictions but also the circumstances under which and the manner in which their imposition has been authorised. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict. AIR 1952 S C 196, Foll. The fact of the statute being given retrospective operation may also be properly taken into consideration in determining the reasonableness of the restriction imposed in the interest of the general public. Express Newspapers (Private) Ltd. v. Union of India, **(1958-59) 14 F J R 211 : (1958) S C J 1113 : 1958 S C A 952 : 1959 S C R 12 : (1961) 1 Lab L J 339 : AIR 1958 S C 578 (621) (Pt J) (Prs 168, 169, 170).**

● —**Art. 19 (1) (g) and (6) — Reasonable restriction.**

The phrase "reasonable restriction" connotes that the limitation imposed upon a person in enjoyment of a right should not be arbitrary or of an excessive nature beyond what is required in the interest of the public. Legislation, which arbitrarily or excessively invades the right, cannot be said to contain the quality of reasonableness, and unless, it strikes a proper balance between the freedom guaranteed under Art. 19 (1) (g) and the social control permitted by Cl. (6) of Art 19, it must be held to be wanting in reasonableness. A law or order, therefore, which confers arbitrary and uncontrolled power upon the executive in the matter of regulating trade or business in normally available commodities cannot but be held to be unreasonable. Dwarka Prasad Laxmi Narain v. State of Uttar Pradesh, **1954 S C J 238 : 1954 All L J 203 : 1954 S C A 204 : 1954 S C R 803 : AIR 1954 S C 224 (227) (Pt A) (Pr 6).**

● —**Art. 19 (6) — Reasonableness of restriction, how determined.**

In order to determine the reasonableness of the restriction regard must be had to the nature of the business and the conditions prevailing in the trade. It is obvious that these factors must differ from trade to trade and no hard and fast rules concerning all trades can be laid down. The right of every citizen to pursue any lawful trade or business is obviously subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, peace, order and morals of the community. Cooverjee B. Bharucha v. Excise Commissioner, **1954 S C J 246 : 1954 S C A 256 : 1954 S C R 873 : AIR 1954 S C 220 (223) (Pt A) (Pr 7).**

● —Art. 19 (6) — **'Reasonable restrictions'—Meaning of—Determination of, by Legislature — If final.**

The phrase "reasonable restriction" in Art. 19 (6) connotes that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature, beyond what is required in the interests of the public. The word "reasonable" implies intelligent care and deliberation, that is, the choice of a course which reason dictates. Legislation which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness and unless it strikes a proper balance between the freedom guaranteed in Art 19 (1) (g) and the social control permitted by cl. (6) of Art. 19, it must be held to be wanting in that quality.

The determination by the Legislature of what constitutes a reasonable restriction is not final or conclusive: it is subject to the supervision by the Supreme Court. In the matter of fundamental rights, the S. C. watches and guards the rights guaranteed by the Constitution and in exercising its functions it has the power to set aside an Act of the Legislature if it is in violation of the freedoms guaranteed by the Constitution. Chintamanrao v. The State of Madhya Pradesh, **1950 S C J 571 : 1950 S C R 759 : 64 Mad L W 370 : 1951 All L J (S C) 82 : I L R (1951) Hyd 221 : AIR 1951 S C 118 (119, 120) (Pt A) (Prs 7, 9).**

——**Arts. 19 (6), 19 (1) (g) — Restrictions on the trade or profession of prostitutes — Validity of Suppression of Immoral Traffic in Women and Girls Act (1956)—Entire Act is valid except, Ss. 20 and 4 (2). 1959 All W R (HC) 509 : 1959 All Cri R 427 : AIR 1959 All 57 (59, 61, 66) (Pt B) (Prs 2, 3, 4, 20).**

[Overruled on another point in AIR 1964 S C 416].

● —Art. 19 (6) — **Reasonable restrictions—Test.**

The decision of the question as to what is a reasonable restriction in public interest will have to depend upon the nature of the business, the place and time where it is intended to be carried on, its effect on others, the stage of social development and on many other factors which might change with the passing of time and with the development of society. The Judges on whom lies the duty of deciding this question will have to consider it divorced as far as they can, from their own personal political or economic views. The decision might also well differ not only with the type of legislation which comes under review but also with the nature of the activity that the legislation was intended to regulate or to stop, due regard being given to the view expressed by the citizens through their Legislatures.

It cannot be said that the expression "reasonable restrictions" in Art. 19 (6) can never in any circumstance exclude complete prohibition. Reasonable restrictions in the interests of the general public may in certain circumstances mean complete prohibition; and it will be for the Courts to judge whether in a particular case complete prohibition amounts to more than a reasonable restriction in the interests of the general public. That is a responsibility which, under the Constitution, the Courts cannot escape. In exercising its power the Courts will however, exercise the greatest care. Moti Lal v. State of Uttar Pradesh, **ILR (1951) All 269 : AIR 1951 All 257 (269, 270, 271) (Pt G) (Prs 57, 61, 65, 66, 67) (FB).**

——**Arts. 19 (1) (g) and (6) and 14 — Bombay Police Act (22 of 1951), S. 33 (1) (w) — Rules under — Rule 13-A (4)—Validity—If unreasonable restriction.**

Where the question is one of policy underlying the law as to how the law is to be enforced and as to how the provisions of an Act are to be carried out, then a discretion conferred upon an authority, be it unfettered, uncontrolled and absolute, is not bad. AIR 1954 S C 465 and 58 Bom L R 221 and AIR 1959 Bom 26, Foll.

The term 'suitable' as used in R. 13-A (4) of the Rules framed under S. 33 (1) (w) of the Bombay Police Act, 1951, means suitable for the purpose of keeping a place of public entertainment. The suitability of a person means his suitability for holding or continuing

to hold a licence for keeping a place of public entertainment. It is not suitability dependent upon the arbitrary will or fancy of the authority. There is a clear policy laid down in the Act and R. 13-A is intended to subserve that policy. The discretion is conferred upon the Commissioner of Police by the said Act to carry out and effectuate that policy. It has to be exercised according to rules of reason and justice, according to law. The rule imposes reasonable restrictions in the interest of the general public within the meaning of Art. 19 (6) of the Constitution. **60 Bom L R 1314 : AIR 1959 Bom 346 (352, 353) (Pt B) (Prs 15, 18).**

——Art. 19 (6) — Municipalities — C. P. and Berar Municipalities Act (1922), Section 179 — Bye-laws under — Bye-laws Nos. 1 and 14 (i) and (ii) — Validity —Do not contravene Art. 19 (1) (g) — Test of reasonableness of restrictions — See Municipalities — C. P. and Berar Municipalities Act (2 of 1922), S. 179. **AIR 1959 Bom 112.**

——Arts. 19 (6) and 19 (1) (f) — Right to carry on business — Reasonable restrictions — Section 376, Bombay Provincial Municipal Corporations Act does not constitute an unreasonable restriction on the fundamental right of the timber merchant to carry on his business which has been granted to him under Art. 19. **59 Bom L R 129 : ILR (1957) Bom 147 : AIR 1959 Bom 26 (30) (Pt D) (Pr 15) (DB).**

——Art. 19 (6) — Whether restriction is reasonable or not must not be judged in abstract.

It is true that when a restriction is imposed upon the right of the citizen guaranteed to him under Art. 19, it is for the State to justify that restriction. But whether a restriction is reasonable or not must be judged not in abstract but in the context of the times and in the context of social needs and social urges. **ILR (1955) Bom 870 : 57 Bom L R 892 : AIR 1956 Bom 21 (24, 25) (Pt A) (Fr 8) (DB).**

——Arts. 19 (1) (g) and 19 (6) — Section 61-A of Calcutta Police Act and S. 38-A of Calcutta Suburban Police Act and notification of Police Commissioner banning use of cycle-carts—Validity.

Section 61-A of the Calcutta Police Act and S. 38-A of the Calcutta Suburban Police Act and the notifications thereunder of the Police Commissioner with the previous consent of the State Government banning the use of cycle-carts within the area of Calcutta and its suburbs were challenged on the ground that they were procedurally unreasonable, and that the whole matter was left to the subjective satisfaction of the Police Commissioner.

Held, that the impugned actions were not judicial or quasi-judicial but were executive and administrative. Whether on the particular facts of each case restriction imposed was reasonable or not, was to be judged on the individual merits of the particular restriction. A representative and responsible State Government might be assumed to act reasonably before giving its sanction. (AIR 1957 S C 896 (900-901), Rel. on.). The notification banning the use of cycle-carts was a reasonable restriction within the meaning of cl. (6) of Art. 19 of the Constitution. AIR 1951 Cal 90 and AIR 1951 Cal 3 and AIR 1954 S C 119 and AIR 1952 S C 221 and AIR 1953 S C 373 and AIR 1954 S C 229, Disting. Paschim Banga Malbahi Cycle Mazdoor Union v. Commr. of Police, Calcutta, **65 Cal W N 213 : AIR 1961 Cal 125 (135, 138, 143) (Pt D) (Prs 37, 52, 73) (SB).**

——Art. 19 (1) (g) and (6) — Unreasonable restriction — Test — Calcutta Municipal Act (1951), S. 437 (1) (b) — If ultra vires.

Clause (b) of sub-s. (1) of S. 437, Calcutta Municipal Act, constitutes an unreasonble restriction upon the fundamental right guaranteed under Art. 19 (1) (g) and is, accordingly, ultra vires the Constitution.

In order to determine the reasonableness of any such restrictions the Court can and should examine both the substantive and the procedural aspects of any impugned restrictive legislation. AIR 1950 S C 211 and AIR 1952 S C 196 and AIR 1951 S C 118, Applied.

The impugned provision makes the opinion of the Corporation as to any purpose being dangerous to life, health or property, etc., conclusive. It also makes that opinion non-justiciable, notwithstanding the requirement of the Constitution that the restriction must be reasonable.

The whole of the provision contained in cl (b) must be struck down as void. It is not the business of the Court to hold a part of a single scheme void, leaving the other part intact. To do so would amount to effecting an amendment of the provisions, which is the business of the legislature. **65 Cal W N 346 : 1961 (1) Cr L J 248 : ILR (1961) 1 Cal 537 : AIR 1961 Cal 121 (122, 123) (Prs 4, 5, 6) (DB).**

——Art. 19 (1) (g) and (6) — West Bengal Soft Coke Distribution Order (1955), Para. 3 (b) and (c)—Validity.

The definition of the words 'Director' and the 'District Magistrate' as given in Cls. (b) and (c) of para. 3 of the Order, in so far as they include persons other than the Director, Consumer Goods. Department of Food, Relief and Supplies, West Bengal or the District Magistrate of a District, is bad as being an unreasonable restriction on the fundamental right under Art. 19 (1) (g), but the order in so far as it confers power upon the Director or the District Magistrate respectively, does not offend the test of constitutionality.

Held, that the order of delegation passed by the District Magistrate, 24 Parganas, in purported exercise of his powers under para. 3 (c) of the Order by which he authorised all Sub-divisional Controllers of Food and Supply Department in 24 Parganas to perform the functions of the District Magistrate under the said order in their respective sub-divisions was bad and therefore the order of the Sub-divisional Controller of Food and Supply, Barrackpore, must be struck down as being made by a person without authority. **('60) 64 Cal W N 521.**

——Arts. 19 (1) (g) and 19 (6)—Bengal Smoke Nuisance Act—Validity— Restrictions placed on fundamental right—Reasonableness. See Bengal Smoke Nuisance Act (3 of 1905). **AIR 1959 Cal 397.**

——Art. 19 (6) — Law laying restrictions — Right of private citizen to violate—(Calcutta Police Act (4 of 1866), S. 39).

Where a law such as S. 39, Calcutta Police Act lays down restrictions calculated to ensure public safety, peace and tranquillity, a private citizen cannot openly violate the restrictions merely because he questions the propriety of the executive order. It is true that the executive cannot be allowed to be a law unto themselves, but the required corrective must come from the Court, which alone can decide whether the limits of law have been transgressed or not, and not from a private citizen **62 Cal W N 799: 1959 Cri L J 180 : AIR 1959 Cal 123 (128) (Pt H) (Pr 19).**

——Art. 19 (1) (g) and (6) — Right to ply rickshaws —Restrictions on—Reasonableness—(Calcutta Hackney Carriage Act (I of 1919), Ss. 8, 9 and 71 — Bye-law 13-A framed under S. 71)

The Rickshaw as a vehicle of locomotion is a barbarous mode of travel. It is strange to talk of the fundamental right to exploit a few hapless human beings, and transform them into beasts of burden,

transporting heavy loads on superheated asphalt roads, in tropical sun and shower, for a miserable pittance. The police authorities and the Corporation have onerous responsibilities to discharge. Therefore it is by no means unreasonable to confer a degree of control in their hands, so that the number ot vehicles of a particular description, using the roads, can be limited.

It must be left to the discretion, good sense and administrative experience of the executive authorities, or a public body like the Corporation of Calcutta, to arrive at a figure which constitutes the outer margin of safety. Provided it is done honestly and bona fide, the High Court cannot substitute its own views for it.

In this view, Ss. 8 and 9, Calcutta Hackney Carriage Act, 1919, and bye law 13-A framed under S. 71 of the Act, under which power is granted to the Registering Authority to limit the number of licenses if there happens to be too large a number of such vehicles on the road, are intra vires and valid.

The rickshaw owners cannot be said to be prevented from carrying on their business of rickshaw plying totally and for all times to come. The bye-law is a reasonable restriction upon the fundamental right of the rickshsw owners to carry on the business of their choice. AIR 1951 S C 118; AIR 1950 S C 163 ; AIR 1953 S C 79, Disting. **59 Cal W N 215 : AIR 1955 Cal 417 (418, 419) (Prs 12, 15).**

——Art. 19—Gujarat Denatured Spirituous Preparations Rules (1962), Rr. 22, 32 (9), (10), 37— Validity Rules are covered by Art. 19 (6).

The question as to the reasonableness of a statute or a rule is always a justiciable question. But no abstract proposition can be laid down as a conclusive test of reasonableness and therefore, whenever a statute or a rule is being challenged on the ground of its being unreasonable or excessive, it becomes the duty of the Court to look into the nature of the restriction and come to its conclusion from the circumstances of each case. While dealing with such a question, the Court has to take into consideration (1) the nature of the right claimed, (2) whether the impugned restriction is necessary in relation to the object sought to be achieved, and (3) even when such a restriction is necessary, whether it is excessive and disproportionate and whether it unduly interferes with the rights of the subject. While considering the question of reasonableness or otherwise of a restriction either under a statute or a rule, the Court has to consider not only the nature of the right restricted, but also the circumstances necessitating the restriction. The mere fact that the Bombay Prohibition Act contained Ss. 21 and 21A cannot by itself be a ground to hold that further measures to prevent the mischief are unreasonable. Reports received from the Prohibition Officers of the State indicated large scale use of French Polish and Varnish for potable purposes and it was to prevent such misuse of denatured spirituous preparations, like French Polish and Varnish, that Chapter IV-B of the Act containing provisions for control and regulation of trade in such preparations had to be enacted. It was in these circumstances that the Government of Gujarat framed Gujarat Denatured Spirituous Preparations Rules The State Government had already taken steps to ensure that bona fide users of such preparations did not suffer and it was for that purpose that exemptions were granted for possession and use of French Polish and Varnish in certain quantities to carpenters and artisans actively engaged in the profession of polishing wooden articles and making furniture. French Polish and Varnish are apparently not meant for human consumption, but there was evidence with the State Government of a large scale misuse of French Polish and Varnish for potable purposes, particularly amongst illiterate and ignorant people, that the preparations which were being imported on a large scale in the name of French Polish and Varnish were neither genuine French Polish nor Varnish but intoxicating liquors capable of being used for potable purposes containing negligible proportions of other solid ingredients which could be removed by precipitation. It was to prevent this mischief that the import of French Polish and Varnish had to be regulated by the issue of licences. The rules framed by the State Government did not envisage prohibition of import, sale, possession, use, etc. of French Polish or Varnish for genuine purposes. The object in making these rules was to prevent abuse of denatured spirituous preparations namely, French Polish and Varnish, and thereby to effectuate the policy of prohibition as directed by Art. 47 of the Constitution and adapted by the State Legislature while enacting the Bombay Prohibition Act. Since the rules were made to meet the situation which had arisen owing to the unregulated import and sale of these two commodities which made the abuse of these articles possible, the object of providing for these restrictions cannot be said to prevent the legitimate use of genuine French Polish and Varnish, but to so regulate its use, possession, sale, import etc., as to render its abuse and mischief impossible. Rules 22, 32 and 37, except for the proviso to R. 22 and the provision for the vend fee in R. 37 are reasonable restrictions covered by cl. (6) of Art. 19 of the Constitution. (1964) 4 Guj L R 1033 : ILR (1964) Guj 96 : AIR 1964 Guj 59 (76, 77) (Pt G) (Prs 31, 32, 33) (DB).

——Art. 19 (6) — Power of Court to decide reasonableness of legislation. 1952 Mad W N 913 : (1952) 2 Mad L J 894 : 66 Mad L W 85 : ILR (1953) Mad 304 : AIR 1953 Mad 279 (294 to 296) (Pt M) (Prs 44, 46, 51, 53) (DB).

——Art. 19 (6) — "Reasonable."

What is reasonable within the meaning of Cl. (6) of Art. 19 of the Constitution of India has to be decided by a Court of law and in doing so the Court has got to see both the substantive as well as the procedural aspects of the question. Case-Law Ref. **1953 R L W 311 : 1953 Cri L J 1283 : ILR (1952) 2 Raj 993 : AIR 1953 Raj 162 (166) (Pt A) (Pr 17) (DB).**

16. "Interests of the general public".

See also Ibid, Note 15.

● **——Art. 19 (1) (f) and (g) and Cls. (5) and (6) —** Reasonable restrictions on fundamental rights under Art. 19 — Test of reasonableness — "Interests of the general public' — What amounts to — Rule of evidence casting burden of proof upon person from whom specified goods have been seized, to establish that they are not smuggled — Whether violates Art. 19 (1) (f) and (g) and is not saved by Cls. (5) and (6) — Sea Customs Act (1878), S. 178A—Not constitutionally invalid — AIR 1959 Mad 142, Reversed; Decision of K. T. Desai J. in 62 Bom L R 1043, Overruled. Collector of Customs v. Sampathu Chetty, (1962) 1 S C J 68 : 1962 Mad L J (Cri) 1 : (1962) 1 Mad L J (S C) 43 : (1962) 1 An W R (S C) 43 : 1962 (1) Cri L J 364 : AIR 1962 S C 316 (332, 333, 334) (Pt A) (Prs 35, 36).

● **——Arts. 19 (1) (f) and (g), 31 and 14 —** Imports and Exports (Control) Act (1947), S. 3 — Imports (Control) Order (1955), Para. 6 (h) — Validity — Canalization of imports through special or specialized agencies or channels — Refusal of import licences to applicants outside agencies or channels whether contravention of Art. 19 (1) (f) and (g) or Art. 31—Restriction on right to carry on trade if can be attacked as not in the interests of general public. Glass C. I. and U. Assocn. v. Union of India, **AIR 1961 S C 1514 (1516, 1517) (Prs 5, 6, 7).**

● — Arts. 19, 14 and 21 — Supreme Court Rules — O. 4A, R. 24—Rule 24 is not discriminatory so far as the precincts of Supreme Court are concerned and does not infringe Art. 14 of Constitution — So also it does not infringe Arts. 19 and 21 — It is in interest of general public to exclude touts from precincts of Supreme Court — Word 'Life' in Art. 21 does not include livelihood. See Supreme Court Rules, O. 4-A, R. 24. AIR 1960 S C 932.

● —**Art. 19 — Reasonable restrictions — Coir Industry Act (1953), S. 26 — Rules under, Rr. 18, 19, 20 (1) (a), 21 and 22 (a)—Validity.**

As the regulation of the coir industry is in the public interest, it would be for the rule-making authority to decide which test would meet the requirements of public interest and what method would be most expedient in controlling the industry for the national good. Control and regulation of any trade though reasonable within the meaning of Art. 19, sub-art. (6), may in some cases lead to hardship to some persons carrying on the said trade or business if they are unable to satisfy the requirements of the regulatory rules or provisions validly introduced; but once it is conceded that regulation of the trade and its control are justified in the public interest it would not be open to a person who fails to satisfy the rules or regulations to invoke his fundamental right under Art. 19 (1) (g) and challenge the validity of the regulation or rule in question. Hence the challenge to the validity of the rules on the ground of Art. 19 of the Constitution must fail. P. V. Shivarajan v. Union of India, **1959 S C J 481 : 1959 Supp 1 S C R 779 : 1959 Cal L J 214 : AIR 1959 S C 556 (559) (Pt B) (Pr 7).**

——**Art. 19 (1) (a), 19 (2)** — Validity of U. P. Special Powers Act (14 of 1932), S. 3 —If Offends Art. 19 (1) (a) and is saved by Art. 19 (2) — See Ibid, Art. 13. **AIR 1955 All 193.**

——**Art. 19 (3), (4) and (5)—"In the interests of public order" and "in the interests of the general public."**

The words "in the interests of the general public" used in Cl. 5 are of much wider import than the words "in the interests of public order," used in Cls. 3 and 4. The restriction, therefore, on the right to move freely throughout the territory of India may be not merely for the purpose of maintaining public order but may be in the interests of the general public. The words "in the interests of the general public" used in Cl. 5 of Art. 19 have been advisedly used and in contradistinction with the words "in the interests of public order" used in the earlier clauses. It is probable that the Constitution used these particular words in order to enable the State to adjust the rights given by the Constitution and to reconcile them in the interest of the general public whether the interests of the public order were immediately affected or not by such restrictions. **53 Bom L R 739 : AIR 1951 Bom 459 (464) (Pt B) (Pr 10) (DB).**

— **Art. 19 (6) (ii)** — 'Interest of public generally' — Construction — Nationalisation and congestion — Recognition of. See Motor Vehicles Act (1939), S. 47 (1) (a). **AIR 1958 Cal 652.**

● ——**Art. 19 (5) — "In the interests of general public"—Interpretation.**

It cannot possibly be said that the words "in the interests of the general public" in Art. 19 (5) of the Constitution mean "in the interests of the public of the whole of the Republic of India". They mean nothing more than "in the public interest", and it may well be that legislation affecting a limited class of persons or a limited area might well be legislation in the public interest, though the public of other parts of India might not be directly affected by such legislation. Iswari Prosad Goenka v. N. R. Sen, **55 C W N 719: AIR 1952 Cal 273 (278, 279) (Pt E) (Pr 33) (FB).**

——**Art. 19 (5)—"In the interests of general public'; —West Bengal Bargadars Act (2 of 1950), S. 5.**

The subsequent words "the interests of any Scheduled Tribe" do not act as qualifying adverbs on the previous expression "in the interests of the general public." The words in the interests of the general public" must be given their plain meaning. That plain meaning is that it includes even sections of general public. General public will include a fairly substantial section of people who constitute the class of Bargadars in West Bengal. They are just as much a part of the general public as anybody else. But in considering whether Act 2 of 1950 is in the interests of the general public the cause of the Bargadars is not the only criterion. The legislation is also in the larger interest of the owners of the lands. Then again there is the interest of the agricultural lands in the country which is also an interest for the general public. The historic considerations and the present situation alike stamp this legislation with overwhelming public interest. The Bargadar Act 2 of 1950 is thus "in the interests of the general public" within the meaning of the Constitution. **89 Cal L J 15 : 56 Cal W N 325: AIR 1952 Cal 184 (186) (Pt B) (Prs 13, 13a, 13c) (DB).**

——**Art. 19 (6)—Reasonable restrictions in the interest of general public — Test.**

The expression 'reasonable restrictions in the interest of the general public' in Art. 19 (6) is of wide import. All legislation directed to the preservation and protection of safety, health, morals and general welfare of the people would thus be in the 'interest of the general public'. Similarly, preserving its people from imposition, fraud and deceipt would also be a legitimate object of its policy, as it would undoubtedly be in the interest of the general public. The test of reasonableness is in the fact that the means adopted by the legislature have a fairly appropriate connection with the end to be achieved. **1960 Jab L J 698 : 1960 M P C 549 : 1960 Cr L J 1614 : 1960 M P L J 972 : AIR 1960 Madh Pra 389 (391) (Pt A) (Prs 15, 16).**

——**Art. 19 (6)—"Interests of the general public" — Meaning of.**

It is not correct to assume or postulate that a restriction or regulation imposed must flow from the inherent nature of the trade intrinsic to the commodities dealt with or the articles manufactured, and could not be found on public interest orginating in factors extrinsic to the trade. The restrictions permitted by sub-Cls. (2) to (6) follow a pattern, viz., that they are imposed by the legislature for reasons of public policy. Public policy may spring by reason of the principles of common law, like decency, morals or public order which are the very foundation of society. Public policy, however, might equally have its origin in the statute law of the country. A statute might therefore itself be the foundation for the creation and emergence of a public interest to preserve its principles. To the extent that that law or other law enables this purpose to be achieved, its enforcement must be held to be in the public interest. **70 Mad L W 770 : (1957) 8 S T C 690: (1957) 2 Mad L J 469 : ILR (1958) Mad 35 : AIR 1958 Mad 158 (165, 166) (Pt A) (Prs 28, 29, 30) (DB).**

——**Art. 19 (5) — Interests of general public — Berar Land Revenue Code (Amendment) Act is in interests of general public.**

The Berar Land Revenue Code (Amendment) Act is in the interest of general public even though its object is to ameliorate the conditions of only a class of persons. For one thing it is part of a scheme for land reforms. Then again the class which the Legislature had in view is a large one and the interests of

the general public are necessarily bound up with the interest of this class. A law enacted for the benefit of a class must in this context, be regarded as a law made in the public interest. 1953 Nag L J 199 : ILR (1952) Nag 736 : AIR 1953 Nag 40 (50) (Pt K) (Pr 46) (DB).

——Art. 19 (6) — "Reasonable restrictions" — "In the interest of the general public"—Meaning and significance in Act — Restrictions on right guaranteed by Art. 19 (1) (g)—Reasonableness—Test of — Orissa Act 36 of 1947—If void or is saved by Art. 19 (6) — See Orissa Motor Vehicles (Regulation of Stage Carriage and Public Carrier's Services) Act. AIR 1952 Orissa 42.

——Art. 19 (6)—"Reasonable" and "interests of the general public."

Per Narasimham J. — The expressions 'reasonable' and 'the interests of the general public' are both elastic terms and a discussion about the full import of these expressions necessarily involves a discussion of the political, social, and economic problems of the present day not only in this country but all over the world. AIR 1952 Orissa 42 (46) (Pt H) (Pr 10) (DB).

——Art. 19 (5)—'In the interest of the general public' —Meaning of — (Cantonments Act (2 of 1924), S. 238— Section, if in the interests of general public).

The expression 'general public' is wide enough to include a section of the public. It is in the interests of the general public that the armed forces and those connected with them should be protected from the evil influences of disorderly persons who are liable to be externed under the provisions of S. 238 of the Act. Interests of the general public cannot be deemed to be synoymous with interests of the public of the whole of the country. A legislation meant for the benefit of a well defined class will be deemed to be in the interest of general public regardless of the smallness of the number of persons primarily benefited by the legislation. 59 Pun L R 289 : 1957 Cr L J 1173 : I L R (1957) Punj 1388 : A I R 1957 Punj 244 (248) (Pt A) (Pr 5) (DB).

——Art. 19 (2)— Cr. P. Code, S. 144 falls within ambit of Art. 19 (2).

Section 144 Cr. P. Code, has been designed to impose restrictions on the exercise of the right of freedom of speech and expression in the interests of public order. 58 Pun L R 464 : 1957 Cri L J 88 : 1957 All W R (Sup) 21 : I L R (1957) Punj 218 : AIR 1957 Punj 1 (4) (Pt E) (Pr 10) (DB).

——Art. 19 (1) (a)— S. 144 Cr. P. C., whether ultra vires. See Criminal P. C. (1898), S. 144. ILR (1957) Punj 386.

——Art. 19 (1) (f) and (g)—Sea Customs Act (1878), S. 178-A—Rule of evidence contained in S. 178-A — Rule is not unreasonable.

The rule of evidence contained in S. 178-A of the Sea Customs Act, 1878, is in the interest of general public. It is not correct to say that the rule travelled beyond the due bounds of reasonableness because it cannot be said that the social good to be achieved by this kind of legislation is disproportionate to the importance of the object to be achieved by it, namely. the prevention and eradication of smuggling. A I R 1962 S C 316, Foll.; A I R 1959 Mad 142, held no longer good law. 1962 Raj L W 492 : I L R (1962) 12 Raj 469 : 1962 (2) Cr L J 584 (587) (Pt A) (Pr 12) (DB) (Raj).

●——Art. 19 (5) and (6)—"Interests of general public".

The expression "general public" is wide enough to include a section of the public and provisions for the safeguarding of the religious institutions of a particular faith and the avoidance of friction and mismanagement will have to be considered as "reasonable restrictions' in the interests of the general public. P.M. Bramadathan Nambooripad v. Cochin Devaswom Board, 1955 Ker L T 516 : ILR (1955) T C 741 : AIR 1956 Trav.Co 19 (22) (Pt D) (Pr 10) (FB).

●——Art. 19 (5)— 'General public"—Scope.

The expression 'general public' in Art. 19 (5) is wide enough to include a section of the public and the removal of the grievances of a particular section is very often in the interests of the public generally. Jamath Mosque v. Vakhan Joseph, 1955 Ker L T 406 : ILR (1955) T-C 423 : A I R 1955 Trav-Co 227 (229) (Pt D) (Pr 11) (FB).

17. "Public order".

●——Arts. 19 (1) (c), (4), 309— 'In the interests of public order' — Connection of restriction with public order must be shown to be rationally proximate or direct — Central Civil Services (Conduct) Rules (1955), R. 4-B— Validity — Restriction imposed by rule is not reasonable —Rule is ultra vires.

The words 'public order' must have the same meaning in both Cls. (2) and (4) of Art. 19. In Cl. (2), public order is virtually synonymous with public peace, safety and tranquillity. The denotation of the said words cannot be any wider in Cl. (4). A restriction can be said to be in the interests of public order only if the connection between the restriction and the public order is proximate and direct. This interpretation is strengthened by the other requirement of Cl. (4), that, by itself, the restriction ought to be reasonable. A restriction which does not directly relate to public order cannot be said to be reasonable on the ground that its connection with public order is remote or far-fetched. Therefore, reading the two requirements of Cl. (4), it follows that the impugned restriction can be said to satisfy the test of Cl. (4) only if its connection with public order is shown to be rationally proximate and direct. A I R 1960 S C 633 and A I R 1950 F C 87, Rel. on.

The fundamental rights guaranteed by Art. 19 can be claimed by Government servants. The validity of R. 4-B of the Central Civil Services (Conduct) Rules (1955) has to be judged on the basis that the Government servant and his co-emplovees are entitled to form association or unions. R. 4 B imposes a restriction on this right. It virtually compels a Government servant to withdraw his membership of the Service Association of Government servants as soon as recognition accorded to the said association is withdrawn or if, after the association is formed, no recognition is accorded to it within six months.

It is quite possible that recognition may be refused or withdrawn on grounds which are wholly unconnected with public order and it is in such a set up that the right to form association guaranteed by Art. 19 (1) (c) is made subject to the rigorous restriction that the association in question must secure and continue to enjoy recognition from the Government. Therefore the restriction thus imposed would make the guaranteed right under Art. 19 (1) (c) ineffective and even illusory. The impugned R. 4-B is therefore invalid. O. K. Ghosh v. Ex. Joseph, (1962) 2 Lab L J 615 : (1963-64) 24 F J R 115 : (1962) 5 Fac L R 511 : (1963) 2 S C A 117 : (1963) Supp 1 S C R 789 : (1963) 1 S C W R 168 : 66 Bom L R 93 : 599 : 1964 Mah L J 509 : 1964 M P L J 599 : A I R 1963 S C 812 (814, 815, 816) (Pt B) (Prs 10, 11, 12).

●——Arts. 19 (1) (a) and 19 (2) — Pepsu Police (Incitement to Disaffection) Act (I of 1953), S. 3— Provision is not violative of Art. 19 (1) (a), as it is in the interest of securing public order it is saved by Art. 19 (2). See Pepsu Police (Incitement to Disaffection)

Act (1 of 1953), S. 3. 1962 (2) Cr L J 247 : AIR 1962 S C 1106.

● ——Art. 19 (1) (a), (b), (2) and (3) — Anticipatory restrictions—Validity.

Both in Cl. (2) (as amended in 1951) and in Cl. (3) of Art. 19 power is given to the legislature to make laws placing reasonable restrictions on the exercise of the rights conferred by these clauses in the interest, among other things, of public order. Public order has to be maintained in advance in order to ensure it and, therefore, it is competent to a legislature to pass a law permitting an appropriate authority to take anticipatory action or place anticipatory restrictions upon particular kinds of acts in an emergency for the purpose of maintaining public order. Anticipatory action of the kind permissible under S. 144, Cr P. Code is not impermissible under cls. (2) and (3) of Art. 19. Babulal Parate v. State of Maharashtra, (1961) 1 S C J 524 : (1961) 1 An W R (S C) 154 : (1961) 1 M L J (S C) 154 : 1961 M L J (Cr) 297 : 1961 (2) Cr L J 16 : (1961) 2 S C A 497 : (1961) Andh L T 610 : (1961) 2 Ker L R 327 : 1961 S C D 597 : AIR 1961 S C 884 (891) (Pt F) (Pr 28).

● ——Art. 19 (1) (a), (b), (2), (3) — Order under S. 144, Cr. P. Code—Validity—Dispute between two Textile Unions Order under S. 144 restricting activities of general public in particular area.

It would be extremely difficult for Magistrate to differentiate between members of public and members of the two textile unions. If any members of public unconnected with the two textile unions wanted to exercise rights restricted it was open to them to move the District Magistrate and apply for modification of the order by granting them exemption from the restrictions placed by the order. Babulal Parate v. State of Maharashtra, (1961) 1 S C J 524 : (1961) 1 An W R (S C) 154 : 1961 M L J (Cr) 297 : (1961) 1 M L J (S C) 154 : 1961 (2) Cr L J 16 : (1961) 2 S C A 497 : 1961 An LT 610 : (1961) 2 Ker L R 327 : 1961 S C D 597 : AIR 1961 S C 884 (891) (Pt H) (Prs 30, 31).

● ——Art. 19 (1) (a), (b), (2), (3) — Order under S. 144, Criminal P. C. —Order only excepting funeral processions and religious processions from its operation — If anyone wanted to take out a procession for some other purpose which was lawful, it was open to him under S. 144, sub-s. (4) to apply for an alteration of the order and obtain a special exemption — Mere omission of the District Magistrate to make the exemption clause of the order more comprehensive would not vitiate the order on the ground that it places unreasonable restrictions on certain fundamental rights of citizens. Babulal Parate v. State of Maharashtra, (1961) 1 Andh W R (SC) 154 : (1961) 2 S C A 497 : 1961 Mad L J (Cri) 297 : 1961 (2) Cri L J 16 : (1961) 1 Mad L J (S C) 154 : (1961) 1 S C J 524 : 1961 Andh L J 610 : (1961) 2 Ker L R 327 : AIR 1961 S C 884 (891) (Pt I) (Pr 32).

● ——Art. 19 (1), (a), (b), (2), (3) — Order under S. 144, Criminal P. C., prohibiting shouting of "provocative slogans"—The expression "provocative slogans" has necessarily to be understood in the context in which it has been used in the order and, therefore, it cannot be regarded as vague—Order cannot be held to place unreasonable restriction on the rights of the free speech of citizens. Babulal Parate v. State of Maharashtra, (1961) 1 Andh W R (SC) 154 : (1961) 2 S C A 497 : 1961 Mad L J (Cri) 297 : 1961 (2) Cri L J 16 : (1961) 1 Mad L J (SC) 154 : (1961) 1 S C J 524 : 1961 Andh L J 610 : (1961) 2 Ker L R 327 : AIR 1961 S C 884 (891, 892) (Pt J) (Pr 33).

● ——Arts. 19 (2) and 13 (1)—Restriction in 'interest of public order' — Validity of — Essentials—S. 3 of U. P. Special Powers Act, 1932—If void — Doctrine of severability.

By the amendment of Art. 19 (2) by the Constitution (First Amendment) Act, 1951, the wide concept of 'public order' is split up under different heads. All the grounds mentioned in Cl. (2) can be brought under the general head 'public order' in its most comprehensive sense. It can be postulated that 'public order' is synonymous with public peace, safety and tranquillity.

The distinction between the phrases 'in the interest of public order' and 'for the maintenance of public order' does not ignore the necessity for intimate connection between the Act and the public order sought to be maintained by the Act.

The limitation that the restrictions shall be reasonable brings about the same result. In order to be reasonable the limitation must have a proximate connection with 'public order' and not one far-fetched, hypothetical, problematical or too remote. AIR 1950 F C 67, Applied.

By S. 3 of the U. P. Special Powers Act, 1932, any instigation not to pay or defer payment of any exaction or even contractual dues to Government authority or a land-owner is made an offence. It was held that there is no proximate or even foreseeable connection between such instigation and the public order sought to be protected under this section and that it is void. Under Art. 13 (1), laws in so far as they are inconsistent with the provisions of Part 3, are void only to the extent of such inconsistency. But this implies that consistent and inconsistent parts of a law are severable.

The provisions of S. 3 of the Act are so inextricably mixed up that it is not possible to apply the doctrine of severability so as to enable the court to affirm the validity of a part of it and reject the rest. The entire section therefore must be struck down as invalid. Superintendent Central Prison, Fatehgarh v. Dr. Ram Manohar Lohia, 1960 All L J 320 : ILR (1960) 1 All 407 : 1960 S C J 567 : 1960 M L J (Cr) 340 : 1960 Cr L J 1002 : 1962 All W R (H C) 247 : 1960 All Cr R 166 : (1960) 2 S C R 821 : A I R 1960 S C 633 (637 to 640, 641, 642) (Prs 9, 10, 11 to 14, 18, 20).

● ——Arts. 19 (2) and 19 (6)—In the interest of public order—Meaning of.

The words 'in the interests of' are words of great amplitude and are much wider than the words "for maintenance of". The expression 'in the interest of" makes the ambit of the protection very wide for a law may not have been designed to directly maintain the public order or to directly protect the general public against any particular evil and yet it may have been enacted "in the interests of" the public order or the general public as the case may be. AIR 1957 S C 620, Rel. on. Virendra v. State of Punjab, (1958) S C J 88 : 1958 S C C 1 : 1958 S C A 891 : 1958 S C R 308 : AIR 1957 S C 896 (899) (Pt B) (Pr 9).

● ——Art. 19 (2) — 'In the interests of public order' —Interpretation of.

Per Desai, J.—Article 19 (2) uses the words 'in the interests of public order' and not the words 'for maintenance of public order'. The words 'in the interest of' are wider than 'for maintenance of' only in this sense that they include anything that even indirectly helps the maintenance of public order.

Per Gurtu, J. — No doubt the words in Art. 19 (2) are 'interest of public order' and it may be taken that the amendment made in Art. 19 (2) of the Constitution intended to give ample powers. This is also evident by the fact that the words 'maintenance of public order' are not used. But even so what is in the interest of public order necessarily tends to the maintenance of it and although the words 'maintenance of public order' are not there, there must still be some real likelihood of public disorder taking place either

immediately or in the remote future. If there is no such possibility, surely the interest of public order cannot be said to be affected. The restriction must not be given more prominence than the fundamental liberty assured. Further, the words 'interest of public order' should not be so amplified as to enable the fundamental right guaranteed by Art. 19 (1) (a) to be swallowed up by the application of Art. 19 (2). Ram Nandan v. State, 1958 All L J 793 : 1958 All W R (HC) 796 : 1959 Cr L J 128 : 1959 All Cr R 1 : ILR (1958) 2 All 84 : A I R 1959 All 101 (104, 105, 114, 115) (Pt D) (Prs 7, 50) (FB).

[Reversed on another point in A I R 1962 S C 955.]

● ——Art. 19 (1) (a), (2) – S. 99A, Criminal P. C. does not contravene Art 19 (1) (a) and comes under Art, 19 (2)—(Criminal P. C. (1898), S. 99A).

(Per Special Bench) — Section 99A, Criminal P. C., does not take away the right to write and publish books. People are at liberty to write books without offending deliberately the religious sentiments of the other citizens who are as much entitled to certain freedoms as the petitioner himself. Section 99-A does not place a total prohibition on the exercise of the fundamental right guaranteed to a citizen. It only empowers the Executive to take action in the interest of public order etc., in the eventualities mentioned in the section. The provision is conceived in the interests of public order, decency or morality etc. Hence the restriction placed by this statutory provision on the freedom of expression is a reasonable one and as such it falls within the reservation under Cl. 2 of the Article. Consequently, it is not open to any objection based on the Constitution.

The expression 'in the interests of' used in Art. 19 (2) is of wide connotation. So any law penalising activities which have a tendency to cause public disorder is within the scope of authorised limits. The impugned section, therefore, comes within the range of Cl. 2 of the Article. The restriction imposed by S. 99-A, Criminal P. C., is not disproportionate to the evil sought to be remedied. Section 99-A, Criminal P. C. is not hit at by Art. 19 of the Constitution and its validity cannot be impeached. N. Veerabrahmam v. State of Andh Pra, 1959 Andh L T 575 : (1959) 2 Andh W R 269 : 1959 Mad L J (Cri) 703 : 1959 Cri L J 1280 : AIR 1959 Andh Pra 572 (575, 576) (Pt A) (Prs 8, 10, 13) (SB).

[Overruled on another point in AIR 1962 S C 1662.]

——Art. 19 (2) — 'In the interests of public order'—Interpretation of.

Article 19 (2) uses the words 'in the interests' of public order and not 'maintenance of public order.' The words 'in the interests of public order' are wider in scope than the words 'maintenance of public order'. The words 'in the interests of public order' mean and include any measure or direction or order which assists in or is conducive to the maintenance and preservation of public order. Disaffection caused in a police force or inducement given to a member or members thereof to withhold his or their services or to commit breach of discipline must be held to have connection with public order. Any restriction on such activity must therefore be regarded as being in the interests of public order. AIR 1957 S C 620 and 1958 S C J 88 : A I R 1957 S C 896, Rel. on. 62 Bom L R 206 : 1960 Nag L J 244 : ILR (1960) Bom 305 : 1960 Cr L J 1192 : A I R 1960 Bom 399 (403) (Pt E) (Pr 15) (DB).

——Art. 19 (3), (4) and (5) — "In the interests of public order", and "in the interests of the general public."

The words "in the interests of the general public" used in Cl. (5) are of much wider import than the words "in the interests of public order" used in Cls. (3) and (4). The restriction, therefore, on the right to move freely throughout the territory of India may be not merely for the purpose of maintaining public order but may be in the interests of the general public. The words "in the interests of the general public" used in Cl. (5) of Art. 19 have been advisedly used and in contradistinction with the words "in the interests of public order" used in the earlier clauses. It is probable that the Constitution used these particular words in order to enable the State to adjust the rights given by the Constitution and to reconcile them in the interests of the general public, whether the interests of the public order were immediately affected or not by such restrictions. 53 Bom L R 739 : 1952 Cri L J 37 : 21 Bom Cr C 232 : A I R 1951 Bom 459 (464) (Pt B) (Pr 10) (DB).

——Art. 19 — Mysore Police Act (5 of 1908), S. 40—Notification under — Validity—If can be challenged on ground that proceedings under S. 144, Criminal P. C. would have been more appropriate so as to protect rights of petitioners in respect of management of religious institution — Duty of State to protect civil rights—Extent of, in cases of emergency arising out of breach of public peace. See Mysore Police Act (5 of 1908), S 40. 1962 Mys L J (Supp) 411.

● ——Art. 19—Interpretation—Act if emergency legislation - - Interpretation of statutes—Emergency legislation. See Public Safety — Preventive Detention Act (1950), S 1. ('50) ILR 29 Pat 502 (FB).

——Art. 19 (1) (a)—Public tranquillity—Pleading of cause by lawful means. See Public Safety—Preventive Detention Act (1950), S. 3 (1). A I R 1955 Raj 6 (DB).

18. "Restriction"—Meaning of.

See also Ibid, Note 15.

——Art. 19 (5)—'Restriction'—Meaning of — Provincial Insolvency Act (1920), S. 28 (2) — Vesting of insolvent's property in the Court or the receiver——Amounts to reasonable restriction as contemplated in clause (5) of Art. 19. A I R 1960 S C 480, Rel. on. ILR (1962) 1 All 200 : A I R 1962 All 256 (260, 261) (Pt D) (Pr 27) (DB).

——Arts. 19 (6) and 25 — "Restriction" and "Regulation"—Meaning and interpretation of — Distinction.

The word "restriction" in Arts. 19 (6) and 25 cannot be held to be synonymous with 'regulation" in Art. 25. They are intended to convey two different meanings. Restriction may be complete or partial, and where it is complete it would imply absolute prohibition — Restriction includes prohibition also. A I R 1952 Orissa 42 (45, 46) (Pt G) (Pr 9) (DB).

19. "Existing law".

See also Ibid, Art. 254.

● ——Art. 19—Scope—Clauses (2) to (6)—U. P. Police Regulations, Chap. 20, Reg. 236 — Regulations contained in Chap. 20 have no statutory basis—They are not 'a law' which the State is entitled to make under Cls. (2) to (6) of Art. 19. Kharak Singh v. State of U. P., 1963 All L J 711 : 1963 (2) Cri L J 329 : (1964) 2 S C J 107 : (1964) 1 S C R 332 : A I R 1963 S C 1295 (1299) (Pt B) (Pr 5).

● ——Art. 19 (2) — Law — Meaning of—Distinction between agreement and law—Agreement entered into on 17-4 41 by Ruler of Jodhpur State with a Company exempting excise duty and income tax in respect of goods produced by the Company — Held, agreement could not be considered law within Art 372 — Agreement not affirmed by United State of Rajasthan — Company had no enforceable right against Union Government—Parliament not prohibited under Art. 295 from altering terms of contract under which liability of Government arose — Liability of

Government of India was subject to agreement entered into by Government of India and Government of the State—Such agreement entered into on 25-2-1950 — Company could not invoke Art. 19 or Art. 31 to its aid having no enforceable rights on 20-1-1950. See Ibid, Art. 372. A I R 1963 S C 953.

● —Art. 19 (2) — Existing law.

The alteration made in the language of the amended cl. (2) of Art. 19 does not mean that the words 'any existing law' are not to be governed by the words 'in so far as such law imposes'. According to the construction of the sentence and the punctuations, the words 'in so far as such law imposes' govern not only the immediately preceding words 'prevent the State from making any law' but also the earlier words 'any existing law'. The object behind the amendment was to enlarge the field of reasonable restrictions and not to differentiate between existing law and future law. Ram Nandan v. State, **1958 All L J 793 : 1958 All W R (H C) 796 : 1959 All Cr R 1 : 1959 Cri L J 128 : ILR (1958) 2 All 84 : A I R 1959 All 101 (103, 104) (Pt I) (Pr 5) (FB).**

[**Reversed** on another point in A I R 1962 S C 955.]

——Arts. 19, 13 — 'Laws', 'law in force' and 'existing law'—Criminal P. C., S. 144—Order under—Constitutionality. See Ibid, Art. 13. **A I R 1956 All 481.**

——**Art. 19 — Expression "Existing law" in Art 19 —Connotation of.**

Article 19, sub-clauses (2), (3), (4), (5) and (6), where the expression "existing law" is used indicates that the restriction on fundamental right is not only with regard to the saving of existing law, but also with regard to any future law that the State might make. Therefore, it would not be true as far as Art. 19 is concerned that the intention of the Constituent Assembly was to save only laws actually in operation and to declare void laws only potentially in force and laws to be made in future. **53 Bom L R 837 : A I R 1952 Bom 16 (24) (Pt G) (Pr 19) (DB).**

[Reversed on another point in A I R 1955 S C 41].

——**Art. 19 (1) (g)**—Government, in exercise of powers conferred under S. 3 of Essential Supplies (Temporary Powers) Ordinance, 2003, imposing ban on movement of vegetables from one province to another, in public interest—**Held**, order did not infringe fundamental rights guaranteed under Art. 19 (1) (g) and was not hit by Art. 301 – Order had no existence apart from Ordinance which was saved as existing law under Art. 305. See Ibid, Art. 301. **A I R 1965 J & K 93 (DB).**

——**Art. 19 (1) (g)**—Law — 'Authority of law'—Law and executive order — Gwalior Darbar Order, dated 27th July, 1946, whether law. See Ibid, Art. 14. **AIR 1954 Madh B 196 (DB).**

——Arts. 19, 13, 366 (10):— Scope — Existing law—Criminal P. C., is not existing law of Manipur State within meaning of Art. 19 (2) (3) — No provision in Code can curtail fundamental rights of citizens in Manipur State — Order on the analogy of S. 144, Criminal P. C., is void as being inconsistent with Part 3 of Constitution — Validity — (Criminal P. C (1898), Ss. 1 (2) and 144)—(Merged States (Laws) Act (1949), S. 3) — (Part States (Laws) Act, (1950), S. 3). See Ibid, Art. 13. **AIR 1955 Manipur 41.**

——**Arts. 19 (2), 366 (10) and 215 — "Existing law" — Existing law relating to contempt of court saved by Art. 19 (2) must include not only statutory law but entire case law.**

Per Narasimham J. — The definition of 'existing law' in clause (10) of Art. 366 should not be applied in construing that expression occurring in cl. (2) of Art. 19 in so far as it relates to the law of contempt of Court because 'the context otherwise requires'. The existing law in so far as it relates to contempt of Court saved by cl. (2) of Art. 19 must include not only statutory law but the entire law of contempt as was recognised in India prior to the advent of the Constitution, based on the English common law and the case law as laid down by the High Court and Privy Council. The Constitution has not in any way enlarged the freedom of the press in this respect. A I R 1950 S C 27, Disting.

If the definition of the expression 'existing law' as given in cl. (10) of Art. 366 is applied in construing that expression occurring in Art. 19 (2) the result would be that the power of the High Court as a Court of Record under Art. 215 would become nugatory and the Contempt of Courts Act would become unworkable. **ILR (1952) Cut 1 : 52 Cri L J 1605 : AIR 1952 Orissa 318 (342) (Pt J) (Pr 66) (DB).**

——**Art. 19 (5)—'Existing law'.**

The expression 'general public' in Article 19 (5) includes not only the law made by a statute but also any personal law, custom or usage having the force of law. **ILR (1955) 5 Raj 650 : 1956 Raj L W 336 : AIR 1955 Raj 140 (140, 141) (Pt A) (Pr 3) (DB).**

● ——**Arts. 19 (1) (f), 19 (5), 366 and 372—Laws continuing in force under Art. 372 — Effect on custom contrary to Art. 19.**

The restrictions, subject to which the fundamental rights are to be enjoyed, are contained in Part 3 itself. Therefore, the fact that Customary law continues to remain in force by virtue of Art. 372 will not save it from being declared void if it is hit by Art. 13 of the Constitution.

Secondly, as the opening words of Art. 366 of the Constitution say, the words defined in that article are to be assigned the particular meaning unless the context otherwise requires. The context in Art. 19 (5) requires that the words 'existing law' should be understood in their broad sense as including any kind of law and there is no doubt that the restrictions imposed by any customary law cannot be more sacrosanct than the restrictions imposed by Statute law and if they are unreasonable they would be void under Art. 13 of the Constitution. Panch Gujar v. Amarsingh, **ILR (1954) 4 Raj 84 : 1954 Raj L W 204: A I R 1954 Raj 100 (103) (Pt C) (Pr 14) (FB).**

20. Clause (1) (a)—(General).

● ——**Art. 19 (1) (a)**—Art. 194 (1) confers on legislatures freedom of speech independently of Art. 19 (1) (a). See Ibid, Art. 194 (1). **AIR 1965 S C 745.**

● ——**Art. 19 (1) (a), (b)—Essential Services Maintenance Ordinance (1960), Ss. 3, 4, 5—Validity—Provisions do not contravene Art. 19 (1) (a) and (b).**

Sections 3, 4 and 5 of the Essential Services Maintenance Ordinance (1960) do not violate the fundamental rights enshrined in Art. 19 (1) (a) and (b). A perusal of Art. 19(1) shows that there is no fundamental right to strike, and all that the Essential Services Maintenance Ordinance provides is with respect to an illegal strike as provided in the Ordinance. There is no provision in the Ordinance which in any way restricts freedom of speech and expression nor is there any provision therein which restricts any one from assembling peaceably and without arms. The Ordinance thus has nothing to do with restricting the fundamental rights enshrined in sub cls. (a) and (b) of Art. 19 (1). Parliament had the competence to make a law in the terms of the Ordinance and therefore the President had also the power to promulgate such an Ordinance.

The charge against the petitioner was that he had acted in furtherance of the illegal strike which was

to commence on the midnight of July 11, 1960 and was therefore guilty of gross misconduct. It was this charge of gross misconduct which had been found to be proved against the petitioner and which had led to the punishment inflicted on him.

Held, that the punishment given to the petitioner could not be set aside on the ground that the charge was in violation of the fundamental rights guaranteed under sub-cls. (a) and (b) of Art. 19 (1). Whether the acting in furtherance of the strike took the form of speeches or demonstration would make no difference. In neither case could it be said that there was a violation of Art. 19 (1) (a). AIR 1962 S C 171, Rel. on; AIR 1962 S C 1166 and AIR 1963 S C 812, Disting. Radhey Shyam v. Postmaster-General, Central, Nagpur, (1964) 1 S C W R 820 : (1965) 2 S C J 581 : (1965) Mad L J (Cri) 793 : (1964) 7 S C R 403 : AIR 1965 S C 311 (313, 314) (Prs 5, 7).

● ——**Arts. 19 (1) (a), 19 (1) (g) — Advertisement—When form of speech—Commercial advertisement—Nature of—Prohibition of Advertisements by S. 3 of Act 21 of 1954—Art. 19 (1) (a) not violated.**

An advertisement is no doubt a form of speech but its true character is reflected by the object for the promotion of which it is employed. It assumes the attributes and elements of the activity under Art. 19 (1) (a) which it seeks to aid by bringing it to the notice of the public. When it takes the form of a commercial advertisement which has an element of trade or commerce, it no longer falls within the concept of freedom of speech, for the object is not propagation of ideas, social, political or economic, or furtherance of literature or human thought, but the commendation of the efficacy, value and importance of certain goods.

It cannot be said, therefore, that every advertisement is a matter dealing with freedom of speech nor can it be said that it is an expression of ideas. In every case one has to see what is the nature of the advertisement and what activity falling under Art. 19 (1) it seeks to further. The advertisements prohibited by S. 3 of Act 21 of 1954 relate to commerce or trade and not to propagating of ideas ; and advertising of prohibited drugs or commodities of which the sale is not in the interest of the general public cannot be speech within the meaning of freedom of speech and would not fall within Art. 19 (1) (a). As the main purpose and true intent and aim, object and scope of the Act is to prevent self-medication or self-treatment and for that purpose advertisements commending certain drugs and medicines have been prohibited it cannot be said that this is an abridgement of the petitioner's right of free speech. (1937) 82 Law Ed. 949 and AIR 1958 S C 578, Distinguished; (1941) 86 Law Ed. 1262 and AIR 1957 S C 628, Rel. on.

Freedom of speech goes to the heart of the natural right of an organised freedom loving society to "impart and acquire information about that common interest." If any limitation is placed which results in the society being deprived of such right then no doubt it would fall within the guaranteed freedom under Art. 19 (1) (a). But if all it does is that it deprives a trader from commending his wares it would not fall within that term. Hamdard Dawakhana v. Union of India, **(1960) 1 S C A 314 : (1960) 2 Andh W R (SC) 1 : (1960) 2 Mad L J (S C) 1 : 1960 Cri L J 735 : 1960 Mad L J (Cri) 358 : 1960 S C J 611 : (1960) 2 S C R 671 : AIR 1960 S C 554 (563, 564) (Pt C) (Prs 17, 18).**

● ——**Art. 19 (1) (a)—Working Journalists Act (1955)—Constitutional validity—Whether violates Arts. 19 (1) (a), 19 (1) (g), 14 and 32 of the Constitution. See Working Journalists (Conditions of Service and Miscellaneous Provisions) Act (1955). AIR 1958 S C 578.**

● ——**Art. 19 (1) (a) and Part 3 (General)—Interpretation—Reference to American decisions.**

The fundamental right to the freedom of speech and expression enshrined in Art. 19 (1) (a) of our Constitution is based on the provisions contained in Amendment I of the Constitution of the United States of America and it would be therefore legitimate and proper to refer to those decisions of the Supreme Court of the United States of America in order to appreciate the true nature, scope and exent of this right in spite of the warning administered by the Supreme Court against the use of American and other cases. Express Newspapers (Private) Ltd. v. Union of India, **(1958-59) 14 F J R 211 : (1958) S C J 1113 : 1958 S C A 952 : 1959 S C R 12 : AIR 1958 S C 578 (615) (Pt E) (Pr 133).**

● ——**Art. 19 (1) (a)—Freedom of speech and expression.**

Freedom of speech and expression includes freedom of propagation of ideas, and that freedom is ensured by the freedom of circulation. Romesh Thappar v. State of Madras, **1950 All L J 485 : 1950 S C J 418 : (1950) 2 Mad L J 390 : 63 Mad L W 929 : 51 Cri L J 1514 : 1950 S C R 594 : 1950 Mad W N 435 : 1950 Mad W N (Cri) 115 : 1950 Raj L W 389 : AIR 1950 S C 124 (127) (Pt B) (Pr 6).**

● ——**Art. 19 (1) (a)—Curtailment of rights to freedom of speech and expression, when justified.**

The Constitution, in formulating the varying criteria for permissible legislation imposing restrictions on the fundamental rights enumerated in Art. 19 (1), has placed in a distinct category those offences against public order which aim at undermining the security of the State or overthrowing it, and made their prevention the sole justification for legislative abridgement of freedom of speech and expression. Thus, nothing less than endangering the foundations of the State or threatening its overthrow could justify curtailment of the rights to freedom of speech and expression, while the right of peaceable assembly (sub-cl. (b)) and the right of association (sub-cl. (c)) may be restricted under cls (3) and (4) of Art. 19 in the interest of "public order", which in those clauses includes the security of the State. Romesh Thappar v. State of Madras, **1950 All L J 485 : 1950 S C J 418 : (1950) 2 Mad L J 390 : 63 Mad L W 929 : 51 Cri L J 1514 : 1950 S C R 594 : 1950 Mad W N 435 : 1950 Mad W N (Cri) 115 : 1950 Raj L W 389 : AIR 1950 S C 124 (128) (Pt C) (Pr 10).**

——**Arts. 19 (1) (a), 14, 21 and 22—Scope and applicability — Preventive Detention Act (1950), S. 3—Validity.**

A law which deprives a person of his personal liberty falls exclusively under Arts. 21 and 22 of the Constitution, and the reasonableness of such a law cannot be questioned with reference to Art. 19 of the Constitution. AIR 1950 S C 27 and AIR 1951 S C 270, Rel. on.

The purpose and policy of the Preventive Detention Act is to prevent anti-social and subversive elements from imperilling the welfare of the Republic. The classification of persons under S. 3 of the Act has been made keeping in view the said purpose and policy, and it is obvious therefore that the classification in question has a reasonable relation to the object of the Legislature in passing this enactment. That being so, the enactment in question cannot be said to infringe the provisions of Art. 24 of the Constitution. Moreover equal protection is not violated if the exception which is made is required to be made by some other provision of the Constitution. Preventive detention has been recognised by Art. 22 of the Constitution itself. That being so, the classification made under S. 3 of the Act is a classification required to be

made by a provision of the Constitution. It follows, therefore, that the equal protection contemplated by Art. 14 of the Constitution cannot be said to have been violated by the Act. **1956 Cr L J 1152 : AIR 1956 All 589 (593, 594) (Pt E) (Prs 10, 11) (DB).**

——Art. 19 (1) and (2) — Freedom of speech and expression — Limitations on, are expressed in Art. 19 (2) — Law must fall within four corners of these exceptions. I L R (1955) 1 All 355 : 1955 Cri L J 623 : A I R 1955 All 193 (203, 204, 214, 217) (Pt D) (Prs 12, 50, 67).

●——**Art. 19 (1) (a), (2) — S. 99A, Criminal P. C., cannot be attacked on ground of not providing for personal service thereby making right of application under S. 99-B illusory, such defect rendering encroachment on right under Art. 19 (1) (a) unreasonable—(Criminal P. C. (1898), S. 99-A).**

Notification, in the Official Gazette, of the forfeiture under S. 99-A, Criminal P. C., is a sufficient publication. Hence, the section cannot be attacked on the ground that it makes no provision for personal service and that it makes the right of application under S. 99-B illusory, such defect rendering the encroachment upon the right conferred by Art. 19 (1) (a) unreasonable and taking it out of the operation of the saving clause. Further, before the order under S. 99-A is put into effect, the order should be communicated to the person concerned, be it the author, the printer or the publisher and that would enable him to move the High Court under S. 99-B.

Bhimasankaram, J.—The provision in S. 99-B limiting the right to question the order under S. 99-A to two months cannot prevent the exercise of the power vested in the High Court under Art. 226, and in the Supreme Court under Art. 32 of the Constitution. The limitation as to time, therefore, should be construed as affecting the availability of the special mode of relief provided by S. 99 B. That provision by itself does not operate to render the power vested in the Government under S. 99 A of the Criminal P. C. unconstitutional as the nature of the power itself is otherwise within constitutionally permissible limits. N. Veerabrahmam v. State of Andhra Pradesh, **1959 Andh L T 575 : (1959) 2 Andh W R 269 : 1959 Mad L J (Cri) 703 : 1959 Cri L J 1280 : A I R 1959 Andh Pra 572 (576, 583) (Pt C) (Prs 16, 17, 54, 55) (SB).**

[Overruled on another point in A I R 1962 S C 1662].

——Art. 19 (1) (a) and (d) — Freedom of speech and freedom of movement—Nature and extent—Power of State to impose restrictions—"Reasonable" restriction —Criminal Law Amendment Act, S. 7—If inconsistent with fundamental rights. See Criminal Law Amendment Act, 1932, S. 7. **A I R 1951 Bom 459.**

——**Art. 19 (1) (a)—Freedom of speech — American Constitution—Law under.**

The law in America as regards the freedom of speech as also on many other points is different from the law laid down by our Constitution. The First and the Fourteenth Amendments of the American Constitution do not impose any restriction on the freedom of speech and the Courts therefore had to make their own rules as regards the reasonableness or the existence of that freedom, and as regards limitation which could be imposed by the State in the exercise of its "police powers". A I R 1955 All 193, Foll. 61 Cal W N 459 : (1957) 2 Lab L J 260 : I L R (1958) 1 Cal 40.

——Art. 19—Criticism of Government — Freedom of speech and of press lies at the foundation of all democracy—Disapprobation and criticism of any policy or administrative action of the Government with a view to obtaining redress by lawful means cannot be regarded as an act likely to disturb maintenance of public order. See Public Safety—Preventive Detention Act (1956), S. 3. **A I R 1953 Hyd 295 (DB).**

——**Arts. 19 (1) (a), 13 — Freedom of speech and expression—Scope of — T. C Public Safety Measures Act (5 of 1950), S. 31 (5) — Constitutional validity—Not ultra vires Art. 19 (1) (a).**

The freedom guaranteed under Art. 19 (1) (a) is the right to express one's convictions and opinions freely by word of mouth, writing, printing, picture or in any other manner. It would thus include not only the freedom of press, but the expression of one's ideas by any visible representation, such as by gesture and the like : 'Expression' naturally presupposes a second party to whom the ideas are expressed or communicated. In short freedom of expression includes the freedom of the propagation of ideas, their publication and circulation.

Though S. 31 (5) of the T. C. Public Safety Measures Act imposes restrictions on the fundamental right of freedom of speech and expression, those restrictions are in the interests of public order and within the ambit of permissible legislative interference with that fundamental right and clause (2) of Art. 19 of the Constitution clearly saves the section from the vice of unconstitutionality : A I R 1953 Trav-Co 540, Rel. on. Chapter 3 of T. C. Public Safety Measures Act deals with public safety and it is in this chapter that S. 31 occurs. What is made punishable is doing of prejudicial act or publishing of prejudicial report. Thus, it is clear that what is made punishable is only publishing a false rumour or report or information. But even assuming that it could be argued that the section can refer to a true report also the entire section cannot be declared to be unconstitutional. Article 13 (1) of the Constitution says that all laws in so far as they are inconsistent with the provisions of Part 3 of the Constitution are void only to the extent of such inconsistency and so the law to the extent that it can impose reasonable restriction cannot be held to be void. A I R 1957 S C 628 and A I R 1962 S C 955, Rel. on. **1963 Ker L J 718 : 1963 Ker L T 838 : I L R (1963) 2 Ker 456 : 1964 (1) Cri L J 400 : A I R 1964 Ker 104 (105, 107) (Prs 5, 10, 11, 14) (DB).**

——**Art. 19 (1) (a), (b), (c) — Scope — Government Servants' Conduct Rules, 1950, R. 63—Validity.**

Rule 63 is neither vague nor indefinite, but clear and specific and must be considered as forming part of the contract of service under which the petitioner continued to work since the promulgation of the Government Servants' Conduct Rules, 1950, on the 22nd February 1950. The said rules were not issued under any statutory or constitutional provision and they are the terms on which the petitioner continued in the employment of the State subsequent to their promulgation. The petitioner is bound to obey them as they are the basis of his employment until such time as he chooses to leave the State service or the rules are modified by the State. In R. 63 there is no violation of the provisions of Art. 19 (1) (a), (b) or (c) of the Constituiion and a reasonable restriction on the freedom of an employee like the one embodied in R. 63 and which forms part of his contract of service a restriction which is in his power to avoid by severing the relationship of master and servant—is not hit by Art 19 of the Constitution. **1957 Ker L T 13 : 1957 Ker L J 6 : I L R (1957) Ker 1020 : A I R 1957 Ker 7 (8, 9) (Prs 4, 5).**

——**Art. 19 (1) (a) and (c)—Labour and trade unions — Rights of individual worker to conduct his own case before Industrial Court — Bombay Industrial Relations Act (11 of 1949) (as adopted in M. B.),**

Ss. 27-A, 32, 33 — Validity — Not in conflict with fundamental rights and so are not void.

The provisions of Ss. 27-A, 32, 33, Proviso of Bom. Ind. Rel. Act are not void as being repugnant to Art. 19 of the Constitution.

The impugned provisions of the Bombay Industrial Relations Act are not directly in conflict with Art. 19 (1) (c) as the Act does not aim at abolition of the unions, nor does it refuse to recognise them. There is also no conflict between the Act and Art. 19 (1) (a). The law which seeks to obtain industrial peace by prohibiting strike and lockouts cannot be said to be arbitrary or discriminatory or imposing an unreasonable restriction on the right to go on strike even if such a right was guaranteed by the Constitution. What the Legislature had rendered illegal is to go on strike during a limited period and without first availing of the machinery of conciliation and arbitration. This is not an abridgement of any of the fundamental rights. It is also difficult to contend that the Act is in conflict with the provisions of Art. 19 (1) (a) because it does not permit an individual employee to conduct his own case. No such right is guaranteed by Art. 19.

Formation of unions is expressly recognized and there is provision in the Act for their registration. Whenever such a union appears in a proceeding as a representative of the employees, the individual employees are excluded from appearing and conducting their own cases. AIR 1951 Bom 105, Rel. on. There is neither a denial of justice nor is there any encroachment on any of the fundamental rights.

The right to form a union does not carry with it a right to represent, when there is an industrial dispute, before a conciliator or the Court or voluntary or compulsory arbitration. AIR 1951 Bom 105, Rel. on. An order passed in a proceeding in which the union had in fact participated and appeared on behalf of the employees cannot be held to be void and against the principles of natural justice. 1956 Madh B L J 826 : Madh B L R 1956 Civil 271 : ILR (1956) Madh Bha 353 : A I R 1956 Madh Bha 199 (202, 203, 206) (Pt A) (Prs 26, 31, 32, 33, 34, 59) (DB).

——Arts. 19 (1) (a) and 19 (1) (g) — **Election to Central Council of Institute of Chartered Accountants of India — Prohibition imposed by Notification against canvassing of votes by visiting places of business or residence of voters or in any other manner — No unreasonable restriction on any fundamental right.**

The prohibition imposed by the President of the Chartered Accountants Institute of India, by a notification issued by him under the powers conferred on him by Cl. (ii) of part II of the Second Schedule to the Chartered Accountants Act, against canvassing votes by visiting places of business or residence of the voters or in any other manner, in connection with an election to the Council of the Institute cannot be said to operate as unreasonable restriction on the fundamental right of the freedom of speech and expression guaranteed under Art. 19 (1) (a) and on the fundamental right of the petitioner to carry on his profession as guaranteed under Art. 19 (1) (g) of the Constitution of India.

Any right to canvass for votes in connection with election to the Council, could only be incidental to the said statutory rights; therefore, such incidental rights also can be regulated by the provisions of the Act. Failure to conform to the Statutory requirements may lead to disciplinary action being taken against the concerned member and that may result in interference with his right to carry on as a Chartered Accountant; but, this result is merely incidental to his being a member of the Institute. **(1964) 2 Comp L J 289 : (1964) 1 Mys L J 386 : A I R 1965 Mys 112 (116, 117) (Pt B) (Pr 5) (DB).**

——Art. 19 (1) (a) (b) — **Freedom of speech and expression and freedom to assemble peacefully.**

It would be no answer to a proper charge that the accused behaved riotously at a private or even a public meeting violently or in an indecorous manner or disorderly way by insisting on the same being held in a particular language or in a particular way. 1954 Cri L J 144 : ILR (1953) Mys 338 : 33 Mys L J 68 : AIR 1954 Mys 12 (14) (Pt D) (Pr 9).

——Art. 19 (1) — Freedom of expression — Nature and extent of. See Penal Code (1860), S. 505 (c). 1960 Cri L J 497 : AIR 1960 Orissa 65.

——Art. 19 (1) (a) — Freedom of speech — Meaning.

Freedom of speech does not mean that a person is at liberty to say what he pleases at all times and under all circumstances. This right may sometimes become a wrong if for example, a person were to indulge in the use of language which is so defamatory, insulting, inciting or provocative as to be reasonably likely to cause disorder and violence. 58 Punj L R 464 : 1957 Cri L J 88 : 1957 All W R (Sup) 21 : I L R (1957) Punj 218 : A I R 1957 Punj 1 (4) (Pt C) (Pr 8) (DB).

——Art. 19 (1) — Freedom of expression — It is liberty and not licence. **A I R 1955 N U C (Punj) 4999.**

——Art. 19—Scope — **Order under S. 144, Criminal P. C. — Order does not affect legitimate activities of citizen.**

An order under S. 144, Criminal P. C. does not in any way affect the peaceful life or legitimate activities of the citizen in the area in which it is proclaimed. Though freedom of speech or peaceable assembly or printing or publishing of leaflets and pamphlets or the carrying of persons in buses are prohibited in general terms in the impugned order under S. 144, the violation of any part of the order by itself will not amount to an offence. It is only when an order under S. 144, Criminal P. C is taken along with S. 188, I. P. C. that the violation will become an offence. A I R 1956 All 431, Rel on. 1961 (1) Cri L J 676 : AIR 1961 Manipur 12 (18) (Pt G) (Pr 23).

——Art. 19 – **Freedom of speech and expression.**

Freedom of speech and expression includes freedom of propagation of ideas and that freedom is ensured by the freedom of circulation. Writing on the black board set up in a public place in the town criticisms of Government and their officers including Ministers would be protected by the right of freedom of speech and expression. AIR 1950 S C 124, Foll. 1952 Cri L J 506 : AIR 1952 Sau 25 (26) (Pt B) (Pr 2) (DB).

21. Freedom of the press.

See also Ibid, Notes 22, 26, 27 & 28.

——Art. 19 (1) (a), (2), (6)—Newspaper (Price and Page) Act (1956) and Daily Newspaper (Price and Page) Order (1960) — Validity — Provisions offend Art. 19 (1) (a) of the Constitution and are unconstitutional.

Neither the (Price and Page) Act of 1956 nor the Order of 1960 made thereunder can be justified by any of the circumstances set out in Art. 19 (2). After the commencement of the Act and the coming into force of the Order a newspaper which has a right to publish any number of pages for carrying its news and views will be restrained from doing so except upon the condition that it raises the selling price as provided in the schedule to the Order. This would

be violative of the right of newspapers guaranteed by Art. 19 (1) (a). Again, S. 3 (1) of the Act in so far as it permits the allocation of space to advertisements also directly affects freedom of circulation. The object of the Act in regulating the space for advertisements is stated to be to prevent 'unfair' competition. It is thus directed against circulation of a newspaper. When a law is intended to bring about this result there would be a direct interference with the right of freedom of speech and expression guaranteed under Art. 19 (1) (a). One of the objects of the Act is to give some kind of protection to small or newly started newspapers, but for attaining it the State cannot make inroads on the right of other newspapers which Art. 19 (1) (a) guarantees to them. It would follow that S. 3 (1) of the Act, which is its pivotal provision, is unconstitutional and, therefore, the Daily Newspaper (Price and Page) Order, 1960 made thereunder is also unconstitutional. If S. 3 (1) is struck down as bad, nothing remains in the Act itself. AIR 1950 S C 129; A I R 1958 S C 578 ; AIR 1950 S C 124 ; AIR 1952 S C 196 ; AIR 1954 S C 119 and AIR 1957 S C 896, Rel. on., A I R 1960 S C 554, Disting., Sakal Papers (P.), Ltd. v. Union of India, **(1962) 2 S C J 400 : (1962) 3 S C R 842: A I R 1962 S C 305 (310, 311, 312, 313, 314, 315) (Prs 25, 29, 31, 32, 33, 34, 37, 38, 39, 46, 49).**

● —— **Art. 19 (1) (a) — Freedom of press — Right of non-citizen.**

Article 19 guarantees to all citizens freedom of speech and expression but does not specifically or separately provide for liberty of the press. It has, however, been held that the liberty of the press is implicit in the freedom of speech and expression which is conferred on a citizen. A non-citizen running a newspaper is not entitled to the fundamental right to freedom of speech and expression and, therefore, cannot claim, as his fundamental right the benefit of the liberty of the Press. AIR 1914 P C 116, Rel. on. M.S.M. Sharma v. Krishna Sinha, **1959 S C J 925 : (1959) 2 M L J (S C) 125 : (1959) 2 Andh W R (S C) 125 : 1959 M L J (Cr) 660 : (1959) Supp (1) S C R 806 : A I R 1959 S C 395 (401, 402) (Pt A) (Pr.13).**

● —— **Arts. 19 (1) (a) and 19 (2) — Freedom of speech —Scope of—Freedom of press.**

The freedom of speech comprehends the freedom of press and the freedom of speech and press are fundamental personal rights of the citizens. The purpose of guarantee is to prevent public authorities from assuming the guardianship of the public mind. Freedom of press involves freedom of employment or non-employment of the necessary means of exercising this right or in other words, freedom from restriction in respect of employment in the editorial force. The necessary corollary thereof is that no measure can be enacted which would have the effect of imposing a precensorship, curtailing the circulation, or restricting the choice of employment or unemployment in the editorial force. Such a measure would certainly tend to infringe the freedom of speech and expression and would therefore be liable to be struck down as unconstitutional. The press is however, not immune from the ordinary forms of taxation for support of the Government nor from the application of the general laws relating to industrial relations. Laws imposing precensorship, etc., would not be saved by Art. 19 (2) of the Constitution. Express Newspapers (Private) Ltd. v. Union of India, (1958-59) 14 F J R 211 : (1961) 1 Lab L J 339; (1958) S C J 1113 : 1958 S C A 952 : 1959 S C R 12 : A I R 1958 S C 578 (616, 617) (Pt F) (Prs 142, 143, 150, 151).

● —— **Arts. 19 (1) (a), 19 (1) (g) — Rights under — Difference between total prohibition and restriction —Ss. 2 and 3 of the Punjab Special Powers (Press) Act (38 of 1956)—Validity.**

There is and can be no dispute that the right to freedom of speech and expression carries with it the right to propagate and circulate one's views and opinions subject to reasonable restrictions and that the several rights of freedom guaranteed to the citizens by Art. 19 (1) are exercisable by them throughout and in all parts of the territory of India. The restrictions, so far as they extend, may be certainly complete but whether they amount to a total prohibition of the exercise of the fundamental rights must be judged by reference to the ambit of the rights.

Thus where it was contended that Ss. 2 and 3 of the Punjab Special Powers (Press) Act, 1956 were ultra vires the State Legislatures as the notification issued under S. 2 (1) (a) prohibiting the printing and publishing of any article, report, news item, letter or any other material of any character whatsoever relating to or connected with "save Hindi agitation" and that under S. 3 (1) imposing a ban against the entry and the circulation of the said papers published from New Delhi in the State of Punjab, imposed not merely restrictions on but total prohibition against, the exercise of the said fundamental rights ;

Held, that, judged by the above test, the entire rights under Arts. 19 (1) (a) and 19 (1) (g) had not been completely taken away by the notifications but restrictions had been imposed upon the exercise of those rights, with reference to the publication of only articles etc., relating to a particular topic and with reference to the circulation of the papers, only in a particular territory and, therefore, it was not right to say that these sections had imposed a total prohibition upon the exercise of those fundamental rights. Virendra v. State of Punjab, **(1958) S C J 88 : 1958 S C C 1 : 1958 S C A 891 : 1958 S C R 308 : A I R 1957 S C 896 (899) (Pt A) (Pr 8).**

● —— **Art. 19 (2) — Amendment made by the Constitution (First Amendment) Act is not repugnant to Art. 20.**

The contention that the amendment made in Art. 19 (2) of the Constitution by the Constitution (First Amendment) Act with retrospective operation is repugnant to Art. 20 of the Constitution inasmuch as it declares a certain act an offence which was not an offence at the time when the act was committed, is untenable. Thus to the case of a person who is alleged to have violated the provisions of S. 4 (1) (a), Press (Emergency Powers) Act, which was a law in force in the year 1949 when the offending pamphlet was published and who has not been convicted of any offence so far and is not being again convicted for the same by reason of the amendment in Art. 19 (2), Article 20 has no application. State of Bihar v. Shailabala Devi, **(1952) 2 Mad L J 323 : 1952 Mad W N (Cri) 169 : 1952 S C R 654 : I L R 31 Pat 544 : 1953 S C A 152 : 1952 Mad W N 545 : 1952 S C J 465 : 1952 Cri L J 137 : A I R 1952 S C 329 (331) (Pt B) (Pr 6).**

—— **Art. 19—Freedom of press—Limits of.**

The freedom of press under our Constitution is not higher than that of citizen, there is no privilege attaching to the profession of the press as distinguished from the members of the public. To whatever height the subject in general may go, so also may the journalist, and if an ordinary citizen may not transgress the law so must not the press. That the exercise of expression is subject to the reasonable restriction of the law of contempt, is borne out by Cl. (2) of Art. 19 of the Constitution.

It should be well to remember that the Judges by reasons of their office are precluded from entering into any controversy in the columns of the public press nor can enter the arena and do battle upon equal terms in newspapers as can be done by ordinary citizens. I L R (1954) Hyd 270 : 1954 Cr L J 1281 : AIR 1954 Hyd 175 (178) (Pt C) (Pr 9) (DB).

——Art. 19 (1) (a)—Freedom of press — Meaning of —S. 3 of Press and Registration of Books Act, 1867 —If invalid.

Liberty of the press, means only the liberty of publication without the previous permission of the Government, i. e., neither Courts of Justice, nor any other judges whatever are authorised to take notice of writings intended for the press, but are confined to those which are actually printed. The same idea is incorporated in the American Bill of Rights. Thus the freedom of speech and expression in substance is freedom from any provision which even indirectly amounts to censorship. Courts have in general construed freedom of press so as to preserve the fundamental values intended to be protected by the constitutional provisions protecting them.

The impugned S. 3 of the Press and Registration of Books Act, 1867, does not in any way restrict the freedom of expression. On the other hand, to maintain unimpaired that freedom of expression but at the same time to prevent that freedom from degenerating into licence without remedy both for the State as well as individual citizen in regard to defamatory, seditious, blasphemous, obscene and contempts of Courts, the State in the exercise of its police powers, insists upon the furnishing of the information set out in the section. The section is not, therefore, inconsistent with the fundamental rights guaranteed by Art. 19 (1) (a) of the Constitution. (1957) Mad L J (Cri) 53 : (1957) 1 Mad L J 136 : A I R 1957 Mad 427 (430, 431) (Pt C) (Prs 14, 15, 16).

● **——Art. 19 (1) (a)—Freedom of press, if included.**

The term "freedom of speech and expression" would include the liberty to propagate not only one's own views but also the right to print matters which are not one's own but have either been borrowed from someone else, or are printed under the direction of that person.

The freedom of the press is a guaranteed right, under Art. 19 (1) (a), of a citizen who keeps a printing press, or is an editor, or a publisher. Shrinivasa Bhat v. State of Madras, 64 Mad L W 82 : (1951) 1 Mad L J 115 : A I R 1951 Mad 70 (73, 74) (Pt B) (Prs 4, 9) (SB).

——Art. 19 (1) (a)—Scope.

Article 19 (1) (a) guarantees the right of freedom of speech, which: expression includes the freedom of the press also. 1955 Cri L J 547 : I L R (1955) Cut 204 : A I R 1955 Orissa 36 (39) (Pt B) (Pr 7) (DB).

——Art. 19 (1) (a) — Freedom of press — Scope of— Duty to maintain dignity of Courts—See Contempt of Courts Act (1952), S. 3. 1959 Cri L J 81 : A I R 1959 Punj 41.

——Art. 19 (1) (a) — Freedom of press — Extent of. See Contempt of Courts Act (1952), S. 3. 1958 Cri L J 1225 : AIR 1958 Punj 377.

——Art. 19 (1) (a) – Freedom of press—Meaning.

Freedom of the press means principally the right to publish without any previous licence or censorship. 1957 Cri L J 88 : (1957) All W R (Sup) 21 : I L R (1957) Punj 218 : 58 Punj L R 464 : A I R 1957 Punj 1 (3) (Pt B) (Pr 8) (DB).

Press (Emergency Powers) Act (1931).

● **——Art. 19 (1) (a) and 19 (2) — Scope.** See Press (Emergency Powers) Act (23 of 1931), S. 4 (1) (a). AIR 1952 S C 329.

——Art. 19—Possession of unauthorised news sheets on 11-6-1950 — Conviction under S. 18 of Press Act, 1931 on 23-2-1951—Validity. See Press (Emergency Powers) Act (1931), S. 15. AIR 1954 All 562 (DB).

——Arts. 19 (1) (a), 19 (5)—Validity of Ss. 15 and 18 of Act (23 of 1931). See Press (Emergency Powers) Act (1931), S. 15. AIR 1954 All 562 (DB).

——Art. 19 — Press Emergency Powers Act (1931), S. 3 (1)—Validity. See Press Emergency Powers Act (1931), S. 3 (1). AIR 1951 Mad 950 (DB).

——Art. 19 (1)—Scope — Press (Emergency Powers) Act, 1931, S. 4 (1) and (b) — Validity of. See Press (Emergency Powers) Act, 1931, S. 4 (1) (a) and (b). 52 Cri L J 309 : AIR 1951 Pat 12.

● **——Art. 19 — Section 7 (1), Press (Emergency Powers) Act (1931), if void under Art. 13 (1) of Constitution — The section has become void under Art. 13 (1) after coming into force of the Constitution.** See Press (Emergency Powers) Act (1931), S. 7 (1). AIR 1952 Sau 57 (FB).

——Art. 19 — Press Emergency Powers Act (1931), S. 4 (1) (d) — Clause is inconsistent with right of freedom of speech and expression — Clauses (f) and (d) of S. 4 (1) have ceased to be operative in view of present Constitution. See Press (Emergency Powers) Act (1931), S. 4 (1) (d) (f). AIR 1952 Sau 25 (DB).

Press (Objectionable Matter) Act (1951).

——Art. 19—Article not offended by S. 3 (v) of Press (Objectionable Matter) Act (1951). A I R 1954 Ajmer 19.

——Art. 19 (1) (a) and 19 (2) — Press (Objectionable Matter) Act (1951), Ss. 11 and 24 — Order under S. 11 by Assam Government on certificate by Legal Remembrancer — Validity — Validity of S. 11. See Press (Objectionable Matter) Act (1951), S. 11. A.I R 1954 Assam 193.

——Art. 19 (1) (a)—Press (Objectionable Matter) Act (1951), S. 11 — Validity. See Press (Objectionable Matter) Act (1951), S. 11. AIR 1954 Bom 508.

——Art. 19 (1) (a)—Legality of the Press (Objectionable Matter) Act (1951). See Press (Objectionable Matter) Act (1951), S. 3. AIR 1954 Sau 28 (DB).

22. Pre-censorship.

——Art. 19 (1) (a) — Imposition of pre-censorship on a Journal—Legality.

The imposition of pre-censorship on a journal is undoubtedly a restriction on the liberty of the press which is essential part of the right to freedom of speech and expression declared by Art. 19 (1) (a) of the Constitution and as such is altogether without jurisdiction. A I R 1950 S C 124 and AIR 1950 S C 129, Foll. 52 Cri L J 1530 : A I R 1951 Ajmer 100 (101) (Pt B) (Pr 5).

——Art. 19 (1) (a) — Freedom of expression — Publication of pamphlet or newspaper containing information regarding horse races—Restriction on, by way of precensorship — Validity of S. 49 A, Madras City Police Act, 1888. See Madras City Police Act (3 of 1888) (as Amended by Madras Act (7 of 1949), S. 49-A. AIR 1954 Mad 901.

——Art. 19 (1) (a)—Pre-censorship — Criminal P. C. (1898), S. 144—Provisions empowering imposition of pre-censorship are not inconsistent with Art. 19 (1) (a).

After the enactment of the Constitution First Amendment Act, 1951, a law imposing restrictions on the

liberty of speech or expression cannot be said to be ultra vires the Constitution if the restrictions have been imposed in the interest of public order. Hence the provisions of S. 144, Criminal P. C., which empower the District Magistrate to impose pre-censorship on newsapers are not inconsistent with the provisions of Art. 19 (1) (a) of the Constitution. **58 Punj L R 464 : 1957 Cri L J 88 : (1957) All W R (Sup) 21 : ILR (1957) Punj 218 : A I R 1957 Punj 1 (4) (Pt D) (Pr 9) (DB).**

23. Security of the State.

See also Ibid, Note 25.

● ——Art. 19 (1) (a) and (2) — East Punjab Public Safety Act (5 of 1949), S. 7 (1) (c) — Validity. See Public Safety — East Punjab Public Safety Act (5 of 1949), S. 7 (1) (c). **AIR 1950 S C 129.**

● ——**Art. 19 (2)—Danger to public security — Restriction on freedom of speech and expression — Invalidity of Madras Maintenance of Public Order Act, 1949 (23 of 1949), S. 9 (1 A).**

Unless a law restricting freedom of speech and expression is directed solely against the undermining of the security of the State or the overthrow of it, such law cannot fall within the reservation under cl. (2) of Art. 19, although the restrictions which it seeks to impose may have been conceived generally in the interests of public order. Clause (2) of Art. 19 having allowed the imposition of restrictions on the freedom of speech and expression only in cases where danger to public security is involved, an enactment, which is capable of being applied to cases where no such danger could arise, cannot be held to be constitutional and valid to any extent. It follows that S. 9 (1-A), Madras Maintenance of Public Order Act, 1949, which authorises imposition of restrictions for the wider purpose of securing public safety or the maintenance of public order falls outside the scope of authorised restrictions under cl. (2), and is therefore void and unconstitutional. Romesh Thappar v. State of Madras, **1950 All L J 485 : 1950 S C J 418 : (1950) 2 Mad L J 390 : 63 Mad L W 929 : 51 Cri L J 1514 : 1950 S C R 594 : 1950 Mad W N 435 : 1950 Mad W N (Cri) 115 : 1950 Raj L W 389 : A I R 1950 S C 124 (129) (Pt E) (Prs 12, 13).**

● ——**Arts. 19 (2) and 352 — Security of State — Meaning of.**

Security of the State is threatened by an invasion or by a rebellion or insurrection but not by mere public disorders. Art. 352 suggest that the security of the State may be threatened not only by an external aggression but by an internal disturbance, but what is meant by 'internal disturbance' is a rebellion or insurrection and not an ordinary breach of the public peace. Ram Nandan v. State, **1958 All W R (H C) 796 : 1958 All L J 793 : 1959 All Cri R 1 : 1959 Cri L J 128 : I L R (1958) 2 All 84 : A I R 1959 All 101 (111) (Pt F) (Pr 25) (FB).**

[Reversed on another point in AIR 1962 S C 955.]

——**Art. 19 (1) (a) and (2) — Police (Incitement to Disaffection) Act, 1922, S. 3—Validity.**

Section 3 of the Police (Incitement to Disaffection) Act, 1922 is intra vires and falls within the protection of Cl. (2) of Art. 19 of the Constitution. **62 Bom L R 206 : 1960 Nag L J 244 : ILR (1960) Bom 305 : 1960 Cri L J 1192 : AIR 1960 Bom 399 (404) (Pt A) (Pr 21) (DB).**

——**Art. 19 (2)—'Security of the State'—Meaning of.**

The expression 'security of the State' in Art. 19 (2) does not mean merely danger to the security of the entire country, nor can it be restricted to an upheaval or a rebellion endangering the security of the entire country. The security of the State can be undermined by danger both from within and without the State. In that light, along with the armed forces, the constabulary also consists of persons specifically engaged to avert danger arising from within the State although they may be expected to avert such danger in limited fields and on limited occasions. **62 Bom L R 206 : 1960 Nag L J 244 : I L R (1960) Bom 305 : 1960 Cri L J 1192 : A I R 1960 Bom 399 (402, 403) (Pt D) (Pr 14) (DB).**

——**Art. 19 — Right of person to dissuade customers from purchasing goods from a shop — Interpretation of statutes — Criminal Law Amendment Act (1932), S. 7.**

A shop keeper, who is a citizen of India, has a fundamental right to carry on his trade in any part of the Indian Union subject to the controls, licenses and restrictions orders legitimately imposed by the State. A citizen has therefore a right to expect from the State protection in the exercise of his business from persons, who assemble outside his shop and seek to dissuade customers from purchasing goods from him on the ground that he is a North Indian. Under Art. 19 (2) the right to freedom of speech and expression would not affect the operation of any existing law so far as it relates to libel, slander, defamation, contempt of Court or any matter which offends against decency or morality or which undermines the security or tends to overthrow the State. The conduct of such persons would if carried to logical and extreme conclusions come within the category of something, which would tend to undermine the security of the State, the objective being to create disaffection which may ultimately lead to hatred and strife in the South between South Indians and North Indians residing in and doing business in the South. This is also a case in which one fundamental right claimed of freedom of speech and expression comes into conflict with other fundamental rights of all citizens viz., to reside and settle in any part of the Indian Union and to carry on their occupation, trade or business. When two fundamental rights come into conflict and one is sought to be extended to extreme and logical conclusions at the expense of the other, a Court will be slow to recognise and uphold such an extension of a fundamental right which infringes and violates another fundamental right. The conduct of such persons therefore cannot be justified under Art. 19 (1) (a) of the Constitution nor can S. 7 of the Criminal Law Amendment Act in such context be declared ultra vires. **1951 Mad W N 697 : 1951 Mad W N (Cr) 201 : 1951-2 Mad L Jour 241 : ILR (1952) Mad 553 : AIR 1952 Mad 95 (95, 96, 97) (Prs 5, 6, 8, 10).**

24. Sedition.

● ——**Arts. 19 (1) (a) and 19 (2)**—Constitutionality—List of the offences — Freedom of speech and expression — Restrictions on, imposed by impugned provisions come within permissible limits under Art. 19 (2) of the Constitution. AIR 1959 All 101 (FB), **Reversed** See Penal Code (1860), S. 124-A. **1962 (2) Cri L J 103 : AIR 1962 S C 955.**

● ——**Art. 19 (2) — Absence of word 'sedition' from —Significance of.**

Deletion of the word 'sedition' from the draft Art. 13 (2), before the article was finally passed as Art. 19 (2), shows that criticism of Government exciting disaffection or bad feelings towards it is not to be regarded as a justifying ground for restricting the freedom of expression and of the press, unless it is such as to undermine the security or tend to overthrow the State. Romesh Thappar v. State of Madras, **1950 Mad W N 435 : 1950 Mad W N (Cri) 115 : 1950 Raj L W 389 : 1950 All L J 485 : 1950 S C J 418 : (1950) 2 Mad L J 390 : 63 Mad L W 929 : 51**

Cri L J 1514 : 1950 S C R 594 : A I R 1950 S C 124 (128) (Pt D) (Pr 11).

● —**Art. 19 (1) (a) and (2)— Freedom of speech— S. 124-A, Penal Code—Validity — Restriction not in interest of public order—S. 124-A is void.**

Even the mildest form of disaffection could be caught by S. 124-A of the Penal Code; the restrictions which that section imposes are far too wide and cannot be justified as being solely in the interest of public order within the meaning of Art. 19 (2) of the Constitution Section 124-A, Penal Code, is ultra vires of Art. 19 (1) of the Constitution, both because it is not in the interests of public order as well as because the restrictions imposed thereby are not reasonable restrictions. This section is therefore, not saved by the reservations contained in Art. 19 (2) of the Constitution. Hence it is void : AIR 1950 S C 124; A I R 1950 S C 129 and AIR 1951 Punj 27, Rel. on; AIR 1957 S C 620, Disting.; AIR 1954 Pat 254, Diss. from. Ram Nandan v. State, ILR (1958) 2 All 84 : 1959 All Cr R 1 : 1959 Cr L J 128 : 1958 All W R (H C) 796: 1958 All L J 793 : AIR 1959 All 101 (111, 114, 129) (Pt A) (Prs 28, 43, 94, 95) (FB).

[Reversed in AIR 1962 S C 955.]

● —**Art. 19 (2)—Penal Code (1860), S. 124-A—Validity—Restriction imposed on freedom of expression not in interest of public order.**

If any form of bad feeling to the Government is expressed then S. 124-A, Penal Code, would be attracted. No publicity is required and even an intimate conversation or a conversation with a person who is not at all likely to disturb public order, is punishable. A tendency to disorder cannot be said to be inherent in 'disaffection'; there may be 'disaffection' which has a tendency to disorder and there may, at the same time, be 'disaffection' within the meaning of S. 124-A of the Penal Code which has not that tendency. Therefore, it is apparent that S. 124-A also penalises the making of speeches which are not against the interest of public order. Therefore, S. 124-A could not be said to be a reasonable restriction in the interest of public order The same holds good for the words 'hatred' and 'contempt' which are covered by the word disaffection'. AIR 1947 P C 82 and ILR 22 Bom 112 and ILR 20 All 55 (FB), Rel. on; AIR 1951 All 459 Diss. from. Ram Nandan v. State, **1959 All Cr R 1 : ILR (1958) 2 All 84 : 1958 All L J 793: 1958 All W R (HC) 796: 1959 Cr L J 128 : AIR 1959 All 101 (107, 108, 109, 113) (Pt B) (Prs 14, 17, 40) (FB).**

[Reversed in AIR 1962 S C 955.]

● —**Arts. 19 (2) and 12—'State' —Meaning of 'Government" —Security of State—Offence under S. 124-A, Penal Code.**

Article 12 provides that unless the context otherwise requires, 'the State' includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India. The word 'Government' is not defined anywhere in the Constitution of India, what is stated in S. 3 (23) of the General Clauses Act is simply this that 'Government' includes both the Central Government and the State Government. It is the system of Government or the institution consisting of the President and the Governors acting with the advice of their Councils of Ministers and not the actual persons holding the Offices of the President and Governors and the Ministers advising them. AIR 1918 Mad 1210 (SB) and ILR 30 Bom 421 and AIR 1919 All 91 (FB) and (1949) 79 CLR 101, Rel on.

Exciting a feeling of hatred, contempt, or disaffection towards a person holding the office of the President or a Governor or a Minister is not exciting such a feeling towards the Government and is not punishable under S. 124-A. A threat of changing the Government after previously altering the Constitution in such a manner as to permit the new system of Government cannot amount to a threat to the security of the State. The security of the State cannot be threatened by anything done in exercise of the powers conferred by the Constitution itself. A speech advocating a change in the system of Government cannot be said to involve a threat to the security of the State so long as the change advocated is not unconstitutional Ram Nandan v. State, 1958 All W R (H C) 796 : 1959 All Cr R 1 : 1958 All L J 793: ILR (1958) 2 All 84 : 1959 Cri L J 128 : AIR 1959 All 101 (109, 110, 111, 116) (Pt E) (Prs 23, 24, 58) (FB).

[Reversed on another point in AIR 1962 S C 955.]

——**Art. 19 (1) (a)** -Section 108 Criminal P. C., if contravenes Art. 19 (1) (a)—Reference to S 124-A, Penal Code, if affects constitutionality of S. 108. See Ibid, Art. 13. **AIR 1956 All 270.**

——**Art. 19 (2)— Validity of S. 124-A, Penal Code—(Penal Code (1860), S. 124-A).**

In the former Cl. (2) of Art. 19 the State could make any law relating to any matter which undermines the security or tends to overthrow the State. Section 124-A, Penal Code, was not saved by Art. 19 (2), because the offence under the section consists in exciting or attempting to excite in others certain bad feelings towards the Government and as in some instances at least the unsuccessful attempt to excite, will not undermine or attempt to overthrow the State. After the amendment of the Article it will have to be seen whether S. 124-A, Penal Code, would be operative and binding in view of the amendment the words in which are wider in scope and it is for the State to show how the provisions of S. 124 A, Penal Code, are reasonable and otherwise satisfy the conditions which would make it valid under Art. 19 (2) of the Constitution.

Under the amended clause reasonable restriction may be imposed by law in the interest of the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of Court, defamation or incitement to an offence. The restriction of the right of freedom and expression of speech in so far as a speech merely tends to excite disaffection towards the Government would not be reasonable and to this extent. S. 124-A, Penal Code, must be held ultra vires and inoperative as being repugnant to Art. 19 (1) (a) and (2) of the Constitution. The entire S. 124-A however cannot be deemed to be ultra vires. The portion of the section which contains the restriction of freedom of speech or expression, on a person who brings or tends to bring into hatred or contempt the Government established by law in India, is for one of the purposes mentioned in the amended Cl. (2) of Art. 19 of the Constitution and it is reasonable and cannot therefore be held to be ultra vires. Case law referred to. **1955 Cr L J 184 : AIR 1955 Manipur 9 (14, 15) (Pt C) (Prs 12, 15, 16, 17, 18).**

——**Art. 19 (1) (a) — Ss. 124-A and 153-A, Penal Code Validity — [Penal Code (1860), Ss. 124-A, 153-A].**

The provisions of Ss. 124-A and 153-A of the Penal Code are not rendered void on the ground that they are inconsistent with the fundamental right of freedom of speech and expression guaranteed to all citizens of India under Art. 19 (1) (a) of the Constitution of India. In construing the provisions of Ss. 124-A and 153-A of the Penal Code, it should be the effort of the Court to give that interpretation of those provisions which would make them consistent with the Constitution of India unless the language of the provisions precludes such an interpretation. Sections 124 A and 153 A of the Penal Code impose reasonable restrictions in the interests of public order,

giving that expression a fair and reasonably wide meaning. Clause (2) of Art. 19, as it now stands, saves the provisions of Ss. 124-A and 153-A of the Indian Penal Code. Case law discussed. **1954 B L J R 99: 1954 Cr L J 758 : 32 Pat 1104 : AIR 1954 Pat 254 (257, 259, 260) (Pt B) (Prs 10, 12, 13) (DB).**

——Art. 19—Scope of — S. 124-A, Penal Code — Validity.

Section 124-A, Penal Code, has become void as contravening the right of freedom of speech and expression :guaranteed by Art. 19 (1). The section is not saved by Art. 19 (2) as the limitations placed by Art. 19 (2) upon interference with freedom of speech are real and substantial. The offence under S. 124-A consists in exciting or attempting to excite in others certain bad feelings towards the Government. In some instances at least the unsuccessful attempt to excite will not undermine or tend to overthrow the State. **52 Cri L J 449 : ILR (1951) Punj 193 : AIR 1951 Punj 27 (29, 30) (Pt C) (Prs 13, 15) (DB).**

25. Promoting enmity between classes.

—— Art. 19 (1) (a), (2)—Reasonable restriction on exercise of right of speech and expression — Restrictions in relation to incitement of an offence—Promotion of enmity between classes is in substance incitement to offence — Restriction imposed on freedom of speech and expression by S. 153-A is reasonable restriction. See Penal Code (1860), S. 153-A. **1964 All L J 545.**

——Art. 19 (1) (a) and (2)—Penal Code (1860), S. 153-A —Constitutional validity—Not ultra vires Art. 19 (1) (a). See Penal Code (1860), S. 153-A. **1963 (2) Cri L J 4 : AIR 1963 All 335 (DB).**

——Art. 19 (1) (a) — Penal Code (1860), S. 295-A — Constitution of India, Arts. 19 (1) (a), (2), 25 — Section 295-A is valid — Applicability and scope of S. 295-A explained—Intention of writer found clearly to outrage religious feelings of Muslims deliberately and maliciously—Offence under S. 295-A held made out. See Penal Code (1860), S. 295-A. **AIR 1964 Mad 258.**

——Art. 19 (1) (a)—Freedom of speech—Reasonable restrictions — S. 295-A, Penal Code, is a reasonable restriction which is in public interest.

Although freedom of speech is one of the basic rights guaranteed under the Constitution, the limits of freedom end where the religion and religious beliefs are insulted and outraged — Section 295-A, Penal Code, is a reasonable restriction which is in public interest. **1962 (2) Cri L J 146 : 1962 Mad L J (Cr) 465 : (1962) 2 Mad L J 210 : 1962 Mad W N 74.**

——Art. 19 (2) —Validity of S. 153-A, Penal Code— (Penal Code (1860), s. 153-A).

A reasonable restriction has been imposed in S. 153-A, Penal Code, for whosoever, promotes or attempts to promote the feelings of enmity or hatred between different classes of citizens of India to the extent of endangering public order cannot be protected by Cl. (2) of Art. 19 and so the section can be deemed not to be wholly ultra vires in view of the amended Cl. (2) of Art. 19 of the Constitution. **1955 Cri L J 184 : AIR 1955 Manipur 9 (15) (Pt D) (Pr 20).**

——Art. 19—Scope of—S. 153-A, Penal Code—Validity.

The gist of the offence under S. 153-A is the promotion or attempt to promote feelings of enmity or hatred between different classes of citizens of India. Though many acts falling under S. 153-A will be acts undermining or tending to overthrow the State, there can equally be many acts made punishable by S. 153-A which will not in any way undermine the security of or tend to overthrow the State. Section 153-A has become void as providing an unwarranted restriction on the freedom of speech and expression. **52 Cri L J 449 : 53 Pun L R 22 : I L R (1951) Punj 193 : A I R 1951 Punj 27 (30) (Pt D) (Pr 16) (DB).**

26. Decency or morality.

——Art. 19 (1) (a) and (2)—Section 292, Penal Code is not invalid in view of Art. 19 (2) of Constitution. See Penal Code (1860), S. 292. **AIR 1965 S C 881.**

——Art. 19 (1) (a) and (5)—Test of obscenity in a book — It must square with freedom of speech and expression guaranteed by Constitution — Test laid down. See Penal Code (1860), S. 292. **A I R 1965 S C 881.**

——Art. 19 — S. 292-A (Madras) — Penal Code does not offend Article.

No citizen is entitled to publish grossly indecent and scurrilous publications. Hence the restriction imposed by S. 292-A, Penal Code, against publication of such matter is a reasonable one which cannot be questioned. **1964 Mad L J 604 : (1964) 2 Mad L J 440 : 1965 (2) Cri L J 285 (286) (Pt B) (Pr 4).**

——Art. 19 (1) (a) and (g), (2) and (6)—Provisions of Press (Objectionable Matter) Act — Provisions are in interests of decency and morality—Provisions are reasonable restriction in interests of general public—(Press (Objectionable Matter) Act (1951), S. 1). **68 Mad L W 426 : (1955) 2 Mad L J 106 : 1955 Mad W N 469 : I L R (1956) Mad 161 : A I R 1955 Mad 498 (501) (Pt E) (Pr 9) (DB).**

——Art. 19 (1) (a) (g) — Validity of S. 49-A of the Madras City Police Act — Restriction on ground of morality—Restriction on profession—See Madras City Police Act, (3 of 1888) (As Amended by Madras Act (7 of 1949), S. 49-A. **AIR 1954 Mad 901.**

27. Contempt of Court.

——Art. 19 (3)—Contempt of Court and Legislature —Power to punish for contempt to be exercised cautiously. See Ibid, Art. 129. **AIR 1965 S C 745.**

——Art. 19 (2)—Scope of law of contempt—Nature of proceedings—See Contempt of Courts Act (1952), S. 3. **AIR 1957 All 37.**

——Art. 19 (2) (as amended in 1951) — Reasonable restrictions.

The language of the Constitution after the amendment of Art. 19 requires the High Court to see whether the restrictions are "reasonable." The law of contempt as laid down by British and Indian Courts imposes nothing but reasonable restrictions on the exercise of the right of freedom of speech and expression and, therefore, the previous law continues in force even after the amendment of Art. 19. American Case-law Ref. **1953 All W R (HC) 170 : 1953 Cri L J 733 : 1953 All L J 376 : I L R (1953) 1 All 796 : AIR 1953 All 342 (344, 345) (Pt B) (Prs 10, 16) (DB).**

——Art. 19 (1) (a)—Contempt of Court.

The right to freedom of speech and expression does not embrace the freedom to commit contempt of Court. **1959 Cri L J 567 : 60 Bom L R 873 : AIR 1959 Bom 182 (189) (Pt B) (Pr 24) (DB).**

——Art. 19 (1) (a)—Contempt proceedings—Defences in — Defence of 'freedom of press' — Scope. See Contempt of Courts Act (1952), S. 1. **1965 M P L J 844 : 1966 Cri L J 214.**

——Arts. 19 (2) and 215—Contempt of Court—Existing law relating to, if satisfies test of reasonableness.

Quaere : Whether the words "in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause" in Art. 19 (2) do not relate to any existing law, or do not prevent the State from making any law in relation to contempt of court, defamation or incitement to an offence?

Even assuming that the Constitution makes the existing law relating to contempt of court, subject to reasonable restrictions of the exercise of the right of freedom of speech the whole of law of contempt of Court, as it stood on the date of the coming into force of the

Constitution, answers the test of reasonableness. (1941) 314 U S 252, Discussed and minority view of Frankfurter, J., approved. A I R 1952 S C 196, Applied; AIR 1953 All 342, Foll.

The power to punish for contempt of court is inherent in a Court of Record and this has been recognized from the earliest times in England. The High Courts in India were created Courts of Record by several Letters Patents. By the Government of India Act, 1935, as well as by Art. 215 of the Constitution, the Supreme Court of India and the High Courts are the Courts of Record and it is essential for the administration of justice and protection of individuals that the Courts should be able to punish summarily acts of contempt, because in the words of Blackstone "this power is an inseparable attendant upon every superior Tribunal." A I R 1953 Orissa 249, Rel. on. 1955 Cr L J 547 : I L R (1955) Cut 204 : AIR 1955 Orissa 36 (39, 41) (Pt C) (Prs 7, 11, 12) (DB).

——**Art. 19 (2)—Reasonable restriction on freedom of speech—Publication in respect of proceedings which writer knows to be imminent — Power of Court to punish for contempt if reasonable restriction.**

The right of the Court to punish for contempt when a publication calculated to obstruct or interfere with due course of justice, is made in respect of a proceeding which the writer knows to be imminent, is a reasonable restriction upon the right of freedom of speech. If we have the interest of fair administration of justice in view, such a limitation on the right of freedom of speech or freedom of the press cannot but be held to be reasonable. If immediately after an occurrence takes place and before the police complete the investigation and submit the charge-sheet, publications are made in newspapers concerning the truth or falsity of one version or the other, such publication is bound to react on the minds of the witnesses and jurors. If such publications emanate from persons exercising high influence in public life, they may, in certain circumstances, also overawe the Magistracy. Therefore, the publications by a person with the knowledge that a proceeding is imminent, regarding the truth or falsity of rival versions in respect of any occurrence, have the clear and substantially reasonable tendency to interfere with the fair course of justice and as such should be held to constitute contempt 1955 Cr L J 547 : I L R (1955) Cut 204 : A I R 1955 Orissa 36 (41) (Pt D) (Pr 10)(DB).

——**Art. 19 (1) (a) — Action for defamation by politician—Articles in newspapers during its pendency — Considerations involved.** See Contempt of Courts Act (1952), S. 3. **AIR 1954 Orissa 149 (DB).**

——**Arts. 19 (1) (a), (2), 215 — Power to deal with contempt of Court.**

Art. 19 of the Constitution does not curtail the right of the High Court to deal with contempt of Courts. ILR (1953) Cut 283: 1953 Cri L J 1491 : AIR 1953 Orissa 249 (252) (Pt A) (Pr 12) (DB).

● ——**Arts. 19 (2) and 13 — Contempt of Courts Act, 1952—Validity.**

In view of Art. 19 (2), the law of contempt as embodied in the Contempt of Courts Act, 1952, which has taken the place of the law of contempt embodied in the Contempt of Courts Act, 1926, according to which punishment is limited, is not hit by Art. 19 (1) (a). There is no inconsistency of any kind between the Contempt of Courts Act and Art. 13, inasmuch as Art. 19 (2) forms part of Part III of the Constitution itself. Basanta Chandra Ghosh In the matter of, ILR 39 Pat 415 : 1960 Cr L J 1254 : 1960 B L J R 622 : AIR 1960 Pat 430 (440) (Pt E) (Pr 9) (FB).

——**Art. 19 (2) — Contempt of Courts Act—Validity.** See Contempt of Courts Act (1952), Preamble. **AIR 1954 Pat 203 (DB).**

——**Arts. 19 (2), 215—Contempt of Courts Act (1952), Ss. 3, 4—Pending case — Publication in respect of — When amounts to contempt — Case about to come to trial — Publication in newspaper in respect of such case—Rights of newspaper — Freedom of press—Extent.** See Contempt of Courts Act (1952), S. 3. **AIR 1958 Punj 273.**

28. Defamation.

——**Art. 19 (1) (a) and (2) — Right under Art. 19 (1) (a) is not absolute—S. 499, Penal Code, does not contravene Art. 19. AIR 1961 Andh Pra 190 (199) (Pt D) (Pr 11) (DB).**

——**Art. 19 (1) (a) — Applicability — Defamation — Special privilege does not attach to publication of a news item by a newspaper.** See Tort—Defamation. **AIR 1957 Nag 19 (Bom. at Nagpur).**

——**Art. 19 (2)—Penal Code (1860), Ss. 499, 500—Validity after commencement of Constitution.**

Under Art. 19 (2) as it stood before its amendment in 1951, the existing law as to defamation prevailed and Ss. 499 and 500 I. P. C., were part of the existing law on the date of the commencement of the Constitution. 55 Cal W N 745 : 52 Cri L J 1422 : AIR 1951 Cal 176 (178) (Pt C) (Pr 24) (DB).

——**Art. 19 (1) (a)—Defamation—Freedom of press—Extent of.** See Penal Code (1860), S. 499. **1962 (2) Cr L J 617 : AIR 1962 Orissa 197.**

[Reversed on another point in AIR 1963 S C 1198.]

——**Art. 19 (2) — Freedom of speech—Limitation on —Freedom of press is not higher than that of citizen — Use of this freedom so as to constitute infraction of law relating to defamation is not allowed.**

The freedom of the press is not higher than the freedom of an ordinary citizen and is subject to the same limitations as are imposed by Art. 19 (2). The limitations, inter alia are to the effect that the freedom of speech and expression is not to be exercised in such a way as to constitute an infraction of the law relating to defamation. Just as every individual possesses the freedom of speech and expression, every person also possesses a right to his reputation which is regarded as property. Hence, nobody can so use his freedom of speech or expression as to injure another's reputation or to indulge in what may be called character assassination. **64 Punj L R 1074 : 1963 (1) Cr L J 609 : AIR 1963 Punj 201 (205) (Pt D) (Pr 14).**

29. Incitement to offence.

——**Arts. 19 (1) (a), 22 — Freedom of expression — Reasonable restriction — Preventive detention for inciting violence — Legality.**

Advocacy of violence or incitement to use violence or resort to other illegitimate courses would be considered good grounds for inferring that the public order would not be maintained. Similarly the expression of views which would normally tend to disturb public order, peace and tranquillity would also be considered good grounds for that purpose. What has to be seen in all such cases is the effect which the expression of such views, judged from ordinary standards, would have on the people for whose consumption those views are being expressed. The freedom of speech and expression guaranteed by the Constitution is subject to the restrictions which have been validly placed upon it by the Preventive Detention Act in the interest of public order, peace and tranquillity. It would thus be a question of fact in each case whether the views expressed are of one kind or the other. The test in all such cases would be whether there is any 'real' and 'genuine,' or as it has been sometimes described 'proximate' and 'rational' connection between the acts complained of and the

apprehension of the disturbance of public peace, order and tranquillity likely to result therefrom. **ILR (1957) 2 All 42 : 1957 Cr L J 1361 : AIR 1957 All 782 (791, 792) (Pt C) (Pr 14) (DB).**

——Art. 19 (2) — 'Incitement to offence' and 'incitement to break law.'

Article 19 (2) does not in so many words save a law in relation to incitement to break a law. 'Incitement to break a law' is not same as 'Incitement to an offence,' because every breach of law does not amount to an offence.

Our Constitution safeguards to every citizen of India the freedom to preach non-violent disobedience to civil laws, not being laws mentioned in Cl. (2) of Art. 19. If the contention that an incitement to breach of every kind of laws is likely to lead to a breach of public order were true, it would hardly have been necessary for the fathers of the Constitution to single out in Cl. (2) of Art. 19, laws relating to seven matters only including 'incitement of offences.' Indeed the reference to 'incitement to an offence' clearly shows that an incitement to a breach of every civil law is not necessarily contemplated in Cl. (2). **1955 Cr L J 623 : ILR (1955) 1 All 355 : AIR 1955 All 193 (204, 205, 220) (Pt H) (Prs 14, 79, 80) (DB).**

——Art. 19 (2) — Police (Incitement to Disaffection) Act (1922), S. 3 — Police Officer withholding his services or committing breach of discipline is punishable under S. 145 of the Bombay Police Act, 1951 — To induce Police Officer to do so would amount to incitement to an offence — Hence restriction imposed by S. 3 of the Police (Incitement to Disaffection) Act is covered by Art. 19 (2) and is valid. 62 Bom L R 206 : 1960 Nag L J 244 : ILR (1960) Bom 305 : 1960 Cr L J 1192 : AIR 1960 Bom 399 (404) (Pt C) (Pr 20) (DB).

——Art. 19 (1) (2) — Penal Code (1860), S. 505 (c) — Incitement to commit offence — Grievances against local authorities expressed through publication of pamphlet — Proceeding started under S. 505 quashed in light of freedom of expression guaranteed under Art. 19 (1) of Constitution. See Penal Code (1860), S. 505. AIR 1960 Orissa 65.

30. The film as a medium of expression.

——Art. 19 (1) (a) — Prohibition from or direction for exhibiting certain films — Cinematograph Act (1918), S. 8 — Notifications dated 20-3-1948, 15-9 1948.

It cannot be said that a licensee of a cinema theatre who exhibits films is exercising a right of freedom of speech and expression in exhibiting films which he desired to exhibit. He is not exhibiting them either as the expression of his thoughts and ideas or of those borrowed from some one else and adopted by him. He is doing nothing but carrying on a business. His right to freedom and expression is no more infringed by his being prohibited from exhibiting certain films or by being directed to exhibit certain films than in the case of a book-seller who is prohibited from selling certain books or is directed to sell certain other books. AIR 1951 Mad 70 (SB), Ref. **ILR (1953) Mad 636 : 64 Mad L W 1066 : 1951-2 Mad L J 517 : AIR 1952 Mad 120 (123) (Pt C) (Pr 13) (DB).**

[Reversed in AIR 1954 S C 747].

——Art. 19 (1) (g), (6) — Provision in licence for exhibition of films of educative and cultural value — Cinematograph Act (1918), S. 8 — Notifications dated 20-3-1948, 15-9-1948.

The provision for exhibition of films of educative and cultural value is in the interests of the general public. The advantage of visual methods of instruction combined with a certain amount of entertainment cannot be sufficiently emphasised in a country like India where the masses are practically illiterate. If at the most, the time taken for exhibiting the approved films does not exceed about 15 or 20 minutes, there is no unreasonable restriction on the exercise of the licensee's right to carry on his business. The fact that the licensee has to pay rent for the use of such films is immaterial. **ILR (1953) Mad 636 : 64 Mad L W 1066 : 1951-2 Mad L J 517 : AIR 1952 Mad 120 (124) (Pt D) (Prs 15, 16) (DB).**

[Reversed in AIR 1954 S C 747].

31. Loudspeakers, ban of.

——Art. 19 (1) (a) — Freedom of speech and expression — Extent of — Use of loudspeakers.

Use of mechanical instruments like loud-speakers and amplifiers is not covered by the guarantee of freedom of speech and expression. Therefore a bye-law of a municipality which requires permission of the Executive Officer for using a loud-speaker does not infringe Art. 19 (1) (a). **1958 All L J 56 : 1958 All W R (HC) 131 : 1958 All (Cri) R 113 : AIR 1958 All 360 (361) (Pt A) (Pr 7).**

——Art. 19 (1) (a) — Use of loud-speaker — Taking out of licence — Provision is reasonable restriction of right of freedom of speech, in interest of public order — Power is not arbitrary — Provision cannot be attacked on grounds of delegation. See Bombay Police Act (22 of 1951), S. 33 (1) (r) (iii). **(1963) 2 Cr L J 502: AIR 1963 Guj 259 (DB).**

32. Picketing, prohibition of.

——Art. 19 — Peaceful picketing in mill area — Restriction placed by S. 7 (1) of Criminal Law Amendment Act, 1932 — Section, whether void under Constitution of India, Art. 19 (1). See Criminal Law Amendment Act (1932), S. 7 (1). **AIR 1951 Bom 459 (DB).**

33. Right to make demonstrations.

● **——Arts. 19 (1) (a), (b), 309 — Central Civil Services (Conduct) Rules (1955), R. 4-A — Validity — Is invalid in so far as it prohibits any form of demonstration but cannot be struck down in so far as it prohibits strikes.** O. K. Ghosh v. E. K. Joseph, **(1962) 2 Lab L J 615 : (1962) 5 Fac L R 511 : 1963 Supp (1) S C R 789: (1963-64) 24 F J R 115: (1963) 1 S C W R 168 : 1964 Mah L J 509 : 1964 M P L J 599 : (1963) 2 S C A 117 : 66 Bom L R 93 : AIR 1963 S C 812 (814, 816) (Pt A) (Prs 8, 13).**

● **—— Art. 19 (3) — Bihar Government Servants' Conduct Rules (1956), R. 4A — Constitutional validity — Rule in so far as it prohibits any form of demonstration violates Art. 19 (1) (a) and (b) — Prohibition against resorting to strike is valid — Provisions of rule not being separable, entire rule is invalid — AIR 1959 Pat 187, Reversed.** See Bihar Government Servants' Conduct Rules (1956), R. 4-A. **AIR 1962 S C 1166.**

● **——Art. 19 (1) (a) and (b) — Right to make demonstrations if covered by fundamental right under Cls. (a) and (b) — Demonstration — Meaning of.**

Broadly stated a demonstration is a visible manifestation of the feelings or sentiments of an individual or a group. It is a communication of one's ideas to others to whom it is intended. It is in effect therefore a form of speech. There are forms of demonstration which would fall within the freedoms guaranteed by Art. 19 (1) (a) and 19 (1) (b) A violent and disorderly demonstration would not obviously be within Art. 19 (1) (a) or (b). But peaceful and orderly demonstration would fall within the freedoms guaranteed under these clauses. Kameshwar Prasad v. State of Bihar, **(1962) 2 S C A 240 : (1962) 1 Lab L J 294 : (1961-62) 22 F J R 50 : 1962 B L J R 499 : I L R 42 Pat 259 : (1962) Sup 3 S C R 369 : AIR 1962 S C 1166 (1170, 1171) (Pt C) (Pr 13).**

——**Art. 19 (1) (c)** — Central Civil Services (Conduct) Rules (1955), R. 4 (A) — Constitutional validity — Prohibition against resorting to strike and participating in any demonstration — Whether violative of Art. 19 (1) (a), (b), (c) or (g) of the Constitution. See Central Civil Services (Conduct) Rules (1955), R. 4 (A). **AIR 1962 Bom 53.**

——**Art. 19 (1) (a)** — **Freedom of speech** — **Government Servants' Conduct Rules** — **Rule prohibiting demonstrations and strikes** — **Validity of (Bihar Government Servants' Conduct Rules (1956), R. 4-A).**

Rule 4-A of the rules which prohibits the Government Servants from participating in any demonstrations or resorting to any strike in connection with any matter pertaining to their conditions of service does not violate any of the guarantees under Art. 19.

The freedom guaranteed under Arts. 19 (1) (a) and 19 (1) (c) may include the right to strike and the right to demonstrate in a lawful manner with respect to the employees in an industrial undertaking but so far as Government servants are concerned the right guaranteed by those provisions does not include the right to strike and the right to demonstrate.

Rule 4-A of the Bihar Government Servants' Conduct Rules is reasonable and in the interest of the public order within the meaning of Arts. 19 (2) and 19 (4). The promulgation of R. 4-A has not resulted in a total prohibition of freedom of speech. **(1959) 1 Lab L J 401 : 1958 B L J R 600 : I L R 37 Pat 1199 : AIR 1959 Pat 187 (189, 190, 191) (Pt A) (Prs 5, 6, 7).**

[**Partly Reversed in** AIR 1962 S C 1166.]

——**Art. 19 (1) (a) and (2)** — **Right to make "demonstration"** — **Restrictions on** — **Civil Service Rule banning every type of demonstration is ultra vires and unconstitutional** — **Central Civil Services (Conduct) Rules, R. 4-A** — **Rule invalid.**

Rule 4-A of the Central Civil Services (Conduct) Rules, in so far as it lays a bar on every type of demonstration, be the same however innocent and however incapable of causing a breach of public tranquillity, and not confining itself to those forms of demonstrations which might lead to that result, is ultra vires and unconstitutional. AIR 1962 S C 1166, Foll. **1963 Cur L J 449 : 65 Punj L R 997 : (1965) 2 Lab L J 696: AIR 1964 Punj 143 (144, 145) (Pr 6).**

——**Art. 19 (1) (a) and (b)** — Central Civil Services (Conduct) Rules, 1955, R. 4-A — Validity — Rule violates Art. 19 (1) (a) and (b) — Petitioner held could not be punished for participating in any demonstration. See Ibid, Art. 309. **AIR 1963 Punj 390.**

34. Restrictions on freedom of speech and expression — Miscellaneous examples.

● ——**Art. 19 (6)** — Newspaper (Price and Page) Act (1959) and Daily Newspaper (Price and Page) Order (1960) — Validity — Provisions offend Art. 19 (1) (a) of the Constitution and are unconstitutional. See Ibid, Art. 19 (1) (a). **(1962) 2 S C J 400: AIR 1962 S C 305.**

● **Art. 19 (2)** — Bombay Civil Services (Conduct, Discipline and Appeal) Rules (1932), R. 26 (a) — Speech by Educational Inspector with general permission of Government that in Karnatak Kannada language should precede and Hindi should follow — Held speech did not attract R. 26 (a) and also fell outside Art. 19 (2) of the Constitution — See Bombay Civil Services (Conduct, Discipline and Appeal) Rules (1932), R. 26 (a). **(1962) 1 Lab L J 134 (S C).**

● ——**Art. 19 (1) (a)** — Sections 123 (5) and 124 (5), Representation of the People Act, are not ultra vires Art. 19 (1) (a). See Representation of the People Act (1951), S. 123 (5). **AIR 1954 S C 686.**

——**Art. 19 (1) (a) and (2)** — **Restrictions on fundamental rights** — **Tests of reasonableness** — **Both substantive and procedural aspects to be considered** — **Dramatic Performances Act (1876), Ss. 3, 10** — **Validity** — **Substantive provisions not invalid** — **Distinction between written word and spoken word.**

A reading of Cl. (2) of Art. 19 makes it clear that the restrictions imposed must be reasonable. This reasonableness is necessary not only in the substantive provisions of the impugned law, but also in the procedural provisions. Restrictions imposed by a law may be reasonable in their substantive provisions but the operation of the law may amount to an unreasonable restriction because no adequate provision has been made in the procedural part of the law to safeguard the rights guaranteed under the Constitution. AIR 1950 S C 211, Rel. on.

The Dramatic Performances Act, 1876, is ultra vires of the Constitution of India, because its procedural part imposes such restrictions on the right of freedom of speech and expression which cannot be covered by the saving clause in Art. 19 (2). AIR 1951 Cal 322 and AIR 1952 S C 196 and AIR 1954 All 562 and AIR 1953 Raj 162, Rel. on.

The written word can be confiscated before it has done much damage, but the spoken word achieves its objects as soon as it is uttered. The spoken word is also far inflammable and can engender heat and excite passions in a quicker manner and become a greater danger to the security of the community. These and other differences make it necessary that in the interests of public order and security, the State should have some power to deal in an emergent manner with the spoken word. The Dramatic Performances Act, 1876, is such a preventive measure. The substantive provisions of the Dramatic Performances Act do not infringe Art. 19, Constitution of India, as the restrictions imposed are reasonable within the meaning of sub-cl. 2) of the said Article. Where the restriction imposed by means of a prohibitory order passed as a measure of emergency is amenable to objective determination by a Court of law or some other body, but no such provision is made in the procedural part of the impugned law, it cannot be held to be a reasonable restriction. The final order cannot be left to the mere subjective determination of an executive officer whose decision is not open to review or reconsideration. **1956 A L J 939 : I L R (1957) 1 All 399 : 1956 Cr L J 1143 : AIR 1956 All 571 (573, 574, 575) (Pt B) (Prs 11, 12, 13, 15, 16, 19, 23) (DB).**

——**Arts. 19 (1) (a), 19 (2)** — Rule 20 (1) of Government Servants Conduct Rules 1926, constitutes unreasonable restriction on fundamental rights under Art. 19 (1) (a) and is not saved by Art. 19 (2) — Reasonable restriction under Art. 19 (2) should not be vague. See Government Servants' Conduct Rules (1926), R. 20 (1). **AIR 1955 Cal 76.**

——**Art. 19 (1) (a)** — Public Safety — M. P. Public Security Act (25 of 1959), S. 3 (1) (a) — Imposing of restrictions without notice of hearing — Unreasonability of procedure does not affect validity of S. 3 (1). See Public Safety — M. P. Public Security Act (25 of 1959), S. 3 (1) (a). **AIR 1964 Madh Pra 175 (DB).**

——**Art. 19 (5)** — M. P. Public Security Act (25 of 1959), S. 3 (1) (a) — Restriction under, is reasonable both from substantive and procedural aspects. See Public Safety — M. P. Public Security Act (25 of 1959), S. 3 (1) (a). **AIR 1964 Madh Pra 175 (DB).**

——**Art. 19 (1) (a)** — Validity of S. 3 (2), M. P. Official Languages Act (1950) — Does not offend Art. 19 (1) (a). See M. P. Official Languages Act (1950), S. 3 (2). **AIR 1959 Madh Pra 208 (DB).**

——**Arts. 19 and 14** — Madras City Police Act (3 of 1888) as amended by Madras Act (7 of 1949), S. 49A — Validity of — Differentiation, distinction and discrimination — Classification is in derogation of right

secured under Art. 19 (1) (a)—See Madras City Police Act (3 of 1888) as amended by Madras Act (7 of 1949), S. 49A. **AIR 1954 Mad 901.**

——**Arts. 19 (1) (a), 19 (2)** — Bihar Essential Services Maintenance Act (1948), Ss. 5, 3 — Validity — Does not go beyond reasonable restrictions in Art. 19 (2) of the Constitution (Words and Phrases — 'Causing disaffection') —See Bihar Essential Services Maintenance Act (1 of 1948), S. 5. **AIR 1956 Pat 188.**

——**Art. 19 (1) (a) and (2)** — Dramatic Performances Act (1876), S. 3 (a) and (c) — Provisions are unreasonable restriction on fundamental right of freedom of speech. See Dramatic Performaces Act (1876), S. 3 (a). **1961 (1) Cr L J 851 : AIR 1961 Punj 272 (DB).**

——**Art. 19 (1)** — Order under S. 7 — Dramatic Performances Act — Violates Art. 19 (1). See Dramatic Performances Act (1876), S. 3 (b). **AIR 1958 Punj 243.**

——**Art. 19 (1) (a)** — Criminal P. C. (1898), S. 144— Validity — Section does not contravene Art. 19 (1) (a) of the Constitution. See Criminal P. C. (1898), S. 144. **ILR (1957) Punj 386.**

——**Art. 19 (2)** — Public Safety — Trav-Co. Public Safety Measures Act (5 of 1950), S. 31—Restriction under— Validity — The restriction imposed by the section is of the nature permitted by Art. 19 (2) of the Constitution and is not ultra vires of the Constitution. See Public Safety — T. C. Public Safety Measures Act (5 of 1950), S. 31. **AIR 1953 Trav-Co 540.**

35. Clause (1) (b)—(General).

——**Art. 19 (1) (b)**— Scope — U. P. Opium Act, 1934, S. 14 — Amounts to reasonable restriction in the interest of public on exercise of right of assembly and is not ultra vires — See U. P. Opium Smoking Act (3 of 1934), S. 14. **1957 Cr L J 1199 : AIR 1957 All 753.**

——**Art. 19 (1) (b)** — Government Servants' Conduct Rules, 1950, R. 63—Validity —See Ibid, Art. 19 (1) (a). **AIR 1957 Ker 7.**

——**Art. 19 (1) (b) and (d) — M. B. Maintenance of Public Order Act (7 of 1949), S. 11—Validity—Contravention of fundamental rights under Art 19.**

Section 11 of the Madhya Bharat Maintenance of Public Order Act (7 of 1949), as it stood at the material time (viz., 22-10-1952), was contrary to the fundamental rights guaranteed under Art. 19 (1) (b) and (d) of the Constitution as it imposed unreasonable restrictions upon those rights by reason of the wide amplitude of possible delegation by Government of its powers under S. 7 (1) of that Act. The contravention of an order made under S. 7 in pursuance of such delegation cannot therefore be illegal. AIR 1951 Cal 3; (1953) M B L J 607, Foll.; AIR 1952 S C 196, Disting. **1957 M P C 220 : 1957 Jab L J 74: ILR (1957) Madh Pra 179 : AIR 1957 Madh Pra 54 (58) (Pt C) (Pr 23) (DB).**

——**Arts. 19 (1) (a) and (b) and 14 — Madras City Police Act (3 of 1888), S. 41—Validity.**

Section 41 of the Madras City Police Act cannot be held to be ultra vires and cannot be struck down as going against the provisions of Art. 19 (1) (a) and (b) of the Constitution.

The restrictions imposed under S. 41 are not unreasonable as conferring unlimited and absolute powers on a Police Officer.

Section 41 has laid down certain conditions to be observed by the Commissioner before passing an order under that section prohibiting public meetings and one of conditions is that he should consider such prohibition to be necessary for the preservation of the public peace or public safety.

Though there is no express provision in S. 41 for approaching the government against commissioner's orders pass under that section everybody knows that the Government under whom the Commissioner is directly working, can be approached for rescinding or modifying such orders, though what orders the Government would pass would depend on the merits of the case.

Although no time limit is fixed for an order under S. 41 in the section itself, as a matter of convention, the time limit of 14 days has been observed in the orders under S. 41 and any order under S. 41 extending over 15 days at a time will be held invalid by the Court (Desirability of incorporating provison for time limit in S. 41 stressed).

The powers under S. 41 are no doubt wider than those given under S. 30 (2) of the Police Act or under S. 144, Criminal P. C., but that is because the presidency police administration has been considered to be different from the district police administration and so there is a reasonable classification and no discrimination.

The section cannot be attacked on the ground that orders under it differ from those under S. 144, Criminal P. C. in not being justiciable or subject to judicial scrutiny. The orders under S. 41 cannot in their very nature be justiciable or subject to judicial scrutiny. The Court is wholly unsuited to guage the seriousness of the situation, for it cannot be in possession of materials which are available only to the Executive Government. AIR 1957 S C 896, Rel. on.

Section 41 does not allow a total prohibition of the right to the public meeting. It gives the Commissioner a wide discretion according to the exigencies of the situation to allow some public meetings as for marriages and funerals without licence, some others with a licence, and to prohibit some others either in the particular areas or for particular days or occasions.

There is no presumption that High Police Officer will act unscrupulously and in order to please the political bosses. Where the commissioner's orders are vitiated by the mala fides, they could always be challenged on that ground either by writ to the High Court, before the prosecution or in the criminal case after the prosecution is launched, and the mere possibility that a power may be abused is no reason for denying the power itself, or to strike down the section of the Act conferring that power. **71 Mad L W 655 : (1958) 2 Mad L J 363 : 1958 Mad L J (Cri) 302 : ILR (1958) Mad 865 : 1959 Cri L J 204 : 1958 Mad W N 809 : AIR 1959 Mad 63 (65, 66, 67) (Pt A) (Prs 5, 7, 8, 9, 10) (DB).**

——**Art 19 (1) (b)** —Mysore Police Act not ultra vires Arts. 19 (1) (b) and (d). See Mysore Police Act (5 of 1908), S. 45. **1960 Cri L J 379 : AIR 1960 Mys 57 (DB).**

——**Art. 19 (1) (a), (b)**—Freedom of speech and expression and freedom to assemble peacefully — It would be no answer to a proper charge that the accused behaved riotously at a private or even a public meeting violently by insisting on the same being held in a particular language. **AIR 1954 Mys 12 (14) (Pt D) (Pr 9).**

——**Art. 19 (1) (b)** — Public Safety — Bihar Maintenance of Public Order Act (1950), S. 9 (2)—Act originating from Ordinance promulgated during emergency —Act whether permanent measure imposing restrictions — Art. 19 (1) (b), (d) of Constitution, if violated — (Constitution of India, Art. 19 (1) (b) and (d))— See Public Safety — Bihar Maintenance of Public Order Act (3 of 1950), S. 9 (2). **AIR 1959 Pat 425.**

——**Art. 19 (3)**—Representation of the People Act (43 of 1951), S. 126—Validity—Restrictions imposed on holding of public meetings how far reasonable. See

Representation of the People Act (1951), S. 126. AIR 1957 Pat 252.

——Art. 19 (1) (b)—Regulation of Public meetings—Validity of law.

The law relating to regulation of public meetings is a law passed in the interests of public order. **ILR 34 Pat 855 : 1957 Cri L J 648 : AIR 1957 Pat 252 (254) (Pt B) (Pr 5) (DB).**

——Art. 19—Scope —Instructions prohibiting railway servants to hold meetings in places of work — No contravention of Art. 19. AIR 1962 Punj 482, Reversed.

The instructions issued by the railway authorities absolutely forbidding the holding of meetings in actual places of work such as workshops, stores, depots and office compounds without their permission do not contravene Art. 19. Any employer of labour can prohibit Union meetings on his own premises, and this applies just as much to Government in its capacity as an employer as to any private individual. To prohibit meetings or demonstrations in factory premises is not an infringement of any fundamental right since nobody has a fundamental right to hold meetings of any kind on private property. AIR 1962 Punj 482, Reversed, **(1963) 7 Fac L R 58 : 65 Punj L R 571 : ILR (1963) 1 Punj 862 : (1964) 1 Lab L J 321 : AIR 1963 Punj 336 (337, 338) (Pt B) (Prs 13, 14) (DB).**

——Art. 19 (1) (b), (2) and (3)—Right to hold meetings—Restrictions on, must be reasonable—Railway authorities prohibiting meetings of workers on premises controlled by Railway without permission — Order held contravened Art. 19.

The right to hold meetings cannot be restricted absolutely without any indication how the public order would be threatened thereby. A restriction in order to be reasonable must have a reasonable relation to the object the Legislation has in view and must not go beyond it. Restrictions meant to be in the interest of public order which have no proximate relationship or nexus with it but can be only remotely or hypothetically connected with it, cannot, therefore, be reasonable within the meaning of Art. 19 (2). Civil Appeal No. 413 of 1959, dated 22-2-1962 (Punj) and AIR 1960 S C 633, Relied on.

The Railway Administration issued a circular letter warning all its staff that if any one of them was found organising or attending a meeting inside Railway premises or at places of work, he would render himself liable to severe disciplinary action as such action on his part would amount to misconduct arising out of violation of administrative instructions; that meeting could be held on open grounds away from the places of work with the permission of the Railway authorities if such open ground fell within Railway boundary :

Held, that the intent of the instructions was to prohibit all meetings without the prior sanction of the Administration and the vice of the instructions was that every kind of demonstration in a public meeting was forbidden. The restriction was not reasonable. The Railway authority might own or control the premises over which meetings had been prohibited without permission but that did not entitle it to curb or curtail the fundamental right accorded by the Constitution of India, unless the restriction came strictly within the ambit of Art. 19 (3). The instructions were, therefore unconstitutional and void. (1944) 323 U S 516 and (1945) 326 U S 501 and (1945) 326 U S 517, Relied on. **64 Punj L R 620 : (1962) 1 Lab L J 588 : AIR 1962 Punj 482 (484) (Pt B) (Prs 8, 9, 12).**

[**Reversed in AIR 1963 Punj 336**].

36. Right to take out procession along highway.

● **——Art. 19 (1) (a), (b), (2), (3) —** Order under S. 144, Cr. P. Code — Order only excepting funeral processions and religious processions from its operation—If anyone wanted to take out a procession for some other purpose which was lawful it was open to him under S. 144, sub-s. (4) to apply for an alteration of the order and obtain a special exemption — Mere omission of the District Magistrate to make the exemption clause of the order more comprehensive would not vitiate the order on the ground that it places unreasonable restrictions on certain fundamental rights of citizens. Babulal Parate v. State of Maharashtra, (1961) 1 S C J 524 : (1961) 1 An W R (SC) 154 : (1961) 1 M L J (SC) 154 : 1961 M L J (Cr) 297 : 1961 (2) Cr L J 16 : (1961) 2 S C A 497 : 1961 An L T 610 : (1961) 2 Ker L R 327 : 1961 S C D 597 : AIR 1961 S C 884 (891) (Pt I) (Pr 32).

● **——Arts. 19 (1) (a), (b), (2), (3) —** Order under S. 144, Criminal P. C. prohibiting shouting of "provocative slogans" — The expression "provocative slogans" has necessarily to be understood in the context in which it has been used in the order and, therefore, it cannot be regarded as vague—Order cannot be held to place unreasonable restrictions on the rights of free speech of citizens. Babulal Parate v. State of Maharashtra, **(1961) 1 S C J 524 : (1961) 1 Andh W R (S C) 154 : (1961) 1 M L J (S C) 154 : 1961 M L J (Cr) 297 : 1961 (2) Cri L J 16 : (1961) 2 S C A 497 : 1961 Andh L T 610 : (1961) 2 Ker L R 327 : 1961 S C D 597 : AIR 1961 S C 884 (891, 892) (Pt J) (Pr 33).**

——Art. 19—Penal Code (1860), Ss. 141 (fifthly), 142, 143, 148—Hindu Muslim factions — Agreement as to right to take procession with music in front of mosque on public highway—Effect.

The very fact that a particular path or a road is a public highway means that every member of the public has a right to use it. Such a right does not originate either in agreement or in custom. The right is subject only to similar rights of other members of the public to use the public highway and to the power of the State to regulate traffic and to prevent disturbances or breaches of public peace. Although the right to use public highways in this manner is not expressly described as a fundamental right in the Constitution, it can reasonably be stated to partake of the fundamental right to assemble throughout the territory of India guaranteed under Art. 19 of the Constitution.

An agreement reached between the Hindus and Muslims of a place whereby the Muslims agreed not to object to processions being taken out with music in front of a mosque on a highway on occasions of national festivals cannot have the effect of a decree of Court or an award of arbitrators defining and declaring the rights of the parties. 38 Mys L J 203 and AIR 1925 P C 38 and AIR 1944 P C 33, Rel. on.

Such an agreement will not give any right to the members of the Muslim Community to prevent the processionists to proceed along the mosque on the public highway with music. By such obstruction the persons would constitute themselves an unlawful assembly within the meaning of S. 141 (fifthly), of Penal Code. **1961 (1) Cri L J 291 : 1962 M L J (Cri) 55 : 38 Mys L J 1039 : ILR (1960) Mys 1238 : AIR 1961 Mys 57 (57) (Pt A) (Prs 21, 22) (DB).**

——Art. 19 (1) (b) — Right to take out procession accompanied with music on public highway — Representative suit for declaration of right is maintainable—Hindus have unrestricted right to take out such processions at all hours subject to restrictions, put by authorities to prevent breach of peace — Previous compromise, effect of. See Civil P. C. (1908), S. 9. **AIR 1964 Orissa 18.**

——Art. 19 (1) (b), (d) — Highway — Right to lead procession on — Nature and scope of — It is neither easementary nor customary but fundamental.

Any section of the public have got right to lead a religious procession with its appropriate observances along a highway, subject to particular limitations, viz., that they do not interfere with the other fundamental rights of the public; this right is subject also to the control by the appropriate authorities to regulate the traffic, and is not based upon an easementary right or a customary right. This is a fundamental right as the ordinary user by an individual of the public street. AIR 1925 P C 36 and AIR 1944 P C 33, Rel. on. **(1960) 3 O J D 22 : AIR 1961 Orissa 167 (168) (Pr 2).**

37. Clause (1) (c) - (General).

● **——Art. 19 (1) (c)**—Forward Contracts (Regulation) Act (1952), Chap. III, Ss. 5, 6 and 10—Recognition of associations — Provisions as to, do not violate Art. 19 (1) (c) and are valid. Raghubar Dayal Jai Parkash v. Union of India, **(1962) 2 S C J 445 : (1962) 3 S C R 547 : AIR 1962 S C 263 (270) (Pt A) (Pr 14).**

● **——Art. 19 (1) (c)**—Freedom to form association—Forward Contracts (Regulation) Act (1952), S. 6—Recognition of association — These do not affect freedom to form association. Raghubar Dayal Jai Parkash v. Union of India, **(1962) 2 S C J 445: (1962) 3 S C R 547 : AIR 1962 S C 263 (270) (Pt B) (Pr 12).**

● **——Art. 19 (1) (c)—Scope — Right not to form association.**

Assuming that the right to form an association implies a right not to form an association, it does not follow that the negative right must also be regarded as a fundamental right. The citizens of India have many rights which have not been given the sanctity of fundamental rights and there is nothing absurd or uncommon if the positive right alone is made a fundamental right. Tika Ramji v. State of Uttar Pradesh, **1956 S C A 979 : 1956 S C J 625 : 1956 All W R (HC) 657 : 1956 S C R 393 : AIR 1956 S C 676 (709) (Pt G) (Pr 48).**

● **——Art. 19 (1) (c) and (4)**—Criminal Law Amendment Act (1908), S. 15 (2) (b) (as amended by Madras Act 11 of 1950)—Validity—See Criminal Law Amendment Act (1908), S. 15 (2) (b) (as amended in Madras by Madras Act (11 of 1950)). **AIR 1952 S C 196.**

——Art. 19 (1) (c) — University Union Ordinance empowering realisation of fee compulsorily from students — Ordinance is not ultra vires — (Allahabad University Act (3 of 1921), S. 33). **AIR 1955 N U C (All) 2034.**

● **——Art. 19 (1)(c)—If contravened by S. 114 of the U. P Zamindari Abolition and Land Reforms Act (1951).**

Section 114 of the U. P. Act 1 of 1951 does not contravene the provisions of Art. 19 (1) (c) of the Constitution as the membership of the Gaon Sabha is voluntary and not compulsory. Suryapal Singh v. Government of Uttar Pradesh, **1951 A W R (H C) 317 : ILR (1952) 2 All 46 : 1951 All L J 365 : AIR 1951 All 674 (699) (Pt X) (Pr 132) (FB).**

— Arts. 19 (1) (a), 19 (1) (c), 19 (2)—Andhra Civil Services (Safeguarding of National Security) Rules (1954), R. 3 — Validity — Amounts to reasonable restriction. See Andhra Civil Services (Safeguarding of National Security) Rules (1954), R. 3. **AIR 1958 Andh Pra 288 (DB).**

——Art 19 (1) (c) and (4) — Scope — G. O. Ms. No, 418, Education and Public Health, dated 24th February, 1939, Rr. 3 and 4—Validity.

The right to form an association or union necessarily implies that a person is free to refuse to be a member of an association or union, if he so desires. AIR 1951 All 674 (FB), Rel. on.

Rules 3 and 4 in G. O. Ms. No. 418, Education and Public Health, dated the 24th February, 1939, in so far as they empower the authorities to make it obligatory on the part of a every teacher in an elementary school to become a member of the Association sponsored by the Government must be declared to be void as constituting an abridgment of the rights guaranteed under Art. 19 (1) (c). **AIR 1958 Andh Pra 78 (79) (Prs 6, 12).**

——Art. 19 (1) (c)—Criminal Law Amendment Act (1908), S. 15 — Provisions of, do not offend Art. 19 (1) (c) of Constitution. See Criminal Law Amendment Act (1908), S. 15. **AIR 1952 Assam 167 (DB).**

——Art. 19 (4) and 19 (1) (c) — Right to strike not included in right to form associations or unions — Essential Services Maintenance Ordinance (1960), Ss. 3 (1) and 7 — Restrictions imposed by Ordinance are within limits provided by Cl. (4). **63 Bom L R 774 : 1961 Nag L J 695 : (1961-62) 21 F J R 441 : (1963) 2 Lab L J 264 : AIR 1962 Bom 53 (65, 66, 67) (Pt D) (Prs 40, 49, 55) (DB).**

——Art 19 (1) (c) — Fight of Association — Jadavpur Univesity Act—If violates right and if invalid — (Jadavpur University Act (33 of 1955), S. 2 (c) and (4)).

Where the Jadavpur University Act was challenged by a life member of the National Council of Education on the ground that it violated the applicant's right of association, namely to form National Council of Education, under Art. 19 (1) (c) of the Constitution:

Held, that there was explicit and implicit recognition in the Jadavpur University Act, that the nucleus was the National Council of Education. There was, therefore, no infringement of the applicant's right to form association under Art 19 (1) (c) of the Constitution. **('59) 63 Cal W N 914 : ILR (1960) 2 Cal 311 : AIR 1960 Cal 120 (122) (Pt C) (Pr 10).**

——Art. 19 (1) (c) — Restriction on teachers of primary schools from getting mixed up with political institutions—If justified.

A citizen has freedom under Art. 19 of the Constitution to form associations or unions, to practise any occupation and to have freedom of speech and expression. A teacher in service in the primary school is not merely a citizen but he has also got to be under certain terms and discipline of employment. To prevent teachers from getting mixed up with political institutions is a reasonable restriction. To prevent them from entering into rivalries in respect of the Union Board, Panchayat and the District Board is a reasonable restriction. Teachers are all the better by being and remaining non-partisan and non-factious. Village libraries and village clubs have been centres of many activities other than library or purely social life. A provision that the Board's permission should be taken by the teachers of the primary school to engage in those activities is a reasonable restriction. **AIR 1958 Cal 401 (402) (Pr 2).**

——Arts. 19 (1) (c), 19 (4)—Grounds—Membership of Communist party which was declared unlawful under S. 16 of Criminal Law Amendment Act, 1908 which was declared as void — Declaration also void — Being members of communist party, one of grounds of detention — Detention — Validity See Public Safety — Preventive Detention Act (1950), S. 9. **AIR 1955 N U C (Cal) 1009.**

——Art. 19 (1) (c)—Defence of Hyderabad Regulation — Rules under—R. 66-A — Validity. See Defence of Hyderabad Regulation (1352-F), Rules under. **AIR 1954 Hyd 121 (DB).**

——Art. 19 (1) (c)—Resolution by General Body of Co-operative Society — Communication by Registrar that resolutions were ultra vires — Communication held departmental—Art. 19 (1) (c) could not be invoked as there was no infringement of the right of persons to form an association. 66 Mad L W 905 : (1953) 2 M L J 584 : AIR 1954 Mad 348 (349, 350) (Prs 4, 5).

● ——Art. 19—If contravened by the Criminal Law Amendment Act as amended by the Indian Criminal Law Amendment (Mad.) Act of 1950 – Provisions inconsistent with Art. 19 (1) (c). See Criminal Law Amendment Act (14 of 1908) as Amended by the Criminal Law Amendment (Mad.) Act (11 of 1950). AIR 1951 Mad 147 (FB).

● ——Art. 19 (1) (c)—"Form" — Meaning of.

The word "form" in Art. 19 (1) (c) refers not only to the initial commencement of the association but also to the continuation of the association as such. Row V G v. State of Madras, 52 Cri L J 515:(1951) 1 Mad L J 628 : AIR 1951 Mad 147 (179) (Pt E) (Pr 88) (FB).

——Art 19 (c) – Society against capitalism and private ownership and for establishment of socialist state—No use of force or violence – Does not amount to subverting Government by force and violence. See Penal Code (1860), S. 121. AIR 1955 Trav-Co 33 (DB).

——Art. 19 (4) — Section 23, Tra-Co. Public Safety Measures Act, 1950 and notification issued under same declaring Cochin Communist Party unlawful are ultra vires the Constitution. See Public Safety — Travancore-Cochin Public Safety Measures Act (5 of 1950), S. 23. AIR 1953 Trav Co 174 (DB).

● ——Art 19 (1) (c) & (4)—Public Safety — Cochin Criminal Law Amendment Act:(27 of 1124), S. 3 and notification under —Validity.

Section 3 of the impugned Act enacts a provision directly affecting one of the seven fundamental rights guaranteed by Art 19 (1) viz. that recognised by Art. 19 (1) (c) to form associations or unions. Legislation seeking to prevent activities of associations falling within the category of those mentioned in the impugned section is certainly legislation in the interests of public order or morality. S. 3 however oversteps the bounds of permissible legislation and it has, therefore, to be declared to have become void when the Constitution came into force. When a law became void obviously a notification issued under that law would also become void. Once a prosecution is launched against an association declared to be unlawful, the criminal Court cannot question the validity of the notification and it cannot therefore be said that the law gives persons hit by it an opportunity for a fair trial. Serious inroads are made regarding the right to property also. There is no time limit prescribed for the duration of a notification issued under S. 3. Government alone have authority to decide how long an association declared to be unlawful should continue to remain under the ban imposed by them. The cumulative effect of the absence of a provision for proper notice or sufficient publicity and the imposition of a time limit to seek a review of the Government order by the High Court is to make the law overstep the bounds of permissible legislation in such a manner that sub-clause (4) of Art. 19 could not save it. In other words it offends Cl (4) of Art. 19 as an unreasonable restriction on the exercise of the right conferred by Art. 19 (1) (c). AIR 1951 Mad 147, Rel. on; A I R 1951 S C 467, Foll. George Chandayammury v. State, I L R (1952) Trav-Co 1 : 1952 Ker L T 178 : 1952 Cri L J 1066 : AIR 1952 Trav-Co 217 (223, 224) (Pt D) (Prs 13, 17, 18, 19) (FB).

38. Labour and trade unions.

● ——Arts. 19 (1) (c), 14— Freedom of association — Right to form Union — Scope of — Labour Union — Right guaranteed under Art. 19 (1) (c) does not extend to concomitant right to effective collective bargaining or to strike—Banking company—Provision exempting it from disclosing secret reserves or provision made for bad and doubtful debts in proceedings under Industrial Disputes Act No cantravention of Arts. 19 (1) (c) and 14— Banking Companies Act (1949), S. 34-A — Not unconstitutional. All India Bank Employees Association v. National Industrial Tribunal (Bank Disputes), Bombay, (1962) 32 Com Cas 414 : (1962) 1 S C A 604 : (1961) 3 F L R 307 : (1961-62) 21 F J R 63 : (1961) 2 Lab L J 385 : (1962) 3 S C R 269 : AIR 1962 S C 171 (179, 180, 181, 182, 184, 185) (Prs 18, 19, 20, 22, 28, 33, 36, 37).

● ——Arts. 19 (1) (c) and 311— Notice to appellant under R. 3, Railway Services (Safeguarding of National Security) Rules — Reference to appellant being member of Communist Party and to his activities in trade union – Order terminating service — If contravenes Art. 19 (1) (c)—Railway Services (Safeguarding of National Security) Rules (1949), R. 3).

Where the notice issued to the appellant under R. 3 of the Security Rules referred to the appellant being a member of the Communist Party and to his activities in the trade union and his services were terminated under that Rule :

Held, that the order terminating the services of the appellant was not void as being in contravention of Art. 19 (1) (c). Though he had a fundamental right to form associations under Art. 19 (1) (c), he had no fundamental right to be continued in the employment of the State and when his services were terminated by the State he could not complain of the infringement of any of his constitutional rights, when no question of violation of Art. 311 arose. P. Balakotaiah v. Union of India, (1958) S C J 451 : 1958 S C R 1052 : 1958 S C A 209 : (1958) 1 Mad L J (S C) 162 : (1958) 1 An W R (S C) 162 : A I R 1958 S C 232 (238) (Pt E) (Pr 17).

——Art. 19 (1) (c) (g), (6)—Right to form association—Para 97 of Manual of Government Orders —Validity —Reasonable restriction.

Para 97 of the Manual of Government Orders does not restrict right of association of the Government servant and even otherwise it does not expose such right of Government servant to the risk of Art. 19 (1) (c). The true effect of para. 97 is that unless the association has been formed with the prior sanction of the Government the association will not have the right to speak or to be heard on behalf of the members of the service. One view about para. 97 can be that since, it requires Government servants to act in a certain manner in relation to their employment namely, that a representative approach by them to higher authorities shall be made through a recognised association only, it is a matter which directly concerned Cl (6) of Art. 19 which authorised the imposing of reasonable restrictions in the interest of general public on the right guaranteed to citizens under sub-Cl. (g) of Cl. (1) of that Article, namely to practise any profession or to carry on any occupation, trade or business. ILR (1959) 1 All 787 : AIR 1960 All 353 (356, 357) (Pt D) (Prs 15, 17) (DB).

——Art. 19 (1) (a) and (c)— Rules under S. 23, U. P. Industrial Disputes Act, R. 40 — Validity. See U. P. Industrial Disputes Act (28 of 1947), S. 6-I. 1959 All L J 745.

——Art. 19 (1) (c) — Proviso to R. 40 (3) of U. P. Industrial Disputes Rules is ultra vires of Article. See U. P. Industrial Disputes Rules (1947), R. 40 (3). AIR 1960 All 45.

——Art. 19 (1) (c)— Sub-r. (4) of R. 40 of U. P. Industrial Disputes Rules is hit by Art. 14 of Constitution —Sub-rule is unreasonable restriction on right to form association. See U. P. Industrial Disputes Rules (1947), R. 40 (4). **AIR 1960 All 45.**

——Art. 19 (1) (c) and (4) — Right to form trade unions comes within article— State cannot circumvent article by placing restrictions on objects or purposes of association — Rejection of application of federation of trade unions to represent its members —This would be restriction within Art. 19 (4)—(U. P. Industrial Disputes Act (28 of 1947), S. 6-I)—(Trade Unions Act (1926), Preamble).

The right to form associations or unions guaranteed under Art. 19 (1) (c) of the Constitution includes the right of workmen to form trade unions for a lawful purpose. The purpose of an association is an integral part of the right, and if the purpose is restricted, the right is inevitably restricted. The enjoyment and fulfilment of the right begins with the fulfilment of the purpose for which the association is formed. If the State tries to circumvent Art. 19 (1) (c) by placing restrictions on the objects or purposes or the normal functioning of an association, this would amount to an indirect restriction on the right itself. A I R 1958 S C 956, Foll.

The effect of the rejection of the application under S. 6-I, U. P. Industrial Disputes Act of the federation of trade unions for permission to represent its members or the rejection of its application for approval by the Labour Commissioner for purposes of such representation would amount to restriction within the meaning of clause 4 of Art. 19 of the Constitution. **(1959-60) 17 FJR 290 : (1960) 1 Lab L J 745 : AIR 1960 All 45 (49) (Pt A) (Prs 12, 13).**

——Art. 19 (1) (c) — Law or order whether restricts unreasonably right of association — Court must take notice of existence of conditions of labour.

The High Court must, in deciding whether any particular law or order of Government restricts unreasonably the right of association guaranteed under Art. 19 (1) (c), take notice of the existence of conditions relating to organised industrial labour in India. A I R 1952 S C 196, Foll.

The purpose of industrial legislation is to strive for the settlement of the disputes by methods of conciliation and negotiation. But the existence of rival Trade Unions in the same industry which owe allegiance to different political parties is more likely to hinder than advance the process of conciliation. This is a phenomenon which is all too familiar in this country and of which the Court must take notice in any proceedings in which the reasonableness of a particular piece of industrial legislation is called in question. (1959-60) 17 F J R 290 : (1960) 1 Lab L J 745 : A I R 1960 All 45 (50) (Pt C) (Prs 16, 17).

——Arts. 19 (1) (c) and (4), 13 and 14—Citizen complaining that his right to form association has been violated or unduly restricted—Court cannot surrender its own judgment in favour of any other organ of State.

When a citizen comes to the High Court with a complaint that his fundamental right to form an association guaranteed under Art. 19 (1) (c) has been violated or unduly restricted the Court cannot surrender its own judgment in favour of any other organ of the State in deciding whether the impugned restrictions are reasonable or not.

Indeed, the High Court is under a duty imposed by Arts. 13 and 14 of the Constitution, to act as a sort of constitutional censor of all legislation and to scrutinise at the instance of any aggrieved citizen, any law or executive act and to examine its legality and thus ensure that no unconstitutional legislation or illegal State action slips through its vigilant scrutiny. Only by performing this duty can this Court effectively protect the fundamental rights of the citizens. The High Court is the sole arbiter, subject to the ultimate authority of the Supreme Court in appeal or otherwise of the question whether any particular law or order of Government imposes an unreasonable restriction on the rights of the citizen. **(1959-60) 17 F J R 290 : (1960) 1 Lab L J 745 : A I R 1960 All 45 (50, 51) (Pt D) (Pr 18).**

——Art. 19 (1) (c)—Scope of—Illegal action by Association—Stopping of, when amounts to interference.

Freedom to form an association necessarily carries with it the freedom to continue such association. But that does not mean that if an illegal action taken in obedience to any resolution passed in Association is stopped, it will amount to interference with the formation or even continuance of the association. Stopping of work by an individual by itself may be due to many reasons, but when such an action is taken as a protest and as an organised action it may be regarded as a breach of the discipline and violation of the conditions of service. In such a case any act on the part of the officials to stop giving effect to a resolution of an association will not amount to interference with the fundamental right to form an association. **1957 All L J 480 : 1957 All W R (HC) 445 : (1957) 2 Lab L J 231 : AIR 1959 All 614 (617, 618) (Pt D) (Pr 8).**

——Art. 19 (1) (c) — Proceedings requiring sanction to become member or secretary of Union—Rights of employee—If infringed.

The proceedings, dated 13th February, 1952, of the Director of Public Instruction, Madras, which require an employee of a Local Board to obtain its previous sanction to become a member or a secretary of the Union does not in any way infringe the rights of the employee of that authority guaranteed under Art. 19 (1) of the Constitution. **(1959) 2 Lab L J 561 : A I R 1960 Andh Pra 342 (343) (Pt A) (Pr 2) (DB).**

——Art. 19 (1) (c)—Bombay Industrial Relations Act, if ultra vires.

There is nothing in the Act which renders the right guaranteed by Art. 19 (1) (c) to form associations or Unions illusory. The right to form Union does not carry with it the right to represent, when there is an industrial dispute before a conciliator or the Court of voluntary or compulsory arbitration, those persons or members of the Trade Union. There is consequently no abridgment of the right guaranteed by Art. 19 (1), Cl. (c) by Ss. 27A &:30 of the Industrial Relations Act. **53 Bom L R 333 : 52 Cri L J 779 : ILR (1951) Bom 318 : A I R 1951 Bom 105 (114, 115, 116) (Pt G) (Prs 21, 22) (DB).**

——Arts. 19 (1) (c), 19 (4) — Railway Establishment Code (1951), App. XIII, Pt. B, R. 1 — Right of State servants to form Unions — Constitutes fundamental right subject to Art. 19 (4) — Recognition or withdrawal of recognition to Unions — Nature of the right— Conditions for recognition or withdrawal — Test of validity — Limitations imposed by R. 1 — Essential conditions for validity. A I R 1965 Cal 389 (392, 393) (Pt C) (Prs 9, 11, 19, 20).

——Art. 19 (1) (c) and (a) — Labour and trade unions —Right of individual worker to conduct his own case before Industrial Court—Bombay Industrial Relations Act (11 of 1949) (as adapted in M. B.), Ss. 27A, 32, 33 — Validity — Not in coflict with fundamental rights and so are not void. See Constitution of India, Art. 19 (1) (a). A I R 1956 Madh Bha 199.

——Art. 19 (1) (c) — Right of freedom of association guaranteed—If infringed by Madras G. O. No. 416, Education, dated 24th February, 1939, empowering the Director of Public Instruction to forbid existence

of, and dissolve, any Teachers' Union not conforming to the rules and compelling teachers in Local Boards or Municipal service to obtain permission of the Board or Council concerned before forming unions and prohibiting membership of teachers' unions not constituted in accordance with the orders of Government.

The rules contained in (Madras) G. O. No 416 Education, dated 24th February, 1939, in so far as they empower the Director of Public Instruction to forbid the existence of, and dissolve any Teachers' Union not conforming to the rules and compelling teachers in Local Board or Municipal service to obtain the permission of the Board or Council concerned before forming unions and in so far they prohibit teachers in recognised elementary schools from becoming members of teachers' unions or other teachers' organisations not constituted in accordance with the orders of the Government should be declared to be void as constituting an abridgement of the right of freedom of association guaranteed by Art. 19 (1) (c) of the Constitution.

The exercise of any of the fundamental rights like the right of free speech, right of freedom of religion or the right of freedom of association cannot be made subject to the discretionary control of administrative or executive authority which can grant or withhold permission to exercise such right at its discretion. There cannot be any restriction on the exercise of such a right which consists in a previous restraint on such exercise and which is in the nature of administrative censorship. The guaranteed freedoms cannot be abridged or abrogated by the exercise of official discretion. **ILR (1953) Mad 57 : 1952 Mad W N 16 : 65 L W 140 : (1952) 1 M L J 38 : A I R 1952 Mad 253 (254, 255) (Pr 7) (DB).**

Government Servants' Conduct Rules.

——Art. 19 (1) (c), (g), (6) — Right to form association — Para. 97 of Manual of Government Orders does not restrict right of Government servants to form association — It does not infringe Art. 19 (1) (c) — It may be considered as reasonable restriction under Art. 19 (6). I L R (1959) 1 All 787 : A I R 1960 All 353 (356, 357) (Pt D) (Prs 15, 17) (DB).

——Arts. 19 and 309 — Government servants conduct Rules — Rule 22 prohibiting membership in unrecognised Service Association is not violative of fundamental right to form association guaranteed by Art. 19 (1) (c). See Ibid, Art. 309. (1960) 1 Lab L J 156 (Andh-Pra).

——Art. 19 (1) (c) —Central Civil Services (Conduct) Rules (1955), R. 4-A — Validity — Rule cannot be held to be invalid on the ground of its prohibiting Government servant from going on strike — Rule applies even to individual worker — There is no question of association being prohibited from going on strike.

Rule 4-A of the Central Civil Services (Conduct) Rules is not liable to be struck down as violating Art. 19 (1) (c). Though a servant of the Government has a right to form an association and may also have a right of peaceful demonstration within limits it cannot be argued on the basis of these rights that there is any right of strike for using it as a means of redressal of its grievance.

Further the very concept of strike postulates a joint action, that is, more than one person withdrawing from work in spite of there being a contract or an obligation to work. Rule 4-A, as it is cast, would seem to apply even to an individual worker. Therefore, it does not contemplate a case of joint action. Rule 4-A is a rule of conduct for each single employee. The association never works under the Government as such and no question can possibly arise of the association going on strike. Therefore, there is no question of association being prohibited from going on strike. It is in that aspect that rules regarding recognition of association of employees have to be read and there is nothing wrong if an employee is prohibited from going on strike. **A I R 1962 S C 171, Rel. on. 65 Bom L R 65 : I L R (1962) Bom 664 : 1963 Mah L J 205 : (1963) 1 Lab L J 428 : A I R 1963 Bom 121 (136, 137) (Pt F) (Prs 54, 55, 60) (DB).**

——Art. 19 (1) (a) to (c) — Central Civil Services (Conduct) Rules (1955), R. 4-A — Constitutional validity — Prohibition against resorting to strike and participating in any demonstration — Whether violative of Art. 19 (1) (a), (b), (c) or (g) of the Constitution. See Central Civil Services (Conduct) Rules (1955) R 4-A. AIR 1962 Bom 53 (DB).

——Art. 19 (1) (c)—Central Civil Services (Conduct) Rule (1955), R. 4-B — Constitutional validity — Rule contravenes Art. 19 (1) (c) of the Constitution and does not come within permissible limits of Cl. (4). See Central Civil Services (Conduct) Rules (1955), R. 4-B. AIR 1962 Bom 53 (DB).

——Art. 19 — Central Civil Services (Conduct) Rules (1955), R. 3 — Validity. See Central Civil Services (Conduct) Rules (1955), R. 3. AIR 1964 Cal 415.

——Art. 19 — Government Servants' Conduct Rules, Rr. 20, 23 —Validity—Rules do not contravene Art. 19 of the Constitution — Restrictions imposed by Rules are not void on ground of vagueness or uncertainty —Capable of embarrassing — Meaning. See Government Servants' Conduct Rules (1926), R. 20 (1). ('57) 61 Cal W N 459.

——Arts. 19 (1) (c), (4), 13 (2) — Right of association — Reasonable restrictions — Rr. 80 (a), 81 and 82 of Government Servants' Conduct Rules—Validity of.

There is no doubt that the Government Servants' Conduct Rules restrict the activities of one segment of the population while permitting them to the remainder. So long as such restrictions and regulations are not arbitrary and bear a reasonable relation to legitimate ends to be attained no question as to their constitutionality can arise. So considered the Rr. 80 (a), 81 and 82 restricting the membership to Government Servants' Association to Government Servants only and prohibiting Government servant from becoming member of association which is not recognised by Government cannot be complained against.

The Government servants forming members of the Service Associations, have no constitutional right to any appointment under the Government. The appointments are, subject only to the Government Servants' Conduct Rules.

The imposition by Government of the conditions as herein restricting the choice of the personnel for the office of President in a Service Association of their employees to Government Servant only cannot be said to be unconstitutional in any sense. **1957 Ker L T 891 : 1957 Ker L J 914 : (1958) 2 Lab L J 77 : A I R 1958 Ker 283 (285, 286) (Pt B) (Prs 8, 10, 11) (DB).**

——Arts. 19 (1) (c) and 19 (4) — Government Servants' Conduct Rules (1950), Rr. 30 (a) and 81 — Validity.

Restrictions on the fundamental rights guaranteed to a citizen can be imposed in a contract of Government service provided such restrictions satisfy the test of reasonableness and do not make a nullity of the rights conferred. A reasonable restriction on the fundamental rights imposed by a contract of Government service will not be ultra vires of the Constitution. Judged by that standard Rr. 80 (a) and 81 of the Government Servants' Conduct Rules (1950) appear to be eminently reasonable and must

be upheld as valid. **I L R (1958) Ker 92 : 1957 Ker L T 169 : 1957 Ker L J 186 : (1957) 1 Lab L J 634 : AIR 1957 Ker 43 (45) (Pt B) (Prs 11, 12).**

——Art. 19 (1) (a), (b) and (c) — Governments Servants' Conduct Rules, 1950. R. 63—R 63 does not violate provisions of Art. 19 (1) (a), (b) or (c) and reasonable restriction on the freedom of employee is not hit by Art. 19. **1957 Ker L T 13 : 1957 Ker L J 6 : I L R (1957) Ker 1020 : A I R 1957 Ker 7 (8, 9) (Prs. 4, 5).**

——Arts. 19 (1) (c) and 226 — Right to form association—Extent of disciplinary action for contravention of R. 6 of Madras Government Servants Conduct Rules — Fundamental right of association does not include right to solicit monies by sale of tickets to members of public unconnected with an association to join which a person has the fundamental right, even if the object of such sale was to raise funds for the association and such sale was not by itself unlawful — Such right is not protected — Disciplinary action against servant for selling tickets in contravention of R. 6 — Order cannot be challenged under Art. 226. **(1955) 1 Mad L J 538 : (1955) 2 Lab L J 473 : 1955 Mad W N 1037 : A I R 1955 Mad 468 (469) (Pt B) (Pr 4).**

——Art. 19 (4) — Madras Government Service Conduct Rules, R 6—R. 6 is not unconstitutional. **(1955) 1 Mad L J 538 : (1955) 2 Lab L J 473 : 1955 Mad W N 1037 : A I R 1955 Mad 468 (470, 471) (Pt E) (Prs 10, 11).**

39. Right of businessmen to form combinations.

●——Art. 19 (1) (c) — U. P. Sugar-cane (Regulation of Supply and Purchase) Act (24 of 1953)—Notification under, dated 27th September 1954— Act and notification—If void.

There is no compulsion at all on any cane-grower to become a member of the Cane growers' Co-operative Society. Similarly no cane-grower is prevented from resigning his membership of a Cane-grower Co-operative Society. These are voluntary organisations which a cane-grower is entitled to join or not at his choice.

The cane-grower is at perfect liberty not to become a member of a Cane-growers' Co-operative Society if he chooses not to do so. Just as he is not bound to become a member of a Cane-growers' Co-operative Society, he is equally not bound to offer his sugarcane for sale to the occupier of a factory even if he happens to be a cane grower within the area reserved for that factory. His freedom in that behalf is absolutely unrestricted and hence it cannot be urged that the provisions of the U. P. Sugar-cane (Regulation of Supply and Purchase) Act and the notification, dated 27th September 1954, are violative of his fundamental right under Art. 19 (1) (c) of the Constitution Tika Ramji v. State of Uttar Pradesh, **1956 S C A 979 : 1956 S C J 625 : 1956 All W R (H C) 657 : 1956 S C R 393 : A I R 1956 S C 676 (709, 710, 711) (Pt H) Prs 48, 49, 50).**

——Arts. 19 (1), Cls. (c), (f) and (g) and 14 — (Iron and Steel Companies Amalgamation Ordinance (8 of 1952)—Iron and Steel Companies Amalgamation Act (89 of 1953).

The legislation relating to the Amalgamation of the Bengal Steel Corporation with the Iron and Steel Company does not interfere with the rights and privileges which the shareholders of the latter company have and does not fetter their rights to deal with their shares as they liked. It does not also affect the shareholders since it is the company which as a separate legal entity that carries on the business and not the share-holders and further the business of the company has not been stopped or restricted by the legislation. It does not also interfere with the right of share-holders to form association for they could if they did not like to continue as members of the company, after the amalgamation, sell their shares and go out of the company. Thus it does not offend either sub-clause (c), (f) or (g) of Art. 19 (1).

Even if the legislation infringes the rights under sub-cls. (c), (f) and (g) of Cl (1) it is saved by Cls. (5) and (6) of the article as a reasonable piece of legislation where the combination of the two companies is for the general good of the country and no material has been placed before the Court to show that it is not bona fide or that is a colourable piece of legislation introduced to benefit private enterprise.

This reasonableness of the legislation which saves it under Cls. (5) and (6) of Art. 19 also protects it from being challenged under Art. 14. **A I R 1953 Cal 695 (700, 701) (Pt E) (Prs 29, 30, 31, 33, 35, 36).**

40. Supersession of local board, municipality, etc.

——Art. 19 (1) (c) and (4) — Right of Members of District Board — Order of supersession under S. 131 of Bengal Local Self-Government Act (3 of 1885).

Article 19 (1) (c) which speaks of the right of a citizen to form associations or unions refers to the ordinary right which is enjoyed by all citizens. It has no reference to a right which is conferred by a particular statute to act as members of a body which is the creation of the statute itself. But even assuming that the members of a District Board have the fundamental right to form an association and to become members of the Board unhampered by the terms of the Bengal Local Self-Government Act (1885) which created that body, the right referred to in Art. 19 (1) (c) is subject to the provisions contained in Art. 19 (4). The order of supersession of the Board on the terms set forth in S. 131 of the Bengal Local Self Government Act, 1885, cannot be regarded as an unreasonable restriction on the right conferred by Art. 19 (1) (c) of the Constitution. The supersession is in the interest of the public order in order that the affairs of the District might not be managed by an incompetent Board. **A I R 1952 Cal 901 (905) (Pt D) (Pr 26).**

——Art. 19 (1) (c) and (g) — Order of supersession under S. 131 of Bengal Local Self-Government Act (3 of 1885).

Assuming that their franchise would be lost by the order of supersession under S. 131 of the Bengal Local Self-Government Act, (1885) and the right to vote in the electoral college envisaged in the Act 43 of 1950 would be taken away by the order of supersession, it cannot be said that thereby the Members of the Board are deprived of any of the fundamental rights referred to either in Art. 19 (1) (c) or Art. 19 (1) (g). **A I R 1952 Cal 901 (905) (Pt E) (Pr 27).**

41. Clause (1) (d)—(General).

See also Ibid, Notes 3 and 45.

●——Art. 19 (1) (d)—Freedom of movement—Police keeping watch on movement of suspect—Impairment of 'free' movement guaranteed by Art. 19 (1) (d).

Per Majority.—The freedom guaranteed by Art. 19 (1) (d) has reference to something tangible and not to the imponderable effect on the mind of a person which might guide his action in the matter of his movement or locomotion.

Per Subba Rao and Shah, JJ.—The argument that the fundamental right under Art. 19 (1) (d) means only that a person can move physically from one point to another without any restraint ignores the adverb 'freely' in Cl. (d). Mere movement unobstructed by physical restrictions cannot in itself be the object of a person's travel. A person travels ordinarily

n quest of some objective. He goes to a place to enjoy, to do business, to meet friends, to have secret and intimate consultations with others and to do many other such things. If a man is shadowed, his movements are obviously constricted. He can move physically, but it can only be a movement of an automaton.

Assuming that Art. 19 (1)(d) of the Constitution must be confined only to physical movements, its combination with the freedom of speech and expression leads to the above conclusion. The act of surveillance is certainly a restriction on the said freedom. It cannot be suggested that the said freedom is also bereft of its subjective or psychological content, but will sustain only the mechanics of speech and expression. Kharak Singh v. State of U. P., 1963 All L J 711 : 1963 (2) Cr L J 329 : (1964) 2 S C J 107 : (1964) 1 S C R 332 : AIR 1963 S C 1295 (1300, 1301, 1306) (Pt F) (Prs 14, 32, 33).

● ——Arts. 19 (1) (d) and (e), Art. 19 (5)—Legislation contemplating preventive action against goondas—Absence of guidance or assistance in statute in deciding who can be put in category of goonda—Constitutional validity — Legislation whether saved by Art. 19 (5)—C. P. and Berar Goondas Act (10 of 1946) as amended by Act (49 of 1950), Ss. 4 and 4-A—Sections contravene Art. 19 (1) (d) and (e) and whole Act is invalid.

Though the object of the C. P. & Berar Goondas Act and its purpose would prima facie attract the provisions of Art. 19 (5), Ss. 4 and 4-A, which contain the operative provisions of the Act, impose unreasonable restrictions on the fundamental rights of a citizen guaranteed under Art. 19 (1) (d) and (e), not saved by Art. 19 (5). As the operative sections are invalid, the whole Act must fail. State of Madhya Pradesh v. Baldeo Prasad, (1961) 1 S C R 970 : 1961 Mad L J (Cr) 603 : (1961) 2 S C J 484 : 1961 (1) Cr L J 442 : AIR 1961 S C 293 (297, 298) (Prs 8, 9, 10, 11).

● ——Art. 19 (1) (d) and (5) — Right of free movement throughout India—Extent of—Right, whether means absence of inter-State restrictions — Act restricting the right—Validity — Public Safety—East Punjab Public Safety Act (5 of 1949), S. 4 (1) (c).

Per Mukherjea J. — The contention that the right of free movement throughout the Indian territory as enunciated in Art. 19 (1) (d) of Constitution contemplates nothing else but absence of inter-State restrictions, which might prevent citizens of the Indian Union from moving from one State to another and that a law which does not impose barriers of this kind cannot be said to be inconsistent with the fundamental right secured by this clause, is not tenable, as such restricted interpretation is not at all warranted by the language of the sub-clause. What Art. 19 (1) (d) of the Constitution guarantees is the free right of all citizens to go wherever they like in the Indian territory without any kind of restriction whatsoever. They can move not merely from one State to another but from one place to another within the same State and what the Constitution lays stress upon is that the entire Indian territory is one unit so far as the citizens are concerned. Clause (c) of S. 4 (1), East Punjab Public Safety Act, 1949, authorises the Provincial Government or the District Magistrate to direct any person to remove himself from any area and prohibit him from entering the same. On the face of it such provision represents an interference with fundamental right guaranteed by Art. 19 (1) (d) of the Constitution. N. B. Khare v. State of Delhi, 1950 Mad W N 440 : 1950 Mad W N (Cri) 120 : 1950 Raj L W 398 : 52 Cri L J 550 : 1950 All L J 506 : 1950 S C J 328 : 1950 All W R 514 : 1950 S C R 519 : AIR 1950 S C 211 (216) (Pt F) (Pr 22).

——Art. 19 (2)—Order under S. 144, Criminal P. C.

An order under S. 144, Criminal P. C., which only requires the persons against whom it is directed not to do certain things when frequenting or visiting any place within a certain municipal limits does not restrict their free movement. And when so far as the restrictions on freedom of speech or freedom of assembly imposed by the order are reasonable restrictions permitted by the Constitution it cannot be said that the order contravenes Art. 19 (1). 1954 Cr L J 1014 : AIR 1954 Ajmer 40 (41) (Pt B) (Pr 3).

——Art. 19 (1) (d) and (e) — Protection under, who can claim.

(Per Thadani C. J.)—A citizen, who has committed an offence or who is a delinquent in the eye of the law and whose crime or delinquency has rendered him liable to certain penalties or disabilities which can be and have been imposed upon him according to the procedure established by law, cannot claim the protection of rights stated in Arts. 19 (1) (d) and (e) of the Constitution if, as a result of such penalty or disability, he has been deprived wholly or partially of those rights—rights which are given to a citizen, and not to a citizen who has commited a crime or is a delinquent in the eye of law. 52 Cri L J 966 : ILR (1951) 3 Assam 181 : AIR 1951 Assam 105 (120) (Pt N) (Pr 93) (DB).

● ——Art. 19 (1) (d) — Extradition Act (15 of 1903), Ss. 7, 9, 19 - Extradition relations between India and Ceylon after independence—Indian subject committing extraditable offence in Ceylon and escaping to India - Extradition of subject to Ceylon under Chap. III is in accordance with law—No infringement of Art. 19 (1) (c) and (d) of Constitution. See Extradition Act (1903), S. 7. AIR 1960 Mad 548 (FB).

——Art. 19 (1) (d)—Right to move freely on railway platform — Regulation of entry into Railway platform — Restriction on sale of platform tickets for particular period in the interest of pilgrims visiting the place—Restrictions do not violate, Art. 19 (1) (d) —Railway authorities empowered to impose such restrictions—Railways Act (1890), S. 47 (g).

Where the railway authorities in the interest of general public especially the pilgrims visiting the place during a particular period regulate the entry into railway platform by imposing restriction on the sale of platform tickets during the particular period for specific reasons, the order imposing restriction does not violate the fundamental right of a person under Art. 19 (1) (d) of the Constitution.

Though a general order forbidding persons to enter railway for bona fide purposes of travelling may be open to objection an order made for definite and specific reasons and in the interest of the general public visiting the place during a particular period for regulating the entry into the railway platform is competent under the provisions of the Railways Act or the rules made thereunder.

A railway platform, though a public place, is not a public property. It is the property of the railway and consequently the Union of India. In view of S. 47 (g) and Rr. 127 and 128 of the Coaching Tariff, the Railway authorities have got a right to restrict the issue of platform tickets and regulate the entry into station platform. AIR 1952 Cal 496 and (1897) A C 479 and AIR 1951 Cal 501, Foll. AIR 1964 Pat 98 (101, 102) (Prs 9, 10, 11, 12) (DB).

——Arts 19 and 21 — Detention under S. 4 of Abducted Persons (Recovery and Restoration) Act (1949) —(Abducted Persons (Recovery and Restoration) Act (1949) S. 4).

The provisions of Article 19 are subject to the provisions of Art 21; the provisions of Art 19 (1) (d), (e) and (f) are subject also to the provisions of Art. 19 (5) and the provision of Art. 19 (1) (g) are subject also to the provisions of Art 19 (6). In other words the right conferred by sub-clauses (d) (e) (f) and (g) can be

interfered with partially if the appropriate legislature decides to impose "reasonable restrictions" in the interest of the general public and totally it the person on whom the right is conferred is arrested and put in confinement according to procedure established by law. AIR 1950 S C 27, Foll.

It was within the competence of the Central Legislature in the year 1949 to enact the Abducted Persons (Recovery and Restoration Act, and a measure of this kind can doubtless be enacted by Parliament today. This Act does not deal with punitive or preventive detention, but with a new kind of detention which may be called 'protective detention.' The Courts are at liberty to examine the various provisions of this "existing law" with the object of determining whether any of the provisions have encroached on the elementary rights guaranteed by Chapter III of the Constitution. A citizen of India who is detained in a camp under S. 4 cannot complain that he has been deprived of the rights guaranteed by Art. 19. Ajaib Singh v. State of Punjab, **54 Pun L R 260: 1952 Cri L J 1313; ILR (1952) Punj 381 : A I R 1952 Punj 309 (316) (Pt A) (Prs 20, 21) (FB).**

[Reversed on another point in AIR 1953 S C 10].

● **——Art. 19 (1) (d), (e), (f), (g) and (6)—Section 7 of Abducted Persons (Recovery and Restoration) Act (1949)—Validity—(Abducted Persons (Recovery and Restoration) Act (1949) S. 7)—Constitution of India, Arts. 51, 245, 253 and Sch. VII List I Entries 18 and 19).**

(Per Bhandari J.)—As sub-clauses (d) and (e) of Art. 19 were enacted solely with the object of preventing provincialism and as sub-clause (f) was also presumably enacted for achieving the same object, it is obvious that the provisions of the Abducted Persons (Recovery and Restoration) Act of 1949 cannot be said to be in conflict with the provisions of any of these sub-clauses, for tne Act of 1949 does not promote or have the effect of promoting provincialism is any shape or form.

It is a fundamental right of a citizen of India to stay within the territory of India, for clause (g) of Art. 19 (1) declares in express terms that he has a right to practise any profession or to carry on any occupation, trade or business. This right would be meaningless if it does not include a right to stay in the country, for a person cannot exercise this right in a country where he cannot live. If the Constitution has stated expressly or by necessary implication that a citizen shall not be expelled from India it would not be open to Parliament to frame a statute so as entirely to defeat the object of the Constitution by directing that he shall be expelled under escort of the police. Nor is it open to Government to state that the taking away of a citizen from India to Pakistan is no worse than taking a prisoner from one prison to another. It is a well known legal maxim that whatever is prohibited by law to be done directly cannot legally be effected by an indirect and circuitous contrivance. For all practical purposes a person who is "conveyed out" of India under the provisions of section 7 is deprived of the rights guaranteed to him by Art. 19 (1) (g) of the Constitution. It is true that Entries 18 and 19 of the Union Legislative List empowers Parliament to make laws in regard to "extradition" and "admission into and emigration and expulsion from India", but these laws must be made in conformity with the provisions of Part III and must not be inconsistent with or repugnant to the fundamental rights guaranteed by the said Part. It is not open to a Legislature to authorise expulsion of a person on the ground only that power to expel has been conferred by one or other of the three Legislative Lists. The Abducted Persons (Recovery and Restoration) Act of 1949 cannot be deemed to be valid on the ground that it was enacted in pursuance of an agreement between the Government of India and Pakistan. There is no provision in the Constitution of India which declares that all treaties to which the Government of India is a party shall be vested with statutory authority. Neither of Arts. 51 and 253 empowers Parliament to make a law which can deprive a citizen of India of the fundamental rights conferred upon him. In so far as the Act of 1949 authorises the deportation of abducted persons to Pakistan it cannot be said to impose "reasonable restrictions" on the rights conferred by Art. 19. Even extraordinary conditions do not create or enlarge constitutional powers and cannot justify governmental action outside the sphere of constitutional authority. Deportation of a citizen to a place outside the territory of India temporarily or permanently is tantamount to deprivation of the rights guaranteed by Art. 19 (1) (g). As the provisions of section 7 authorise the deportation of a citizen from India, these provisions must be be deemed to be inconsistent with the provisions of Art. 19 (1) (g) of the Constitution. Case law discussed. Ajaib Singh v. State of Punjab, **54 Pun L R 260 : 1952 Cri L J 1313 : I L R (1952) Punj 381 : A I R 1952 Punj 309 (318, 319) (Pt B) (Prs 34, 36, 37, 38, 39, 41) (FB).**

[Overruled on another point in AIR 1953 S C 10.]

● **——Arts. 19, 21 and Sch. VII, List I, Items 19 and 14—Abducted Persons (Recovery and Restoration) Act (1949)—Validity.**

(Per Khosla and Harnam Singh JJ.)—The right conferred by Sub-clauses (a), (d) and (e) of Art. 19 (1) of the Constitutioa is a very limited right and the question of personal liberty is dealt with in Art. 21. The right under sub-clause (e) is also a restricted one and this right will not be affected by depriving a citizen of his total liberty. Therefore, imprisonment, detention or confinement will not be treated as having taken away any of the seven rights enumerated in Cl. (1) of Art. 19. All that the (Abducted Persons Recovery and Restoration) Act does is to deprive the abducted person of his personal liberty from the moment he is taken into custody and taken to the camp up to the time when he is allowed to go away or is conveyed outside India. The law, therefore, does not directly take away any of the fundamental rights but even if it were conceded that the abducted person is deprived of the right of free residence the Act will not be declared invalid because the right of residence conferred by sub-cl. (e) is a very narrow right. Since the Act does not come within the ambit of Art. 19 (1) the question whether the restrictions imposed are reasonable or if they are in the interests of general public does not arise. There is no provision in the Constitution against a citizen being sent out of India. Indeed, item 19 read with item 14 of List I of the Seventh Schedule would appear to indicate that the Union Parliament is competent to pass laws whereby the citizens of India may be expelled from the country in accordance with treaties and agreements with foreign countries. There is nothing in the Constitution whereby a citizen cannot be deprived of his rights as a citizen or be deported from India. There is nothing in the Constitution which forbids an abducted person from being conveyed out of India in accordance with the provisions of the Act. AIR 1950 S C 27, Foll. Ajaib Singh v. State of Punjab, **54 Pun L R 260 : 1952 Cri L J 1313 : I L R (1952) Punj 381 : AIR 1952 Punj 309 (333, 334) (Pt F) (Prs 148, 149, 150) (FB).**

[Overruled on another point in AIR 1953 S C 10].

● **——Art. 19 (1) (d)—Scope.**

In our Constitution rights of individuals in matters covered by Art. 301 are provided in Art. 19 (1) (d) and (g). Every enactment therefore which apparently restricts trade commerce and intercourse has to be

viewed so far as the angle concerning individual rights is concerned according to Art. 19 and so far as the angle relating to trade, commerce and intercourse generally is concerned according to the provisions of Part 13 of the Constitution. See Ibid, Art. 301. AIR 1958 Raj 114 (FB).

——Arts. 19 (1) (d); 19 (1) (e); 19 (5) — Rights under — Restrictions imposed by Act (23 of 1949) and permit rules — Legality — (Influx from Pakistan (Control) Act (1949), S. 1) — Influx from Pakistan (Control) Ordinance (34 of 1948), S. 1) — (Permit System Rules (1948), S. 16) — (Permit System Rules (1950), R. 10.)

Article 19 itself, which confers certain rights, provides for certain restrictions to be imposed in the interest of the general public. The interest of the general public would be greatly jeopardized if there were no restrictions on the entry of persons from the neighbouring Dominion. The restrictions imposed by the Influx from West Pakistan (Control) Ordinance or Act and the Rules thereunder are therefore, reasonable and do not involve any inroad upon the fundamental rights.

Held, further that R. 16 of the Rules dated 7-9-1948 or the corresponding R. 10 of Rules of 20-5-1950, which provides for grant of permit for permanent residence after a personal scrutiny of the application and after securing agreement of the State or Province where the applicant intends to resettle, is a very reasonable one. 1958 Cri L J 418 (2) : A I R 1958 Raj 65 (70) (Pt E) (Pr 31) (DB).

——Art. 19 (1) (d)—Orders to close a public road by Municipal authority—If infringes fundamental right — Final orders passed before the coming into force of Constitution — It could be questioned after — Petitioner's right to question—If individual right.

Under S. 207 (1) (c) of the Trivandrum City Municipal Act (4 of 1116), the Commissioner of the Corporation may subject always to sanction as may be required under Ch. 4, turn, divert or with the special sanction of the council and the Government permanently close any public street or part thereof. It cannot be contended that this provision is 'ultra vires' for at the time this Act was passed, His Highness the Maharaja of Travancore had sovereign powers, to lay down restrictions regarding the use of public ways. It could be void after the Constitution was passed only if this provision was inconsistent with any of the provisions in the Constitution.

Where proceedings had been terminated even long before the Constitution of India came into force the provisions of the Constitution could not be relied upon to attack the act which was done before it came into force.

The fundamental right that had been guaranteed by Art. 19 (1) (d) of the Constitution was one to move freely throughout the territory of India. That does not mean the use of any particular road for that purpose. The right contemplated there has for its object the removal of all internal barriers in the country and to make India as a whole the abode of the citizens of India. This provision is thus complementary to Art. 5 which provides a single citizenship. Sub-cl. (5) of Art. 19 of the Constitution provides that nothing in the sub-cl. (1) (d) shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses, either in the interests of the general public or for the protection of the interests of any scheduled Tribes. The restrictions could therefore be imposed provided they are reasonable. Any act providing for such reasonable restrictions could not therefore be 'ultra vires' of the Constitution.

It is obvious that the use of a public way can be regulated by the State and for that purpose reasonable restrictions can be imposed. Reasonable restrictions may in some cases amount to complete prohibition or stoppage of the use. The Court has only to see whether that was in the interests of the general public. In this case, the State acquired certain lands adjoining the Women's College at Trivandrum for the purpose of opening a hostel for the students there. The Women's College is a public institution opened in the interests of the general public. To accommodate the students there, a college hostel had to be opened and for the efficient and safe use of the hostel the authorities found it necessary to close this pathway between the hostel and the College. That is the discretion exercised by the State and it is not a matter that can be called in question by the petitioner.

The petitioner also cannot file a petition on behalf of the general public. He can only agitate his right when it is infringed. ILR (1952) Trav-Co 347 : A I R 1952 Trav-Co 274 (275, 276, 277) (Prs 6, 7, 8, 10).

42. "Throughout the territory of India."

——Art. 19 (1) (d) — "Throughout the territory of India" — Free movement of Indian citizen throughout Indian Union—Discrimination against — Constitution of India, Sch. 7, List 1, Entry 81.

Per Kania C. J.; B. K. Mukherjea and Das JJ. — The words "throughout the territory of India" in Art. 19 (1) (d) indicate that free movement from one State to another within the Union is protected so that Parliament may not by a law made under Entry 81 in List 1 of Sch. 7 curtail it beyond the limits prescribed by Cl. (5) of Art. 19. Its purpose is not to provide protection for the general right of free movement but to secure a specific and special right of the Indian citizen to move freely throughout the territories of India regarded as an independent additional right apart from the general right of locomotion emanating from the freedom of the person. It is a guarantee against unfair discrimination in the matter of free movement of the Indian citizen throughout the Indian Union In short, it is a protection against provincialism. It has nothing to do with the freedom of the person as such.

Per Fazl Ali J. Contra. — 'Throughout" is an amplifying and not a limiting expression The expression "throughout the territory of India" is used to give the widest possible scope to the freedom of movement. These words, having regard to the context in which they have been used here, have the same force and meaning as the expression "to whatsoever place one's own inclination may direct" or the expression "freedom to be able to go whithersoever one pleases." The juristic conception that personal liberty and freedom of movement connote the same thing is the correct and true conception, and the words used in Art. 19 (1) (d) must be construed according to this universally accepted legal conception. Article 19 (1) (d) guarantees the right of freedom of movement in its widest sense ; the freedom of movement being the essence of personal liberty the right guaranteed under the article is really a right to personal liberty and the preventive detention is a deprivation of the right. A. K. Gopalan v. State of Madras, (1950) 2 Mad L J 42 : 63 Mad L W 638 : 1950 S C J 174 : 51 Cri L J 1383 : 1950 S C R 88 : 1950 Mad W N (Cri) 127 : A I R 1950 S C 27 (35, 36, 49, 53, 54, 56, 95, 112) (Pt S) (Prs 8, 46, 59, 65, 174, 222).

——Art. 19 (1) (d) — Words "throughout the territory of India"—Meaning.

The words "throughout the territory of India" in Art. 19 (1) (d) were used because the Constitution is not guaranteeing to the citizen any right of free movement outside its territories; in fact it could not give

any citizen such right because that would result in infringing the sovereignty of a foreign State. This phrase was used also to indicate that the Constitution was not giving the citizen any absolute right to move from the republic of India into some foreign State; in other words, it was saving passport restrictions. Further, those words were used to indicate that the Act was not giving a citizen any absolute right to enter the territory of India from outside. These are the reasons why the words "throughout the territory of India" have been used. Sunil Kumar Bose v. West Bengal Government, 54 Cal W N 394 : 51 Cri L J 1110 : AIR 1950 Cal 274 (277) (Pt B) (Pr 6) (SB).

43. Externment and internment orders.

● —Art. 19 (1) (d) — **Bombay Police Act (22 of 1951), S. 56—Constitutionality.**

Section 56 is not unconstitutional : A I R 1952 S C 221, Foll.

Per Jagannadhadas J. — "If the matter were 'res integra' I should have felt difficulty in upholding the validity of S. 56 (b) Bombay Police Act, 1951 (Bombay Act 22 of 1951) in so far as it did not demarcate the application thereof to the more serious classes of offences falling within the specified Chapters. I should also have felt difficulty in holding a provision to be reasonable which clothes the executive officers with an authority to extern a person for so long a period as two years." Bhabubhai v. Dist. Magistrate, Thana, **1956 S C A 912 : 1956 S C J 565 : 1956 Cr L J 1126 : 1957 B L J R 264 : 58 Bom L R 1007 : 1956 S C R 533 : A I R 1956 S C 585 (592) (Pt C) (Pr 17).**

● —**Arts. 19 (1) (d) and (e) and (5)—S. 57, Bombay Police Act (22 of 1951)—Validity.**

Per Majority, Jagannadhadas J., contra : — The provisions of S. 57 can be applied either by the Commissioner of Police for Greater Bombay and other areas for which a Commissioner may be appointed under S. 57 or by the District Magistrate or a Sub-Divisional Magistrate specially empowered by the State Government in that behalf. Any one of the aforesaid authorities has power to direct an individual dealt with under S. 57 to remove himself outside the area within the local limits of his jurisdiction. Hence none of those authorities has the power to direct that person to remove himself outside the entire State of Bombay, Hari Khemu Gawali v. Dy. Commr. of Police, Bombay. **1956 Cr L J 1104 : 1956 S C J 599 : 1956 S C A 1046 : 1956 Pat L R (S C) 203 : 58 Bom L R 995 : 1956 S C R 506 : A I R 1956 S C 559 (565, 566) (Pt B) (Pr 7).**

● —**Art. 19 (1) (d) and (e) and (5)— S. 57, Bombay Police Act (22 of 1951).**

Per Majority, Jagannadhadas J., contra. — S. 57, Bombay Police Act, cannot be held to be ultra vires on the ground that unlike Preventive Detention laws there was no provision in the impugned law for an Advisory Board which could scrutinise the material on which the officers or authorities contemplated by S. 57 had taken action against a person. It cannot be and has not been laid down, as a universal rule that unless there is a provision for such an Advisory Board such a legislation would necessarily be condemned as unconstitutional. The very fact that the Constitution in Art. 22 (4) has made specific provision for an Advisory Board consisting of persons of stated qualifications with reference to the law for Preventive Detention, but has no such specific provision in Art. 19 would answer this contention. The existence of an Advisory Board is not a sine qua non of the constitutionality of such a legislation. Hari Khemu Gawali v. Dy. Commr. of Police Bombay, **1956 Cr L J 1104 : 1956 S C J 599 : 1956 S C A 1046 : 1956 Pat L R (S C) 203 : 58 Bom L R 995 : 1956 S C R 506 : AIR 1956 S C 559 (566) (Pt C) (Pr 8).**

● —**Arts. 19 (1) (d), (e), (5), 226 — S. 59, Bombay Police Act (22 of 1951)—Validity.**

In order to take preventive action under S. 57, Bombay Police Act the Legislature has entrusted police officers or Magistrates of the higher ranks to examine the facts and circumstances of each case. But the legislature has provided certain safeguards against tyrannical or wholly unfounded orders being passed by the higher ranks of the p lice or the magistracy. The order of externment can be passed only by a Commissioner of Police or a District Magistrate or a Sub Divisional Magistrate specially empowered by the State Government in that behalf. The proceedings contemplated by S. 57 or for the matter of that, the other two Ss. 55 or 56 are not prosecutions for offences or judicial proceedings though the officer or authority charged with the duty aforesaid has to examine the information laid before him by the police. It cannot be contended that the proceedings are initiated by the police and it is the police which is the judge in the case and that therefore the provisions of the Bombay Police Act militate against one of the accepted principles of natural justice that the prosecutor should not also be the judge. Hari Khemu Gawali v. Dy. Commr. of Police Bombay, **1956 Cr L J 1104 : 1956 S C J 599 : 1956 S C A 1046 : 1956 Pat L R (S C) 203 : 58 Bom L R 995 : 1956 S C R 506 : AIR 1956 S C 559 (566, 567) (Pt D) (Pr 9).**

● —**Art. 19 (1) (d), (e), (5)— Bombay Police Act— Validity — (Bombay Police Act (22 of 1951), Ss. 60, 61).**

Section 61 has provided a safeguard to a person dealt with under S. 57. Though S. 59 only required the general nature of the material allegations against the person externed to be disclosed and it did not further provide for particulars to be supplied to such a person and therefore it would be very difficult for him to avail of at least the second ground on which S. 61 permits him to get the matter judicially examined still in the very nature of things it could not have been otherwise. The grounds available to an externee had necessarily to be very limited in their scope. Hari Khemu Gawali v. Dy Commr. of Police, Bombay, **1956 Cr L J 1104 : 1956 S C J 599 : 1956 S C A 1046 : 1956 Pat L R (S C) 203 : 58 Bom L R 995 : 1956 S C R 506 : A I R 1956 S C 559 (567) (Pt E) (Pr 10).**

● —**Art. 19 (1) (d), (e), and (5)—S. 57, Bombay Police Act (22 of 1951)—Validity.**

Per Jagannadhadas J., in dissenting judgment— Though the procedural portion of the law as provided in Ss. 59 and 61, Bombay Police Act may not be open to serious criticism, the substantive portion of the law relating to content of the power as provided under S. 57 of the Act cannot be held to be in the nature of reasonable restriction of the fundamental right for three reasons :—

1. Clause (a) of S. 57 of the Act not being confined to offences serious in their nature or with reference to the attendant circumstances within the chapters specified therein, prevention of the repetition thereof cannot be considered a reasonable restriction. It is in excess of what may be considered justifiable.

2. The previous commission of an offence of the category specified, without any reference to the time environment and other factors has no rational relation to the criterion of "reasonableness in the interest of public."

3. The exercise of the power not being limited by the consideration of non-availability of witnesses is also not rationally related to the criterion of "reasonableness in the interest of the public." S. 57 of the Act is constitutionally invalid. Hari Khemu Gawali

v. Dy. Commr. of Police, Bombay, 1956 Cr L J 1104: 1956 S C J 599 : 1956 S C A 1046 : 1956 Pat L R (S C) 203 : 58 Bom L R 995 : 1956 S C R 506 : A I R 1956 S C 559 (571) (Pt H) (Prs 15, 16).

●——**Art. 19 (5)—East Punjab Public Safety Act (5 of 1949), S. 4 (1) (c)— Power to order externment given to District Magistrate —Delegation, whether amounts to unreasonable restriction within Article 19 (5).**

Per Kania C. J.—The contention that S. 4, East Punjab Public Safety Act, 1949, which gives the power to make an order of externment to the District Magistrate whose satisfaction is final and not open to review by the Court, contained an unreasonable restriction on the exercise of the citizens' right within the meaning of Art. 19 (5) of the Constitution and is therefore invalid, is not sound, as it is not legislative delegation. The desirability of passing an individual order of externment against a citizen has to be left to an officer. In the Act such a provision cannot be made. The satisfaction of the officer thus does not impose an unreasonable restriction on the exercise of the citizens' right.

Per B. K. Mukherjea J.—Under Cl. (5) of Art. 19 the reasonableness of a challenged legislaiion has to be determined by a Court and the Court decides such matters by applying some objective standard which is said to be the standard of an average prudent man. Judged by such standard which is sometimes described as an external yard-stick, the vesting of authority in particular officers to take prompt action under emergent circumstances, entirely on their own responsibility or personal satistaction, is not necessarily unreasonable. One has to take into account the whole scheme of the legislation and the circumstances under which the restrictive orders could be made. Preventive orders by their very nature cannot be made after any judicial enquiry or trial. The provision of S. 4 (1) (c), East Punjab Public Safety Act, cannot therefore be pronounced to be unreasonable, simply because the order could be passed by the Provincial Government or the District Magistrate on their own personal satisfaction and not on materials which satisfy certain objective tests. N. B. Khare v. State of Delhi, 1950 **Mad W N 440 : 86 Cal L J 83 : 1950 Mad W N (Cri) 120: 1950 Raj LW 398: 52 Cri L J 550: 1950 All L J 506 : 1950 S C J 328 : 1950 All W R 514 : 1950 SCR 519 : AIR 1950 S C 211 (214, 217) (Pt B) (Prs 5, 26).**

●——**Article 19 (5)—East Punjab Public Safety Act (5 of 1949), S. 4 (3)—Order of externment for three months – Period whether unreasonable—Possibility of abuse of power—Whether ground for impugning an Act.**

Majority view; Mukherjea and Mahajan JJ. dissenting — The period of three months for which an order of externment may be passed by a District Magistrate under S. 4 (3), East Punjab Public Safety Act, 1949, is not prima facie unreasonable, even though the externee has no remedy during that time. The further extension of the externment order beyond three months may be for an indefinite period, but in that connection the fact that the whole Act is to remain in force only upto 14th August 1951 cannot be overlooked. Moreover, this whole argument is based on the assumption that the Provincial Government when making the order will not perform its duty and may abuse the provisions of the section. It is improper to start with such an assumption and decide the legality of an Act on that basis. Abuse of the power given by a law sometimes occurs; but the validity of the law cannot be contested because of such an apprehension.

Per Mukherjea J.—There is absolutely no limit under S. 4 (3) as to the period of time during which an externment order would remain in force if the order is made by the Provincial Government. The Provincial Government has been given unlimited authority in this respect and they can keep the order in force as long as they choose to do so. As regards orders made by a District Magistrate, the period indeed has been fixed at 3 months, but even here the Provincial Government is competent to extend it to any length of time by means of a special order. The law does not fix any maximum period beyond which the order cannot continue, and the fact that the Act itself would expire in August 1951 is not a relevant matter for consideration in this connection at all. The provision of sub-s. (3) of S. 4 is therefore manifestly unreasonable and cannot be supported on any just ground. N. B. Khare v. State of Delhi, 1950 **Mad W N 440 : 86 Cal L J 83 : 1950 Mad W N (Cri) 120: 1950 Raj L W 398 : 52 Cri L J 550 : 1950 All L J 506 : 1950 S C J 328 : 1950 All W R 514 : 1950 S C R 519 : AIR 1950 S C 211 (214, 217, 218) (Pt C) (Prs 6, 27).**

——**Art. 19 (1) (d)**— Assam Opium Prohibition Act (1947), S. 16—Period of duration of externment — Unreasonableness. See Assam Opium Prohibition Act (23 of 1947), S. 16. **AIR 1951 Assam 106 (DB).**

——**Arts. 19, 21 — Externment order — Validity — Assam Opium Prohibition Act (23 of 1947), S. 17,**

Even if externment may be regarded as amounting to deprivation of personal liberty inasmuch as it prevents the individual externed to move freely throughout the territory of India, the individual concerned, if he happens to be the citizen of India, has got an additional right where his freedom to move freely throughout the territory of India is taken away. Assuming then that the case of externment under S. 17 of the Assam Opium Prohibition Act can be brought within the scope of Art. 21, it would be open to a citizen to claim that the impugned legislation should be examined in the light of tests laid down by Cl. (5) of Art. 19. AIR 1950 Bom 363, A I R 1950 Bom 374, AIR 1950 Pat 322, AIR 1950 S C 211, Rel. on. **52 Cri L J 966 : ILR (1951) 3 Assam 181 : AIR 1951 Assam 106 (117) (Pt J) (Pr 68) (DB).**

——**Art. 19 (1) (d)** — Bombay Police Act (1951), S. 57 —Externment order under, when should be passed, See Bombay Police Act (22 of 1951), S. 57. **AIR 1956 Bom 719.**

●——**Art. 19 (1) (d) and (e) and (5)**—Bombay Public Security Measures Act (6 of 1947), S. 2 (1) (b) - Externment order under — Validity of. See Public Safety — Bombay Public Security Measures Act (6 of 1947), S. 2 (1) (b). **52 Cri L J 120 : AIR 1950 Bom 363 (FB).**

——**Art. 19 (1) (d), (e) and (5) — Externment order under Cantonments Act—Validity of —Cantonments Act (2 of 1924), S. 238 — If violates fundamental rights under Art. 19 (1) (d) (e).**

The provisions of S. 238 of the Cantonments Act are not violative of the constitutional liberties declared by Art. 19 (1) (d) and (e); S. 238 of the Cantonments Act is therefore intra vires the Constitution. Section 238 provides elaborate procedural safeguards, to enable the person whose liberty of locomotion is about to be curtailed, to examine and then, meet and, rebut the allegations before the Magistrate. Thus, from the procedural point of view the law gives to such a person adequate opportunity not only to present his case before the Magistrate but also to contest the validity of his order in appeal. This section is obviously not violative of the principle of natural justice and it does not exclude judicial inquiry. The mere possibility of an abuse of provision cannot be a ground for holding the provision void. **ILR (1957) Punj 1388 : 59 Punj L R 289 : 1957 Cr L J 1173 : AIR 1957 Punj 244 (253, 254) (Pt E) (Prs 36, 37, 38, 43) (DB).**

44. Restrictions on entry into India.

● **——Art. 19 (1) (d) (e), (5)—Passport Act (1920), S. 3 and Passport Rules (1950), R. 3—Not ultra vires.**

To require an Indian citizen to produce a passport before he can be allowed to enter India may be regarded as a proper restriction upon entering India. Hence S. 3 of the Passport Act (1920) and Rule 3 of the Passport Rules (1950) do not offend Art. 19 (1) (d) and (e). AIR 1954 S C 229, Foll. Abdul Rahim Ismail C. Rahimtoola v. State of Bombay, **61 Bom L R 1547 : (1960) S C J 50 : 1960 Cr L J 124 : (1960) 1 An W R (SC) 11 : (1960) 1 Mad L J (S C) 11 : (1960) 1 S C R 285 : AIR 1959 S C 1315 (1316) (Pt A) (Pr 6).**

● **——Art. 19 (1) (d), (e) and (5)—Influx from Pakistan (Control) Act (23 of 1949), S. 7 — Validity—Infringes fundamental right under Cls. (d) and (e). See Influx from Pakistan (Control) Act (23 of 1949), S. 7. AIR 1954 S C 229.**

——Arts. 19 (1) (d) and 19 (5)—Influx from Pakistan (Control) Act (23 of 1949), S. 3—Validity—Does not contravene Art. 19 (1) (d). See Influx from Pakistan (Control) Act (1949), S. 3. AIR 1959 All 19.

——Art. 19 (1) (d) and (e) and (5) and Influx from West Pakistan (Control) Act (23 of 1949) — Restrictions in regard to permit to visit India and stay—Legality.

A law allowing the removal from the territory of India of any citizen would be in contravention of Art. 19 (1) (d) and (e) of the Constitution and will therefore be void in view of Art. 13 (1) of the Constitution. A provision of law requiring a person entering the territory of India from Pakistan to have a proper permit with him is a reasonable restriction on such rights within the meaning of Art. 19 (5). But the condition that after entering the territory of India he has to move in a certain manner and should leave the country after the period mentioned in the permit cannot be said to be a reasonable restriction on the exercise of the aforesaid rights of the citizen. These conditions amount to an infringement of the rights given to a citizen in Art. 19 (1) (d) and (e) as his free movement is controlled and he is deprived of his right to settle anywhere. So such provisions of the Influx from Pakistan (Control) Act, 1949 and the rules made thereunder as lead to the infringement of these rights would be void in view of Art. 13 of the Constitution in their application to the citizens of India.

Rule 19 of the Permit System Rules, 1949, and S. 7 of the Influx from Pakistan (Control) Act in so far as they are applicable to citizens of India and are inconsistent with the fundamental rights guaranteed to them under Art. 19 (1) (d) and (e) of the Constitution have, after the commencement of the Constitution become void in view of the provisions contained in Art. 13 (1). **1952 Cri L J 553 : I L R (1952) 1 All 513 : AIR 1952 All 257 (263, 264, 269, 270) (Pt C) (Prs 34a, 35, 35a, 77, 85) (DB).**

——Art. 19—Validity of S. 7 of Influx from Pakistan (Control) Act, 1949. See Influx from Pakistan (Control) Act (1949), S. 7. AIR 1954 Bhopal 9.

——Art. 19—Scope—Rules under Passport Act, Rr. 3 and 6—Validity—Art. 19 of Constitution—If violated. See Passport Act (1920), S. 2. 1958 Cri L J 360 : AIR 1958 Bom 115 (DB).

——Art. 19—Applicability—Business of travel agency—Government not dealing with agent — (Contract Act (1872), S. 182).

The third party is not bound by the private arrangement made between the agent and his principal. The law will not compel a third party to accept the agent. He is always free to say that he will deal direct with the principal. Further the Government's method of directly dealing with the travellers in matters of passport and visa in respect of Indo-Pakistan travelling and not to accept applications from intermediaries does not at all affect the essential business of travel agency of the applicant-company. The only effect of the Government not dealing with the intermediaries but dealing with travellers direct in Indo-Pakistan travelling is that the Government does not recognise the agent of the travellers. A I R 1952 S C 12, Foll. **62 Cal W N 682 : AIR 1958 Cal 634 (635) (Pt A) (Prs 6, 7).**

——Art. 19 — Influx from Pakistan (Control) Act (1949), S. 4 (a)—Conditions in permit — Reasonableness—They are reasonable in the interest of the State generally. 1952 Cri L J 1683: AIR 1952 Cal 837 (838) (Pt A) (Pr 6) (DB).

● **——Art. 19 (1) (d) and (e) — When infringed. See Influx from Pakistan (Control) Act (1949), S. 1. AIR 1954 Hyd 77 (FB).**

——Art. 19—Influx from West Pakistan Control Act (1949), S. 4—Section is not ultra vires and unconstitutional. 1952 Cri L J 1759 : AIR 1952 Kutch 91 (92) (Pt C) (Pr 5).

——Art. 19 (1) (d)—Freedom of movement, if affected by the Influx from West Pakistan (Control) Act, 1949. See Influx from West Pakistan (Control) Act, 1949. AIR 1951 Kutch 38.

——Arts. 19 and 13 (1)—Influx from Pakistan (Control) Act (1949), S. 7—Validity. See Ibid, Art. 13 (1). AIR 1956 Madh Bha 250.

45. Clause (1) (d)—Illustrative examples.

● **——Art. 19 (1) (d), (e), (5)—Suppression of Immoral Traffic in Women and Girls Act (1956), S. 20—Validity — Provisions of S. 20 are reasonable restrictions imposed in public interest within Art. 19 (5).**

Under Art. 19 (1) (d) a prostitute has a fundamental right to move freely throughout the territory of India, and under sub-cl. (e) thereof to reside and settle in any part of territory of India. Under S. 20 of the Act of 1956 the Magistrate can compel her to remove herself from the place where she is residing or which she is frequenting to places within or without the local limits of his jurisdiction by such route or routes and within such time as may be specified in the order and prohibit her from re-entering the place without his permission in writing. This is certainly a restriction on a citizen's fundamental right under Art. 19 (1) (d) and (e) of the Constitution. Whether a restriction is reasonable in the interests of the general public depends upon the peculiar circumstances of each case. If in a particular locality the vice of prostitution is endemic degrading those who live by prostitution and demoralising others who come into contact with them, the Legislature may have to impose severe restrictions on the right of the prostitute to move about and to live in a house of her choice. If the evil is rampant, it may also be necessary to provide for deporting the worst of them from the area of their operation. One of the objects of the Act is to control the growing evil of prostitution in public places. Under S. 20 of the Act the freedom of movement and residence are regulated, but an effective and safe judicial machinery is provided to carry out the objects of the Act. The restrictions placed upon the prostitutes are certainly in the interests of the general public and as the imposition of the restrictions is done through a judicial process on the basis of a clearly disclosed policy, the said restrictions are clearly reasonable. Once it is held that the activities of a prostitute in a particular area, having regard to the conditions obtaining therein, are so subversive of public morals and so destructive of public health that it is necessary in public interest to deport her from that place the restrictions should be held to be reasonable.

Whether deportation out of the jurisdiction of the Magistrate is necessary or not depends upon the facts of each case and the degree of the demoralising influence a particular prostitute is exercising in a particular locality. If in a particular case a Magistrate goes out of the way, and makes an order which is clearly disproportionate to the evil influence exercised by a particular prostitute, she has a remedy by way of revision to an appropriate Court. The provisions of S. 20 of the Act are reasonable restrictions imposed in public interest within the meaning of Art. 19 (5) of the Constitution and, therefore do not infringe the fundamental rights of the prostitute under Art. 19 (1) (d) and (e) thereof. A I R 1951 S C 188 and A I R 1952 S C 196, Rel. on; A I R 1963 All 71, Reversed; AIR 1963 Bom 17, Overruled. State of Uttar Pradesh v. Kaushailiya, 1964 All L J 1 : 1964 (1) Cri L J 304: 1964 S C D 167: (1964) 1 S C W R 276: I L R (1964) 1 All 528 : (1965) 1 S C A 53 : A I R 1964 S C 416 (422, 423) (Pt C) (Prs 11, 12, 14).

● **——Arts. 19 (1) (d) and 21 — U. P. Police Regulations. Reg. 236, Cl. (b)—Reg. 236, Cl. (b) is violative of Art. 21—It is invalid.**

Per Court. — Clause (b) of Reg. 236 of the U. P. Police Regulations which authorises 'domiciliary visits' is violative of Art. 21 of the Constitution. There is no law on which it can be justified. It is, therefore, unconstitutional.

Per Subba Rao and Shah, JJ. — Not only Cl. (b) of Reg. 236 is unconstitutional but the entire Reg. 236, consisting of Cls. (a) to (f), is unconstitutional on the ground that it infringes both Art. 19 (1) and Art. 21 of the Constitution. Kharak Singh v. State of U. P., **1963 All L J 711 : 1963 (2) Cr L J 329 : (1964) 2 S C J 107 : (1964) 1 S C R 332 : AIR 1963 S C 1295 (1303, 1306) (Pt A) (Prs 19, 21, 22, 32, 36).**

● **——Art. 19 (1) (d) and Art. 21 — U. P. Police Regulations, Reg. 236, Cls. (c), (d) and (e) — These clauses do not infringe Arts. 19 (1) (d) and 21.**

Per Majority. — So far as Cls. (c), (d) and (e) of Reg. 236 of the U. P. Police Regulations are concerned, the freedom guaranteed by Art. 19 (1) (d) is not infringed by a watch being kept over the movements of the suspect. Nor has Art. 21 any relevance in the context. For, the right of privacy is not a guaranteed right under the Constitution and therefore the attempt to ascertain the movements of an individual which is merely a manner in which privacy is invaded is not an infringement of a fundamental right guaranteed by Part III. Kharak Singh v. State of U. P., **1963 All L J 711 : 1963 (2) Cr L J 329 : (1964) 2 S C J 107 : (1964) 1 S C R 332 : AIR 1963 SC 1295 (1302) (Pt J) (Pr 20).**

● **——Art. 19 (1) (f) — Infringement of** — See Orissa Hindu Religious Endowments Act (4 of 1939), S. 38. **AIR 1954 S C 400.**

● **——Art. 19 (1) (d)**—Abducted Persons (Recovery and Restoration) Act (1949), not inconsistent with Art. 19 (1) (d), (e), (g) and Art. 21 of the Constitution—See Abducted Persons (Recovery and Restoration) Act (65 of 1949), Preamble. **AIR 1953 S C 10.**

● **——Art. 19 (1) (d) and (5)** — City of Bombay Police Act (1902), S. 27 (1) — Validity — Restrictions by S. 27 (1) upon fundamental right of free movement are reasonable—See City of Bombay Police Act (4 of 1902), S. 27 (1). **AIR 1952 S C 221.**

——Art. 19 (1) (d) — Suppression of Immoral Traffic in Women and Girls Act (1956), S. 20—Constitutional validity — Provision abridges fundamental rights guaranteed under Art. 19 (1) (d) and (e) and infringes Art. 14—It does not however violate Art. 19 (1) (g) — See Suppression of Immoral Traffic in Women and Girls Act (1956), S. 20. **AIR 1963 All 71.**

[**Reversed** in AIR 1964 S C 416.]

——Art. 19 (1) (d)—Public Safety — U. P. Prevention of Crimes (Special Powers) (Temporary) Act (5 of 1949), S. 3 (2) — Provision, if imposes unreasonable restriction on right of free movement in India — See Public Safety — U. P Prevention of Crimes (Special Powers) (Temporary) Act (5 of 1949), S. 3 (2). **AIR 1951 All 718 (DB).**

——Art. 19 (1) (d) — Suppression of Immoral Traffic in Women and Girls Act (1956), S. 20 — Constitutional validity — S. 20 does not offend Art. 14 or Art. 19 (1) (d) (e) and (g) read with Art. 19 (5) and (6) of the Constitution of India — Constitution of India, Arts. 14, 19 (1) (d), (e) and (5), (6) — See Suppression of Immoral Traffic in Women and Girls Act (1956), S. 20. **AIR 1964 Andh Pra 400.**

——Arts. 19 (1) (d), 19 (5) and 22 (4) — Assam Maintenance of Public Order Act (5 of 1947), (as amended by Assam Act 21 of 1950), S. 2—Validity—See Public Safety — Assam Maintenance of Public Order Act (5 of 1947) as amended by Assam Act (21 of 1950), S. 2. **AIR 1953 Assam 77.**

——Art. 19 (1) (d) and (e) and Art. 19 (5)—Power of Magistrate to remove prostitute to place outside his jurisdiction offends Art. 19 (1) (d) and (e) — Rest of section valid — See Suppression of Immoral Traffic in Women and Girls Act (1956), S. 20. **1963 (1) Cr L J 148 : AIR 1963 Bom 17 (DB).**

[**Reversed** in AIR 1964 S C 416.]

——Art. 19 (1) (d) and (e) — City of Bombay Police Act (4 of 1902), S. 27 (7) — Validity — See City of Bombay Police Act (4 of 1902), S. 27 (7). **AIR 1951 Bom 432 (DB).**

● **——Art. 19 (1) (d) and (5)**—Bombay District Police Act (4 of 1890), S. 46 (3)— Validity — S. 46 (3) is not rendered void by Art. 13 of the Constitution on the ground that it contravenes fundamental right under Art. 19 (1) (d) and (e). Abdul Rahiman v. Emperor, **52 Bom L R 558 : ILR (1950) Bom 564 : 52 Cr L J 1059 : AIR 1950 Bom 374 (374, 375) (Pt A) (Prs 1 & 5) (FB).**

——Art. 19—Validity of S. 3, Criminal Law (Industrial Areas) Amendment Act (4 of 1942) — Does not offend Art. 14 or any other Article—See Ibid, Art. 14. **1963 (2) Cr L J 498 : AIR 1963 Cal 562 (DB).**

——Art. 19 (1)(d), 19 (1) (g), 19 (5) and 19 (6)—Police Act (1861), S. 17—Appointment as police officer under —Validity—Does not contravene Articles—See Police Act (1861), S. 17. **AIR 1958 Cal 365.**

——Art. 19 (1) (d), 19 (1) (f), 19 (1) (g), 19 (5) — West Bengal Foodgrains (Movement Control) Order (1951), Para. 3 — Validity—Amounts to reasonable restriction under Art. 19 (5) — See West Bengal Foodgrains (Movement Control) Order, 1951, Para. 3. **AIR 1952 Cal 61.**

● **——Arts. 19 (1) (d), 19 (5), 22 (4)**—Bengal Criminal Law Amendment Act (as amended by Amending Ordinance of 1949), Preamble, S. 2 (1) — Validity — Not valid after passing of the Constitution — See Public Safety — Bengal Criminal Law Amendment Act (6 of 1930 as amended by Criminal Law Amendment (Amending) Ordinance, 1949), Preamble. **AIR 1950 Cal 274 (SB).**

——Art. 19 (5) — Order under S. 26, Hyderabad City Police Act — Allegation of mala fide. See Hyderabad City Police Act (9 of 1348 F), S. 26. **A I R 1954 Hyd 221 (DB).**

——Art. 19 (1) (d), (e) and (5)—Public Safety—United States of Gwalior, Indore and Malwa (Madhya Bharat) Maintenance of Public Order Act (7 of 1949), Ss. 3, 5 and 11—Validity—The restrictions which it is permissible to impose under these sections must be held to be ultra vires of the State Legislature. **ILR**

(1952) M B 364 : 1952 Cri L J 1058 : A I R 1952 Madh Bha 114 (117, 118, 119) (Pt B) (Prs 14, 18, 19).

——Art. 19 (5) — Order restricting person not to remain in any area or place in the State — Not unreasonable on ground that it is not in the interest of general public and for maintenance of public order. See Public Safety — M. P Public Security Act (25 of 1959), S. 3 (1) (a). **AIR 1964 Madh Pra 175 (DB).**

——**Arts. 19 (1) (d) and 19 (5)** — Asking a person to remain at particular place — Restriction is unreasonable. See Public Safety — M. P. Public Security Act (25 of 1959), S. 3 (1) (b). **A I R 1964 Madh Pra 175 (DB).**

——**Art. 19 (1) (d)** — Restriction requiring person to notify his movements — **Held**, permissible and therefore not unconstitutional. See Public Safety — M. P. Public Security Act (25 of 1959), S. 3 (1) (c). **A I R 1964 Madh Pra 175** (DB).

——**Art. 19 (1) (d)**—Order under S. 3 (1) (b) of M. P. Public Security Act after declaration of emergency — Clause (b) held invalid—Order held not immune from attack. See Public Safety — M. P. Public Security Act 25 of 1959), S. 3 (1) (b). **A I R 1964 Madh Pra 175 (DB).**

——**Art. 19 (1) (d)** — Obstruction by members of Hindu Community to Harijans in taking a corpse along public road — Constitutes an offence under S. 341 — Exception to S. 339 does not apply. See Penal Code (1860), S. 341. **(1963) 2 Mad L J 80.**

——**Arts. 19 (1) (d), (e), (5), 14, 226, 244, 342**—Laccadive Islands and Minicoy Regulation (1 of 1912), S. 33 —S 33 is not unreasonable and is valid—See Laccadive Islands and Minicoy Regulation (1 of 1912), S. 33. **AIR 1957 Mad 433.**

—**Art. 19 (1) (d), (5)** — Madras Restriction of Habitual Offenders Act (6 of 1948), S. 5 — Validity. See Madras Restriction of Habitual Offenders Act (1948), S. 5. **A I R 1953 Mad 664 (DB).**

——**Art. 19 (1) (d)**—Mysore Police Act not ultra vires, Art. 19 (1) (b), (d). See Mysore Police Act (5 of 1908), S. 45. **1960 Cri L J 379 : A I R 1960 Mys 57 (DB).**

——**Art. 19** — Right to claim rights guaranteed by emigrants to Pakistan staying in India after cancellation of their permit for permanent return before Art. 19 coming into force. See Ibid, Art. 7, Proviso. **A I R 1951 Nag 38.**

——**Art. 19 (1) (d)**—Public Safety—Bihar Maintenance of Public Order Act (1950), S. 9 (2) — Act originating from Ordinance promulgated during emergency — Act whether permanent measure imposing restrictions—Article 19 (1) (b), (d) of Constitution, if violated. See Public Safety—Bihar Maintenance of Public Order Act (3 of 1950), S. 9 (2). **A I R 1959 Pat 425.**

——**Art. 19 (1) (d)** — Punjab Police Rules, R. 24 (4) — Surveillance Register No. 10 kept under — Maintenance of the Register not unconstitutional — It cannot, however, be publicly displayed — A I R 1959 Punjab 323, Foll. **67 Punj L R 528 : A I R 1966 Punj 268 (269) (Pr 1).**

——**Art. 19 (1) (d), (e), (g) and (5)** — Suppression of Immoral Traffic in Women and Girls Act (1956), S. 20 —Constitutional validity — Provisions do not offend Art. 14 or 19 (1) (d), (e), (g) and (5) of the Constitution. See Suppression of Immoral Traffic in Women and Girls Act (1956), S. 20. **1963 (1) Cri L J 59 : A I R 1963 Punj 36.**

——**Art. 19 (1) (d)** — Surveillance Register No. 10 — Keeping of — If constitutional. See Punjab Police Rules, R. 23.4. **1959 Cri L J 900 : AIR 1959 Punj 323 (DB).**

——**Art. 19 (1) (d), (e) and (g)**—Validity of Abducted Persons (Recovery and Restoration) Act, 1949 — Does not infringe Art. 22 (1) and (2) nor is it inconsistent with Art. 19 (1) (d), (e) and (g). See Abducted Persons (Recovery and Restoration) Act (1949), S. 1. **A I R 1954 Punj 145 (DB).**

——**Art. 19 (1) (d), (e) and (5)** — U. P. Goondas Act (1 of 1932). (as modified and extended to the State of Delhi) — Validity. See Public Safety— U. P. Goondas Act (1 of 1932) (as modified and extended to the State of Delhi). **A I R 1953 Punj 52.**

46. Clause (1) (e).

● ——**Art. 19 (1) (e) and Art. 19 (1) (d)**—Suppression of Immoral Traffic in Women and Girls Act (1956), S. 20 — Validity — Provisions of S. 20 are reasonable restrictions imposed in public interest within Art. 19 (5). A I R 1963 All 71, **Reversed.** A I R 1963 Bom 17, **Overruled.** State of Uttar Pradesh v. Kaushailiya, **1964 All L J 1 : 1964 S C D 167 : (1964) 1 S C W R 276 : I L R (1964) 1 All 528 : 1964 (1) Cri L J 304 : AIR 1964 S C 416 (422, 423) (Pt C) (Prs 11, 12, 13).**

● ——**Art. 19 (1) (e) and (d)** — Legislation contemplating preventive action against goondas—Absence of guidance or assistance in statute in deciding who can be put in category of goonda—Constitutional validity —Legislation whether saved by Art. 19 (5)—C. P. and Berar Goondas Act (10 of 1946) (as amended by Act 49 of 1950), Ss. 4 and 4-A — Sections contravene Art. 19 (1) (d) and (e) and whole Act is invalid. State of M. P. v. Baldeo Prasad, **(1961) 1 S C R 970 : 1961 Mad L J (Cr) 603 : (1961) 2 S C J 484 : 1961 (1) Cri L J 442 : A I R 1961 S C 293 (297, 298) (Prs 9, 10 and 11).**

——**Art. 19 (1) (e)** — Abducted Persons (Recovery and Restoration) Act is not inconsistent with Art. 19 (1) (d), (e) and (g) of Constitution. **1953 All L J 273 : 1953 All W R (H C) 257 : 1953 Cri L J 1384 : ILR (1953) 2 All 735 : AIR 1953 All 613 (616) (Pt E) (Pr 13) (DB).**

——**Art. 19 (1) (e)** — Suppression of Immoral Traffic in Women and Girls Act (1956), S. 20 — Constitutional validity — S. 20 does not offend Art. 14 or Art. 19 (1) (d) (e) and (g) read with Art. 19 (5) and (6) of the Constitution of India. See Suppression of Immoral Traffic in Women and Girls Act (1956), S. 20. **AIR 1964 Andh-Pra 400.**

——**Arts. 19 (1) (d), 19 (5) and 226** — Long standing custom in Garo Hills that it is in interest of people there that no Nepali or foreign should be allowed to live in Garo village without Deputy Commissioner's permission — Deputy Commissioner after due inquiry coming to conclusion that petitioner's living in such village was not in interest of people of the village — Expulsion order passed against petitioner — Order held reasonable and covered by Cl. (5) of Art. 19. **1953 Cri L J 495 : ILR (1952) 4 Assam 320 : AIR 1953 Assam 61 (62) (Pt C) (Pr 4).**

——**Art. 19 (1) (e) and (d)**—Suppression of Immoral Traffic in Women and Girls Act (1956), S. 20 — Validity — Power of Magistrate to remove prostitute to place outside his jurisdiction offends Art. 19 (1) (d) and (e) — Rest of section valid. See Suppression of Immoral Traffic in Women and Girls Act (1956), S. 20. **AIR 1963 Bom 17.**

[**Overruled** in AIR 1964 S C 416.]

——**Art. 19 (1) (d), (e)**—Revenue Recovery Act (1890), Ss. 3 (2), 5 — Constitutional validity — Power of Revenue Authorities to determine arrears due and issue certificate — Power to send defaulter to civil prison —No violation of Arts. 14, 19, 20 and 21. See Ibid, Art. 14. **(1962) 3 Guj L R 666.**

——**Arts. 19 and 19 (1) (d)** — Validity of S. 46-B, Bombay District Police Act — Contravenes fundamental rights mentioned in Art. 19 (1) (d) and (e) by imposing unreasonable restrictions. See Bombay Dis-

trict Police Act (4 of 1890), S. 49-B. 1954 Cri L J 770 : AIR 1954 Kutch 15 (17, 18) (Pt C) (Prs 8, 10).

——Art. 19 (1) (e) and (d)—Citizen of Pakistan cannot claim rights under Art. 19 (1) (d) and (e). **1956 M B L R (Civil) 442 : 1956 M B L J 893 : AIR 1957 Madh Bha 1 (3) (Pt E) (Pr 5) (DB).**

——Art. 19 (1) (e) and (d) – Commonwealth citizen cannot claim fundamental rights under Article — (Citizenship Act (1955), S. 12). **1956 M B L J 870 : Madh B L R 1956 (Civil) 535 : AIR 1956 Madh Bha 211 (213) (Pt C) (Pr 8) (DB).**

——Arts. 19(1) (d) and (e), (5)—Madhya Bharat Police Act (76 of 1950), S. 49 (2) – Section is not repugnant to Art. 19 (1) (d) and (e) and as such is not void. **AIR 1955 N UC (Madh B) 5943.**

——Art. 19 (1) (e) — S. 33, Laccadive Islands and Minicoy Regulation (1912) is not unreasonable and is valid. See Laccadive Islands and Minicoy Regulation (1 of 1912), S. 33. **AIR 1957 Mad 433.**

——Arts. 19 (1) (e), 10 and 226 – Married women — Order for deportation — Right to relief – Bihar Administration of Evacuee Property Ordinance (3 of 1949), S. 11.

Where an order for deportation is served on a person that person, if he can make out a prima facie case that he is a citizen and not an alien is entitled to a writ of certiorari and on the return to that writ being made, to a judicial determination of the question of his status.

A woman-born in India and married to a citizen in India taking up temporary residence in Pakistan for medical treatment would neither fall under Cl. (f) of the definition of "evacuee" contained in Cl. (c) of S. 2, Bihar Administration of Evacuee Property Ordinance, 1949, nor under Cl. (ii) as the word "resident" occurring there must be construed as meaning a person who has taken up his or her residence in Pakistan permanently.

Even if that person comes within the definition of "evacuee" in the Ordinance, nevertheless, she is also a citizen of India and as such is entitled to remain in India. If, while in Pakistan, her conduct was such as to create suspicions as to her loyalty to the Indian Union, she may, on her return to India be subjected to such restrictions on her movements as Parliament may consider advisable and not be deported.

Per Sarjoo Prasad J.– A woman acknowledged by her husband as his wife can claim her husband's domicile though it is not clear in what form that marriage was solemnised. **ILR 30 Pat 21 : AIR 1951 Pat 434 (435, 436) (Pt A) (Prs 3, 4, 8) (DB).**

[**Reversed** in AIR 1955 S C 282]

——Art. 19 (1) (e), (d) and (5) — Externment order under Cantonments Act — Validity — (Cantonments Act (2 of 1924), S. 238 — If violates fundamental rights under Art. 19 (1) (d) and (e) — Validity). **59 Pun L R 289 : 1957 Cri L J 1173 : AIR 1957 Punj 244 (253, 254) (Pt E) (Prs 36 37, 38, 43) (DB).**

——Art. 19 (1) (e) and (d) — Rights under Clauses (d) and (e) — Restrictions imposed by Act 23 of 1949 and permit rules — Reasonableness — (Influx from Pakistan (Control) Act (1949), S. 1) — (Influx from Pakistan (Control) Ordinance (34 of 1948), S. 1)—(Permit System Rules (1948), R. 16) — (Permit System Rules (1950), R. 10). **1958 Cri L J 418 (2):AIR 1958 Raj 65 (70) (Pt E) (Pr 31) (DB).**

47. Clause (1) (f).

● **——Art. 19 (1) (f)** — Civil P. C. (1908), S. 87-B — Section does not contravene Art. 14 or Art. 19 (1) (f) of the Constitution and is not invalid. See Civil P. C. (1908), S. 87-B. **AIR 1964 S C 1590.**

● **——Art. 19 (1) (f), (g) and Art. 246— Scope and extent of legislative power — Law passed making its provision retrospective – Effect of retrospective operation changing character of legislative competence.**

Though the Legislature can pass a law and make its provisions retrospective, it would be relevant to consider the effect of the said retroactive operation of the law both in respect of the legislative competence of the Legislature and the reasonableness of the restrictions imposed by it. It may be open to a party to contend that the restrictions imposed by the Act are so unreasonable that they should be struck down on the ground that they contravene his fundamental rights guaranteed under Art. 19 (1) (f) and (g). Rai Ramkrishna v. State of Bihar, (1963) 50 I T R 171 : (1964) 1 S C A 413 : I L R 41 Pat 796 : (1964) 1 S C R 897 : (1964) 2 S C J 749 : A I R 1963 S C 1667 (1673) (Pt D) (Pr 11).

● **——Art. 19 (1) (f)**—Suspension of Government servant—Effect of—Dismissal order set aside by Supreme Court – Order for further enquiry and consequential suspension under R. 12 (4)—Validity—Does not contravene Arts. 142, 144, 19 (1) (f) and 14 of the Constitution. See Ibid, Art. 309. **AIR 1963 S C 687.**

● **——Art. 19 (1) (f)**—Banking Companies Act (1949), S. 38 (1) and (3) (b) (iii)– Banking Companies—Special law dealing with winding up — Validity—Whether discriminatory—Provision making Reserve Bank sole judge to decide whether affairs of banking company were being conducted prejudicially to interests of depositors and making it mandatory for High Court to order winding up when application was made by Reserve Bank—No violation of Arts. 14, 19 (1) (f) and (g) and 301. See Ibid, Art. 14. **AIR 1962 SC 1371.**

● **——Art. 19** — Deprivation of property – Sugar Export Promotion Act, S. 5—Validity— If infringes Art. 19 or 31. See Sugar Export Promotion Act (1958), S. 5. **AIR 1959 SC 1124.**

● **——Arts. 19 (1) (f) and 363** — Acquisition of territory — Relationship between citizens of acquired territory and sovereign of acquiring territory — Covenant between East Punjab States to form Patiala Union — Obligations of covenanting States to devolve on Union of Patiala States — Union formed and Rajpramukh taking over administration of Union — Covenant is act of State—Ordinance by Rajpramukh repealing all laws and notifications of covenanting States and applying laws of Patiala State — Agreement between covenanting State (Jind) and Public Limited Company in that State whereby Company given concession in rates of income-tax—Agreement held not binding on Rajpramukh — Rates of income-tax held applicable according to Patiala Income-tax Act for period subsequent to formation of Union — Union subsequently acceding to Union of India—After accession Indian Income-tax Act applied—Agreement being abrogated before accession, question of whether there was breach of rights guaranteed by Art. 19 (1) (f) did not arise — (Patiala Income-tax Act (7 of 2001), S. 1) — (Pepsu Administration Ordinance (1 of 2005), S. 3)—(Pepsu General Provisions (Administration) Ordinance (16 of 2005), S. 3) — (Civil P. C. (1908), S. 9). Dalmia Dadri Cement Co. Ltd. v. I. T. Commr., (1958) 34 I T R 514 : ILR (1958) Punj 1966 : 1958 S C J 1041 : 1959 S C R 729 : A I R 1958 S C 816 (822, 823, 824, 825, 826, 827) Prs 9, 11, 13, 14, 17, 22, 23, 25, 27).

● **——Arts. 19 (1) (f) and 31-A – Bihar Land Reforms Act (30 of 1950), S. 4 (h)—Validity—Tenancy Laws.**

Section 4 (h) of the Bihar Land Reforms Act does direct the Collector to give reasonable notice to the parties concerned and to hear them. Such annulment or dispossession which he may order, must be with the previous sanction of the State Government and he is compelled to do so on terms which may

appear to him fair and equitable. The power is, therefore, not quite absolute or arbitrary. The Act being a law for acquisition of estates the question of it or S. 4 (h) of it imposing any unreasonable restriction on the fundamental rights of a party to realise does not arise. In any event the Act including S. 4 (h) is protected by Art. 31-A of the Constitution. Kamakshya Narain Singh v. Collector and Deputy Commissioner of Hazaribagh, **1956 S C J 118 : 1956 All L J 158 : 1956 Pat L R (SC) 69 : 1956 B L J R 135 : 1956 S C A 495 : (1955) 2 S C R 988 : A I R 1956 S C 63 (66) (Pt B) (Pr 5).**

● **——Art. 19 (1) (f) —Marwar Land Revenue Act (40 of 1949), S. 82—Legislation fixing fair and equitable rent —It does not infringe Art. 19 (1) (f).**

The fundamental right which a citizen has, to hold and enjoy property, imports only a right to recover reasonable rent when the lands are cultivated by a tenant, and therefore a legislation whose object is to fix fair and equitable rent cannot be said to invade that right. The contention that the provision in S. 82 (1) (a), Marwar Land Revenue Act, 1949, that abnormal years as notified in the Gazette should be excluded in determining average collections is calculated to reduce the rent, and is, therefore, unreasonable is unfounded, because a declaration that a year is abnormal is made not only when there are bumper crops but also when the yield is very low, and the provision is intended equally for the benefit of the tenant and of the landlord. A provision of this kind is usual in all tenancy legislation, and there is nothing unreasonable or unfair about it. Kishan Singh v. Rajasthan State, **1956 S C A 402 : (1956) SCJ 14 : (1955) 2 S C R 531 : AIR 1955 S C 795 (798) (Pt C) (Pr 6).**

● **——Art. 19 (5)—Applicability—Art. 19 (5) presupposes violation of Art. 19 (1) (f).**

The question whether a law is valid under Art. 19 (5) can arise only when there is a violation of the fundamental right declared in Art. 19 (1) (f), and if the right to hold property imports, as it does, only a right to recover reasonable rent from cultivating tenants, that right cannot be held to have been invaded by S. 86, Marwar Land Revenue Act, 1949, fixing reasonable rent, even when it is retrospective in operation. If the rent fixed is reasonable with reference to a period subsequent to the settlement, it must be reasonable for the period prior to it as well, and if the settlement is not an encroachment on the rights of the holder as regards the future it cannot be an encroachment as regards the past. Kishan Singh v. Rajasthan State, **1956 SCA 402 : 1956 SCJ 14 : (1955) 2 S C R 531 : A I R 1955 S C 795 (798) (Pt D) (Pr 7).**

● **——Art. 19 (1) (f) —Marwar Land Revenue Act (40 of 1949), S. 86—Discretion under S. 86 though wide is still not arbitrary—S. 86 is not invalid.**

Section 86, Marwar Land Revenue Act expressly lays down that if a Settlement Officer decides to bring rates into operation from a date earlier than the following 1st of July, it must be for reasons. There is no force in the contention that S. 86 does not lay down under what circumstances such an order could be passed, because the very nature of the things requires that a large discretion should be left to the authority. Discretion which is wide is not necessarily arbitrary.

And the power conferred on the Settlement Officer to fix an earlier date for giving operation to the rent rate is reasonable and valid and it invades no fundamental rights of the landlord. AIR 1953 S C 373, Disting. Kishan Singh v. Rajasthan State, **1956 SCA 402 : (1956) SCJ 14 : (1955) 2 S C R 531 : AIR 1955 S C 795 (799) (Pt F) (Pr 9).**

● **——Art. 19 (1) (f), 19 (1) (g)—Right to hold fair on one's land — Nature of — (Aimer Laws Regulations (3 of 1877), S. 40 —Rules under R. 1).**

A right to hold fair on one's own land is a fundamental right under Art. 19 (1) (f) which can only be restricted in the manner permitted by sub-clause (5). The holding of an annual fair is also an occupation of business within the meaning of Art. 19 (1) (g), therefore, the person also has a fundamental right to engage in that occupation on his land provided it does not infringe any law imposing "reasonable restrictions on that right in the interests of the general public." Ganpati Singhji v. State of Ajmer, **1955 S C J 119 : 1955 S C A 252 : 1955 SCR 1065 : A I R 1955 S C 188 (189) (Pt B) (Pr 3).**

● **——Arts. 19 (1) (f), 19 (5) and 31 — Applicability — Person deprived of all rights in property—Article has no application.**

Articles 19 (1) (f) and 31 deal with different subjects and cover different fields. There is no overlapping. Article 19 (1) (f) read with Cl. (5) postulates the existence of property which can be enjoyed and over which rights can be exercised because otherwise the reasonable restrictions contemplated by Cl. (5) could not be brought into play. If there is no property which can be acquired, held or disposed of, no restriction can be placed on the exercise of the right to acquire, hold and dispose of it, and as Cl. (5) contemplates the placing of reasonable restrictions on the exercise of those rights it must follow that the Article postulates the existence of property over which these rights can be exercised. The freedoms relating to the person of a citizen guaranteed by Art. 19 assume the existence of a free citizen and can no longer be enjoyed if a citizen is deprived of his liberty by the law of preventive or punitive detention. In the same way, when there is a substantially total deprivation of property which is already held and enjoyed, one must turn to Art. 31 to see how far that is justified.

These Articles deal with substantial and substantive rights and not with illusory phantoms of title. When every form of enjoyment which normally accompanies an interest in this kind of property is taken away leaving the mere husk of title, Art. 19 (1) (f) is not attracted. Where the right to occupy the premises has gone as also the right to transfer, assign, let or sub-let and what is left is but the mere husk of title in the leasehold interest, Article 19 (1) (f) read with Cl. (5) has no application. AIR 1954 S C 92; AIR 1954 S C 119 and AIR 1950 S C 27, Ref. State of Bombay v. Bhanji Munji, **1955 S C J 10 : 1954 S C A 1286 : 1955 S C R 777 : 57 Bom L R 575 : AIR 1955 S C 41 (43, 44) (Pt A) (Prs 6, 7).**

● **——Arts. 19 (1) (f) and 31** — Illegal seizure of goods in possession of petitioner in India, under no authority of law, at instance of Jammu and Kashmir Police — Amounts to infringement of fundamental rights both under Art. 19 and Art. 31 — Writ under Art. 226. See Ibid, Art. 226. **AIR 1954 S C 415.**

● **——Art. 19 (1) (f), (5)** — Issue of search warrant if infringes fundamental right under Art. 19 (1) (f). See Criminal P. C. (1898), S. 98 (1). **1954 Cr L J 865: AIR 1954 S C 300.**

● **——Arts. 19 and 31 — Scope of.**

Article 31 deals with private property of persons residing in the Union of India while Art. 19 only deals with citizens defined in Art. 5 of the Constitution. The scope of these two articles cannot be the same as they cover different fields. It cannot be seriously argued that so far as citizens are concerned, freedoms regarding enjoyment of property have been granted in two articles of the Constitution, while the protection to property qua all other persons has been

dealt with in Art. 31 alone. If both articles covered the same grounds, it was unnecessary to have two articles on the same subject. The true approach to this question is that these two articles really deal with two different subjects and one has no direct relation with the other, namely, Art. 31 deals with the field of eminent domain and the whole boundary of that field is demarcated by this article. In other words, the State's power to take the property of a person is comprehensively delimited by the article.

"My view about the correlation between Art. 19 (1) (f) read with Art. 19 (5) and Art. 31 and the true meaning and the respective scope and effect of Cls. (1) and (2) of Art. 31 have been set forth in detail in my judgment in AIR 1951 S C 41 and have been more fully explained in my judgment in Appeal No. 107 of 1952 and no reiteration of them is called for."

Per Bose, J. – Article 19 (1) (f) confers a certain fundamental freedom on all citizens of India, namely, the freedom to acquire, hold and dispose of property. Article 31 (1) is a sort of corollary, namely that after the property has been acquired, it cannot be taken away save by authority of law. Article 31 is wider than Art. 19 because it applies to everyone and is not restricted to citizens. But what Art. 19 (1) (f) means is that whereas a law can be passed to prevent persons who are not citizens of India from acquiring and holding property in this country no such restrictions can be placed on citizens. But in the absence of such a law non-citizens can also acquire property in India and if they do then they cannot be deprived of it any more than citizens, save by authority of law.

Article 31 is wider than Art. 19 (1) (f) which confers upon a citizen only the right to acquire, hold and dispose of property and is different in scope and content. Article 31 is self contained and Cl. (1) refers to deprivation of property in general. Acquisition or taking possession in Cl. (2) are different modes of deprivation and are comprehensive enough to include all forms of taking away rights of property. Dwarkadas Shrinivas v. Sholapur Spinning & Weaving Co. Ltd., **1954 S C J 175 : (1954) 1 M L J 355 : 67 Mad L W 176 : (1954) 24 Com Cas 103 : 1954 S C A 132 : 56 Bom L R 681 : 1954 S C R 674 : AIR 1954 S C 119 (126, 133, 137, 138, 139) (Pt C) (Prs 16, 43, 55, 78).**

● **——Art. 19 (1) (f)** — Right to acquire, hold and dispose of property — If infringed by the Sholapur Spinning and Weaving Co. (Emergency Provisions Act (28 of 1950)). See Ibid, Arts. 14. **AIR 1951 S C 41.**

——Art. 19 (1) (f) — Court-fees Act (1870), S. 37 — U. P. Court-fees (U. P. Amendment) Ordinance (2 of 1960), S. 2 — Retrospective legislation affecting right to file appeal on payment of court-fees — Constitutional validity — Appeal filed on payment of proper court-fee pending on date of promulgation of Ordinance — Demand for additional court-fee according to Ordinance, whether contravenes Art. 19 (1) (f) of the Constitution. See Court-fees Act (1870), S. 37. **1962 All L J 480.**

——Arts. 19 (1) (f) and (g) and 226 — Confiscation of property under R. 151 (c) of Central Excise Rules — Legality — Writ petition—Competency—Central Excise Rules (1944), R. 151 (c) — Central Excises and Salt Act (1944), S. 36

Where the property of the petitioner has been confiscated under R. 151 (c) of the Central Excise Rules and such confiscation is unlawful, there would be a restriction in the exercise of the fundamental right given to the citizens of India under Art. 19 of the Constitution to hold property and to carry on any trade or business. Consequently High Courts can take cognizance of a petition under Art. 226 even though all the remedies available to the petitioner have not been availed of. Further, while exercising the power of revision under S. 36, it is doubtful whether the Central Government would hear the petitioner on the facts of the case because revisions are invariably disposed of on questions of law and a finding of fact unless perverse is not interfered with. **1960 Cr L J 867 : AIR 1960 All 402 (403) (Pt A) (Pr 7).**

——Art. 19 (1) (f) — U. P. Municipalities Act (1916), S. 221 — Validity — Declaration of street as public street — Nature of proceedings — Objection to declaration — Duty of administrator. See Municipalities — U. P. Municipalities Act (2 of 1916), S. 221. **AIR 1958 All 209.**

——Art. 19 (1) (f) — Scope — If infringed by S. 7 of Finance Act (1951). See Finance Act (1951), S. 7. **AIR 1957 All 84.**

——Art. 19 (1) (f) — Sections 3 and 4 of the High Denomination Bank Notes (Demonetization) Ordinance (1946)—Provisions not in conflict with Art. 19 (1) (f) and hence not void under Art. 13 of the Constitution. See High Denomination Bank Notes (Demonetization) Ordinance (1946), S. 3. **AIR 1954 All 753.**

——Art. 19 (1) (f) — Criminal P. C. (1898), S. 517—Section does not contravene Art. 19 of Constitution—Confiscation or forfeiture of property does not amount to any disturbance of right to acquire, hold or dispose of property. See Criminal P. C. (5 of 1898), S. 517. **AIR 1954 All 758.**

——Arts. 19 (1) (f) and 19 (5) — U. P. Private Forests Protection Act (1949), Ss 12 and 13 - Article 19 (1) (f) of the Constitution is not infringed. See U. P. Private Forests Protection Act (6 of 1949), S. 12. **AIR 1954 All 753.**

——Art. 19 (1) (f) — Court has power to determine whether amount of fee fixed by bye-law of District Board is reasonable or not See U. P. District Boards Act (10 of 1922), S. 109. **AIR 1954 All 675.**

——Art. 19 (1) (f)—Hindu Widows' Remarriage Act is not invalid See Hindu Widows' Remarriage Act (1856), S. 1. **AIR 1954 All 538 (DB).**

——Arts. 19 (1) (f) and 226—Person's right to acquire property by raising building upon his land—Interference with right under colour of statutory authority.

A person is entitled to acquire property by raising a building upon his own land and no restrictions not statutorily authorised can be imposed upon the exercise of that right. Any person attempting to interfere with that right under colour of statutory authority must be prevented from doing so under Art. 226. **(1960) 1 Andh W R 113 : AIR 1960 Andh Pra 603 (604, 605) (Pt C) (Pr 4).**

——Art. 19 (1) (f) — Expropriation — Andhra Inam (Assessment) Act, 1955—Validity —There is no deprivation of property — Nor is there resumption of inam. See Andhra Inams (Assessment) Act (17 of 1955), S. 3. **AIR 1960 Andh Pra 461 (DB).**

——Art 19 (1) (f) and (g)—Madras Act, 29 of 1949—Constitutional validity—If violates Art. 19 (1) (f) and (g). See Madras Essential Articles Control and Requisitioning (Temporary Powers) Act (29 of 1949) (as amended by Andhra Act 1 of 1955). **AIR 1959 Andh Pra 538 (DB).**

——Art. 19—Madras Preservation of Private Forests Act (27 of 1949), Preamble and S. 3 (2)—Scope and object of the Act — Constitutionality of S. 3 (2). See Madras Preservation of Private Forests Act (27 of 1949), Pre. **AIR 1958 Andh Pra 93.**

——Art. 19 (1) (f)—Arms Act (1878), S. 18 (b)—Whether contravenes Arts. 14 and 19 (1) and (8) of the Constitution (Quaere). See Arms Act (1878), S. 18 (b). **AIR 1955 Assam 183.**

——Art. 19 (1) (f) and Sch. 7, List 2, Entry 36—Eminent domain—Act of State Legislature in exercise of

power of—Act is not subject to Art. 19 (1) (f)—(Government of India Act (1935), Sch. 7, List 2, Item 9).

When an Act of the State Legislature is covered by Item 9, List 2 of Sch. 7 in the Government of India Act, it is an Act passed by the State in the exercise of its power of eminent domain, and is, therefore, not subject to the provisions of Art. 19 (1) (f), Constitution of India, in precisely the same way as when an Act passed by the State Legislature in the exercise of its police power depriving a person of his property by reason of his personal incapacity or disability or in the interests of public order, is not subject to the provisions of Art. 19 (1) (f). **AIR 1953 Assam 84 (88) (Pt D) (Pr 13) (DB).**

——**Art. 19 (1) (f) and (g)** — Sea Customs Act (1878), S. 178 A — Validity — If contravenes fundamental rights 61 Bom L R 1230, Foll. **62 Bom L R 634 : 1961 (1) Cr L J 229 : AIR 1961 Bom 48 (55, 56) (Pt E) (Pr 23).**

——**Art. 19**—Where the Legislature had evinced an intention to encroach upon private right, the Court must insist on strict and rigid adherence to formalities. (1956) 2 All E R 669, Rel. on. **68 Cal WN 383 : 1965 (2) Cri L J 477 : AIR 1965 Cal 507 (515) (Prs 34, 37) (DB).**

——**Art. 19 (1) (f)**—Scope—Legislation dealing with acquisition or requisition as contemplated by Art. 31 (2) read with (2A) has the effect of excluding the operation of Art. 19 (1) (f). See West Bengal Land Requisition and Acquisition Act (2 of 1948). **AIR 1962 Cal 269.**

——**Art. 19 (1) (f)**—Electricity Act, S. 51—Validity—Restriction upon fundamental right to acquire, hold and dispose of property. See Electricity Act (1910), S. 51. **AIR 1960 Cal 311.**

——**Art. 19 (1) (f) and (g)**—Scope—Declaration under S. 5 (42) (b) of Calcutta Municipal Act affects rights under Art. 19 (1) (f) and (g). See Municipalities—Calcutta Municipal Act (33 of 1951), S. 5 (42) (b). **AIR 1960 Cal 172.**

——**Art. 19 (1) (f), 19 (5) and (6)**—Direction to sell to Government—Question of compensation—Justiciability. See Essential Commodities Act (1955), S. 3 (2) (f). **AIR 1958 Cal 257.**

——**Art. 19 (1) (f)**—Essential Commodities Act (1955), S. 3 (2) (f)—Order mentioning purchasers—Power of Court to go behind order and determine the real purchaser. See Essential Commodities Act (1955), S. 3 (2) (f). **AIR 1958 Cal 257.**

——**Art. 19 (1) (f)** — Bengal Municipal Act (1932), S. 129 — Validity—Resolution to split up holding for purposes of municipal tax — Notice to owner — Necessity. See Municipalities—Bengal Municipal Act (15 of 1932), S. 129. **AIR 1958 Cal 151.**

——**Art. 19 (1) (f), (5)** — Priority of State dues over private debts. See Constitution of India, Art. 372. **AIR 1955 Cal 423.**

——**Art. 19 (1) (f)** — Objection under. See West Bengal Food Grains (Intensive Procurement) Order (1952). **AIR 1954 Cal 97.**

● ——**Art. 19 (1) (f)** — **Right to hold property — If includes right to enjoy it.**

Article 19 (1) (f) of the Constitution gives a citizen a right to hold property which includes the right to enjoy the same. Interference with the right of enjoyment is, therefore, clearly an interference with the right to hold property. Iswari Prasad Goenka v. N. R. Sen, **55 C W N 719 : A I R 1952 Cal 273 (279) (Pt G) (Pr 36) (FB).**

[Reversed on another point in AIR 1953 S C 148.]

——**Arts. 19 (1) (f), 19 (5) and 13 (1)** — Bengal Land Revenue Sales (West Bengal Amendment) Act (7 of 1950), S. 7 — Section is ultra vires. See Bengal Land Revenue Sales (West Bengal Amendment) Act (7 of 1950), S. 7. **AIR 1951 Cal 85 (DB).**

[Reversed in AIR 1954 S C 92.]

——**Art. 19 (5)**—Hindu widow—Restriction on power of disposal of property — The restrictions on the widow's power of disposal of property do not amount to the infringement of any of the fundamental rights or are not void under Art. 13 (1). See Ibid, Art. 13 (1). **AIR 1952 Him Pra and B 42.**

——**Art. 19 (1) (f)** — Travancore Education Code (1909) M. E., R. 146 (a) — Madras Grant-in-aid Code, R. 2 — Madras Elementary Schools Rules, Part II, Chap. 1, R. 14—Grant-in-aid—Legal right to — Right under Art. 19 (1) (f), if infringed — Discrimination. See Travancore Education Code (1909), R. 146 (a). **AIR 1958 Ker 290.**

——**Art. 19—Ss. 523, 524, Criminal P. C.—Validity.**

It cannot be said that the provisions contained in Ss. 523 and 524, Criminal P. C. deny to any person equality before the law or the equal protection of law, or infringe the fundamental right of citizens to acquire, hold and dispose of property, or are inconsistent with Art. 31. See Ibid, Art. 14. **A I R 1951 Madh B 159.**

——**Art. 19 (1) (f)** — Law infringing Art. 19 (1) (f) and not saved by Art. 19 (5) is not valid law — M. P. Abolition of Cash Grants Act (16 of 1963) — Validity — See Ibid, Art. 31 (1). **AIR 1965 Madh Pra 77.**

——**Art. 19 (1) (f)** — Tank cannot vest in the State unless enquiry contemplated in S. 251 of the M. P. Land Revenue Code is made — S. 251 is not violative of Art. 19 (1) (f) of the Constitution. See M. P. Land Revenue Code (1959), S. 251. **1963 M P L J (Notes) 133.**

——**Art. 19 (1) (f) and (g)** — Custom giving exclusive right to some Chamars to take carcasses of animals dying in village — Custom violates Art. 19 (1) (f) and (g) - Custom is void and unenforceable. **1962 Jab L J 58 : 1962 M P L J (Notes) 115 : AIR 1962 Madh Pra 275 (276) (Prs 12, 13).**

● ——**Art. 19 (1) (f)**—Delegation of powers—Validity of Essential Supplies (Temporary Powers) Act (1946), S. 3. See Ibid, Art. 245. **A I R 1957 Madh Pra 179 (FB).**

——**Art. 19 (1) (f)** — Madras Prevention of Insults to National Honour Act (14 of 1957), S. 5 — Constitutional validity — Section is competent for State Legislature to enact under Entry 1 of Lists 2 and 3 — Phrases "Public Order" and "Criminal Law"—Meaning—Section does not violate Art. 19 (1) (f) of Constitution. See Madras Prevention of Insults to National Honour Act (14 of 1957), S. 5. **A I R 1965 Mad 11 (DB).**

——**Arts. 19 (1) (f), 265** — Madras Agricultural Income-tax Act, S. 65 (4) — Validity — Does not contravene Art. 19 (1) (f) of the Constitution.

The State's power to tax under S. 65 of the Madras Agricultural Income-tax Act does not violate the fundamental right guaranteed in Part III of the Constitution. Article 265 of the Constitution provides that no tax shall be levied or collected except by authority of law. Tax on property cannot be said to impinge on the right to hold property under Art. 19 (1) (f). The State, however, cannot deprive a citizen of his fundamental right under the guise of taxation. A legislation to that effect would be a colourable exercise of taxing power and should be struck down as unconstitutional. An oppressive and arbitrary levy of property tax, under a seeming exercise of taxing power may be questioned, if in substance and in effect, the tax measure is of a

'confiscatory' character. The levy of tax on holding or disposing of property is not per se unconstitutional. Article 19 (1) (f) of the Constitution only declares a fundamental right to acquire, hold and dispose of property and does not grant an immunity from taxation. Section 65 (4) of the Madras Agricultural Income-tax Act is not unconstitutional, on the alleged ground that it is repugnant to Art. 19 (1) (f) of the Constitution. A I R 1952 Mad 395 and A I R 1954 S C 92 and A I R 1961 S C 552 and A I R 1958 S C 578, Rel. on. **I L R (1964) 2 Mad 312 : 77 Mad L W 422 : 1964 Mad W N 351 : AIR 1964 Mad 556 (559, 560) (Pt B) (Pr 8) (DB).**

——Art. 19 (1) (f) and (g)—The provisions of S. 16(3) (a) (i) and (ii), Income-tax Act do not offend clauses (f) and (g) of Art. 19 (1) of the Constitution. See Income-tax Act (1922), S. 16 (3) (a) (i). **A I R 1963 Mad 348 (DB).**

——Art. 19 (1) (b), (g), (5), (6) — Right to acquire hold and dispose of property — Sea Customs Act (1878), S. 178 A (1)—Validity.

Section 178-A is a restriction on the right to acquire, hold and dispose of gold as property and on the right to carry on business in gold. The restriction was imposed in the interests of the general public. There is no reasonable or rational connection between the fact to be proved and the presumption to follow under S. 178-A (1). Hence S. 178-A (1) of the Sea Customs Act constitutes an unconstitutional infringement of the fundamental right of the petitioners secured by Arts 19 (1) (f) and 19 (1) (g) and is therefore void under Art. 13 of the Constitution. **72 Mad L W 104 : I L R (1959) Mad 222 : (1959) 2 M L J 35 : A I R 1959 Mad 142 (146, 148, 149) (Pt A) (Prs 17, 18, 23, 26) (DB).**

[Reversed in AIR 1962 S C 316.]

——Art. 19 (1) (f) — Scope — Companies Act (1913), S. 34 (7)—Validity of—Application for registration—Company's discretion to accept or reject application—If arbitrary or invalid. See Companies Act (1913), S. 34 (7). **AIR 1957 Mad 702.**

——Art. 19 (1) (g), (6)—Validity of S. 92, Madras Village Panchayats Act. See Ibid, Art. 13. **A I R 1956 Mad 289.**

——Art. 19 (1) (f)—Madras Shariat (Amendment) Act (18 of 1949), S. 2 — Object and scope — Act is not repugnant to Art. 19 (1) (f) of the Constitution—(Muslim Personal Law (Shariat) Application Act (1937), Ss. 2, 3, 6) — (Madras Civil Courts Act (3 of 1873), S. 16)—(Marumakkathayam Law). See Madras Shariat Amendment Act (18 of 1949), S. 2. **AIR 1956 Mad 244.**

——Art. 19 (1) (f) — Right to use property and carry on business.

The use of premises for running a brothel is not a use of property guaranteed by the Constitution, nor is it a business the right to which is one of those guaranteed by Part III. **1956 Mad W N 70 : (1956) 1 M L J 220 : 1957 Cri L J 141 (142) (Pt B) (Pr 5).**

——Art. 19 (5) — Panchayats — Madras Village Panchayats Act (1950), S 81 (1)— Validity of sub-section and notification issued thereunder - (Constitution of India, Art. 19 (1) (f) and (5)). See Panchayats—Madras Village Panchayats Act (10 of 1950), S. 81 (1). **A I R 1954 Mad 754.**

——Art. 19 (1) (f) — Sales Tax — Mysore Sales Tax Act (25 of 1957), Ss 13 (3) (b), 32, 35 and 20 — Application under S. 13 (3) (b) to Magistrate to recover sales tax due from assessee — S. 32 precludes Magistrate from going into question of validity of assessment. Even assuming that Magistrate functions as Civil Court and not as Criminal Court and S. 32 is not attracted, S. 35 acts as a bar and precludes Court from going into question of validity of assessment — When assessee has not availed of remedies of appeal and revision under Act to question validity of assessment, he cannot contend that prohibition under S. 32 causes him hardship — Question whether S. 32 infringes fundamental right under Art. 19 (1) (f) of Constitution of India — Question when not raised in grounds of revision and when has no bearing to case must be left as purely academic question. See Sales Tax — Mysore Sales Tax Act (25 of 1957), S. 13 (3) (b). **(1965) 4 Law Rep 444 : (1965) 2 Mys L J 712 : (1966) 18 S T C 94 (Mys).**

——Art. 19 (1) (f) — Bombay Saranjams, Jahagirs and other Inams of Political Nature Resumption Rules, 1952—Rules are not ultra vires — Constitution of India, Arts. 14, 19 (1) (f), 31, Sch. VII, List II Entries 18, 45. See Bombay Saranjams, Jahagirs and other Inams of Political Nature Resumption Rules, 1952. **(1963) 2 Mys L J 164 (FB).**

——Art. 19 (1) (f)—Bihar Mica Act, 1947 (10 of 1948), S. 6 (6) — Validity. See Bihar Mica Act, 1947 (10 of 1948), S. 6 (6). **AIR 1958 Pat 496 (DB).**

——Art. 19 (1) (f) — Article deals with both abstract and concrete rights.

It cannot be said that Art. 19 (1) (f) merely deals with abstract rights and capacity of citizens to acquire, hold and dispose of property. No distinction can be drawn between abstract and concrete rights in relation to that article. **I L R (1954) Patiala 545 : AIR 1954 Pepsu 180 (181, 182) (Pt A) (Pr 6) (DB).**

——Art. 19 (1) (f), (g) — Chief Settlement Commissioner forbidding persons to bid for properties forming part of compensation pool—There is no infringement of fundamental right — There is also compliance with provisions of Rr. 87 and 88 of Displaced Persons (Compensation and Rehabilitation) Rules (1955).

The Chief Settlement Commissioner has the power to determine the manner in which any property forming part of the compensation pool may be sold. Where certain persons have been forbidden to bid for the properties forming part of the compensation pool, it must be held that the Chief Settlement Commissioner has laid down the manner in which the properties in question have to be sold, and that he has taken action under rule 88. The provisions of Rr. 87 and 88 have been substantially complied with. Apart from this, the Government which has to sell its own properties, has a power to say that the said properties would not be sold to any particular person unless of course there are any definite rules which stand in the way of the Government from taking such an action. The persons have no doubt, right to carry on their business, but they have no right to insist that their bids must be received at every auction sale. Any person or the Government may very well refuse to deal with any particular person and this would not in any way amount to infringement of that person's right to carry on his business. AIR 1958 Kerala 333 and AIR 1955 Mad 365 and (1939) 84 Law Ed. 1108, Rel. on. **AIR 1961 Punj 553 (554, 555) (Prs 3, 4, 6).**

——Art. 19 (1) (f)—Duty of Court.

Article 19 (1) (f) imposes a constitutional obligation on the Court to enquire whether there has been an arbitrary interference with the protected rights of property. Sardha Ram v. Haji Abdul Majid, **62 Punj L R 201: AIR 1960 Punj 196 (197) (Pt B) (Pr 3) (FB).**

[Overruled on another point in AIR 1962 S C 1476.]

——Art. 19 (1) (f) — Patiala Act 4 of 2002 B. K. — Validity — It offends Art. 19 (1) (f) and 19 (1) (g). See Patiala Recovery of State Dues Act (4 of 2002 B. K.), S. 1. **AIR 1959 Punj 440 (DB).**

[Reversed on another point in AIR 1963 S C 222.]

——Art. 19 (1) (f) and (g)—Mineral Concession Rules, 1949, Rr 32 57 and 59—Validity — Review application — Decision of Central Government is not judicial or quasi-judicial but merely administrative — Does not infringe any rights under Art. 19 (1) (f) or (g). See Mines and Minerals (Regulation and Development) Act (1948), S. 5 **I L R (1957) Punj 39.**

——Art. 19 (1) (f)—Rights to property — Right recognised by judicial decision—Legislation seeking to deprive party of rights—Validity.

A judicial decision no doubt does not create any new right, but it places on a firm foundation the rights upheld by the decision, and establishes for all times to come the rights so recognised as against the contesting parties or their successors in title, and if such rights are rights to property, the legislation, which seeks to deprive the successful parties to the litigation of such rights is hit by Art. 19 (1) (f) of the Constitution, unless it can be shown that the deprivation is reasonable and in the public interest. **I L R (1959) 9 Raj 424 : 1959 Raj L W 496 : AIR 1959 Raj 177 (184) (Pt A) (Pr 33) (DB).**

[Reversed on another point in AIR 1961 S C 1402.]

——Art. 19 (1) (f) — Unauthorised construction of latrine by wife as owner of house — Notice to dismantle on husband and his prosecution for failure to do so — Not legal. See Municipalities — Tripura Municipal Act (2 of 1349, T. E.), S. 100. **1961 (2) Cri L J 804 : AIR 1961 Tripura 49.**

48. "Property."

See also Ibid, Note 4.

● ——Art. 19 (1) (f) and (5) — Property — Tenant's interests in demised premises is property within Art. 19 (1) (f), subject to provisions of cl. (5)—Restrictions on tenants' right to hold property enacted in Ss. 354R and 354RA. Bombay Municipal Corporation Act, 1888, are not unreasonable—These sections are valid. Municipal Corporation of Greater Bombay v. Lala Pancham, **67 Bom L R 782 : AIR 1965 S C 1008 (1014, 1016) (Pt D) (Prs 18, 23).**

● ——Arts. 19(1) (f), 31 and 31-A—East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (50 of 1948) (as amended by Act (27 of 1960), Ss. 18 and 23-A—Punjab Gram Panchayat Act (4 of 1953), S. 19—Punjab Village Commom Lands (Regulation) Act (1 of 1954), S. 3—Shamilat deh and abadi deh in village — Transfer of shamilat deh to village panchayat—Conferment of proprietary rights on non-proprietors in respect of lands in abadi deh—Validity of such transfer and conferment — Expressions "any estate or of any rights therein" and "the extinguishment or modification of such rights" in Art. 31A—Wide connotation of—Punjab Acts mentioned above are valid and protected by Art. 31-A. AIR 1960 S C 1080, Disting. Ranjit Singh v. State of Punjab, 1965 Cur L J 371 : (1965) 2 S C A 385 : **AIR 1965 S C 632 (636, 637, 638, 639) (Prs 8, 10, 12, 13, 14).**

● ——Art. 19 (5) — Property of Math — Right of Mahant over such property is 'property'—Reasonable restriction which may be placed upon that right — Madras Hindu Religious Endowments Act (Mad. 19 of 1951), (as amended by Mad. Act 27 of 1954), S. 52 (1) (f) (as in force in Madras area of the State of Mysore) — Power of Mahant over income of Math — Waste of Math property — Restriction on Mahant's power placed by S. 52 (1) (f) is reasonable. See Ibid, Art. 19 (1) (f). AIR 1963 S C 986.

● ——Art. 19 (1) (f)—Right to purchase property — Madras City Tenants' Protection Act (3 of 1922), S. 9 — Right to purchase land given under S 9 taken away by amending Madras Act 13 of 1960—Right to purchase land is not right of property — Amending Madras Act has not affected fundamental right of tenant of non-residential building.

The Madras Act 19 of 1955 by amending the Madras City Tenants' Protection Act (3 of 1922) conferred two rights on a tenant of non-residential building, of which one was that such a tenant against whom a suit in ejectment has been instituted has an option to apply to the Court for an order directing the landlord to sell the land to him for a price to be fixed by the Court. This right conferred by the Act is a right to purchase land. Such a right when conferred under a contract is not a right of property. The fact that such a right stems from a statute cannot expand its content or make it any the less a non-proprietary right. It is settled law that a contract to purchase a property does not create an interest in immovable property.

Section 9 of the principal Act, extended by the 1955 Act, only confers a right in respect of the land and not of the superstructure. This right to purchase land conferred by the amending Madras Act of 1955 is taken away by a subsequent amending Madras Act (13 of 1960) in respect of tenants of non-residential buildings living in certain towns. If the main Act held the field such tenants could have purchased the land, but by reason of the 1960 Act they could no longer do so. Neither the 1955 Act conferred any right as to the superstructure under S. 9 of the principal Act nor did the 1960 Act take right away. The 1960 Act does not in any way affect such tenants' fundamental right. The prayer, therefore, of such tenants that the lower Court should be directed to proceed with the disposal of the applications filed by them under S. 9 of the principal Act cannot be granted. Swami Motor Transports, Ltd. v. Sri Sankaraswamigal Mutt, (1964) 1 S C J 530 : (1964) 1 Mad L J (SC) 146 : (1964) 1 Andh W R (SC) 146 : (1963) Supp 1 S C R 282: AIR 1963 S C 864 (873, 874) (Pt C) (Pr 30).

● ——Arts. 19 (1) (f) and 32—Right to acquire and hold property — Jagirdar giving contracts to cut forests in Jagir—Unauthorised extension of period of contracts by forest officers—Confiscation of forest goods by Government — Petitions under Art. 32 — Maintainability — (Easements Act (1882), S. 52) — (Madhya Bharat Forests Act (73 of 1950), Ss. 26 (2) (a) and 34).

Held, on facts (1) that the petitioners could not claim that the property in the trees in the areas worked by them passed to them legally through any sale made in their favour by the State or by any officer duly authorised to make the sale.

(2) That when the licence permits any person to do something on immovable property and also includes permission to take away movable property the licence may operate not only as a licence but also as a grant for movable property. In this case, there was merely a licence by the forest authorities in favour of the petitioners. The licence cannot in the circumstances of this case, pass property in the trees to the petitioners.

(3) That Ss. 26 (2) (a) and 34 of the Forests Act could not help the petitioners to claim property in the trees inasmuch as the former section merely saves a person from certain penalties.

(4) That no property having passed to the petitioners they had no right to maintain the petitions on the ground that they had fundamental right to hold and dispose of their property. Rameshwar Proshad Khandewal v. Commissioners, Land Reforms & Jagirs, Madhya Bharat (Now M. P.), (1959) **2 S C A 236 : 1959 S C J 621 : AIR 1959 S C 498 (502, 503, 504) (Prs 10, 11, 12, 15).**

● ——Arts. 19 (1) (f), 19 (5)—Ss. 3 (1), 3 (2) (b) of Bombay Labour Welfare Fund Act, 1953—Validity—'Property' in Art. 19 (1) (f) includes money—Ss. 3 (1),

and 3 (2) (b) contravene Art. 19 (1) (f). See Bombay Labour Welfare Fund Act (40 of 1953), S. 3 (1). **AIR 1958 S C 328.**

● ——**Arts. 19 (1) (f), (g) and 31—Highways—Nature and extent of right of public over highway—Right to carry on business of transporting passengers on public highway—Nature of — Not in the nature of easement and as such cannot be reckoned as property.** Saghir Ahmad v. State of U. P., **1954 S C J 819 : (1954) 2 M L J 622 : AIR 1954 S C 728 (733) (Pt A) (Pr 7).**

● ——**Art. 19 (1) (f) — Connotation of 'property' — Right of Mahant to enjoy property—Nature of right —(Hindu Law—Religious Endowment).**

The word 'property' as used in Art. 19 (1) (f) of the Constitution, should be given a liberal and wide connotation and so interpreted, should be extended to those well recognised types of interest, which have the insignia or characteristics of proprietary right. Thus, Art. 19 (1) (f) applies equally to concrete as well as abstract rights of property. The ingredients of both office and property, of duties and personal interest are blended together in the rights of a Mahant. The Mahant has the right to enjoy this property or beneficial interest so long as he is entitled to hold his office. To take away this beneficial interest and leave him merely to the discharge of his duties will be to destroy his character as a Mahant altogether.

Opinion of Patanjali Sastri, C. J., in AIR 1954 S C 92, Criticised. Commr. of H. R. E', Madras v. Sri Lakshmindra Thirtha Swamiar, **(1954) S C J 335 : (1954) 1 M L J 596 : 1954 S C A 415 : 20 Cut L T 250 : 1954 S C R 1005 : 1954 Mad W N 363 : 67 Mad L W 1220 : AIR 1954 S C 282 (288, 289) (Pt B) (Pr 12).**

● ——**Arts. 19 (1) (f) and 31 — Property—Meaning—Rights of share-holder to elect directors of company, give direction by passing resolution and to present petition for winding up—If property.**

Articles 19 (1) (f) and 31 only regard that as "property" which can by itself be acquired, disposed of or taken possession of. The right to vote for the election of directors, the right to pass resolutions and the right to present a petition for winding up are personal rights flowing from the ownership of the share and cannot by themselves and apart from the share be acquired or disposed of or taken possession of as contemplated by those Articles. Charanjit Lal Chowdhury v. Union of India, **64 Mad L W 47 : 1951 S C J 29: 1951 Mad W N 111 : (1951) 21 Comp Cas 33 : 1950 S C R 869 : 53 Bom L R 499 : I L R (1951) Hyd 461 : AIR 1951 S C 41 (57, 62, 63) (Pt K) (Prs 60, 78, 79).**

——**Arts. 19 (1) (g) and 21 — 'Property' — Right of management of property—If 'property'.** See Charitable Endowments Act, Ss. 2, 3, 4, 5, 6 and 8. **AIR 1958 Andh Pra 773.**

● ——**Arts. 19 (1) (f) and 31 (2)—Right to enjoy land held free of land revenue whether is 'property".** See ibid, Art. 31 (2). **AIR 1956 Assam 33 (SB).**

——**Arts. 19 (1) (f) and 31 — Property — Rights of Watandari Patels and Patwaris — (Berar Patels and Patwaris Law (1900), S. 9) — (Madhya Pradesh Land Revenue Code (2 of 1955), S. 214).**

Per Kotwal, J.—Though something may be said for the view that the mere office of a patwari or patel is not 'property' the rights which the petitioners held as watandari patels and patwaris were not rights merely to an office or to a mere dignity. Under the provisions of the Patels and Patwaris Law, there were attached to each office valuable monetary rights in the shape of emoluments and with the abolition of the offices, those rights to remuneration were also taken away. In so far as every office of patwari or patel necessarily imported the right to certain emoluments, the rights which the petitioners held were 'property' within the meaning of Art. 19 (1) (f) and Art 31. AIR 1954 S C 119 and AIR 1954 S C 92 and AIR 1954 S C 282, Rel. on. **1958 Nag L J 63 : 60 Bom L R 597 : I L R (1958) Bom 645 : AIR 1958 Bom 300 (303) (Pt A) (Pr 19) (DB).**

——**Arts. 19 (1) (f) and 31 (2)—"Property" — Meaning, interpretation and essential characteristics of — Power of State to acquire or take possession of.**

In order to give a correct interpretation of the word "property" in the Constitution Arts. 19 and 31 have both to be looked at; the word is not used in different senses in these two articles. 'Property" may not be necessarily tangible property but may also be intangible property and may include incorporeal rights. Property in Art. 19(1)(f) can only mean all the attributes and indicia which result in the legal conception of property. The right of dominion, the right of possession, the right of control would all be included in the expression "property". The same meaning and intendment must also be given to the term in Art. 31 (2) also. It is only when the State is acquiring from a subject or taking possession of from a subject property in this sense of the term that there is an obligation upon it to pay compensation. The further essential requirement is that the acquisition or taking possession must be for public purposes. It is implicit in the power conferred upon the Legislature to legislate for the purposes of acquisition or taking possession of property. The property referred to in Art. 31 (2) must also be capable of being acquired or taken possession of. It therefore follows that if the property is capable of being acquired or taken possession of, it is also property the loss of which can be compensated for. **53 Bom L R 218 : I L R (1951) Bom 473 : AIR 1951 Bom 86 (90) (Pt C) (Pr 6) (DB).**

[Reversed on another point in AIR 1954 S C 119.]

——**Art. 19 (1) (f)—"Property"—Right of hereditary trustee to manage endowment is "property" and is covered by Art. 19 (1) (f).**

The trustee of a secular trust would be entitled to all the rights of the owner against the rest of the world, and the position of the trustee for the religious purpose is not different. The rights of both would be covered by the word 'property'. Hence the right to manage endowed property which is one of the hereditary and cherished rights in this country is covered by the word 'property' as used in Art. 19 (1) (f). AIR 1958 Andh Pra 319 and AIR 1959 Orissa 5, Diss. from; AIR 1954 S C 282 and AIR 1954 S C 119, Rel. on. **1960 Ker L T 1107 : I L R (1960) Ker 1259 : 1960 Ker L J 1445 : AIR 1961 Ker 87 (89) (Pt A) (Pr 5) (DB).**

——**Art. 19 (1) (f) — 'Property' — Hereditary trustees —Right to manage institution—If property.**

Undoubtedly there exists a fundamental right of property in the hereditary trustees by way of their right to administer and manage their institution and due regard must be paid thereto in framing a scheme of management for such institution. AIR 1954 Mad 385 and AIR 1955 Mad 120, Rel. on. **I L R (1953) Ker 351 : 1957 Ker L T 1117 : 1957 Ker L J 1056 : AIR 1958 Ker 57 (57, 58) (Pr 4) (DB).**

● ——**Art. 19 (1) (f)—Scope and applicability—Right to property.**

Per Dixit, J — Article 19 (1) (f) applies equally to concrete as well as abstract rights of property. AIR 1954 S C 282, Rel. on. Babulal v. Govardhandas, **Madh B L R 1956 Civ 1 : Madh B L J 1955 H C R 1905 : AIR 1956 Madh B 1 (5) (Pt H) (Pr 7) (FB).**

● ——**Art. 19 — "Property" — Payments made to irregular forces (Shiledars, etc.) by Scindia are not**

property — Nature of payment — Government of Madhya Bharat can stop these payments—No infringement of fundamental right — No writ can issue. See Ibid, Art. 31. AIR 1953 Madh B 257 (FB).

[Reversed in AIR 1961 S C 298.]

——Arts. 19 and 31 — 'Property' — Right to vote — M. P. Act, 14 of 1958 — It ultra vires — Municipalities—C. P. and Berar Municipalities Act (2 of 1922 as amended by Act 14 of 1958), S. 18.

The word property must have the same meaning in both Arts. 19 and 31. The test of property lies in its being capable of being acquired, held or disposed of. Though property includes incorporeal rights, these rights must be over something which is capable of being acquired or disposed of. The right of voting, granted by a statute, has no relation with anything which is considered property in the ordinary sense. It is not capable of being acquired or disposed of. Such a right cannot be property with the meaning of Art. 19 or Art. 31 of the Constitution.

The State Legislature is at liberty to prescribe the constitution of local bodies No one can insist that the right of vote which was granted to him earlier should not be taken away. Consequently the amendment of S. 18 of the C. P. and Berar Municipalities Act, 1922, whereby the election of the President was to be by the elected members of the Municipal Committee does not affect the fundamental right of the citizen under Arts. 19 and 31 and is not ultra vires. **1959 M P L J 710 : 1959 Jab L J 453 : 1959 M P C 458 : I L R (1959) Madh Pra 343 : AIR 1959 Madh Pra 353 (355) (Pt A) (Prs 7, 8, 9, 10) (DB).**

——Art. 19 (1) (f) — Renewal of old notification — Effect—Hereditary trusteeship is property — Expression 'deemed'—Meaning. See Madras Hindu Religious and Charitable Endowments Act (19 of 1951), S. 64 (4). **(1962) 2 Mad L J 67.**

——Arts. 19 (1) (f), 31 (1), 226—Right to property—Infringement—Managing agency rights—Nature of —Issue of writ of mandamus.

There is no analogy or comparison between hereditary trusteeship and managing agency. The managing agency, though it may be hereditary, is a right arising out of contractual relationship—a contract of personal service. It cannot possibly be contended that the office of agency can be called property within the meaning of Art. 19 (1) (f) of the Constitution. A I R 1954 Mad 385 and A I R 1954 S C 282, Disting.

Held, on facts that the right of hereditary managing agency conferred under the memorandum and the articles of the company could not be said to be property within Art. 19 (1) (f).

Held further, that no writ could be issued against a company or its director for its violation, as Arts. 19 (1) (f) and 31 (1) which were great constitutional safeguards against State aggression on private property, could not be directed against infringement by private individuals for which remedies should be sought in the ordinary law. **(1956) 26 Com Cas 431 : 70 Mad L W 28 : (1957) 1 Mad L J 254 : I L R (1957) Mad 383 : A I R 1957 Mad 309 (319) (Pt I) (Pr 24) (DB).**

——Art. 19—'Property'—Aliyasanthana family—Partition of Kutumba property — Ejaman's right — S. 35, Madras Aliyasanthana Act, 1949 does not violate Art. 31 — Right to manage kutumba property is not 'property' within meaning of Art. 19 or 31. See Ibid, Art. 31. **A I R 1956 Mad 642 (DB).**

——Art. 19—Validity of S. 87, Madras Hindu Religious and Charitable Endowments Act—Whether unreasonable restriction on the right of trustee to hold property. See Madras Hindu Religious and Charitable Endowments Act (19 of 1951), S. 87. **A I R 1954 Mad 500 (DB).**

——Art. 19 (1) (f)—Property—Hereditary trusteeship. See Madras Hindu Religious and Charitable Endowments Act (19 of 1951). **A I R 1954 Mad 385 (DB).**

——Art. 19 (1) (f) — "Property" includes "gun" — What constitutes "property" explained. **(1953) 1 Mad L J 418 : 1953 Cri L J 917 : 1953 Mad W N 168 : A I R 1953 Mad 476 (477) (Pt B) (Pr 5).**

——Art. 19 (1) (f)—"Property"—Interest of the head of a Mutt or Dharmakartha in the property of the Mutt and its income. See Madras Hindu Religious and Charitable Endowments Act (19 of 1951), Ss. 20, 21, etc. **A I R 1952 Mad 613.**

——Art. 19 (1) (f)—Property, meaning of.

'Property' as used in Art. 19 (1) (f) includes even incorporeal rights. The addition of the right to dispose of property in Art. 19 (1) (f) along with the right to acquire and hold is not intended to give a definition of property so as to limit it to disposable property. Property may be inalienable but yet a person may be entitled to hold it as in the case of inalienable service inams. A I R 1951 Bom 86, Rel. on.

The head of a mutt is not a bare trustee but occupies a peculiar position and has beneficial interest in the mutt property and its income. The head-ship of a mutt can therefore be considered as property within Art. 19 (1) (f).

An idol is a juristic person capable of taking and holding property. The right to possession and management, however, of the property endowed to the idol is in a manager or Dharmakartha or shebait and the manager represents the idol in all transactions and suits. Usually, the dharmakartha has no beneficial interest and the property is not vested in him. The authority of the manager is analogous to that of a guardian of an infant heir and his liability in respect of his management is analogous to that of a trustee. But if the dharmakartha or the head of a mutt has a beneficial interest in the property and its income, such rights are "property" within the meaning of Art. 19 (1) (f) of the Constitution. **1952 Mad W N 299 : 1952-1 Mad L J 557 : A I R 1952 Mad 613 (633, 646) (Pt C) (Prs 32, 77) (DB).**

——Art. 19 (1) (f)—"Property" — Karnam's office—Madras Restoration of Village Officers (Validating) Act (18 of 1939), whether infringes Art. 19 (1) (f).

The property which is contemplated by Art. 19 (1) (f) is obviously property which can be acquired, held and disposed of. The Karnam's office cannot be acquired and it cannot be disposed of, and so far as holding is concerned, the incumbent holds it so long as he is not lawfully removed from that office. An office held in such circumstances on a precarious tenure cannot be deemed to be "property" as contemplated by Art. 19 (1) (f). A I R 1922 P C 96, Rel. on.

Madras Restoration of Village Officers (Validating) Act (18 of 1939), does not in any way infringe Art. 19 (1) (f). **64 Mad L W 1029 : 1951-2 Mad L J 561 : A I R 1952 Mad 150 (151) (Pt B) (Pr 4) (DB).**

——Art. 19 (1) (f) — Right of pasturage — Infringement of—Relief under Article—Right to.

The right of pasturage is a tangible right in immovable property and so an infringement of such right would justify the petitioners coming to the High Court for relief regarding the alleged infringement of their fundamental rights secured to them by Art. 19 (1) (f). A I R 1955 Manipur 49, Foll. **A I R 1957 Manipur 18 (21) (Pt C) (Pr 12).**

——Arts. 19 (1) (f), 31 (1) and 226 (1) — Lease for carrying on teak operation in forest—Termination of lease — Deprivation of property without compensation—Infringement of fundamental rights—Issue of writ of mandamus—No other remedy open.

By a lease, dated 24th February 1955, the Forest Officer, Manipur, on behalf of the Government of Manipur, allowed the petitioner to carry on teak operation in contracted forest on certain specific conditions. But without giving him any opportunity of hearing and without any fault of his being pointed out to him the contract was virtually terminated by the Government by a letter, dated 26th March 1955, with the result that the petitioner suffered financial loss.

The petitioner also incurred the risk of failure to keep up his contracts with the big timber merchants of other places which meant possible future financial losses in the form of damages. The petitioner applied for the issue of a writ of mandamus calling the Forest Officer and the Government of Manipur to re-call and cancel the letter, dated 26th March 1955, and to allow him to carry on teak operation.

Held (1) that the rights acquired by the petitioner in the deed, dated 24th February 1955, would constitute property in the legal sense as a completed contract in favour of the petitioner which gave him specified legal rights would by itself constitute property.

(2) that for the deed, dated 24th February 1955, to amount to a completed contract it was not necessary that it should have been ratified by a Secretary to the Government of Manipur.

(3) that since the petitioner was not allowed to work in the contracted forest and was completely ousted from the forest, there was 'deprivation' of property without any compensation, and, therefore, the petitioner's fundamental rights under Arts. 19 (1) (f) and 31 (1) were infringed.

(4) that a writ of mandamus should be issued as prayed as the petitioner had no equally efficacious and adequate alternative remedy and if urgent steps were not taken he would be put to irretrievable loss simply because the respondents chose not to abide by terms of the lease and as he should not be deprived of possession. Case law discussed. **A I R 1955 Manipur 49 (54, 55, 56) (Pt A) (Prs 18, 19, 20, 26, 27).**

——**Art. 19 (1) (f)** — Abolished village offices are not property within meaning of Art. 19 (1) (f). See Mysore Village Offices Abolition Act (14 of 1961), S. 2 (1) (n). **A I R 1964 Mys 84 (DB).**

——**Art. 19 (1) (f) and (g)** — Rustication of students by University Authorities for resorting to malpractice at University Examination — No infringement of fundamental right of student under Art. 19 (1) (f) and (g). **1963 Mys L J 408.**

● ——**Art. 19 (1) (f)**—C. P. and Berar Prohibition Act (7 of 1938), S. 1—Validity—Whether infringes Art 19 (1) (f)—Property — Meaning. See Prohibition—C. P. and Berar Prohibition Act (7 of 1938), S. 1. **A I R 1951 Nag 58 (FB).**

——**Arts. 19 (1) (f) and 31**—'Property' — Orissa Act, XI of 1955—Validity—Rights of Raja of Puri—Right as Adya Sebak and of superintendence — Orissa Act, 11 of 1955—Validity — If offends Arts. 19 (1) (f) and 31 (2). See Sri Jagannath Temple Act (11 of 1955), S. 1. **AIR 1959 Orissa 5 (DB).**

● ——**Art. 19 (1) (f)—Property—Right to possession.**

The contention that even right to possession is protected under Art. 19 (1) (f) is sound to this extent that if there is a property which belongs to nobody and is taken possession of then certainly Art. 19 (1) (f) will be applicable. There may be a graveyard which was not the property of anybody, until it was taken possession of by somebody, and the person taking possession of it can claim a possessory right. Brij Bhukan v. S. D. O. Siwan, **1954 B L J R 513 : 33 Pat 690 : AIR 1955 Pat 1 (33, 34) (Pt Z) (Pr 26) (SB).**

——**Arts. 19, 31, 366 (22), 363**—Property and right to property—Meaning of—Right to recognition as a Ruler under Art. 366 (22) and the rights that accrue by virtue of such recognition—Not rights to property within Art. 19 (1) (f)—Rights guaranteed by the Covenant of the United States of Rajasthan are merely political rights—Not justiciable—Recognition as Ruler under Art 366 (22) of a person who is not a legal heir to his predecessor — No infringement of Art. 19 (1) (f). **A I R 1951 S C 41** and **AIR 1956 S C 15**, Rel. on. **A I R 1963 Punj 461 (467, 468, 469) (Pt B) (Prs 22, 23, 24, 26).**

——**Arts. 19 (1) (f) and (g) and 31 (1) — 'Property'—Cancellation of lease to work mine, by Government under due process of law—If infringement of Art. 19 (1) (f) or (g) or Art. 31 (1) — (Mines and Minerals (Regulation and Development) Act, 1948) —(Mineral Concession Rules (1949), Rr. 32, 59).**

Where the Central Government in review proceedings under Mineral Concession Rules, 1949, from an order by the State Government granting a mining lease to the appellant, held that the question of priorities under R. 32 had been wrongly decided by the State Government and therefore cancelled the lease in favour of the appellants and granted the same to the respondents in accordance with R. 32, there is no infringement of the rights guaranteed to the appellant by Art. 19 (1) (f) or (g) or by Art. 31 (1) of the Constitution. The right granted to the appellant cannot be said to constitute property. Moreover, he has not been deprived of that property without due process of law.

The right to work a mine upon another's land is, in no way, analogous to the fundamental right of a citizen to trade and buy and sell in the open market. The fundamental rights as contemplated by the Constitution are rights which already exist and not rights which are created by a contract Neither the Mines and Mineral (Regulation and Development) Act, 1948, nor the mining rules framed under the Act can, therefore, be said to interfere with the fundamental rights of a citizen AIR 1956 S C 17, Rel. on. **61 Punj L R 489 : I L R 1959 Punj 1332 : A I R 1959 Punj 510 (512, 513) (Pt A) (Pr 8) (DB).**

[Reversed on another point in AIR 1960 S C 606.]

——**Art. 19 (1) (f)**—To acquire, hold or dispose arms is a right and not privilege. See Arms Act (1878), S. 14. **AIR 1954 Raj 264 (DB).**

——**Arts. 19, 31, 226—Right to salary already earned.**

The salary already earned by a Government servant is his property, and a deduction not made in accordance with statutory rules infringes his fundamental right to property both under Art. 19 and Art 31 and relief must be granted under Art. 226. AIR 1954 S C 245; AIR 1954 S C 415, Foll. **AIR 1955 Vin Pra 21 (24) (Pt B) (Pr 14).**

49. "Acquire."

See also Ibid, Note 4.

● ——**Arts. 19 (1) (f) and 31 (2)** — Shri Jagannath Temple Act, 1954 (Orissa Act II of 1955), S. 6—Act is not unconstitutional on the ground that it takes away the sole management of the temple which was vested in the Raja of Puri and his ancestors — There is no acquisition of extinguished office. See Shri Jagannath Temple Act, 1954 (Orissa Act 2 of 1955), S. 6. **A I R 1964 S C 1501.**

——**Art. 19 (1) (f)** — **"To acquire, hold and dispose" —Meaning of.**

In dealing with relationship of landlord and tenant, admitting that tenancy itself is a species of property, yet the landlord does not 'acquire' that species of property when he sues to obtain recovery of possession from the tenant. Similarly, the property though let

remains disposable by the landlord. The right 'to hold' property includes the right to recover possession of the property. In one sense the landlord holds the property even when he lets it out to the tenant but that is only in the sense of holding the reversion which is also property. Holding the reversion is only a portion of the total right to hold. The word "to hold" thus means not only to hold the reversion but also to hold the property in praesenti and that to the exclusion of others. ILR (1953) 2 Cal 15 : 88 Cal L J 233 : AIR 1951 Cal 539 (545) (Pt D) (Pr 34).

50. "Hold."

——Art. 19 (1) (f)—"To acquire, hold and dispose" —Meaning of.

In dealing with relationship of landlord and tenant, admitting that tenancy itself is a species of property, yet the landlord does not 'acquire' that species of property when he sues to obtain recovery of possession from the tenant. Similarly, the property though let remains disposable by the landlord. The right 'to hold' property includes the right to recover possession of the property. In one sense the landlord holds the property even when he lets it out to the tenant but that is only in the sense of holding the reversion which is also property. Holding the reversion is only a portion of the total right to hold. The word "to hold" thus means not only to hold the reversion but also to hold the property in praesenti and that to the exclusion of others. I L R (1953) 2 Cal 15 : AIR 1951 Cal 539 (545) (Pt D) (Pr 34).

——Art. 19 (1) (f)—Right to hold property—Infringement of—Right to office of hereditary trustee is property — Order under R. 9 (1) framed under S. 100 (2) (m), Madras Hindu Religious Endowments Act, 1951 directing trustee to lease out lands by public auction —Rule is eminently a reasonable restriction in public interest — Does not amount to infraction of trustee's right under Art. 19 (1) (f). 1963 Mad W N 275 : 76 Mad L W 36 : (1963) 1 Mad L J 225 : AIR 1963 Mad 205 (207) (Pt D) (Pr 8).

——Art. 19 (1) (f)—Right to hold property—Right of re-entry or right to take direct possession.

The right to hold property means the right of ownership to property. Neither the right of re-entry nor the right to take direct possession of the property is equivalent to this right and therefore deprivation by any law of the right of re-entry or of the right to take direct possession does not amount to deprivation or confiscation of the ownership of the property itself. **ILR (1952) Nag 736 : 1953 Nag L J 199 : A I R 1953 Nag 40 (50) (Pt L) (Pr 47) (DB).**

——Art. 19 (1) (f) — Requisitioning of property — If amounts to violation of article.

Article 19 (1) (f) of the Constitution guarantees to a citizen the right to "acquire, hold and dispose of property". Taken in the context of the preceding word "acquire" and that of the following words "dispose of", the word "hold" can have no other meaning than "own" or "be the owner of". By the act of requisitioning the ownership of the owner would not be affected. For despite requisitioning, the owner would continue to have the power to deal with his property in any manner he likes, except letting it out or be in possession thereof. Such an abridgement of his rights would not, however, amount to a violation of Art. 19 (1) (f). **ILR (1951) Nag 791 : 1951 N L J 346 : A I R 1951 Nag 33 (36) (Pt E) (Pr 11) (DB).**

51. Taking away right of management of property, etc.

(a) Religious Endowments and Charitable Trusts Act.

(b) Court of Wards Act.

51. Taking away right of management of property, etc.

●——Art. 19 (1) (f) and Sch. 7, List 3, Entries 28 and 47—Madras Hindu Religious Endowments Act (Mad. Act 19 of 1951) (as amended by Mad. Act 27 of 1954), Ss. 52 (1) (f), 55, 76 (1) and (2); 80, 81 and 82 as in force in Madras area of the State of Mysore and in their application to Maths are intra vires.

Note.—The newly enacted sub-s. (5) of S. 76 was declared ultra vires by the Madras High Court; this part of the decision was not challenged before the Supreme Court. Sudhindra Thirtha Swamiar v. Commr. for Hindu Religious and Charitable Endowments, Mysore, **(1963) 2 S C A 340 : (1963) Supp (2) S C R 302 : AIR 1963 S C 966 (969, 973, 974, 976) (Pt A) (Prs 6, 17, 21).**

●——Art. 19 (1) (f) and (5) — Property of Math— Right of Mahant over such property is 'property'— Reasonable restriction which may be placed upon that right — Madras Hindu Religious Endowments Act (Mad. Act 19 of 1951) (as amended by Mad. Act 27 of 1954), S. 52 (1) (f) (as in force in Madras area of the State of Mysore)—Power of Mahant over income of Math — Waste of Math property—Restriction on Mahant's power placed by S. 52 (1) (f) is reasonable.

The right of a Mahant over the property of the Math is undoubtedly 'property' and unreasonable restrictions placed upon the right of the Mahant which is not in the interest of the general public would, by virtue of Art. 19 (1) (f) read with Cl. (5) of the Constitution of India, be void. Reasonableness of the restrictions which may be placed upon that right must be adjudged in the light of the character and the extent of that right, and the general interest of the public which may be served by the restrictions.

The power of the Mahant over the income does not differ in quality from the power he has over the property of the Math. By S. 52 (1) (f) application of funds or properties for purposes unconnected with the institution, i. e., purposes for which the custom of the institution does not warrant application, is a ground for removal of the Mahant. The provision does not in effect seek to cut down the authority of the Mahant which is traditionally recognised. It merely implies that by virtue of his position and the limited character of his powers he may waste the property of the Math or utilise the property for personal enjoyment or luxury or for objects incongruous with his position or for purposes wholly unconnected with the Math; if he does so, he may by order of the Court be liable to be removed. Such a restriction on the power is in the interest of the general public, and cannot be said to be unreasonable. AIR 1919 P C 62, Rel. on.

The Mahant has to discharge the duties of a trustee qua the institution and is answerable as such. Having regard to the large powers which the Mahant has over the application of the funds, application of the funds for personal enjoyment or luxury by the Mathadhipathi or for purposes wholly unconnected with the institution, would alone be covered by the second part of S. 52 (1) (f). A I R 1956 Mad 491, Criticised. Sudhindra Thirtha Swamiar v. Commr. for Hindu Religious and Charitable Endowments, Mysore, **(1963) 2 S C A 340 : (1963) Supp 2 S C R 302 : A I R 1963 S C 966 (971, 972) (Pt C) (Prs 10, 11, 12).**

●——Art. 19 (1) (f) and (5)—Disposal of property — Reasonable restrictions on—Madras Hindu Religious Endowments Act (Mad. Act 19 of 1951) (as amended by Mad. Act 27 of 1954), Ss. 52 (1) (g) and 55 (as in force in Madras area of the State of Mysore) — 'Pathakanika' — Meaning of—Different meaning of

term as used in S. 52 (1) (g) and S. 55—Provision in S. 55 requiring Mahant to maintain accounts is not unreasonable.

In the context of S. 52 (1) (g), Pathakanika would mean personal gifts to the Mahant. If the Mahant resorts to devices to convert the income of the institution or of the funds or properties thereof into personal gifts made to him that would be improper conduct for which he would be liable to be removed in a suit under S. 52. But under S. 55 the Legislature has expressly restricted the meaning of the expression 'pathakanika' by using the words, that is to say, 'any gift of property made to him as the head of the math.'

Obligations imposed upon the Mahant to maintain regular accounts of the receipts of Pathakanikas of the character defined in S. 55 and to utilise the same in accordance with the customs and usages of the institution cannot be regarded as an unreasonable restriction upon the fundamental right of the Mahant. A Mahant being bound to discharge the duties of a trustee and being answerable as such, provision requiring him to maintain accounts of such pathakanikas would conduce to the effective exercise of the control over him and imposing an obligation to spend the same in accordance with the customs and usages of the institution is not inconsistent with his position as a Mahant even though he has a beneficial interest therein. Section 55 as amended will not apply to pathakanikas which are proved to be gifts personal to the Mahant. Sudhindra Thirtha Swamiar v. Commr. for Hindu Religious and Charitable Endowments, Mysore, **(1963) 2 S C A 340 : (1963) Supp (2) S C R 302 : A I R 1963 S C 966 (972, 973) (Pt D) (Prs 14, 15).**

● **——Art. 19 (1) (f) and (g) — Ss. 2 (d) (v) and 14, Durgah Khawaja Saheb Act (1955)—Validity. AIR 1959 Raj 177, Reversed.**

The effect of Ss. 2 (d) (v) and 14 of Act, 36 of 1955, is that when offerings are made earmarked generally for the Durgah they belong to the Durgah and such offerings can be received only by the Nazim or his agent and by nobody else. These offerings never belonged to the Khadims and they can therefore have no grievance against either S. 2 (d) (v) or S. 14. That is a matter concerning the property of the Durgah and it is open to the Legislature to regulate by providing that the said offerings can be solicited by the Nazim or his agent and by no one else. Even after the Act came into force pilgrims might and would make offerings to the Khadims and there is no provision in the Act which prevents them from accepting such offerings when made. Hence Ss. 2 (d) (v) and 14 do not contravene Art. 19 (1) (f) and (g) and are valid. AIR 1959 Raj 177, **Reversed.** Durgah Committee, Ajmer v. Syed Hussain Ali, **(1962) 1 S C R 383 : (1961) 2 S C A 171 : AIR 1961 S C 1402 (1417, 1419) (Pt E) (Prs 38, 45).**

● **——Art. 19 (1) (f) and (5)—Bihar Hindu Religious Trusts Act (1 of 1951), Ss. 28 and 32—Validity.**

Having regard to the position of a trustee as respects the trust property which he holds and the object or purpose of the Act, the restrictions imposed by Ss. 28 and 32 are really for the purpose of carrying out the objects of the trust and for better administration, protection and preservation of the trust properties; they are, therefore, reasonable restrictions in the interests of the general public within the meaning of Cl. (5) of Art. 19 of the Constitution. Moti Das v. S. P. Sahi, **(1959) 2 S C A 432 : ILR 38 Pat 639 : (1959) Supp (2) S C R 563 : 1959 S C J 1144 : AIR 1959 S C 942 (948, 949) (Pt E) (Pr 11).**

● **——Art. 19 (1) (g)—Scope—Bihar Waqfs Act (8 of 1948), S. 58—Validity of — Whether imposes unreasonable restriction on exercise of duties by Mutwalli.** See Bihar Waqfs Act, 1947 (8 of 1948), S. 58. **1957 Cr L J 1023 : AIR 1957 S C 645.**

——Arts. 19 (1) (f), 25 and 26 - Mutwalli can neither claim personal interest in waqf property nor claim to fall within definition of religious denomination or section thereof — Mutwalli cannot complain about violation of Art. 19 (1) (f) and neither Art. 25 nor Art. 26 can help him—U. P. Muslim Waqfs Act (16 of 1960), Ss. 49, 50. **A I R 1965 All 333 (343, 344) (Pt I) (Pr 49).**

——Art. 19 (1) (f)—Right to hold property — Infringement of — S. 8 (1) (b) of U. P. Court of Wards Act, 1922 abridges the right of a ward under Art. 19 (1) (f) and as such is invalid. See U. P. Court of Wards Act (4 of 1912), S. 8 (1) (b). **AIR 1954 All 608 (DB).**

——Art. 19 (1) (f)—U. P. Court of Wards Act (1912), S. 8 (1) (b)— Discrimination on ground of sex only—Provision infringes Arts. 14, 15 and 19 (1) (f), Constitution of India, and is void. See Ibid, Art. 226. **AIR 1952 All 746.**

——Art. 19 (1) (f) and (g) – Custom binding villagers to allow plaintiff to take carcasses of dead animals runs counter to villagers' fundamental right of disposing of the carcasses as their property.

A custom of the village having the force of law and binding the villagers to allow the plaintiff to take the carcasses of animals dying in the village runs counter to the fundamental right of the villagers whose cattle die to dispose of the carcasses as their property to anybody. It also runs counter to the right of Chamars to carry on profession of taking carcasses of the cattle and utilise them for the purpose of any trade. The plaintiff's right to take the carcasses becomes unenforceable and void after the Constitution. A I R 1953 Hyd 1 (FB), Rel. on. **1962 M P L J (Notes) 115.**

——Art. 19 (1) (f) and (5) — Restriction imposed by S. 87 of Madras Act (19 of 1951) — Validity – If reasonable.

The history of S. 87 of Madras Act (19 of 1951) shows that the restriction has been imposed in the general interests of the public and of the Hindu Religious Endowments which form such a large part of the economic and social life of the public in particular. Hence that section does not contravene Art. 19 (1) (f) read with Cl. (5) of that article. **1958 Cr L J 523 : (1957) M L J (Crl) 864 : 70 Mad L W 957 : (1957) 2 Mad L J 617 : A I R 1958 Mad 147 (148) (Pt C) (Pr 8).**

——Arts. 19, 25, 26 — Bihar Hindu Religious Trusts Act (1 of 1951)—Validity.

There is no violation of the guarantee under Arts. 19, 25 and 26 of the Constitution of India and Bihar Act, I of 1951, is a valid piece of legislation. AIR 1954 Pat 266, Foll. **I L R 33 Pat 682 : AIR 1957 Pat 615 (616) (Pt A) (Pr 4) (DB).**

——Arts. 19, 25, 26—Bihar Hindu Religious Trusts Act (1 of 1951), S. 28 (2) (j)— Validity.

Section 28 (2) (j) of the Bihar Act (1 of 1951) has no bearing on the doctrine of cypres. It merely enacts in a statutory form the rule of English Chancery Courts that a trustee may with the sanction of the Court convert any property of the trust into another property if such conversion is for the benefit of the trust. The power conferred by S. 28 (2) (j) is also surrounded by ample safeguards. There is nothing unreasonable in the provision of S. 28 (2) (j) either from the substantive or procedural aspect. **I L R 33 Pat 682 : A I R 1957 Pat 615 (616) (Pt B) (Pr 4) (DB).**

——Art. 19 (5)—Provisions of Bihar Hindu Religious Trusts Act (1 of 1951) do not violate Arts. 19 (1) (f) and 19 (5). See Bihar Hindu Religious Trusts Act (1 of 1951), S. 59. AIR 1955 N U C (Pat) 5963.

——Art. 19 (1) (f), (5)—Bihar Hindu Religious Trusts Act (1 of 1951)—Validity.

The Bihar Religious Trusts Act may be capable of improvement on certain points but if the provisions of the Act are examined as a whole the restrictions imposed upon the trustees are not unreasonable from procedural or substantive aspect, and there is no violation of the guarantee provided under Art. 19 (1) (f) of the Constitution. 32 Pat 1148 : A I R 1954 Pat 266 (272) (Pt E) (Pr 10) (DB).

——Art. 19 (1) (f)—Person in occupation of land and his name entered in revenue papers — Sub-divisional Officer cannot restrain person from cultivating or transferring same—He must take legal proceedings if he considers such person's title or possession illegal. See Ibid, Art. 226. AIR 1964 Raj 75 (DB).

——Arts. 19 (1) (f), 19 (5)—Provisions for State taking over management of collection of revenue are not void. See (Rajasthan) Ordinances (10 and 11 of 1949). 1952 Raj L W 81 : I L R (1951) 1 Raj 888 : AIR 1953 Raj 22 (DB).

——Art. 19 (5) — Right to free management of property — Restriction reasonable and in public interest.

The applicants were either grantees or lessees of immovable properties including patches of forests. On 27-6-1949 the Government passed an order whereby it was ordered that thereafter auction of Tendu leaf contracts would be unconditional and would cover not only Government forests but other areas. Proportionate compensation to private landholders was also provided for by the order. Thereupon the applicants applied for issue of a writ of mandamus restraining the Government and the Chief Conservator of Forests from interfering with their right to the free management of the property.

Held that the right of the applicants to the free management of the property was restricted only in a reasonable manner and that in the interests of the public and the restrictions imposed by the order were within the exception contained in Art. 19 (5). AIR 1952 Vin Pra 13 (16) (Pt E) (Prs 11, 12)

51 (a). Religious Endowments and Charitable Trusts Act.

● ——Art. 19 (1) (f)— Legislature taking over secular affairs of religious institution—Validity of Nathdwara Temple Act—Act does not contravene Arts. 14, 19 (1) (f), 31 (2), 25 or 26—Provisions of the Act except first part of S. 20 (2) (a) are valid. See Rajasthan Nathdwara Temple Act (13 of 1959), S. 2 (viii). A.I R 1963 S C 1638.

● ——Arts. 19 (1) (f) and 19 (5) — Hindu religious endowments—Provisions as to registration—Hyderabad Endowments Regulations (1940), Ss. 3 to 11 — Provisions contained in Ss. 3 to 11 (except S. 4 (b)) and Rules framed for carrying out those provisions (except R. 25) not violative of Art. 19 (1) (f).

Provisions in the Hyderabad Endowments Regulations, 1940, as to the compilation of book of endowments contained in Ss. 3 to 11 (except S. 4 (b)) provide for registration of endowed property and for carrying out the objects of the Act, namely, that the intention of endower may be carried out and the duties of the trustee may be discharged conveniently and efficiently for the benefit of humanity. These Regulations are clearly reasonable restrictions in the interests of the general public within the meaning of Art. 19 (5) of the Constitution and are conceived with the purpose of having correct information as to the endowments existing in the State, so that their management may be carried out efficiently and for the benefit of humanity according to the terms of the endowments. These provisions therefore (except S. 4 (b)) as to the registration of endowments are not in any way ultra vires the fundamental right enshrined in Art. 19 (1) (f).

The validity of the Rules framed under the Regulations (except R. 25 and the rules consequential thereon on which also no opinion was expressed by the Supreme Court) to carry out the provisions of the Regulations relating to registration must also be upheld. Anant Prasad Lakshminiwas Ganeriwal v. State of Andhra Pradesh, (1964) 1 S C J 615 : (1964) 2 Mad L J (S C) 1 : (1964) 2 Andh W R (S C) 1 : (1963) Supp 1 S C R 844 : A I R 1963 S C 853 (870) (Pt D) (Prs 17, 18).

● ——Art. 19 (1) (f) and (g) — Interference with right of bare management of educational institution — No infringement of Art. 19 (1) (f) or (g).

Interference by State Government by an executive order with the right of bare management of an educational institution does not amount to infringement of the right to property under Art. 19 (1) (f).

The word 'property' in Art. 19 (1) (f) must doubtless be extended to all those recognised types of interest which have the insignia or characteristics of proprietary rights, but it cannot be said that the Society maintaining the educational institution has any such rights vested in it.

Nor is the right of the society guaranteed under Art. 19 (1) (f) infringed by the executive action. A I R 1954 S C 282 and AIR 1959 S C 249, Disting. Rev. Sidhrajbhai Sabbaj v. State of Gujarat, (1963) 2 S C A 394 : 1962 Ker L T (S C) 135 : (1963) 3 S C R 837 : AIR 1963 S C 540 (544) (Pt A) (Pr 7).

● ——Art. 19 (1) (f) — Orissa Hindu Religious Endowments Act (2 of 1952) (as amended in 1954), Ss. 42 (1) (b), (7), 44 (2), 74 (3) — Validity.

The effect of Ss. 42 (1) (b), (7) and 44 (2) is (1) that a scheme can be framed by the Commissioner alone on a report of the Assistant Commissioner on such enquiry as he thinks fit, (2) that there is no right of suit for challenging the validity or the correctness of the scheme framed by the Commissioner, but there is only an appeal to the High Court direct. The enquiry under the present Act is by itself in the nature of a judicial enquiry by judicial officers followed up by a right of regular appeal to the High Court. A scheme framed with reference to such a procedure cannot ipso facto be pronounced to be in the nature of an unreasonable restriction on the rights of the Mahant. The right of appeal is given in very wide and general terms. The present provisions cannot therefore be struck down as being in the nature of unreasonable restriction on the rights of the Mahant. The incidental provisions regarding limitation in S. 44 (2) and stay in S. 74 (3) do not in any way detract from the reasonableness of the main provisions. Therefore, the provisions in the present Act of 1952, as amended in 1954, relating to the framing of schemes are not open to any of the constitutional objections, and are valid. Sadasiv Prakash Brahmachari, Trustee of Mahiparakash Math v. State of Orissa, 1956 S C C 478 : 1956 S C R 43 : 1956 S C A 794 : 22 Cut L T 235 : 1956 S C J 397 : A I R 1956 S C 432 (437, 438, 439) (Pt B) (Prs 5, 6, 7).

● ——Art. 19 (1) (f)—Orissa Hindu Religious Endowments Act (2 of 1952) as amended in 1954, S. 79-A — Validity.

It is true that in the present Act the procedure relating to the scheme has four steps which are as

follows :— (1) The scheme is to be framed by a Commissioner, who is, by appointment, a judicial officer. (2) The procedure is, as far as may be, the same as that in the trial of suits. (3) There is a preliminary enquiry by the Assistant Commissioner. (4) There is an appeal to the High Court. Out of these four, the substantial item is the last one and that has been specifically provided for under S. 79-A and a period of sixty days from the date of the commencement of the Act has been provided for the right of appeal. The deeming provision under S. 79-A which treats the previous schemes as framed under the present Act does not result in bringing about any substantial disadvantages to the detriment of the Mahants. Section 79-A of the present Act is not open to any constitutional objection. Sadasiva Prakash Brahmachari, Trustee of Mahiparakash Math v. State of Orissa, **1956 S C J 397 : 22 Cut L T 235 : 1956 S C C 478 : 1956 S C A 794 : 1956 S C R 43 : AIR 1956 S C 432 (440) (Pt D) (Prs 9, 10).**

● **——Art. 19 (1) (f) — Mahant of Math — His rights and duties — Restrictions on Mahant — (Hindu Law Religious Endowment).**

The beneficial interest which a Mahant enjoys is appurtenant to his duties and as he is in charge of a public institution, reasonable restrictions can always be placed upon his rights in the interest of the public. But the restrictions would cease to be reasonable if they are calculated to make him unfit to discharge the duties which he is called upon to discharge. A Mahant's duty is not simply to manage the temporalities of a Math. He is the head and superior of spiritual fraternity and the purpose of Math is to encourage and foster spiritual training by maintenance of a competent line of teachers who could impart religious instructions, to the disciples and followers of the Math and try to strengthen the doctrines of the particular school or order, of which they profess to be adherents. This purpose cannot be served if the restrictions are such as would bring the mathadhipathi down to the level of a servant under a State department. It is from this standpoint that the reasonableness of the restrictions should be judged. Commr. of H. R. E., Madras v. Sri Lakshmindra Thirtha Swamiar, **(1954) S C J 335 : (1954) 1 M L J 596 : 1954 S C A 415 : 20 Cut L T 250 : 1954 S C R 1005 : 1954 Mad W N 363 : 67 Mad L W 1220 : AIR 1954 S C 282 (288, 289) (Pt C) (Pr 12).**

——Arts. 19 (1) (f), 25 and 26 — U. P. Muslim Waqfs Act (1960), S. 55 — Validity—Duties of Mutwalli are purely secular in character and not comparable with rights of Mahant — Validity cannot be challenged under Arts. 19 (1) (f), 25 or 26 — Muslim Law -Waqf — Rights of Mutwalli - U. P. Muslim Waqfs Act (16 of 1960), S. 55 –AIR 1954 S C 282, AIR 1954 S C 388, Disting.; A I R 1963 S C 985 and A I R 1963 S C 1638, Foll. **A I R 1965 All 333 (342) (Pt F) (Prs 41, 42, 43).**

——Art. 19 —Madras Hindu Religious and Charitable Endowments Act (19 of 1951), S. 5 — Mahant of religious institution — Appointment under sanad—Claim of Mahant to hereditary trusteeship unenable — Scheme under S. 92, Civil P. C. — Its liability to be changed—Extinction of Mahant's right under Madras Act 19 of 1933 and before coming into force of Constitution — Effect — (Civil P. C. (1908), S. 92). See Madras Hindu Religious and Charitable Endowments Act, 1951 (Madras Act 19 of 1951), S. 5. **A I R 1959 Andh Pra 471.**

——Art. 19 (1) (f) and (5)—Scope of—Madras Hindu Religious and Charitable Endowments Act (19 of 1951), Ss. 45 and 46 — If unreasonable restriction on hereditary trustee holding properties — Distinction between trustees of a Temple and a Muth.

A temple trustee has only duties while the trustee of a math has both duties and rights. Although a Mahant of a Math enjoys a beneficial interest in the properties belonging to the institution being a trustee in charge of a public institution, a Mathadhipathi can be subjected to restrictions placed upon his rights in the public interest. Thus the Legislature would be right in dealing with persons falling in each of these categories on a different footing. As such what may be considered unreasonable in the case of a Mathadhipathi may well be considered reasonable in the case of a mere trustee.

The power vested in the Commissioner under Ss. 45 and 46 of the Madras Hindu Religious Endowments Act, is a reasonable restriction within the meaning of Art. 19 (5) of the Constitution. (1954) S C J 329 ; (1954) 1 M L J 591, Disting. **(1958) 1 Andh W R 470 : 1958 Andh L T 143 : A I R 1958 Andh Pra 319 (321, 322) (Pt B) (Pr 4).**

——Art. 19 (1) (f)—Scope — Appointment of executive officer to religious endowment — Whether abridgement of right of hereditary trustee.

It is an invariable rule that any provision for the appointment of an Executive Officer of a Religious Endowment is inconsistent with or repugnant to the principles enshrined in Art. 19 (1) (f). But it is only when in effect the hereditary trustee is reduced to a non-entity that it would amount to such an abridgement Where the affairs of the temple were utterly neglected by the trustee and he had even supported the claim of the archakas to be in exclusive enjoyment of the properties of the institution, and the trustee lived far away from the institution and rarely visited the temple, it cannot be said that the appointment of an Executive Officer was not warranted by the circumstances of the case and the condition in which the temple was at the relevant date. **(1957) 1 Andh W R 228 : A I R 1957 Andh Pra 373 (375) (Pt B) (Prs 6, 7) (DB).**

——Arts. 19, 25, 26 — Madras Hindu Religious and Charitable Endowments Act (19 of 1951), S. 52 — Validity.

Section 52 of the Madras Act, when interpreted in the context of the rights guaranteed to Mathadhipati, is not unreasonable and unconstitutional. A I R 1956 Mad 491, Foll. The provisions of S. 52 of the Act are analogous to those contained in S. 92 of the Code of Civil Procedure. In giving his consent under S. 52, the Commissioner is not expected to decide the rights of the contending parties. What he has to see before giving his sanction for the filing of a suit is merely whether there is a prima facie case that should be allowed to go to a Court of law.

The provisions of S. 52 of the Act are really made for safeguarding the interests of the trustee. They impose a restriction on the ordinary right of a litigant to institute a suit in a Civil Court by making the sanction of the Commissioner a pre-condition for filing a suit. For this reason it must be held that the provision does not amount to a restriction on the rights of Mathadhipatis. A I R 1954 S C 321, Rel. on. **1957 Andh L T 34 : (1957) 1 Andh W R 350 : A I R 1957 Andh Pra 283 (284, 285) (Pt A) (Prs 15, 18).**

——Art. 19 (1) (f) — Scheme under Madras Act 19 of 1951 — Abridgement of rights of hereditary trustees —Validity—Provision for appointment of manager — Effect of. See Madras Hindu Religious and Charitable Endowments Act (19 of 1951), S. 52 (2) (b). **1958 Ker L T 1095.**

——Art. 19 (1) (f) — Madras Hindu Religious and Charitable Endowments Act (19 of 1951), Ss. 64 (4) and 103 (c) — Pre-Constitution notification invading fundamental rights to properties—Agreement for its continuance till Act in force — Effect — Renewal of

old notification by Notification G. O. No. 3069 (Rev.), dated 4-8-1956, under S. 64 (4) — Protection under Constitution—When open—Notification G. O. No. 3069 held valid.

A pre-Constitution notification invading the fundamental rights was the subject-matter of a subsequent agreement entered into between the Government and the Manager of an endowment on the basis that it should subsist so long as Act was in force; the effect of it was that the Manager on his part voluntarily surrendered some of rights. On the date when the Constitution came into force these rights were not subsisting with the Manager so as to enable him to claim protection therefor. The Constitution protects rights of property that existed at the time when it came into being, but it does not have the effect of resurrecting lost rights.

Where, therefore, a notification was continued under S. 103 (c) of the Act (19 of 1951) and it was renewed under S. 64 (4) of the Act :

Held, that the notification was made prior to the Constitution at a time when it was competent for the authority to do so; the G. O. No. 3069 (Rev.), dated 4-8-1956 could not be invalidated on the ground of its infringing rights of property owned by the trustee on the date of the Constitution. **ILR (1962) Mad 449: (1962) 2 Mad L J 67 : 75 Mad L W 546 : 1961 Mad W N 775.**

[Reversed in A I R 1965 S C 1578.]

——Art. 19 (1) (f) — Scope—Madras Hindu Religious and Charitable Endowments Act (19 of 1951), S. 41 — Constitutional validity. See Ibid, Art. 14. **A I R 1958 Mad 275.**

——**Arts. 19, 13, 25 and 26**—Madras Hindu Religious and Charitable Endowments Act (19 of 1951), S. 31 (as amended by Act 27 of 1954) — Unreasonable restrictions on rights of Mathadhipathi in respect of disposal of income — Section 31 is invalid. See Ibid, Art. 13. **A I R 1956 Mad 491.**

——**Arts. 19 (1) (f), 226** — Property — Hereditary trusteeship is property — Scheme taking away right to management of temple and its properties—There is infringement of right under Art. 19 (1) (f)—Scheme forming one integrated whole — Whole scheme set aside. See Ibid Art. 226. **A I R 1955 Mad 120.**

——Art. 19 (1) (f) — Jagannath Temple Act (11 of 1954), S. 21 (2) — Validity of — Powers conferred on Administrator — If contravene Art 19 (1) (f). No infraction from right of property. See Shri Jagannath Temple Act (11 of 1954), S. 21 (2) (e). **A I R 1959 Orissa 17 (DB).**

——**Arts. 19 (5) and 19 (1) (f)** — (Orissa) Puri Shri Jagannatha Temple (Administration) Act (14 of 1952), S. 2 (a), Expl.—Private religious endowments to sevaks or Pandas — Control of, by S. 15 (5) of Orissa Act 11 of 1954 Validity — Does not contravene Art. 19 (1) (f) or 31 (2). See (Orissa) Puri Shri Jagannath Temple (Administration) Act (14 of 1952), S. 2 (9), Expl. **A I R 1959 Orissa 17.**

——**Art. 19 (1) (f)—Bihar Hindu Religious Trusts Act, 1950 (I of 1951), S. 48—Validity.**

The authority empowered under section 48 of the Bihar Hindu Religious Trusts Act for removing the trustee or for appointing a new trustee of a religious trust is an officer of high judicial rank, i. e., District Judge and the mere fact that no right of appeal is provided against his decision to any higher judicial authority is not a circumstance for holding that there is an unreasonable restriction on the right of the trustee of a religious trust guaranteed under Art. 19 (1) (f) of the Constitution. The power of removing a trustee conferred by S. 48 (1) is not an unrestricted and unfettered, power. The provisions of S. 48 do not impose unreasonable restrictions on the fundamental right of property guaranteed under Art. 19 (1) (f) of the Constitution and the provisions are constitutionally valid and operative. AIR 1954 S C 400 and A I R 1958 Pat 442, Dist. **1959 Pat L R 277 : 1959 B L J R 749 : I L R 39 Pat 221 : AIR 1960 Pat 148 (149, 150) (Pr 3) (DB).**

——**Arts. 19, 25, 26 — Bihar Hindu Religious Trusts Act (1 of 1951), S. 60 (2)—Validity.**

The power granted to the Board under S. 60 (2) of the Bihar Act of 1951, is not an uncontrolled or arbitrary power but it is subject to the overriding condition that the power must be exercised in accordance with the wishes of the founder or in accordance with the provisions of the Act. **ILR 33 Pat 682 : AIR 1957 Pat 615 (617) (Pt E) (Pr 5) (DB).**

——**Art 19 (1) (f)** — Provisions of Bihar Hindu Religious Trusts Act (1 of 1951) do not violate Articles 19 (1) (f) and 19 (5). See Bihar Hindu Religious Trusts Act (1 of 1951), S. 59. **AIR 1955 N U C (Pat) 5963.**

——**Art. 19 (1) (f)** — Validity of Bihar Act 1 of 1951 —Does not violate Art. 19 (1) (f). See Bihar Hindu Religious Trusts Act (1 of 1951). **A I R 1954 Pat 279 (DB).**

——Art. 19 (1) (f)—Constitutional guarantee under—Not violated by Bihar Act 1 of 1951. See Bihar Hindu Religious Trusts Act (1 of 1951). **A I R 1954 Pat 278 (DB).**

——**Arts. 19, 13**—Bihar Wakf (Amendment) Act (33 of 1950), S. 2—The Amending Act is not a law which directly affects the fundamental rights of the mutawalli. See Bihar Wakf (Amendment) Act (33 of 1950), S. 2. **AIR 1953 Pat 32 (DB).**

——Art. 19 (1) (f)—Legislation taking over administration of secular affairs of religious institution—Validity—Nathdwara Temple Act (13 of 1959), Ss. 2 (viii), 16, 28 (2) and (3) 30 (2) (a), 36 and 37—Provisions ultra vires the Constitution. See Ibid, Art. 14. **AIR 1962 Raj 196 (DB).**

——**Art. 19 (1) (f)- Durgah Khwaja Saheb Act (1955), S. 2 (d)—Validity.**

Section 2 (d) (v) Durgah Khwaja Saheb Act is hit by Art. 19 (1) (f) of the Constitution so far as it includes in the definition of Durgah endowment nazars or offerings made at the tomb which the Khadims are entitled to share by custom and usage. **1959 Raj L W 496 : ILR (1959) 9 Raj 424 : AIR 1959 Raj 177 (189, 191) (Pt D) (Prs 61, 76) (DB).**

[Reversed in AIR 1961 S C 1402.]

——**Art. 19 (1) (f)—Durgah Khwaja Saheb Act (1955), S. 14—Validity.**

Section 14 of the Act is hit by Art. 19 (1) (f) of the Constitution so far as it empowers the Nazim to solicit and receive offerings at the tomb or in dome, to which the Khadims are entitled by custom and usage, notwithstanding anything contained in any rule of law or decision to the contrary. **I L R (1959) 9 Raj 424: 1959 Raj L W 496: AIR 1959 Raj 177 (191) (Pt J) (Pr 76) (DB).**

[Reversed in AIR 1961 S C 1402.]

——**Arts. 19 (1) (f), (g), 14, 15 (1) and 26**—Travancore Cochin Hindu Religious Institutions Act (15 of 1950), Ss. 63 and 64—Restrictions imposed by Ss. 63 and 64 in choosing members of Cochin Devaswom Board—Cochin Devaswam Board do not violate the provisions of any of the Articles 14, 15 (1), 19 (1) (f) and (g) and 26. See Ibid, Art. 14. **A I R 1956 Trav-Co 19.**

● **—Art. 19 (1) (f)—Hereditary trustee of a temple—His rights as Ooralan constitute property.**

Where the plaintiff is a hereditary trustee of a temple his rights as an Ooralan constitute property within the meaning of Art. 19(1)(f) of the Constitution. AIR 1954 Trav-Co 515 (FB) and AIR 1954 Mad 385, Foll. P. M. Bramadathan Nambooripad v. Cochin Devaswom Board, 1955 Ker L T 516 : ILR (1955) T C 741 : A I R 1956 Trav-Co 19 (21) (Pt C) (Pr 6) (FB).

● **—Arts. 19, 26 and 254** — Scope—Travancore-Cochin Hindu Religious Institutions Act (15 of 1950), S. 66 (vi)—Section 66 of the Act does not offend Arts. 19, 26 and 254 of the Constitution. P. M. Bramadathan Nambooripad v. Cochin Devaswom Board, **1955 Ker L T 516: ILR (1955) T·C 741: AIR 1956 Trav-Co 19 (23) (Pt I) (Pr 18) (FB).**

● **- Art 19 (1) (f) - Travancore-Cochin Hindu Religious Institutions Act (15 of 1950), ss. 79, 81, 83, 84 and 86—Provisions contained in these sections are intra vires.**

No large inroads into the proprietary rights of a hereditary trustee as to violate Article 19 (1) (f) of the Constitution have been made by Ss 70, 81 83, 84 and 86 of the Travancore-Cochin Hindu Religious Institutions Act, 1950 The provisions contained in these sections are only regulatory in character. Hence these sections are intra vires of the Constitution. P. M. Bramadathan Nambooripad v. Cochin Devaswom Board, **1955 Ker L T 516 : I L R (1955) T C 741 : AIR 1956 Trav-Co 19 (25) (Pt K) (Pr 23) (FB).**

● **—Art. 19 (1) (f)—Property—Hereditary trusteeship.**

The hereditary trusteeship of the Malabar temple constitutes a right in property and is within the protection afforded by Art. 19 (1) (f) of the Constitution. AIR 954 Mad 385, Rel. on. Kumaran Nambudiri v. Cochin Devaswom Board **1954 Ker L T 551 : A I R 1954 Trav-Co 515 (517) (Pt B) (Pr 4) FB).**

51 (b). Court of Wards Acts.

● **—Arts. 19 (1) (f), 19 (5) and 31-A—Applicability.**

Taking over by Court of Wards of estate of person "disqualified to manage his estate" under Ajmer Tenancy and Land Records Act (42 of 1950), S. 112. See Tenancy Laws — Ajmer Tenancy and Land Records Act (42 of 1950), S. 112. **AIR 1953 S C 373.**

—Arts. 19 (1) (f), 291, 362, 363, Sch. 7, List I, Entry 34, List 2, Entry 22 — C. P. Court of Wards Act (24 of 1899) (as modified by Adaptation of Laws Order, 1950), S. 41 — Estates of Rulers of Indian States — Act in so far as it provides for assuming superintendence of such estates does not contravene Arts. 291, 362 and 363. See Ibid, Art. 291. **AIR 1961 Madh Pra 197.**

—Arts. 19 (1) (f), 31, 31-A—Taking away right of management of property — Pepsu Court of Wards Act (1 of 2008-B. K.), Ss. 5 (2) (d), 16 — Constitutionality.

The law enacted in S. 5 (2) (d), Pepsu Court of Wards Act, 2008 B K., is not saved by Art 19 (5) or by Art. 31-A of the Constitution. It manifestly infringes the fundamental rights of the landholders guaranteed by Art 19 (1) (f) and therefore is void to that extent. AIR 1954 Punj 247 and AIR 1953 Punj 30, Dissent. from. The impugned legislation enables the Government to deprive a landholder of his property for an indefinite period of time merely on the subjective determination and as such takes away his fundamental rights without leaving any remedy to him. The impugned provision also offends against the provisions of Art 31 (1) and is therefore unconstitutional on that ground also. Taking possession of the property of an individual for indefinite period is manifestly unreasonable and undoubtedly overstep the limits of police power.

Section 16 of the Act is also unconstitutional as it imposes unreasonable restrictions on the rights of the landholders to dispose of their property. Even after the disqualification of the landholder is removed he still remains incompetent to dispose of his property as contemplated by Art. 19 (1) (f). **AIR 1957 Pepsu 5 (8, 11, 13) (Pt A) Prs 13, 21, 22, 26, 27) (DB).**

● **——Arts. 19 (1) (f) and 15**—Legislation for taking over management of estate on sole subjective satisfaction of Government or its officer — Discrimination against female on ground of sex — Validity - Pepsu Court of Wards Act (1 of 2008 B. K.), S. 5 (2) — Ultra vires Arts. 15 and 19 (1) (f) of Constitution AIR 1953 Punj 30 and AIR 1954 Punj 247, **Overruled.** See Ibid, Art 15. **AIR 1963 Punj 9 (FB).**

——Art. 19 –Punjab Court of Wards Act (2 of 1903), S. 5 (2) (d) - Reasonable restrictions—S. 5 (2) (d) is not invalid — (Punjab Court of Wards Act (2 of 1903), S. 5 (2) (d)).

The restrictions imposed by S. 5 (2) (d) of the Punjab Court of Wards Act are neither arbitrary nor capricious. In so far as they are designed to secure that well-to-do landholders should not be allowed to dissipate their property by entering upon a course of wasteful extravagance, the restrictions must be deemed to be in the public interest. AIR 1940 P C 82; (1940) 2 Mad L J 205: AIR 1953 Punj 30, Rel. on. 56 Punj L R 403 : ILR (1955) Punj 331 : AIR 1954 Punj 247 (250) (Pt B) (Pr 9) (DB).

[Overruled on another point in AIR 1963 Punj 9.]

——Art. 19 — Punjab Court of Wards Act (2 of 1903), S. 5 (2) (d) — Reasonable restriction—Subjective consideration—Validity of provision.

The contention that S. 5 (2) (d) of the Punjab Court of Wards Act, 1903 is void and of no effect as it empowers the Government to assume superintendence of the property of a landholder in its own discretion and on its own subjective determination, cannot bear any scrutiny. The Punjab Act of 1903 has provided an adequate machinery for ascertaining whether the requirements of S. 5 (2) have or have not been complied with by imposing certain obligations on the Deputy Commissioner under S. 11. And if the Deputy Commissioner makes the appropriate enquiry and if Government makes an order on the basis of this enquiry it cannot be said that the Court of Wards has assumed superintendence of the estate of a landholder in its own discretion and on its own subjective determination. AIR 1953 S C 373, Disting.

Further, the restrictions imposed by S. 5 (2) (d) on the landlord whose property is brought under the superintendence of the Court of Wards cannot be regarded as penal **ILR (1955) Punj 331 : 56 Punj L R 403 : AIR 1954 Punj 247 (250) (Pt D) (Prs 11, 12) (DB).**

[**Overruled** on another point in AIR 1963 Punj 9.]

——**Art. 19 (1) (f), (6) — Reasonable restrictions — Punjab Court of Wards Act (2 of 1903), Ss. 13, 15, 17 and 25.**

If for the purposes of protection of the revenues of the State and for seeing that there is no discontentment amongst the tenants, laws of the kind such as Punjab Court of Wards Act are passed by the Government, it cannot be said that they are unreasonable interference with the fundamental rights of persons. (1950) S C R 869, Foll. **55 Punj L R 279 : ILR (1953) Punj 279 : AIR 1953 Punj 30 (38) (Pt F) (Pr 50)(DB).**

[**Overruled** in AIR 1963 Punj 9.]

● **——Art. 19 (1) (f) — Restrictions on fundamental rights — Reasonableness.** See Rajasthan Court of

Wards Act (1951), S. 8 (1) (c) (ii), (iii) and (iv). AIR 1954 Raj 131 (FB).

●——Art. 19 (1) (f) — Rajasthan Court of Wards Act (1951), S. 9 (1) — Validity. See Rajasthan Court of Wards Act (28 of 1951), S. 9 (1). AIR 1954 Raj 131 (FB).

52. Control of accommodation and rents.

——Art. 19 (1) (f)— Requisition of house — Application under Art. 226 may lie on ground of infringement of Art. 19 (1) (f). See Ibid, Art. 226. AIR 1952 All 836 (DB).

——Arts. 19 (1) (f) and (5), 31 — Landlord served with notice under municipal law to pull down building - Tenants challenging validity of municipal law under Art. 19 (1) (f) — Applicability of Art. 19 (1) (f) and Art. 31 — (Bombay Municipal Corporation Act (3 of 1888), Ss. 354, 66 (1) (c) — Constitutional validity of S. 354) — Section not open to challenge in view of Art. 19 (5). 60 Bom L R 515 : I L R (1958) Bom 824 : AIR 1959 Bom 332 (337, 338, 341, 342) (Pt B) (Prs 16, 17, 18, 30) (DB).

——Art. 19 (1) (f) — Requisitioning of premises for Government servant — No choice of accommodation — Public purpose — Necessity of — Doctrine of Eminent domain. See Houses and Rents—West Bengal Premises Requisition and Control (Temporary provisions) Act (5 of 1947), S. 3 (1). ('61) 65 Cal W N 794.

●——Arts. 19 (1) (f) and 31 (2) —Correlation public purpose, meaning of — Requisition of godown for storing Government foodgrains collected for distribution in deficit areas — No profit motive requisition is for public purpose — Proper approach by Courts in such cases. See Ibid, Art. 31 (2). AIR 1962 Madh Pra 146 (FB).

——Arts. 19 (1) (f) and 31 (2) and Sch. VII, List II, Item 36—Public purpose — Requisition of house for housing Government servant — Taking possession—Possession taken under S. 3 (3) of Madras Act (25 of 1949)—Exclusion of Art. 19 by Art. 31.

The difficulty to place a right infringed under one or other of Art. 19 or 31 is often a difficult one. The following three principles may be borne in mind in approaching the question. The general provision must give place to the specific provision, the pith and substance or the directness of the legislation, and whether the right sought to be protected under Article 19 has been taken away by legislation under another appropriate article.

The requisition of a house for housing a Government servant is a public purpose, for the interests of the Government and that of the public would necessarily suffer if their officers are not properly housed.

It is not correct to say that Art. 31 deals only with total deprivation of property. Article 31 (2) deals with acquisition and taking possession. Acquisition means actual transference of property whereas taking possession of property need not imply a total deprivation of the ownership of property. The title to the property may continue in the owner but he may be dispossessed for a public purpose. Item 36 of List II provides both for acquisition and requisition of property. Therefore requisition of property, which does not involve a total deprivation of the property from the owner, does come within the meaning of Art. 31. Therefore it cannot be contended that the Madras Buildings (Lease and Rent Control) Act (1949) does not deal with the subject-matter covered by Art. 31 of the Constitution of India. Section 3 (3) specifically enables the Government or the authorised officer to require any building for the purpose of the State. They can take possession of the same subject to the terms prescribed thereunder. The taking of possession under S. 3 (3) is certainly covered by the words "taken possession of" in Art. 31 (2). The subject-matter directly comes under Art. 31 which being a special article, excludes the operation of the general article, Art. 19. Hence, where a building is taken possession of under the Madras Buildings (Lease and Rent Control) Act, the landlord is not protected by the provisions of Art. 19, for Art. 19 (1) (f) can be invoked only if he is legally entitled to use his property. (1952) 2 M L J 761 : 65 Mad L W 1138 : 1952 Mad W N 650 : AIR 1953 Mad 252 (255, 256) (Pt B) (Prs 6, 9, 10, 11, 12).

Bengal Government Premises (Eviction) Act (27 of 1950).

——Art. 19 (1) (f) and (5) — Reasonable restrictions —Act 27 of 1950 — Act is ultra vires. See Houses and Rents —Bengal Government Premises (Eviction) Act (27 of 1950). AIR 1955 NUC (Cal) 4499.

Bihar Buildings (Lease, Rent and Eviction) Control Act (3 of 1947).

——Art. 19 (1) (f), (5)— Bihar Buildings (Lease, Rent and Eviction) Control Act (3 of 1947)—Validity —(Houses and Rents— Bihar Buildings (Lease, Rent and Eviction) Control Act (3 of 1947), Ss. 11, 16, 18, 18-B).

There is no violation of the guarantee under Article 19 (1) (f) of the Constitution so far as the tenants are concerned, and the object of the impugned Act is the protection of tenants by regulating the rent of the building and preventing unreasonable eviction. Assuming, however, that the Act violates the guarantee under Art. 19 (1) (f) the restrictions imposed are reasonable. Section 11 (2) of the Act must be interpreted to mean that the Controller should be reasonably satisfied that the tenant is liable to be evicted under the provisions of sub-s. (1) before he makes the actual order of eviction, and the satisfaction contemplated in S. 11 (2) is not a subjective but an objective satisfaction liable to be tested by the appellate authority under S. 18 and by the Commissioner in revision under S. 18-B. The procedure prescribed is not unreasonable within the meaning of Art. 19 (5) of the Constitution. The considerations that the jurisdiction of the civil Court is barred, and the decision of the House Controller is not justiciable in a regular Court of law are not decisive on the question whether the restriction, from the procedural point of view, is reasonable within the meaning of Art. 19 (5). Case-law, discussed. 1953 B L J R 593 : AIR 1954 Pat 211 (212, 213, 215) (Pt A) (Prs 5, 6, 9) (DB).

Bombay Rents, Hotel and Lodging House Rates Control Act (57 of 1947).

——Arts. 19 (1) (f), (6), 13—Bombay Rents, Hotel and Lodging House Rates Control Act (57 of 1947), S. 13 (1) (g), Explanation (a) is valid. See Houses and Rents — Bombay Rents, Hotel and Lodging House Rates Control Act (57 of 1947), S. 13 (1) (g). AIR 1953 Bom 174.

Government Premises Eviction Act (27 of 1950).

——Art. 19 (5)—Scope—Government Premises Eviction Act (1950)—Validity of — Act held unreasonable. See Houses and Rents—Government Premises Eviction Act (1950), S. 2 (a). AIR 1958 Punj 1 (DB).

——Art. 19 (1) (f) — Government Premises Eviction Act—Validity—Act held ultra vires. See Ibid, Art. 14. AIR 1959 Tripura 21.

Kerala Buildings (Lease and Rent Control) Act (16 of 1959).

——Art. 19 (1) (f) — Validity of Act — Arts. 19 (1) (f) and 31 of Constitution are not offended. See Houses and Rents—Kerala Buildings (Lease and Rent Control) Act (16 of 1959), S. 4 (3). 1960 Ker L T 456.

Madhya Bharat Accommodation Control Act (3 of 1955).

——**Art. 19 (1) (f) and (5)**—Scope — S. 4 (h) of M. B Accommodation Act — If invalid. See Houses and Rents -M. B. Accommodation Control Act (3 of 1955), S. 4 (h). **1957 M P L J (Notes) 179.**

Madhya Bharat Public Premises Eviction and Recovery of Rent Act (27 of 1951).

——**Art. 19—Madhya Bharat Public Premises Eviction and Recovery of Rent Act (27 of 1951), S. 3—Validity—Section does not contravene, Art. 19.**

The legislature has, on the whole, provided suitable precautions against the possibility of mistake or abuse of power in the very vast majority of cases that might arise. Theoretical considerations do show that there is a risk of injustice in a rare case; but this being a matter of urgency, the legislature has chosen to put up with the risk in the interest of prompt disposal and the best utilization of the premises in charge of Government. It is not for the Courts to impose standards of unrealizable perfection in ignorance of the time element and thereby defeat the purpose of the legislation. Section 3 cannot be held to be unreasonable. The Act as a whole, and S. 3 in particular, is not repugnant to Article 19 (1) (f) and (5) of the Constitution. **1961 M P L J 1228 : 1961 Jab L J 256 : ILR (1962) Madh-Pra 57.**

Madhya Pradesh Accommodation Control Act (23 of 1951).

——**Art. 19 (1) (f)** — M. P. Act 23 of 1915 — Reasonability, of restriction—Right of tenant is not fundamental but statutory — No unreasonability in tenants paying rent — Term reasonable with reference to Art. 19—Explained -Duty of legislature. See Houses and Rents—M. P. Accommodation Control Act (23 of 1951), S. 5 (1). **1961 Jab L J 744.**

——**Art. 19 (1) (f)**—Houses and Rents—M. P. Accommodation Control Act (1955), S. 5 (2) and Constitution of India, Art. 19 (1) (f)—S. 5 (2) is not ultra vires. See Houses and Rents — M. P. Accommodation Control Act (23 of 1955), S. 5 (2). **(1961) M P L J (Notes) 293.**

Madhya Pradesh Accommodation (Requisition) Act (63 of 1948).

——**Art. 19 (1) (f)**—Madhya Pradesh Accommodation (Requisition) Act (63 of 1948), S. 3 (1)—Non-mention of reasons in order for requisitioning accommodation does not make order invalid on ground that it infringes Art. 19 (1) (f) of the Constitution — Requisitioned accommodation need not necessarily be occupied by officer for whom it is requisitioned—Holding of enquiry as to public purpose before accommodation is requisitioned, not contemplated by section. See Madhya Pradesh Accommodation (Requisition) Act (63 of 1948), S. 3 (1). **1964 Jab L J 652.**

Madras Buildings (Lease and Rent Control) Act (15 of 1946).

——**Art. 19 (1) (f) — Control of accommodation and rents — Madras Buildings (Lease and Rent Control) Act (15 of 1946)—Validity.**

The Madras Buildings (Lease and Rent Control) Act is 'intra vires' of the Constitution of India.

The various Acts, etc., relating to the control of accommodation in urban areas which are in force in different States in India are all instances of legislation affecting more or less the right to hold and dispose of property under Cl. (1) (f) of Art. 19 of the Constitution of India. But such provisions are obviously necessary in public interest in times of shortage of houses. Hence, in so far as such restrictions are not unreasonable they will be upheld by the Court as being valid. **AIR 1955 Mad 350 (359) (Pt E) (Pr 31).**

Madras Buildings (Lease and Rent Control) Act (25 of 1949).

——**Art. 19 (1) (f)**—Scope—Madras Buildings (Lease and Rent Control) Act (25 of 1949), S. 3 (3)—Validity of—Does not contravene Art. 19 (1) (f). **(1957) 1 M L J 161.**

——**Arts. 19, 14**—Madras Buildings (Lease and Rent Control) Act (25 of 1949), S. 13—House in occupation of tenant—Government exempting house from operation of Act under S. 13 — No fundamental right of lessee is violated—It cannot be said that S. 13 of the Act imposes unreasonable restrictions on the right of the lessee to use the premises as a lessee. See Houses and Rents—Madras Buildings (Lease and Rent Control) Act (25 of 1949), S. 13. **AIR 1953 Mad 351.**

——Arts. **19 (1) (b) and 31 (2)**—Madras Buildings (Lease and Rent Control) Act (1949), S. 3 (8) (as amended by Madras Act, 8 of 1951)—Section does not infringe Art. 19 (1) (f) of Constitution. See Houses and Rents—Madras Buildings (Lease and Rent Control) Act (25 of 1949), S. 3 (8). **AIR 1953 Mad 257.**

——**Art. 19** — Fundamental rights—Not offended by requisitioning of house under Madras Act 25 of 1949. See Houses and Rents — Madras Buildings (Lease and Rent Control) Act (25 of 1949). **AIR 1953 Mad 252.**

Mysore House Rent and Accommodation Control Act (30 of 1951).

● ——**Arts. 19 (1) (f) and 19 (5)**—S. 3 (3) (a) of Mysore House Rent and Accommodation Control Act, 1951—Validity—Does not impose unreasonable restriction on fundamental right to property—Does not violate Art. 14 of Constitution. See Houses and Rents—Mysore House Rent and Accommodation Control Act (30 of 1951), S. 3 (3) (a). **AIR 1961 S C 1523.**

——**Art. 19 (1) (f)** — Mysore House Rent and Accommodation Control Act (1951), S. 20 — Government Notification No. 797, D/- 2-11-1951—Constitutionality —Section and the Notification do not offend Art. 19 (1) (f) — Valid restrictions. See Houses and Rents—Mysore House Rent and Accommodation Control Act (30 of 1951), S. 20. **AIR 1955 Mys 121.**

Public Premises (Eviction of Unauthorised Occupants) Act (32 of 1958).

——**Art. 19 (1) (f)**—Public Premises (Eviction of Unauthorised Occupants) Act — Validity — Does not violate Art. 19 (1) (f). See Public Premises (Eviction of Unauthorised Occupants) Act (32 of 1958), S. 4. **AIR 1961 Punj 98 (DB).**

Punjab Public Premises and Land (Eviction and Rent Recovery) Act (31 of 1959).

● ——**Arts. 19 (1) (f) and 14** —Punjab Public Premises and Land (Eviction and Rent Recovery) Act (31 of 1959)—Validity—Does not contravene Art. 14 or 19 (1) (f)—Provisions of Act are not violative of principles of natural justice. See Ibid, Art. 14. **AIR 1963 Punj 290 (FB).**

Punjab Urban Rent Restriction Act (3 of 1949).

——**Art. 19 (1) (f) — Punjab Urban Rent Restriction Act, S. 3—Validity.**

Section 3 of the Urban Rent Restriction Act confers powers to make an exemption on the State Government which is very different from conferring powers on an executive official. The State Government does not consist of one individual and whatever decisions are taken by the Government they cannot be regarded as exercise of discretion in the same manner as it can be exercised by the District Magistrate or a competent Officer under the Government Premises (Eviction) Act. The provisions contained in S. 3 of the Urban

Rent Restriction Act are perfectly valid. AIR 1958 Punj 1 and AIR 1956 All 507, Dist. **AIR 1960 Punj 172 (173, 174) (Pt A) (Pr 3).**

Rajasthan Premises (Requisition and Eviction) Ordinance (11 of 1949).

——Art. 19 — Rajasthan Premises (Requisition and Eviction) Ordinance (11 of 1949), S. 1 — Validity of ordinance—Contravention of Art 19 (1) (f) of Constitution — The ordinance is valid, because it only places reasonable restrictions on the right to acquire, hold or dispose of property in the interests of the general public. **1952 Raj L W 71: ILR (1951) 1 Raj 853 : AIR 1952 Raj 137 (138) (Pt B) (Pr 5) (DB).**

U. P. (Temporary) Accommodation Requisition Act (25 of 1947).

——Art. 19 (1) (f) — U. P. (Temporary) Accommodation Requisition Act (25 of 1947), S. 3—Validity—Provisions do not violate Arts. 19 (1) (f) and 31 of the Constitution. See Houses and Rents — U. P. (Temporary) Accommodation Requisition Act (25 of 1947), S. 3. **AIR 1963 All 592 (DB).**

U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947).

——Art. 19 — Tenant of shop, karta of joint Hindu family carrying on business in shop, dying leaving no relations except brothers (one being plaintiff)—Landlord (defendant) obtaining release order under R. 6 of Rent Control and Eviction Rules and getting plaintiff summarily ejected — Suit by plaintiff for recovery of possession held maintainable under S. 9, Specific Relief Act—Release order held illegal—Order of release —Nature of—Exercise of power under S. 7-A—Scope —Words 'any person' in S. 7—Meaning of—Interpretation of S. 7—Direction to landlord not to let accommodation to anyone is hit by Art. 19 of the Constitution. See Houses and Rents—U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 7. **(1963) All W R (H C) 415.**

——Art. 19 (1) (f) — U. P. Act 3 of 1947, S. 3 (1) — Permission need not necessarily be given in every case of genuine requirement. See Houses and Rents—U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 3 (1). **1961 All L J 32.**

——Art. 19 (1) (f)—Proviso to S. 7-B (7), U. P. (Temporary) Control of Rent and Eviction Act, S. 78 (7)—If inconsistent with Art. 19 (1) (f)—Sub-ss. (3) and (7) of S. 7-B are not unreasonable. See Houses and Rents — U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 7-B (7), Proviso. **AIR 1957 All 305.**

——Arts. 19, 14—Rent Control laws—Section 7-B (7), Proviso, U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947) Validity. See Ibid, Art. 14. **AIR 1956 All 100.**

——Art. 19 (1)(f)—U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947)—Validity—Not inconsistent with provisions of Art. 19 (1) (f). See Houses and Rents—U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 1. **AIR 1953 All 543 (DB).**

——Art. 19 (1) (f)—U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 7 (1) (a) — Does not contravene Art. 19 (1) (f). See Houses and Rents—U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 7 (1) (a). **AIR 1953 All 51.**

●——Art. 19 (1) (f)—U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 7—Order under, allotting premises to third person instead of landlord —Order does not impose any unreasonable restriction on rights of landlord under Art. 19 (1) (f). See U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S 7. **AIR 1952 All 703 (FB).**

——Art. 19 (1) (f)—U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947) (as amended in 1948), S. 3 - Validity—Unfettered discretion given to District Magistrate to grant permission for eviction suit does not render S. 3 bad. See Houses and Rents—U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947) (as amended in 1948), S. 3. **AIR 1952 All 699 (DB).**

——Arts. 19 (1) (f) and 13—U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 1—Validity of Act. See Houses and Rents—U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 1. **AIR 1952 All 697 (DB).**

U. P. (Temporary) Control of Rent and Eviction Rules (1949).

——Art. 19 (1) (f) and (5)—U. P. (Temporary) Control of Rent and Eviction Rules (1949), Rr. 6, 7 -Object of —Operate as reasonable restrictions on wide powers conferred by S. 7—U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 7 (2). See Houses and Rents — U. P. (Temporary) Control of Rent and Eviction Rules (1949), R. 6. **AIR 1959 All 675 (DB).**

West Bengal Premises Rent Control (Temporary Provisions) Act (17 of 1950).

●——Art. 19 (5) — "In the interests of the general public" does not mean public of whole of Republic of India — It means nothing more than "in the public interest" — Legislation affecting a limited class of persons or limited area might well be legislation in public interest — S. 18 (1) of West Bengal Premises Rent Control (Temporary Provisions) Act, are not unreasonable in the interest of the general public, though the provisions apply to comparatively small class of persons. Iswari Prosad v. N. R. Sen, **55 Cal W N 719: AIR 1952 Cal 273 (278) (Pt E) (Pr 33) (FB).**

[Reversed on another point in AIR 1953 S C 148.]

53. Tenancy laws.

Ajmer Land and Revenue Regulation (2 of 1877).

——Art 19 (1) (f)—Repeal of Ajmer Land and Revenue Regulation by Rajasthan Revenue Laws (Extension) Act, 1957 (2 of 1958) — Right under S. 29 acquired before repeal — Right held was saved under S. 9 (4) of Rajasthan Act — Provision under S 29 becoming void after coming into force of the Constitution—Effect—C. P. Code (1908), Ss 50, 52 -Constitution of India, Arts. 14 and 19 (1) (f). See Tenancy Laws—Ajmer Land and Revenue Regulation (1877), S. 29. **1963 Raj L W 466.**

Ajmer Tenancy and Land Records Act (42 of 1950).

●——Art. 19 (1) (f) and (5) — Ajmer Tenancy and Land Records Act (42 of 1950), S. 112 -Validity. See Tenancy Laws — Ajmer Tenancy and Land Records Act (42 of 1950), S. 112. **AIR 1953 SC 373.**

Andhra Inams (Abolition and Conversion into Ryotwari) Act (37 of 1956).

——Arts. 19, 14 and 245 — Andhra Inams (Abolition and Conversion into Ryotwari) Act (37 of 1956), S. 17 —Rules under. R. 18—Validity—Rule granting power to issue injunctions to prevent eviction of tenants entitled to protection — Rule whether made beyond rule-making power of Government—Rule whether hit by

Arts. 14 and 19 of the Constitution or void as illegal delegation of legislative power. See Tenancy Laws—Andhra Inams (Abolition and Conversion into Ryotwari) Act (37 of 1956), S. 17. A I R 1962 Andh Pra 220.

Assam Fixation of Ceiling on Land Holdings Act (1 of 1957).

● **—Art. 19** — Assam Fixation of Ceiling on Land Holdings Act (1 of 1957) — Act falls within the protection of Art. 31-A of the Constitution – It is also not a colourable piece of legislation — Hence it is constitutionally valid. See Tenancy Laws—Assam Fixation of Ceiling on Land Holdings Act (1 of 1957). AIR 1962 S C 137.

Barahiya Tal Land (Declaration of Possession) Act (26 of 1950).

——Art. 19 — Barahiya Tal Land (Declaration of Possession) Act (26 of 1950), Ss. 2, 3 — Validity of — sections are "ultra vires" — Barahiya Tal Land (Declaration of Possession) Act which is not in conformity with Arts. 14 and 19 (1) (f) and 19 (5) of the Constitution must therefore be held to be 'ultra vires' the State Legislature. See Ibid, Art. 14. **AIR 1952 Pat 166.**

Bengal Land Revenue Sales (West Begal Amendment) Act.

● **—Art. 19 (5) — Considerations — Bengal Land Revenue Sales (West Bengal Amendment) Act (7 of 1950), S. 7.**

(Per S. R. Das and Jagannadhadas JJ.) — Though the fact that a statute is expressly or by necessary implication made retrospective, does not, by itself, furnish any cogent reason for saying that the statute is prima facie unfair and, therefore, unreasonable the fact of the statute being given retrospective effect may be properly taken into consideration in determining the reasonableness of the restriction imposed in the interest of the general public. The loss occasioned to the purchaser by reducing, without any abatement of the purchase price, an estate in possession into one in reversion may also be taken into account in determining the reasonableness of the restrictions permissible under Art. 19 (5). The conditions prevailing at the time which actuated the sponsor of the Bill to introduce the same and the extent and urgency of the evil which he sought to remedy are all matters which must enter into the judicial verdict as to the reasonableness of the restrictions which Art. 19 (5) permits to be imposed on the exercise of the right guaranteed by Art. 19 (1) (6).

Held, that in the circumstances the infliction of the loss of the right of the purchaser to eject undertenants under S. 7 of the Amending Act (7 of 1950) could only be regarded as a reasonable restriction permitted by Art. 19 (5) to be imposed on the exercise of the right guaranteed under Art. 19 (1) (f). A I R 1952 S C 193, Rel on. State of West Bengal v. Subodh Gopal Bose. **1954 S C J 127 : 67 L W 206 : (1954) 1 M L J 314 : 1954 S C A 65 : 1954 S C R 587 : A I R 1954 S C 92 (104, 105, 117, 119) (Pt G) (Prs 36, 58, 59, 62, 70).**

Berar Land Revenue Code (1928).

——Art. 19 (1) (f)—Berar Land Revenue Code (1928), Ss. 73-C and 73-D (enacted by Berar Tenancy Law Amendment Act (19 of 1950)) — Validity. See Berar Land Revenue Code (1928), S. 73-C. **A I R 1953 Nag 40.**

——Art. 19 (5) — Berar Land Revenue Code (1928), S. 73-A (1) and (3) (enacted by Berar Land Revenue Code (Amendment) Act (10 of 1948)) and S. 73-C (enacted by Berar Tenancy Law Amendment Act (19 of 1950)) — Restrictions placed by sections—Reasonableness. See Berar Land Revenue Code (1928), S. 73-A (1) and (3). **AIR 1953 Nag 40.**

——Arts. 19 (1) (f) and (5) and 31 (2) — Reasonable restrictions — Extent — Restrictions placed on landlord's rights in sub-ss. (1) and (3) of S. 73-A of Berar Land Revenue Code—Reasonableness.

Restrictions should not be greater than the mischief it is intended to prevent and it should be in the interest of the general public to place them. It is for the Legislature to scrutinize the need for restrictions and also, in the first instance, to decide upon their reasonableness. As to the need for restrictions, the judgment of the Legislature must be regarded as final. The question of their reasonableness is justiciable and a Court has undoubtedly the power to go into that question when reasonableness of the restriction is challenged before it. The question whether the restrictions placed on a landlord's rights are justified must be determined by having regard to the circumstances which would inevitably arise if the landlord were free to exercise his rights without let or hindrance.

The provisions of sub-ss. (1) and (3) of S. 73-A do not take away completely the landlord's right to hold and dispose of the property. Indeed, they do not go beyond placing certain restrictions on the right of the landlord to hold or dispose of the property. Such restrictions could be placed under Art. 19 (5) of the Constitution. The mere fact that by reason of these restrictions a landlord is precluded from exercising certain rights to property would not attract Art. 31 (2) of the Constitution either. AIR 1952 Pat 166, Dissented from **ILR (1952) Nag 736 : 1953 Nag L J 199 : AIR 1953 Nag 40 (49) (Pt H) (Prs 39, 40, 41) (DB).**

Berar Regulation of Agricultural Leases Act (24 of 1951).

● **——Art. 19 (1) (f) and (5) — Hold property — Tenancy Law — Abridgement of landlord's right — Reasonable restriction—Berar Regulation of Agricultural Leases Act (24 of 1951), S. 3).**

The right to hold property includes the right to enjoy it in any manner the holder likes, and there is no doubt that the Berar Regulation of Agricultural Leases Act abridges the fundamental right guaranteed by Art. 19 (1) (f). But as the provisions of the Act impose a reasonable restriction on the exercise of the right to hold and dispose of property in the interests of the general public, the provisions of the Act are not 'ultra vires' the State Legislature. A I R 1953 Nag 40, Rel. on. Bhaurao v. S. D. O., Chandur-Morsi, **1954 Nag L J 667 : I L R (1954) Nag 816 : AIR 1955 Nag 1 (5, 6) (Pt D) (Prs 14, 16) (FB).**

Bihar Tenancy Act (8 of 1885).

——Art. 19—Scope—Legislation—Validity — Determination of — Test — Bihar Tenancy Act (1885), S. 49-M.

It is only that legislation which deals directly with the rights protected by Art. 19 (1) of the Constitution which is protected by that Article. The correct test is whether the impugned legislation is a direct legislation on the subject and not what is the effect or the result of the legislation. The article clearly means that the legislation to be examined must be directly in respect of one of the rights mentioned in the sub-clauses. A I R 1958 S C

578; A I R 1951 S C 270 and A I R 1950 S C 27, Rel. on

Section 49-M of the Bihar Tenancy Act, is not a legislation which directly deals with the rights guaranteed under Art. 19 (1) (f) of the Constitution, and cannot be said to be unconstitutional as being in violation of the right guaranteed by that clause of the Article. The section does not curtail the right of a member of the backward class to sell his property by a sale inter vivos. 1962 B L J R 845 : ILR 42 Pat 525.

Bombay Land Tenure Abolition Laws (Amendment) Act (57 of 1958).

● ——Arts. 19 (1) (f) and (5), 31-A, Sch. 7, List 2, Entry 18 — Tenancy Laws — Bombay Land Tenure Abolition Laws (Amendment) Act, 1958 (Bombay Act 57 of 1958), Ss. 3, 4 and 6 — Taluqdari tenure —Effect of provisions contained in Ss. 3, 4 and 6 on such tenure—Right to receive purchase price by tenure-holders affected — Ss. 3, 4 and 6 are unconstitutional and void — Provisions are not saved by Art. 19 (5) or by Art. 31-A.

Held, (Per Sinha C. J. and S. K. Das and Ayyangar JJ.) that in so far as Ss. 3, 4 and 6 of the Bombay Land Tenure Abolition Laws (Amendment) Act, 1948 deem some tenants as permanent tenants in possession of the taluqdari land the sections are unconstitutional and void.

Per Ayyangar J.—The entire object and purpose of the impugned enactment which is given effect to by its operative provisions to define, create and as it were, add a new class of 'permanent tenants' i.e., those who satisfy the requirements of S. 4.

Per Sinha C. J. and S. K. Das J.—The right of the petitioners to the purchase price under S. 32-H of the Bombay Tenancy and Agricultural Lands Act, 1948, from those of their tenants who were non-permanent on 1st April 1957 was a right of property in respect of which the petitioner has a guarantee under Art. 19 (1) (f). The provisions in Ss. 3, 4 and 6 of the impugned Act, 1958, in so far as they laid down that in certain circumstances a tenant shall be deemed to be a permanent tenant from the date of the Taluqdari Abolition Act, 1949, adversely affected the right of the petitioner with retrospective effect; it wiped off a large part of the purchase price which the petitioner was entitled to get. If s. 6 of the impugned Act, the Bombay Land Tenure Abolition Laws (Amendment) Act, 1958, is to be tested on the touchstone of reasonable restrictions in the interests of the general public as laid down in Cl. (5) of Art. 19 of the Constitution, it must be held that it does not impose a reasonable restriction.

Article 31-A of the Constitution has no application to the present case, and cannot save the impugned Act, 1958. The true scope and effect of the provisions in Ss. 3, 4 and 6 of the impugned Act, is to considerably reduce the purchase price payable to the petitioner. In that view of the matter, the impugned Act, 1958, does not fall within any entry of List II or List III of the Seventh Schedule to the Constitution and is a piece of colourable legislation. A I R 1953 S C 375, Rel. on.

Held, (Per A. K. Sarkar and Mudholkar, JJ. contra).—S. 4 of the impugned Act by merely enacting the presumption does not take away any property of tenure-holder.

The impugned Act is plainly applicable only to matters arising out of a relationship between landlord and tenant. Its provisions are not intended to apply where such relationship does not subsist. Therefore, the law must be held to be within the competence of the Legislature by virtue of Entry 18 of List II of the Constitution. There can be no question of regarding the impugned Act as colourable because it directly falls under Entry 18 and deals with matters which have a bearing upon the relationship of landlord and tenant. The law being thus within the competence of the Bombay Legislature, Art. 31 (1) of the Constitution cannot be said to have been infringed. Maharana v. State of Gujarat, 1962 Supp (2) S C R 411 : A I R 1962 S C 821 (829 to 833, 842, 846, 847) (Prs 10, 11, 12, 13, 14, 15, 16, 48, 49, 60, 61, 62).

Bombay Land Tenures Abolition (Recovery of Records) Act (50 of 1953).

——Art. 19 (1) (g)—Tenancy Laws — Bombay Land Tenures Abolition (Recovery of Records) Act (50 of 1953), Ss. 3 and 4 — Not violative of Art. 19 (1) (g) and Art. 31 of the Constitution—Constitution of India, Arts. 19 (1) (g) and 31—Possession and acquisition in Art. 31 (2) — Meaning of. See Tenancy Laws — Bombay Land Tenures Abolition (Recovery of Records) Act (50 of 1953), S. 3. **AIR 1962 Guj 18.**

Bombay Tenancy and Agricultural Lands Act (67 of 1948).

——Art. 19 (1) (f)—Tenancy laws— Bombay Tenancy and Agricultural Lands Act (67 of 1948), S. 34 (2-A) —Validity of. See Tenancy Laws—Bombay Tenancy and Agricultural Lands Act (67 of 1948), S. 34 (2-A), **AIR 1958 Bom 94 (DB).**

——Art. 19 (1) (f) — Scope—Whether S. 7 of Bombay Act (67 of 1948) is inconsistent with Arts. 14 and 19 (1) (f) of the Constitution and amounts to delegated legislation. See Tenancy Laws — Bombay Tenancy and Agricultural Lands Act (67 of 1948), S. 7. **AIR 1957 Bom 252.**

[The observation that the power to issue notification may be exercised in favour of a single individual under the authority reserved under S. 7 and may lay the State Government open to a charge of favouritism **Overruled** in AIR 1959 S C 459.]

Cochin Proclamation (16 of 1122 ME).

——Art. 19 (1) (f)—Tenancy Laws — Cochin Proclamation (16 of 1122 ME) — Proclamation does not offend Constitution of India, Art. 19 (1) (f)—See Tenancy Laws—Cochin Proclamation (16 of 1122). **A I R 1956 Trav-Co 42.**

Cochin Proclamation (6 of 1124 ME).

——Art. 19 (1) (f) — Tenancy Laws — Cochin Proclamation (6 of 1124 ME) — Validity. See Cochin Proclamation (6 of 1124), **AIR 1956 Trav-Co 43.**

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act.

——Art. 19 — East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (50 of 1948), S. 14 (1) — Validity — Does not contravene Arts. 19 and 31 of the Constitution. See Tenancy Laws—East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (50 of 1948), S. 14 (1). **AIR 1964 Punj 90 (DB).**

● ——Arts. 19 (1) (f), 14 and 31—East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (50 of 1948), S. 36 — Amendment of S. 36 by Punjab Act 20 of 1953 — Amending Act not reserved for assent of President but subsequent amending Acts reserved for and assented to by President — Effect of such assent on validity of S. 36 — Art. 31-A (1) is attracted — S. 36 of the Punjab Act is not void on ground that it is inconsistent with or takes away or

abridges any of the rights conferred by Arts. 14, 19 or 31. See Ibid, Art. 31-A. AIR 1963 Punj 255 (FB).

——Art. 19(1) (f)— East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (50 of 1948), S. 36 — Validity. See Tenancy Laws — East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (50 of 1948), S. 36. ('61) 63 Punj L R 666.

[Reversed on another point in AIR 1963 Punj 255.]

Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act (15 of 1954).

●——Arts. 19, 31 and 31-A—Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act (15 of 1954), Ss. 11, 27 — Validity — Scope.

The Abolition Act falls within the class of statutes contemplated by Art. 31-A (a) of the Constitution and is protected from the attack that any of its provisions violates the fundamental rights enshrined in Arts. 19 and 31 of the Constitution. The validity of S. 11, therefore, cannot, in view of Art. 31-A, be challenged. The validity of the provisions for acquisition by the State of the lands of the land-owners for compensation determinable in accordance with the provisions of Sch. II is also not liable to be challenged under Art. 31 read with Art. 31-A. AIR 1959 S C 459, Foll. Jadab Singh v. Himachal Pradesh Administration, (1962) 1 S C A 210 : (1961) 3 S C R 755 : (1961) 1 S C J 185 : AIR 1960 S C 1008 (1011, 1012) (Pt B) (Pr 10).

Hyderabad Tenancy and Agricultural Lands Act (21 of 1950).

——Art. 19 (1) (f) — Validity of S. 47 of Hyderabad Tenancy Act — Does not offend against Art. 19 (1) (f). See Tenancy Laws — Hyderabad Tenancy and Agricultural Lands Act (21 of 1950), S. 47. AIR 1955 Hyd 97 (DB).

J. and K. Tenancy Act (2 of 1980 Samvat).

●——Arts. 19 (1) (f), 14, 31, 31-A, 31-B—Tenancy Laws — J. and K. Tenancy Act (2 of 1980 Samvat) — Sections 15-A, 16 (1), 1 (a), 19-B, 45, 47 and 49 (as amended by Act 12 of 1955)—Constitutional validity — Provisions, whether contravene Arts. 14, 19 and 31, Constitution of India—Protection under Arts. 31-A and 31-B, whether available. See Tenancy Laws — J. and K. Tenancy Act (2 of 1980) (as amended by Act 12 of 1955), S. 15-A. AIR 1959 J and K 35 (FB).

Kerala Agrarian Relations Act (4 of 1961).

●——Art. 19 — Tenancy Laws — Kerala Agrarian Relations Act, 1960 (4 of 1961) — Constitutionally invalid in relation to ryotwari lands situated in Malabar area forming part of Kerala State — Constitution of India, Arts. 31-A (1) (a) and (2) (a), 14, 19 and 31 — Malabar Land Registration Act (Mad. Act 3 of 1896) — Whether 'existing law' within Art. 31-A, for lands in Malabar area Ryotwari lands, whether 'estate' within Art. 31-A (2) (a) — 'Jenmam right' in Art. 31-A — Connotation of. See Tenancy Laws — Kerala Agrarian Relations Act, 1960 (4 of 1961). AIR 1963 Ker 101 (FB).

Kerala Kanam Tenancy Act (24 of 1955).

●——Art. 19 (1) (f) — Scope — Kerala — Kanam Tenancy Act (24 of 1955)—Validity. See Ibid, Art. 14. AIR 1961 Ker 210 (FB).

Madhya Bharat Zamindari Abolition Act (13 of 1951).

——Art. 19 (1) (f) — Tenancy Laws — Madhya Bharat Zamindari Abolition Act (13 of 1951), S. 38 (2) — Does not infringe Art. 19 (1) (f).

Before the enactment of the Madhya Bharat Zamindari Abolition Act, 1951 the petitioner was a Maurusi tenant of certain lands and had sublet the holding to the non-applicants Nos. 1 and 2. On the coming into force of the Act the petitioner's rights as a maurusi tenant from the proprietor terminated under S. 4 (1) (b) of the Act, and thereafter by virtue of S. 41 of the Act, he was deemed to be a tenant of the Government. The petitioner did not have the status of a pacca tenant before the Act came into force. He got that status under S. 38 (1) only when the Act came into force and subject to the provisions of S. 38: Held, that it could not be maintained that S. 38 (2) affects or takes away any pre-existing rights of pacca tenancy of the petitioner. Even if it is taken that the combined effect of Ss. 38 (1) and 41 is to preserve the tenancy rights, which the petitioner possessed before the Act came into force, Cl. (2) of S. 38 does not involve any abridgement of the right guaranteed by Art. 19 (1) (f). What S. 38 (2) aims at is to take away the rights of a tenant who has sublet his holding and if a man is deprived of his property no question of his holding and disposing of that property can possibly arise under Art. 19 (1) (f), Madh B L J (1955) H C R 954 : ILR (1955) Madh-B 441 : AIR 1955 Madh Bha 146 (147) (Pt A) (Pr 3) (DB).

Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act (1 of 1951).

——Art. 19 (1) (f), (5) — Validity of M. P. Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act. See Tenancy Laws — Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act (1 of 1951). AIR 1955 N U C (Nag) 1341.

Madras City Tenants' Protection Act (3 of 1922).

●——Arts. 19 (1) (f) and 31 (1) — Madras City Tenants' Protection Act (3 of 1922), S. 9 — Section does not infringe Articles and hence is not invalid.

Section 9 (1) of the Madras City Tenants' Protection Act which enables a tenant to purchase the property leased to him on determination of the lease does not impose an unreasonable restriction upon the right of the landlord to hold and dispose of property within the meaning of Art. 19 (1) (f) of the Constitution.

Section 9 was enacted with a view to give protection to the tenants who had, notwithstanding the usual covenants relating to determination of tenancies, obtained lands on lease in the hope that so long as they paid and continued to pay fair rent, they would not be evicted but because of changed conditions as a result of the war, appreciation in land values and consequent increase in the level of rents, were faced with actions in ejectment involving dismantling of properties constructed by them and eviction. The protection becomes effective only when the landlord seeks to obtain in breach of the mutual understanding benefit of the unearned increment in the land values by instituting a suit in ejectment. It was manifestly in the interest of the general public to effectuate the mutual understanding between the landlord and the tenant as to the duration of tenancies and to conserve building materials by maintaining existing buildings, for purposes for which the leases were granted. Therefore restriction imposed upon the right of the landlord to obtain possession of the premises demised according to the terms of the lease would not be regarded as imposing an unreasonable restriction in the exercise of the right conferred upon the landlord by Art. 19 (1) (f). Since S. 9 is not invalid as offending Art. 19 (1) (f) no independent intringement of Art. 31 (1) may also be set up. N. Vajrapani Naidu v. New Theatres Carnatic Talkies, Ltd., (1965) 1 Mad L J (SC) 47 : (1965) 1

Andh W R (SC) 47 : (1965) 1 S C J 368 : (1964) 6 S C R 1015 : AIR 1964 S C 1440 (1444) (Pt B) (Pr 8).

——Art. 19 (1) (f) (5)—Tenancy Laws—Madras City Tenants' Protection Act, 1921 (3 of 1922), S. 9 (as re-enacted by Act (13 of 1960)) — Validity—Provision is reasonable and cannot be held to contravene Art. 19.

Section 9 of the Madras City Tenants' Protection Act has been re-enacted by Madras Act 13 of 1960 under which the price is to be fixed on the average market value of the property during the three years immediately preceding the date of the order. Even if the compelled sale is regarded as a restriction on the owner's right, it should be considered as a reasonable one intended to achieve the object which the legislature had in view, namely, of doing justice to the tenant who had put up a superstructure on the land leased out to him in the hope that he would not be evicted. As the provision for fixation of price at three years' average is reasonable, S. 9 cannot be held to contravene Art. 19 of the Constitution. ILR (1963) Mad 1054 : 76 Mad L W 381 : A I R 1963 Mad 369 (375) (Pt F) (Pr 28) (DB).

——Arts. 19 (1) (f) and 31 —Tenancy Laws— Madras City Tenants' Protection (Amendments) Act (13 of 1960), S. 9 Validity — Does not violate Arts. 19 (1) (f) and 31—See Tenancy Laws—Madras City Tenants' Protection (Amendment) Act (13 of 1960), S. 9. I L R (1961) Mad 976 : 74 Mad L W 638 : 1961 Mad W N 386 : (1961) 2 Mad L J 435.

——Arts. 19 (1) (f) and 31 (2) — Deprivation of property — Madras City Tenants' Protection Act, Ss. 3, 9 and 12 - Validity. See Tenancy Laws — Madras City Tenants' Protection Act, Ss. 3, 9 and 12. A I R 1960 Mad 108 (DB)

Madras Cultivating Tenants' Protection Act (25 of 1955).

——Art. 19 (1) (f) and (5) — Freedom to hold property — Reasonable restrictions — S. 4 (1), Madras Cultivating Tenants' Protection Act, if repugnant to Art. 19 (1) (f).

The freedom to 'hold property' means a right to enjoy property and if there is any interference with the enjoyment of property, it is tantamount to interference with the right 'to hold property'. The right to enjoy property involves a right to enjoy it in such manner as the owner chooses including a right (a) of choosing his tenants and (b) of resuming personal cultivation. In considering whether the provisions of S. 4 are or are not reasonable restriction on the right to hold property the Court has necessarily to take into account the economic background of the legislation as well as the fact that on the terms of S. 4 (3) the Act would remain in force for a period of one year. The impugned Act is temporary and the statement of objects and reasons shows that it has been passed to maintain the status quo pending permanent legislation. This would be a sufficient emergency to justify a legislation of this type. The retrospectivity of the impugned Act has not gone beyond the limits of reasonableness. The restriction imposed on the right to hold property enacted by the impugned Act is in the interests of the general public and therefore S. 4 is not invalid by reason of its repugnancy to Art. 19 (1) (f) 70 Mad L W 221 : (1957) 1 Mad L J 307 : I L R (1957) Mad 571 : A I R 1957 Mad 333 (335, 336, 337) (Pt B) (Prs 7, 13, 14, 18) (DB).

——Art. 19 (1) (g) and (6)—Scope of —Madras Cultivating Tenants' Protection Act — If repugnant to Art. 19 (1) (g).

The freedom guaranteed by Art. 19 (1) (g) is not one to carry on an occupation or business in any particular place, but the clause is designed to ensure that no unreasonable fetters shall be imposed if one were minded to engage oneself in it. The right of an owner personally to cultivate his land is not a right to carry on an occupation but only a right to hold or enjoy the property. This apart, there is no restriction on his right to carry on business as an agriculturist, because he can still carry it on provided he can acquire land on which to do so.

The impugned Act is not, therefore, repugnant to Art. 19 (1) (g). 70 Mad L W 221 : (1957) 1 Mad L J 307 : ILR (1957) Mad 571 : AIR 1957 Mad 333 (337) (Pt C) (Pr 20) (DB).

Madras Estates (Abolition and Conversion into Ryotwari) Andhra Pradesh Amendment Act (17 of 1957).

——Art. 19 (1) (f) — Madras Estates (Abolition and Conversion into Ryotwari) Andhra Pradesh Amendment Act (17 of 1957) — Amendment Act introducing right of appeal to Government and reopening settled issues regarding 'estates' — Validity—Right of citizen — Power of Legislature to confer right of appeal retropectively — Madras Estates (Abolition and Conversion into Ryotwari) Act (26 of 1948), as amended by Andhra Pradesh Act (17 of 1957), S. 9 (4) (a) (i)—Scope of.

Section 9 (4) (a) (i) of the Madras Estates (Abolition and Conversion into Ryotwari) Act as amended by Andhra Pradesh Act (17 of 1957) has merely vested a right of appeal in Government with retrospective effect, the consequences of which is that the finality which attached to the decision of the Settlement Officer is nullified. As a result of this amendment, the question whether a particular village was an inam within any of the clauses of S. 3 of the Madras Estates Land Act was left open. There is no fundamental right in the Chapter guaranteed to a citizen that any adjudication in his favour should have an attribute of finality. It is, therefore, competent for the Legislature to give a right of appeal to any party, be it Government or a private individual. Therefore the Amendment Act is not in any way repugnant to Art. 19 of the Constitution. (1961) 2 Andh W R 258 : 1961-2 Andh L T 711 : I L R (1962) Andh-Pra 1149 : A I R 1962 Andh-Pra 157 (159, 160) (Pts A, B) (Prs, 9, 10, 11, 14, 15) (DB).

Madras Estates Land (Reduction of Rent) Act (30 of 1947).

——Art. 19 (1) (f) and Sch. 7, List 2, Entry 18 — Government of India Act (1935), S. 299 and Sch. 7, List 2, Item 21 - Land tenures and collection of rents —Power of Provincial Legislature to make law — Madras Estates Land (Reduction of Rent) Act (Mad 30 of 1947) (as amended), S. 3 — Power given to State Government to reduce rents payable by ryots in estates — Notification issued by State Government reducing rents in estates Madras Act and notification issued thereunder are valid A I R 1958 Andh-Pra 173 (FB in Part and DB). Reversed.

The Madras Estates Land Reduction of Rent) Act, 1947, is enacted under the powers conferred on the Provincial Legislature under Item 21 of List 2 of Sch. 7 to the Government of India Act 1935 dealing with land. It provides for reduction of rent to the level at which the rents prevailed in the neighbouring area where there is ryotwari settlement. It cannot be said that the reduction of the prevailing rents to the ryotwari level is an unreasonable restriction on the right of the landholder of an estate to hold property under Art. 19 (1) (f). The Act is constitutional and lays down reasonable restrictions on the right of the landholder to hold his estate.

Under S. 3 of the Madras Estates Land (Reduction of Rent) Act, 1947, the State Government is empo-

wered by order published in the gazette to fix the rates of rent in respect of each class of ryoti land in each village in the estate Accordingly, the Government provided by a notification for the reduction of rents payable by ryots in estates governed by the Madras Estates Land Act, 1908, approximately to the level of the assessments levied on lands in ryotwari areas in the neighbourhood and for the collection of such rents exclusively by the State Government. The notification does not amount to an unreasonable restriction on the right of the estate holder to hold property under Art. 19 (1) (f) of the Constitution. It cannot, therefore, be said that simply because in a particular case the net income after reduction falls below 25 per centum of the net income before reduction the notification which results in such a position is an unreasonable restriction on the right of the landholder to hold his estate AIR 1958 Andh Pra 173 (FB in part and DB), **Reversed.**

The attack based on reading the term 'acquisition' in S. 299 of the Government of India Act, 1935 in the wide sense of any interference with property even when the title thereto does not pass to the State is no longer a live issue since the matter is concluded by the decision of the Supreme Court in A I R 1961 S C 1684. State of Madras v. Kannepalli Chalamaya Sastri, **(1963) 1 S C R 155 : A I R 1962 S C 1687 (1690, 1691) (Prs 7, 8, 9).**

● **——Arts. 19 and 31 — Government of India Act (1935), S. 299 (2) — 'Acquisition' - Meaning—Tenancy Laws Madras Estates Land (Reduction of Rent) Act (30 of 1947), S. 3—Validity of.**

Per Full Bench. — Though the limited meaning given to the word 'acquisition' in AIR 1952 Mad 203, is no longer good law in view of the later decisions of the Supreme Court in AIR 1954 S C 92 and AIR 1954 S C 119 the conclusion arrived at in AIR 1952 Mad 203 still holds the field as the provisions of the Madras Estates Land (Reduction of Rent) Act only regulate the relationship of the landlord and tenant and are not hit at by S. 299 of the Government of India Act Further, the view expressed in the said case that if in a particular case the result of the reduced rate of rent had the effect of totally or substantially depriving the landlord of his net income it would offend Art. 19 of the Constitution, is also sound Venkata Chalammayya v. The State of Madras, **(1958) 1 Andh W R 88 : ILR (1956) Andh Pra 888 : (1958) Andh L T 211 : AIR 1958 Andh Pra 173 (184, 192, 193, 194) (Pt A) (Prs 25, 43, 46, 47) (FB).**

[Reversed on another point in AIR 1962 S C 1687.]

● **—Art 19 (1) (f) and (5) —Scope—Tenancy Laws —Madras Estates Land (Reduction of Rent) Act (30 of 1947), S. 3—Reduction of rent.**

Per Division Bench —Prima facie reduction of the prevailing rents to the ryotwari level cannot be said to be unreasonable. Where in a particular case the actual reduction effected is so drastic and there are other circumstances which lead to the inference that the landholder is practically deprived of all enjoyment of his property, then it may be in that case there has been an unreasonable restriction AIR 1952 Mad 203, Foll

Having regard to the object of the Madras Estates Land (Reduction of Rent) Act, 1947, if the income of the landholder after reduction of the rent does not fall below 25 per cent. of his previous income, it can be held that the reduction is not an unreasonable restriction within the meaning of Art 19 (1) of the Constitution of India. Venkata Chalammayya v The State of Madras, **(1958) 1 Andh W R 88 : ILR (1956) Andh Pra 888 : 1958 Andh L T 211 : AIR 1958 Andh Pra 173 (194, 195) (Pt G) (Pr 50) (FB).**

[Reversed in AIR 1962 S C 1687.]

——Arts. 19 (1) (f), 13, 14 and 31 (2)—Madras Estates Land (Reduction of Rent) Act (30 of 1947)—Validity —(Govt. of India Act 1935), S. 299 (2), Sch. VII, List II, Entries 9 and 21)—(Madras Estates Land (Reduction of Rent) Amendment Act (7 of 1951)). See Tenancy Laws — Madras Estates Land (Reduction of Rent) Act (30 of 1947). **AIR 1952 Mad 203 (DB).**

Malabar Tenancy Act (14 of 1953).

——**Art. 19**—Landlord's rights extinguished for agrarian reforms — Section protected by Art. 31-A—Impeachment under Arts. 14, 19 or 31 not permitted. See Tenancy Laws — Malabar Tenancy Act (14 of 1953), S. 53. **1960 Ker L T 1224**

Malabar Tenancy (Amendment) Act (33 of 1951).

——**Art. 19 (1) (f)** — Malabar Tenancy (Amendment) Act (33 of 1951), S. 52—Validity. See Tenancy Laws —Malabar Tenancy (Amendment) Act (33 of 1951), S. 52. **AIR 1956 Mad 604.**

Marwar Tenancy Act (29 of 1949).

——**Art. 19 (1) (f)—Enjoyment of property by landlord — What is—Validity of laws fixing rent—Marwar Acts 29 and 40 of 1949—Validity - [Marwar Land Revenue Act (40 of 1949), S. 1] - [Tenancy laws -Marwar Tenancy Act (29 of 1949), S. 1].**

It is open to the State to pass a law fixing principles on which rents should be fixed and determining the rights of tenants and landlord with respect to the nature of tenure, ejectment and so on. Such laws are a feature of all progressive States, and it is too late in the day to say that they are hit by Art. 19 (1) (f), unless it is shown that the restriction is unreasonable and goes beyond the necessities of the case.

Enjoyment of property in the case of landholders does not mean an absolute right to charge from the tenants whatever they like or to eject old tenants whenever they like and to keep new tenants on whatever terms they like. It only means enjoyment of the land in accordance with the laws that may regulate the relationship between landholders and tenants. Collection of such rents as would be lawful would be full enjoyment of the property, and similarly, occupation by tenants according to law, even against the will of the landholder, or taking of new tenants on terms and conditions permissible by law but not in excess thereof would also be full enjoyment of the property. AIR 1952 Mad 203, Rel. on.

Held, that the two impugned Marwar Acts were valid as the restrictions provided were reasonable and not more than the necessities of the case require. **1954 Raj L W 268 : ILR (1954) 4 Raj 274 : AIR 1954 Raj 117 (124, 125) (Pt II) (Prs 28, 29) (DB).**

Mysore Tenancy Act (1 of 1952).

● **——Art. 19 (1) (f) - Tenancy Laws—Mysore Tenancy Act (13 of 1952), S. 6—Section is valid—Constitution of India Arts. 14, 19 (1) (f), 26, 31, 31-A—See Tenancy Laws—Mysore Tenancy Act (13 of 1952), S. 6. (1963) 2 S C J 246 (SC).**

——**Art. 19 (1) (f)**—Reasonable restrictions — Mysore Tenancy Act (1952), Ss. 5 and 17 — Validity—Provisions do not infringe Art. 19 (1) (f) of Constitution—Ss. 5 and 17 impose only reasonable restrictions on the right to acquire, hold and dispose of property guaranteed under Art. 19 (1) (f). See Tenancy Laws—Mysore Tenancy Act (1952), Ss. 5, 17. **AIR 1960 Mys 236 (DB).**

Mysore Tenants (Temporary Protection from Eviction) Act (37 of 1961).

——**Art. 19 (1) (f)**— Validity of S. 3, Mysore Tenants (Temporary Protection from Eviction) Act, 1961. See Tenancy Laws—Mysore Tenants (Temporary Protection from Eviction) Act (37 of 1961), S. 3. **AIR 1964 Mys 43 (DB).**

Orissa Tenants' Protection Act (3 of 1948).

● ——Art. 19 (5) — Scope — Orissa Tenants' Protection Act (3 of 1948), S. 3—Validity—Applicability to private lands of ex-Ruler of merged Orissa State — Dispute between ex-Ruler and tenants in occupation of private lands — Jurisdiction of Courts to entertain dispute — Arts. 362 and 363, Constitution of India—Applicability—See Orissa Merged States (Laws) Act (4 of 1950), S. 4. **AIR 1958 S C 239.**

——Arts. 19 (5), 43—Tenancy Laws—Orissa Tenants' Protection Act (3 of 1948), Ss. 4, 6 — Restrictions are reasonable and are in conformity with Art. 43. See Tenancy Laws—Orissa Tenants' Protection Act (3 of 1948), S. 4. **AIR 1953 Orissa 171.**

Orissa Tenants Relief Act (5 of 1955).

——Art. 19—Scope—Orissa Tenants Relief Act (5 of 1955), S. 3 — Restrictions on fundamental rights—Presumption of reasonableness.

Any legislation dealing with tenancy reform must necessarily diminish the rights of the landlord (1) by giving protection from eviction (subject to certain restrictions) to the actual cultivators and (2) by reducing the rent payable by him to the landlord.

If the portion left to the landlord is palpably so negligible as to give him practically no income from his land there may be unreasonable restriction. **23 Cut L T 67 : I L R (1957) Cut 71 : A I R 1957 Orissa 56 (62) (Pt F) (Pr 18) (DB).**

Orissa Tenants Relief Rules (1955).

——Art. 19 — Restrictions on fundamental rights—Orissa Tenants Relief Rules, 1955, R. 22—Validity.

Merely because in a summary enquiry under the Orissa Tenants Relief Act the Revenue Officer is given discretion not to record the depositions of witnesses in full such a provision cannot be held to be unreasonable.

Ordinarily, where summary local enquiries are made at the spot to decide disputes the necessity to hear a legal practitioner may not arise though in respect of certain matters involving difficult questions of law the help of a legal practitioner may be very valuable. In such cases some discretion should be left with the Court concerned. Hence, the provision in the Rules framed under the Orissa Tenants Relief Act conferring discretionary power on the enquiring officer to allow either party to be represented by a legal practitioner cannot be held to be unreasonable. **23 Cut L T 67 : I L R (1957) Cut 71 : A I R 1957 Orissa 56 (63) (Pt H) (Pr 20) (DB).**

Patiala and East Punjab States Union Abolition of Biswedari Ordinance (23 of 2006 Bk).

——Art 19 (1) (f) and (5)—Reasonable restrictions—Patiala and East Punjab States Union Abolition of Biswedari Ordinance (23 of 2006), S. 10.

Restriction in S. 10 of the Ordinance 23 of 2006 was reasonable. A I R 1951 S C 118, Foll.; A I R 1952 Cal 273, Rel. on. **I L R (1954) Patiala 433 : A I R 1953 Pepsu 161 (173) (Pt G) (Pr 38) (DB).**

[Overruled on another point in A I R 1963 S C 222.]

Pepsu Tenancy and Agricultural Lands Act (13 of 1955).

——Arts. 19 (1) (f), 14 and 31-A—Pepsu Tenancy and Agricultural Lands Act (13 of 1955) — Constitutional validity. See Tenancy Laws — Pepsu Tenancy and Agricultural Lands Act (13 of 1955). **A I R 1962 Punj 523.**

——Arts. 19 (1) (f), 14 and 31 — Pepsu Tenancy and Agricultural Lands Act (13 of 1955), S. 32-KK—Section does not contravene Arts. 14, 19 and 31 of the Constitution. See Tenancy Laws—Punjab Security of Land Tenures Act (10 of 1953), S. 19-E. **A I R 1963 Punj 319 (DB).**

Punjab Security of Land Tenures Act (10 of 1953).

——Arts. 19, 14 and 31 — Punjab Security of Land Tenures Act (10 of 1953), S. 19-E added by Punjab Act 14 of 1962 — Section is a measure of agrarian reform within Art. 31 and is saved from attack for violation of Arts. 14, 19 and 31. See Tenancy Laws—Punjab Security of Land Tenures Act (10 of 1953), S. 19-E. **A I R 1963 Punj 319 (DB).**

● ——Art. 19—Tenancy Laws — Validity of Punjab Security of Land Tenures Act (10 of 1953), S. 18.

There is no doubt that certain restrictions upon the enjoyment of property are imposed by the Punjab Security of Land Tenures Act, but a careful examination of the various provisions shows that those restrictions are not arbitrary or capricious and are nothing more than reasonable restrictions having regard to the aims of the Act. The object of this legislation is to give security to the tenants and to safeguard them against unreasonable or capricious ejectment by their landlords. It is intended to prevent the exploitation of the poorer peasantry and these are aims which are laid down by the Constitution in Art. 39.

The Act does not seek to acquire the land of the big holders. It is only intended to limit large holdings and makes ample provision for compensation to the landlords. The landlords can sell the excess holdings to any one they like and the tenants are given the right to pre-empt. The tenants' right to purchase under S. 18 is subject to the payment of a fair price. Therefore it is clear that the restriction imposed by this Act upon the right given to the individual under Art. 19 (1) (f) of the Constitution is a reasonable restriction and it is a restriction in the interests of the general public. The number of persons who will be benefited by this legislation far exceeds the number who will be adversely affected. Bhagirath Ram Chand v. State of Punjab, **56 Punj L R 1 : A I R 1954 Punj 167 (169, 170) (Pt A) (Prs 6, 7) (FB).**

● ——Arts. 19 (1) (f) and (5) and 31-A — Validity of S. 11, Punjab Security of Land Tenures Act (10 of 1953).

In the Act the rights of the landlord are not suspended, nor is there any penalty imposed upon him, as a result of a subjective or arbitrary determination. Under S. 11 of the Act the landlord has to be tried by a Court of law and he can be punished if he does not supply his tenant water in the same quantity as was enjoyed by him before the commencement of the Act. The fact is to be determined by a criminal Court not below the rank of a second class Magistrate and therefore the provision contained in S. 11 is not invalid. A I R 1953 S C 373, Distinguished. Bhagirath Ram Chand v. State of Punjab, **56 Punj L R 1 : A I R 1954 Punj 167 (170) (Pt D) (Pr 11) (FB).**

Rajasthan Produce Rents Regulating Act (15 of 1951).

● ——Arts. 19 (1) and 19 (5)—Reasonable restriction on right to hold property — Validity of Rajasthan Act (15 of 1951) Act cannot be impugned on the ground that it imposed any unreasonable restriction on the right to hold property. Raj Sahiban Shersing v. State of Rajasthan, **1954 Raj L W 296 : I L R (1954) 4 Raj 365 : A I R 1954 Raj 65 (69) (Pt D) (Pr 20) (FB).**

Rajasthan Produce Rents Regulating (Amendment) Act (14 of 1952).

● ——Arts. 19 (1) (f) and 19 (5)—Restrictions imposed by Rajasthan Act (14 of 1952)—Validity—(Tenancy Laws—Rajasthan Produce Rents Regulating (Amendment) Act (14 of 1952), S. 1).

Fixation of one-sixth of the gross produce excluding Bhusa, etc., as rent is a fair and reasonable restriction in the interests of the tenantry which forms the vast majority of the population in the State of Rajasthan and legislation ameliorating its condition must be held to be in the interest of the general public. The mere fact that for years together the rate was one-third or one-fourth in many parts of Rajasthan does not necessarily mean that the rate of one-sixth is unreasonable and considering the fact that the proportion of one-sixth practically prevails in many parts of India, it cannot be said that the fixing of this proportion was an unreasonable restriction within the meaning of Art. 19 (5), and that the Rajasthan Act 14 of 1952, contravened Art. 19 of the Constitution on that ground.

It cannot be held that the Amendment Act imposed unreasonable restrictions simply because there might be some problematic case where the land revenue is heavy and the return to the landlord after payment of that land revenue on the basis of the reduced rent would be illusory, as each case must depend upon its special facts and the decision of the question would ultimately depend upon the circumstances of each estate. A I R 1952 Mad 203, Rel. on.

Further, if the restriction is in itself reasonable the fact that it will have certain repercussions on another law (for instance, on the compensation to be paid under the Jagirdari Resumption laws) cannot be a ground for holding the Amendment Act unconstitutional.

'An enjoyment of the property' in the case of landholders does not mean an absolute right to charge from the tenants whatever they like or to eject old tenants whenever they like and to keep new tenants on whatever terms they like. It only means enjoyment of the land in accordance with the laws that may regulate the relationship between landholders and tenants.

Thus collection of such rents as would be lawful would be full enjoyment of the property, and similarly, occupation by tenants according to law, even against the will of the landholders or taking of new tenants on terms and conditions permissible by law. but not in excess thereof would also be full enjoyment of the property. A I R 1952 Mad 203, Relied on. Raj Sahiban Shersingh v. State of Rajasthan, **1954 Raj L W 296 : I L R (1954) 4 Raj 365 : A I R 1954 Raj 65 (70, 72, 73, 74, 77) (Pt F) (Prs 26, 35, 40, 41, 43, 55, 81) (FB).**

Rajasthan (Protection of Tenants) Ordinance (9 of 1949).

● —— Art. 19 (1)(f) — Rajasthan (Protection of Tenants) Ordinance (9 of 1949) —Validity.

It cannot be said that the provisions of the Ordinance 9 of 1949 are repugnant to Art. 19 (1)(f) in that they oblige the land-owners to keep tenants on their lands, thereby preventing them from themselves cultivating the same. The object of the Ordinance, is clearly not to put a restriction on the right of an owner to himself cultivate the lands, but to prevent him when he had inducted a tenant on the land from getting rid of him without sufficient cause. Such a law cannot be said to be unreasonable. The impugned Ordinance is an emergency legislation of a temporary character, and, that is a factor to be taken into account in judging of its reasonableness. (1920) 65 Law Ed 965 and A I R 1950 S C 211; 1950 S C J 528, Rel. on. Inder Singh v. The State of Rajasthan, **1957 S C J 376 : 1957 S C A 735 : 1957 S C R 605 : A I R 1957 S C 510 (517) (Pt F) (Pr 15).**

——Arts. 19 (1) (f) and 226 — Mala fide order of Government under colour of law—Order cancelling pre-partition tenancy rights without inquiry and reallotting them to another—Legality. See Ibid, Art. 226. **AIR 1956 Raj 139.**

——Art. 19—Rajasthan Tenants' Protection Ordinance, S. 7—Validity — The restriction was reasonable and it was in the interest of general public. See Ibid, Art. 14. **1952 Raj L W 163 : I L R (1951) 1 Raj 770 : AIR 1953 Raj 53 (DB).**

Rajasthan Tenancy (Second Amendment) Act (28 of 1956).

——Art. 19 (1) (f), (5) — Rajasthan Tenancy (Second Amendment) Act (28 of 1956), S. 4 — Validity — S. 4 violates Art. 19 (1) (f) and is not saved by Art. 19 (1) (f)—Section not validated by S. 3 of Rajasthan Tenancy (Amendment) Act (12 of 1964). A I R 1963 Raj 72; A I R 1954 S C 282, Rel. on. **1964 Raj L W 512 : I L R (1964) 14 Raj 935 : A I R 1965 Raj 54 (56, 57, 58) (Prs 5, 10, 11, 14, 15, 18) (DB).**

Saurashtra Barkhali Abolition Act (26 of 1951).

——Art. 19 (1)(f)—Cash annuity to Barkhalidar under S. 18, Saurashtra Barkhali Abolition Act (26 of 1951) —Reduction of annuity without hearing Barkhalidar —No right to property is affected by reduction—R. 17 must be presumed to have received President's assent See Tenancy Laws — Saurashtra Barkhali Abolition Act (26 of 1951), S. 18. **I L R (1965) Guj 1039 : A I R 1966 Guj 200.**

Saurashtra Gharkhed, Tenancy Settlement and Agricultural Lands Ordinance (41 of 1949).

● —— Art. 19 — Tenancy Laws — Saurashtra Gharkhed, Tenancy Settlement and Agricultural Lands Ordinance (41 of 1949), S. 35 is unconstitutional and void. See Tenancy Laws — Saurashtra Gharkhed, Tenancy Settlement and Agricultural Lands Ordinance (41 of 1949), S. 35. **AIR 1952 Sau 59 (SB).**

Tanjore Tenants and Pannaiyal (Protection) Act (14 of 1952).

● ——Art. 19 (1)(f)—Tenancy Laws—Tanjore Tenants and Pannaiyal (Protection) Act (14 of 1952), Ss. 7 and 8 — Extension of term of tenant of land beyond period fixed by contract—Validity. See Ibid, Art. 14. **AIR 1958 Mad 608 (FB).**

——Arts. 19 (1) (f) and 19 (5)—Tanjore Tenants and Pannaiyal (Protection) Act (14 of 1952), Ss. 6 and 12 —No Contravention Art. 19 (1) (f)—Provisions can be upheld under Art 19(5). See Tenancy Laws—Tanjore Tenants and Pannaiyal (Protection) Act (14 of 1952), S. 6. **AIR 1954 Mad 51 (DB).**

Tripura Land Revenue and Land Reforms Act (43 of 1960).

——Art. 19—Tenancy Laws—Tripura Land Revenue and Land Reforms Act (43 of 1960), Chap. 11 and S. 134 (1)—Violation of Arts. 14, 19 and 31 of Constitution cannot be urged in view of Art. 31-A. See Tenancy Laws—Tripura Land Revenue and Land Reforms Act (43 of 1960), Chap. 11. **AIR 1963 Tripura 1.**

U. P. Land Reforms (Supplementary) Act (31 of 1952).

● ——Art. 19—State's granting adhivasi rights to trespasser—Arts. 19 and 31 of Constitution not infringed. See Tenancy Laws—U. P. Land Reforms (Supplementary) Act (31 of 1952), S. 3. **AIR 1964 All 213 (FB).**

——Art. 19—Deprivation of property under Constitution by authority of law — U P. Land Tenures (Regulation of Transfers) Act (15 of 1952), S. 1 — (Tenancy Laws — U. P. Land Reforms (Supplementary) Act (31 of 1952), S. 1)—Validity.

Citizens of India can be deprived of property under the Constitution by authority of law and if the enactment which deprives the person of a property is not unconstitutional, it cannot be argued that the law

militates against the fundamental rights of citizens guaranteed to them under Art. 19 (1) of the Constitution. Hence U. P. Act 15 of 1952 and U. P. Act 31 of 1952 are perfectly good and valid. **1957 All L J 698 : 1957 All W R (HC) 703 : I L R (1957) 2 All 320 : AIR 1957 All 549 (552) (Pt D) (Prs 11, 12) (DB).**

[Overruled on another point in AIR 1963 S C 1449.]

U. P. Tenancy (Amendment) Act (10 of 1947).

——Arts. 19, 31, 366 — Government of India Act (1935), S. 299 — U. P. Tenancy Amendment) Act (10 of 1947), S 27 — Provisions of S. 27 of U P. Act are not void — Re-instatement of ejected tenant under S. 27, is not "acquisition" within meaning of S. 299, Government of India Act and Art. 31 of the Constitution - U. P. Act is existing law and is saved — Rights under Art. 19 (1) (f) of new tenant are not infringed. See Ibid, Art. 31. AIR 1961 All 191.

West Bengal Bargadars Act (2 of 1950).

——Art. 19 (1) (f), (5) — Unreasonable procedure — West Bengal Bargadars Act (2 of 1950), S. 5 (1) (a), Proviso.

The proviso requiring the Board's order for termination of Bargadar's cultivation on the ground of owner's desire under S. 5 (1)(a) of the Act 2 of 1950 is not an unreasonable procedure which comes within the prohibition of Art. 19 (1)(f) read with sub-Art. (5) thereof under the Constitution. **89 Cal L J 15 : 56 Cal W N 325 : A I R 1952 Cal 184 (187) (Pt E) (Pr 17) (DB).**

West Bengal Estates Acquisition Act (1 of 1954).

——Art. 19 — Tenancy Laws — West Bengal Estates Acquisition Act (1 of 1954), S. 52 — Constitutional validity—Expression 'modification'—Meaning of. See Tenancy Laws—West Bengal Estates Acquisition Act (1 of 1954), S. 52. ('63) 67 Cal W N 129.

54. Pre-emption.

Customary law.

——Arts. 19 (1) (f), 19 (5), 13 — Pre-emption on ground of vicinage by custom — It is unreasonable restriction - "Law" in Art. 13 (3) (a) and 'law in force' in Art. 13 (3) (e). AIR 1962 All 199, Reversed.

In so far as statute law is concerned A I R 1962 S C 1470 decides that a law of pre-emption based on vicinage is void. The reasons given by the Supreme Court to hold statute law void apply equally to a custom. Custom as such is affected by Part III of the Constitution dealing with fundamental rights and particularly Art. 19 (1) (f). The definition of the phrase "laws in force" in Art. 13 (3) (b) is an inclusive definition and is intended to include laws passed or made by a Legislature or other competent authority before the commencement of the Constitution irrespective of the fact that the law or any part thereof was not in operation in particular areas or at all. In other words, laws, which were not in operation, though on the statute book were included in the phrase "law in force". But the definition does not in any way restrict the ambit of the word "law" in the first clause as extended by the definition of that word in Art. 13 (3) (b). It merely seeks to amplify it by including something which, but for the second definition, would not be included by the first definition. Custom and usage having in the territory of India the force of the law must be held to be contemplated by the expression 'all laws in force.' The customary law of pre-emption on the ground of vicinage imposes unreasonable restrictions on the right to acquire, hold and to dispose of property guaranteed by Art. 19 (1) (f) of the Constitution and is void. AIR 1962 S C 1476, Foll. AIR 1962 All 199, **Reversed. Sant Ram v. Labh Singh, 1964 All L J 852 : (1964) 1 S C W R 805 : (1965) 2 S C J 6 : (1964) 7 S C R 756 : AIR 1965 SC 314 (315, 316) (Pr 4).**

——Art. 19 — Custom of pre-emption — Validity. See Ibid, Art. 13. 1965 All L J 1178 : A I R 1966 All 271.

——Art. 19 (1) (f)—Pre-emption - Suit for — Constitution of India, Art. 19 (1) (f) — Custom of pre-emption based on vicinage violates fundamental rights guaranteed under Art. 19 (1) (f) of Constitution - Suit based on such custom is not maintainable.

Even though the claim in a suit is based on a custom, if the custom itself is inconsistent with the fundamental rights guaranteed under Part III of the Constitution that custom would have to be held void and cannot be enforced. The custom of pre-emption based on vicinage imposes an unreasonable restriction on the rights guaranteed under Art. 9 (1) (f) of the Constitution of and a suit for pre-emption, when based on such a custom, is not maintainable. A I R 1962 S C 1476. Rel. on. **1963 All L J 1016 : 1964 All W R (H C) 51 : AIR 1964 All 372 (373) (Pr 2) (DB).**

——Art. 19 (5) — Right of pre-emption based on vicinage amounts to reasonable restriction on right to hold property — Not void on coming into force of the Constitution — Mahomedan Law. 1961 All L J 916 : 1961 All W R (H C) 707 : I L R (1962) 1 All 87 : AIR 1962 All 199 (207) (Prs 45, 47 (DB).

[Reversed in AIR 1965 S C 314.]

——Art. 19 (1) (f) — Suit for pre-emption pending at time of coming into force of Constitution — Right to obtain decree for pre-emption not affected by Constitution. See Ibid, Art. 13. A I R 1958 All 419 (DB).

——Art. 19 (1) (f) — Custom of pre-emption — Validity. See Pre-emption—Custom—Wajib-ul-arz. A I R 1955 N U C (All) 2748.

——Art. 19 (1) (f) — Scope — Law of pre-emption — Validity—Right of pre-emption resting upon custom and acquiring force of lex loci — Not rendered void by Art. 13 read with Art. 19 (1) (f).

Extensive though the right of pre-emption conferred by the Mohammadan Law and by the customary law may be, it does not violate the provisions of Art. 19 (1) (f) of the Constitution.

Article 19 (1) (f) does not give a citizen a larger right to hold or dispose of property than what the citizen possessed in that property before the Constitution came into force. Thus, where prior to the commencement of the Constitution, a person holding certain property had restricted rights to the enjoyment thereof because of the personal law governing the person or because the property was inalienable by custom he would not get the property freed from those restrictions merely as a consequence of the coming into operation of the Constitution. What Art. 19 (1) (f) guarantees is a right to hold the property in the right to which that property was acquired or owned by the individual and to dispose of that property. The right to dispose of property has not been taken away by the custom of pre-emption. This custom has merely placed restrictions on the right to sell property and certain person or persons have been given a preferential right to purchase the property from the owner thereof.

Where the right of pre-emption rests upon custom, it becomes the lex loci or the law of the place and the right of pre-emption attaches to the properties situated in that place. Wherever the custom of pre-emption prevails, the properties were subject to the burden of pre-emption before the commencement of the Constitution. This burden was not in any way removed or taken away by Art. 19 (1) (f) of the Constitution. **I L R (1960) Bom 862 : 62 Bom L R 574 : 1960 Nag**

L J 493 : AIR 1960 Bom 552 (554) (Pt B) (Prs 7, 8, 9) (DB).

——Arts. 19 (1) (f), (5) and 13 — Law of pre emption — Right of pre-emption on ground of vicinage — Validity — Infri ges Art 19 (1) (f) and is not saved by Art. 19 (5) — Muhammadan law — Pre-emption — Nature of right). See Ibid, Art. 13. AIR 1956 Hyd 120.

● **——Art. 19 (1) (f)—Violation of—Law of pre-emption in Hyderabad — Validity. See Constitution of India, Art. 13 AIR 1954 Hyd 161 (FB).**

——Art. 19 (1) (f) — Pre-emption ground of contiguity is not an enforceable right as it violates fundamental rights given by Constitution. **1965 Kash L J 190 : AIR 1966 J & K 89 (92) (Pt A) (Pr 13).**

● **——Art 19 (1) (f) and Cl. 7 (as added in J. and K.) and Art. 13 (1).**

Right of pre-emption based on vicinage — Right imposes unreasonable restriction on power of alienation and is not saved by Cl. 7 also. A I R 1955 J. and K. 25 (FB) held **Overruled** in view of AIR 1962 S C 1476; AIR 1963 J and K 27, Approved; AIR 1962 SC 1476 Foll. Master Sewanath v. Faqir Chand, **1965 Kash L J 105 : A I R 1965 J & K 62 (68) (Pt E) (Prs 37 to 40) (F B).**

——Arts. 19 (1) (f), 372—Right of pre-emption under Muhammadan Law — Legality of.

The fundamental rights guaranteed by Art. 19 (1) (f) are subject to reasonable restrictions and it is not an absolute right. All customary law including the personal law is preserved by Art. 372 of the Constitution. Hence, Art. 19 (1) (f) is no bar to the customary right of pre-emption exercisable under the Mohammadan law. AIR 1954 S C 417 and observation of Patanjali Shastri, C. J 1958 M P C 288 : 1958 **M P L J 409 : 1958 Jab L J 554 : AIR 1958 Madh Pra 423 (424, 425) (Pt B) (Pr 9).**

——Art. 19 (1) (f)—Law of pre-emption on ground of vicinage is unconstitutional.

Whatever may be the basis of the law of pre-emption, in any part of the country, whether customary or statutory the law, so far as the right of pre-emption on the ground of vicinage is concerned is unconstitutional, because the restriction that it seeks to impose upon the free power of disposal cannot be regarded as reasonable. AIR 1962 Pat 125 (FB) held **overruled** by AIR 1962 S C 1476. **1963 B L J R 67 : AIR 1963 Pat 144 (145) (Pr 4) (DB).**

● **Art. 19 (1) (f)**—Pre-emption, right of, is not hit by guarantee conferred by Art 19 (1) (f) and is constitutional. AIR 1962 Pat 125 (FB), Foll. Nathuni Ram v. Gopinath, **1962 B L J R 253 : ILR 41 Pat 144 : AIR 1962 Pat 226 (227) (Pt A) (Pr 4) (FB).**

● **——Arts. 19 (1) (f) and 19 (5), 13 (1) —** Customary law of pre-emption is not void — Right of pre-emption is attached to land—Vendee takes subject to this right. See Ibid, Art. 13 (1). **AIR 1962 Pat 125 (F B).**

——Art. 19 — Law of pre-emption — Constitutional validity.

The part of the law of pre-emption which gives preference to a partner in the house over a partner in the mansion and to a partner in the house over a partner in the party wall even when they are both co sharers belonging to the same class is an eminently reasonable one. It is not hit by Art. 14 or 19 of the Constitution See Ibid, Art. 14. **ILR (1960) 10 Raj 75.**

——Art. 19 (1) (f)—Pre-emption on grounds of vicinity only — Right of — Reasonable restriction. See Ibid, Art. 13. **AIR 1957 Raj 182.**

— Art. 19 — Pre-emption — Custom — Prior to Constitution custom of pre-emption was not unreasonable. **ILR (1956) 6 Raj 197.**

——Art. 19 (1) (f) and (5) — Right of pre emption conferred by custom upon 'Shafi-i-sharik' is a valid right.

The claim of pre-emption, whether permitted by law or custom, is a restriction on the right to acquire and hold property guaranteed by Art. 19 (1) (f). But the operation of the existing law of pre-emption (which, is the present case, is by custom) conferring a right upon 'Shafi-i-sharik' to claim the house sold in preference to a stranger, is a reasonable restriction on the right to acquire, hold and dispose of property, and is valid even after the commencement of the Constitution of India. Case law, Ref ILR (1955) 5 Raj 650 : 1956 Raj L W 336 : AIR 1955 Raj 140 (140, 141) (Pt B) (Prs 3, 6) (DB).

● **——Art. 19 (1) (f) — Pre-emption — Customary right of—Validity (Pre-emption Validity of right).**

The custom of pre-emption which allows an owner of adjoining property to claim possession of a property sold only on the ground of being the owner of the adjoining property is invalid as being contrary to the provisions of Art. 19 (1) (f) of the Constitution. Case-law referred. Panch Gujar v. Amarsingh, **ILR** (1954) 4 Raj 84 : 1954 Raj L W 204 : AIR 1954 Raj 100 (104) (Pt E) (Pr 22) (FB).

Agra Pre-emption Act (11 of 1922).

——Arts. 19 (1) (f), 13 (1) — Agra Pre-emption Act (11 of 1922) — Validity — Act held not invalid after Constitution. See Ibid, Art. 13 (1). AIR 1951 All 247

Ajmer Laws Regulation (3 of 1877).

—Art. 19 (1) (f) Cl. '3rdly' of S. 9 of Ajmer Laws Regulation (1877) read with provision of drawing lots is not valid under Constitution — Suit based on Cl. '3rdly' cannot succeed — Right of pre-emption—Nature of. AIR 1964 Raj 55 (57, 58) (Pt B) (Prs 10 11, 12, 13) (DB).

Alwar State Pre-emption Act.

● **——Art. 19 (1) (f) — Rights to acquire, hold and dispose of property — Alwar State Pre-emption Act —Validity.**

The position in law obtaining at present is that Art 19 (1) (f) can be invoked even in cases where the capacity of a citizen to acquire, hold and dispose of the property is not involved but his rights to acquire, hold and dispose of the property in question are only involved on the ground that the restrictions imposed by the Legislature invade his concrete rights in the property. Therefore the rights of a citizen to acquire hold and dispose of the the property as guaranteed under Art 19 (1) (f) of the Constitution are infringed by the Alwar Act. Nathuram v. Patram, **1960 Raj L W 162 : I L R (1960) 10 Raj 443 : AIR 1960 Raj 125 (131) (Pt A) (Prs 17, 18) (SB).**

● **——Art. 19 (1)(f)**—Ownership of some land in patti — Ownership does not furnish any ground of pre-emption — Alwar State Pre-emption Act (7 of 1946), S. 15 (c). Nathuram v. Patram **1960 Raj L W 162 : ILR (1960) 10 Raj 443 : AIR 1960 Raj 125 (131, 132) (Pt B) (Pr 20) (SB).**

● **——Art. 19 (1) (f) — Reasonable restriction- Pre-emption on basis of vicinage or contiguity—Validity — (Alwar State Pre-emption Act (7 of 1946), S. 16).**

Section 16, Alwar State Pre-emption Act should be upheld as valid under Art. 19 (1) (f) except the last which provides that the persons who own immovable property contiguous to the property sold should enjoy the right of pre-emption. The right of

pre-emption on the vicinage or contiguity is void as infringing Art. 19 (1) (f) of the Constitution. Nathuram v. Patram, 1960 Raj L W 162 : ILR (1960) 10 Raj 443 : AIR 1960 Raj 125 (132, 133) (Pt C) (Prs 24, 26) (SB).

● -Art. 19 (1) (f) — Sale taking place before coming into force of Constitution — Right of pre-emptor to enforce his right to pre-empt — (Alwar State Pre-emption Act (7 of 1946), Ss. 15 and 16) — AIR 1954 Raj 231, **Overruled.** Nathuram v. Patram, ILR (1960) 10 Raj 443 : 1960 Raj L W 162 : AIR 1960 Raj 125 (134) (Pt D) (Pr 29) (SB).

● **——Art. 19 (1) (f) — Scope — Custom relating to pre-emption prevalent in Jaipur City — Validity of —(Alwar State Pre-emption Act (7 of 1946), Ss. 15 and 16).**

Under the custom relating to pre-emption prevalent in the Jaipur City, a co-sharer is not entitled to share equally with the vendee in case the vendee is a co-sharer and the pre-emptor has no preferential right. Such custom is void after the coming into force of the Constitution. Nathuram v. Patram, 1960 Raj L W 162 : ILR (1960) 10 Raj 443 : AIR 1960 Raj 125 (135) (Pt E) (Pr 36) (SB).

——Art. 19 (1) (f) — Scope — Right of pre-emption under Alwar State Pre-emption Act — Whether hit. See Ibid, Art. 14. AIR 1959 Raj 78.

——Arts. 19 (1) (f) and 14 — Law of Pre-emption— Alwar State Pre-emption Act (7 of 1946), S. 15— Validity.

The right of pre-emption is a weak right, and must subsist not only on the date of the suit, but also on the date of the decree. The preferential right to purchase allowed by the Alwar State Pre-emption Act to callaterals based merely on relationship with the vendor is obviously a personal right and not a right which may run with the lands. It is not a reasonable restriction on the right to acquire, hold and dispose of property granted by Art. 19 (1) (f). AIR 1954 Raj 100 (FB), Rel. on. It is also hit by Art. 14 of the Constitution. AIR 1954 Raj 195, Rel. on. 1957 Raj L W 219 : AIR 1957 Raj 203 (203, 204) (Pt B) (Pr 7).

——Art. 19—Validity of S. 16, Alwar State Pre-emption Act, 1946. See Alwar State Pre-emption Act (7 of 1946), S. 16. AIR 1954 Raj 285.

Alwar Revenue Code.

——Art. 19 (1) (f) — Alwar Revenue Code, S. 129— Right of pre-emption — Preference given to collaterals—Right is void.

The preferential right to purchase allowed to collatarals by S. 129 of the Alwar Revenue Code on account of relationship as against strangers is not a reasonable restriction on the right to acquire, hold and dispose of property granted by Art. 19 (1) (f) of the Constitution and as such is void. AIR 1954 Raj 195, Foll. 1956 Raj L W 528 : AIR 1955 Raj 144 (144) (Pr 4).

Berar Land Revenue Code.

● **—Art. 19 (1) (f), (5) — Law of pre-emption contained in Ch. 14 of Berar Land Revenue Code (1928) —Validity.**

Chapter 14, Berar Land Revenue Code has engrafted the rules of pre-emption on the land tenures in Berar covered by that chapter. Hence, the property covered by that legislation is a peculiar kind of land tenure which has been created by the State. Such a tenure with its peculiar limitations is property, capable of being held and disposed of like any other property with its own limitations. Such a property does not infringe the provisions of Art. 19 (1) (f) of the Constitution.

Assuming for the sake of argument that the provisions of Art. 19 of the Constitution are attracted to the law impugned, the provisions of Ss. 179 and 184 in Ch. 14 clearly indicate that the rules of pre-emption laid down in that chapter are mainly and primarily intended for the benefit of the occupants or co-occupants, with a view to consolidation of holdings. Thus, there are unmistakable indications in the law itself that it was intended for the benefits of the class of persons coming within the category of 'occupants' and for ensuring that the land held by them did not by divisions and sub-divisions become uneconomic holdings to the detriment of the interest of the community as a whole. Hence, those provisions viewed even as restrictions on the exercise of the right to acquire, hold, and dispose of property must be adjudged to be reasonable. AIR 1954 S C 92 and AIR 1954 S C 119, Foll. Ramchandra v. Janardan, ILR (1955) Nag 378: AIR 1955 Nag 225 (229, 230) (Pt C) (Prs 17, 18, 29) (FB).

Bhopal Pre-emption Act (3 of 1934).

——Art. 19 (1) (f) — Pre-emption law — Bhopal Pre-emption Act (3 of 1934), S. 11 Sixthly—Right of pre-emption on ground of vicinage within limits of urban area —S. 11 Sixthly offends Art. 19 (1) (f) and is void from commencement of Constitution. AIR 1960 Punj 196 (FB) and AIR 1954 Punj 55 (FB), Not foll. 1961 Jab L J 368 : 1961 M P C 319 : 1961 M P L J 779 : ILR (1961) M P 718 : AIR 1961 Madh Pra 311 (311, 312) (Prs 2, 4) (DB).

——Arts. 19 (1) (i) and 19 (1) (f)—Bhopal Pre-emption Act (1934), S. 11 (6)—Section 11 (6) of Bhopal Act giving right of pre-emption by vicinage is void : AIR 1958 Madh Pra 423, Dissented from. See Ibid, Art. 13 (1). AIR 1960 Madh Pra 191.

Gwalior Pre-emption Act.

● **——Art. 19 (1) (f) and (5)—Gwalior Pre-emption Act (1992 Sm.), S. 12 (1), (5) and (6) — Infringement of fundamental right by exercise of right of pre-emption —Restriction, whether reasonable.**

Per Full Bench — Sub-sections (1) (pre-emption by co-sharers), (5) (pre-emption by persons holding a dominant or servient tenement) and (6) (pre-emption by vicinage) of S. 12, Gwalior Pre-emption Act, Samvat 1992, infringe the fundamental rights of the vendor and the vendee under Art. 19 (1) (f).

Per Dixit and Chaturvedi, JJ. — The restrictions imposed by sub-s. (6) (pre-emption by vicinage) of S. 12, Gwalior Pre emption Act, 1992 Sm. are not reasonable; but the restrictions imposed by sub-ss. (1) (pre-emption by co-sharer), and (5) (pre-emption by persons holding a dominant or servient tenement) of that section are reasonable and saved by Art. 19 (5) of the Constitution.

Per Nevaskar, J.—Restrictions imposed by the law of pre-emption in the case of right of pre-emption by co-ownership are reasonable and the law does not therefore, run contrary to Art. 19 (1) (f) of the Constitution. But the restriction imposed on the right guaranteed under Art. 19 (1) by reason of right of pre-emption based on the ground of easement and vicinage cannot be said to be reasonable. Babulal v. Gowardhandas, Madh B L R 1956 Civ 1 : Madh BLJ 1955 H C R 1905 : AIR 1956 Madh Bha 1 (9, 11) (Pt B) (Prs 20, 37, 38, 39) (FB).

J. and K. Rights of Prior Purchase Act (2 of 1993 Samvat.)

——Arts. 19, Cl. (7) and 19 (1) (f) (as added in Jammu and Kashmir).

Clause (7) is not retrospective—J. & K. Rights of Prior Purchase Act (2 of 1993), S. 15, Sixthly— Right of pre-emption in respect of urban immovable property and house property—Right based on vicinage—

Clause Sixthly of S. 15 is void. AIR 1963 J & K 27 (28. 29) (Pr 3) (DB).

——Art. 19 (1) — Right of Prior Purchase Act (2 of 1993 Smt.), S. 14 (c) firstly - Validity — Restriction imposed under is reasonable and hence valid.

Section 14, Clause (c), firstly, of the Right of Prior Purchase Act, conferring right of prior purchase on an owner in the Mahal is intended to preserve integrity of the village and the village community. It cannot be held to be unreasonable restriction on the right to dispose of property. The provision is valid. **1962 Kash L J 123 : AIR 1963 J & K 14 (14, 15) (Pt A) (Pr 2) (DB).**

Marwar Pre-emption Act (1922).

——Art 19 (1) (f) —Section 3, third clause of law of pre-emption in Marwar — Validity — Pre-emption based on vicinage has become invalid from 26-1-50. 1954 Raj L W 292 : ILR (1954) 4 Raj 310: AIR 1954 Raj 231 (232) (Pt A) (Pr 3) (DB).

——Art. 19—Law of Pre-emption in Marwar — S. 3, third clause—Decree for pre-emption, after coming into force of Constitution cannot be given. 1954 Raj L W 292 : ILR (1954) 4 Raj 310 : AIR 1954 Raj 231 (232, 233) (Pt B) (Prs 4, 5, 6, 10, 11) (DB).

——Art. 19 (1) (f)——Law of pre emption – Validity. See Marwar Pre-emption Act (1922), S. 3 (2). AIR 1954 Raj 195 (DB).

Punjab Pre-emption Act (1 of 1913).

● **—Art. 19 (1) (f) and Art. 19 (5) — Punjab Pre-emption Act (1 of 1913) (before its amendment in 1960), S. 15 (c), Thirdly — Restriction placed on right of vendor in regard to disposal of his agricultural land — Restriction is reasonable—S. 15 (c), Thirdly, is valid.**

The expression 'estate' which is used in cl. (c), Thirdly, of S. 15 of the Punjab Pre-emption Act, 1913 is not defined by the Act but by reason of its S. 3 (6), the definition in S. 3 of the Punjab Land Revenue Act 1887, is attracted to it. Reading the definition of the term 'estate' as given in S. 3 of the Punjab Land Revenue Act with S. 61 of that Act, it will be seen that an 'estate' is a unit of assessment and there is a joint and several liability on persons owning land within the 'estate' to pay the entire assessment due on the estate unless a holding or its owner is exempted by a notification issued under S. 61 (1), Proviso (a) of the Punjab Land Revenue Act from his liability for any part of the Land Revenue for the time being as assessed on the estate except that part which is payable in respect of the holding. Thus though it is not really the case of a co-sharer, it is somewhat akin to that of a cosharer because of the joint liability for payment of land revenue. The provision, therefore contained in S. 15 (c), Thirdly, of the Punjab Pre-emption Act (as it stood before its amendment in 1960) vesting the right of pre-emption in respect of agricultural land in the owners of the estate, though restricts the right of the vendor in respect of the disposal of his property, yet the restriction is a reasonable one and not repugnant to Art. 19 of the Constitution of India. Ram Sarup v Munshi, **65 Punj L R 531 : 1963 S C D 728 : (1963) 3 S C R 858 : AIR 1963 S C 553 (559, 560, 561) (Pt D) (Prs 17, 18, 19, 22).**

● **—Art. 19 (1) (f) and Art. 19 (5) — Punjab Pre-emption Act (1 of 1913 (before its amendment by Punj Act 10 of 1960), S. 15 (a) (and after amendment), S. 15 (1) (a) — Pre-emption restricts right given by Art. 19 (1) (f) — However provisions in S. 15 (a), whether before or after its amendment, do not transgress limits of reasonableness required by Art. 19 (5) — Punjab Pre-emption Act is valid.**

The right of pre-emption granted by S. 6 of the Punjab Pre-emption Act, 1913, is a restriction on the right 'to hold and dispose of property' on the part of the vendor—the right guaranteed by Art. 19 (1) (f) of the Constitution. The grounds for upholding S. 15 (a) as reasonable and in the interest of the general public, after eliminating the others enumerated in AIR 1954 Punjab 55 (FB), resolve into two, namely, (1) to preserve the integrity of the village and the village community; and (2) to implement the agnatic rule of succession. The objective underlying the first ground is prima facie reasonable. The other ground, namely, that the next in succession should have the chance of retaining the property in he family will suffice to render the restriction reasonable and in the interest of the general public within Art. 19 (5) of the Constitution.

The provisions contained in S. 15 (a) of the Punjab Act as it originally stood, as well as in the modified form in which it has been re enacted as S. 15 (1) (a) do not transgress the limits of reasonableness required by Art. 19 (5) of the Constitution AIR 1954 Raj 195, Dissting Ram Sarup v. Munshi, 65 Pun L R 531: 1963 S C D 728 : (1963) 3 S C R 858 : AIR 1963 S C 553 (561, 562, 563) (Pt E) (Prs 23, 25, 26, 27, 28 29).

● **——Arts. 19 (5), 19 (1) (f)—Pre-emption—Law of—Validity Whether reasonable restriction on fundamental right to hold property — Rewa State Pre-emption Act (1946), S 10 — Punjab Pre-emption Act (1 of 1913) S 16 - Berar Land Revenue Code (1928), Chapter XV. S. 174 — Constitution of India, Arts 19 (1) (f), 19 (5) and 15; F A No. 16 of 1952 (Vindh Pra.) Reversed. AIR 1954 Punj 55 (FB) and AIR 1960 Punj 196 (FB) Overruled. See Pre-emption —Law of — Validity. AIR 1962 S C 1476.**

——Art. 19 (5) and 19 (1) (f) — Reasonable restrictions — Law of Pre-emption — See Punjab Pre emption Act (1 of 1913), S. 1. AIR 1955 N U C (Him Pra) 3680.

——Art. 19 (1) (f) — Ss. 15 and 16, Punjab Pre emption Act — Sections are not ultra vires See Punjab Pre-emption Act (1 of 1913), S. 15. AIR 1954 Pepsu 180 (DB).

——Art. 19 (1) (f) — Right of pre-emption — Is an aggressive right — No equity in favour of pre-emptor —Right must be strictly construed See Punjab Pre-emption Act (1 of 1913), S. 4. I L R (1961 2 Punj 614.

● **—Art 19 (1) f) – Reasonable restriction — Pre-emption law Validity — (Punjab Pre-emption Act (1 of 1913), S. 16 sixthly).**

The provisions contained in clause 'sixthly' of S. 16 the Punjab Pre emption Act are not ultra vires the provisions of Art. 19 of the Constitution inasmuch as the restrictions imposed by the law of pre-emption are not unreasonable. AIR 1954 Punj 55 (FB), Approved. Sardha Ram v. Haji Abdul Majid, **62 Pun L R 201 : AIR 1960 Punj 196 (197, 201, 202) (Pt A) (Prs 2, 20. 22) (FB).**

[Overruled in AIR 1962 S C 1476].

——Art. 19 (5) — Scope — Punjab Pre emption Act (1913), S. 16 – Validity — Distinction between right of pre-emption based in joint use and ownership— If reasonable restriction. See Punjab Pre-emption Act (1 of 1913), S. 16 AIR 1958 Punj 44 (DB).

——Arts. 19 (1) (f) and 19 (5) — Punjab Pre-emption Act (1 of 1913) S 15 not ultra vires See Punjab Pre-emption Act (1 of 1913), S. 15. AIR 1953 Punj 20.

● **——Art. 19 (1) (f) and (5) — Validity of Punjab Pre emption Act, Ss. 15 and 16 – Restrictions imposed by these Sections are in the interest of general public. Hence these Sections are not ultra vires. See Punjab Pre-emption Act (1 of 1913) S 15. AIR 1954 Punj 55 (FB).**

[Overruled in AIR 1962 SC 1476].

Rewa State Pre-emption Act (1946).

——Art. 19 (5) — Rewa State Pre-emption Act (1946), S. 10 — Validity. See Rewa State Pre-emption Act (1946), S. 10. AIR 1956 Vin-Pra 9.

Zabtai Shikmidaran.

——Art. 19 (1) (f)— Law of pre-emption — Zabtai Shikmidaran, Ss. 12 and 14 — They do not infringe right under Art. 19 (1) (f).

To limit the liberty of the purchase and sale of land of any particular class, with a definite object of welfare of such class may be permissible and considered reasonble restriction whereas subjecting every citizen to the restriction may not be deemed so. Hence Ss. 12 and 14 of Zabtai Shikmidaran do not infringe the right conferred under Art. 19 (1) (f) of the Constitution: AIR 1954 Hyd 161 (FB), Disting. ILR (1956) Hyd 19 : AIR 1956 Hyd 47 (48) (Prs 3, 6) (DB).

55. Acquisition of lands.

See also Ibid, Note 4.

● ——Art. 19 (1) (f) — Land Acquisition Act (1894) as amended by Act 31 of 1962 — Validity — See Ibid, Art. 31 (2). AIR 1964 S C 1230.

● ——Art. 19 (1) (f) — Land Acquisition Act (1894), S. 6—Constitutionality — See Land Acquisition Act (1894), S. 6. AIR 1963 S C 151.

● ——Art. 19 (1) (f)—Notification under S. 4 of Land Acquisition Act (1894) - Validity — Notification does not contravene Art. 19 (1) (f). AIR 1955 S C 41 and AIR 1957 S C 521, Foll. Babu Barkya Thakur v. State of Bombay, (1961) 1 S C R 128 : (1961) 2 S C J 392 : (1961) 2 S C A 425 : AIR 1960 S C 1203 (1208) (Pt E) (Pr 13).

——Art. 19 (5) — Land Acquisition Act (1894), S. 17 (1) — Section is not violative of Art. 19 (1) (f) of Constitution—See Land Acquisition Act (1894), S. 17 (1). AIR 1965 All 433.

——Arts. 19 (1) (f), 19 (5) — Land Acquisition Act (1894), S. 6 (1) and (2)—Validity — Provisions do not violate Arts. 19 (1) (f) and 19 (5). See Land Acquisition Act (1894), S. 6 (1). AIR 1958 All 872.

[Reversed on another point in AIR 1962 S C 764.]

——Art. 19 (6) — 'Interest of general public' — Acquisition for company—(Land Acquisition Act (1894), S. 6 (1).)

The fact that the acquisition is for a company does not necessarily imply that the purpose for which it is acquired is not one for the benefit of the entire public. AIR 1958 All 126 (132) (Pt H) (Pr 16).

——Art. 19 (1) (f) and (5)—Ss. 6 (3) and 17 (4), Land Acquisition Act, if ultra vires.

Sections 6 (3) and 17 (4) of the Land Acquisition Act are not ultra vires as offending against Art. 19 (1) (f) and (5). A I R 1952 Cal 554, Disting. A I R 1958 All 126 (134) (Pt K) (Pr 24).

——Art. 19—Scope — Assam Acquisition of Land for Flood Control and Prevention of Erosion (Validation) Act, 1959 (21 of 1960), Ss. 2, 3—Scope — Act, if provides for acquisition—Provisions relating to payment of compensation—Intention of Legislature - Validity of Assam Act 6 of 1955 — Acquisition of land prior to Act of 1955 — Validation by Act of 1960 — Effect. See Assam Acquisition of Land For Flood Control and Prevention of Erosion (Validation) Act, 1959 (21 of 1960), S. 2. AIR 1963 Assam 141 (DB).

——Art. 19 (1) (f) — United Khasi Jaintia Hills Autonomous Districts (Management and Control of Markets) Act (5 of 1953) — Villagers holding market on land belonging to Government—Permissive user — District Council taking over management of market and right to collect tolls under Act — No infringement of fundamental rights under Art. 19 (1) (g), or Art. 19 (1) (f). I L R (1960) 12 Assam 26.

——Arts. 19 (1) (f), 19 (1) (g), 358 — Land Acquisition Act (1894) (as amended by Bombay Act 8 of 1958), Ss. 4, 6, 3 (f) (2) — Validity of — Sections as amended by Bombay Act not ultra vires.

Sections 4 and 6 of the Land Acquisition Act, 1894 read with S. 3 (f) (2) as amended by the Bombay Commissioners of Divisions Act, 1958 do not infringe the provisions of Arts. 19 (1) (f) and 19 (1) (g) of the Constitution. A I R 1963 S C 151 and Civil Appeal No. 322 of 1961, dated 1-12-1961 (SC), Rel. on. Further, Art. 19 (1) (f) or (g) is no longer available to the petitioner having regard to the provisions of Art. 358 of the Constitution and the proclamation of emergency recently made by the President in October, 1962. Neither S. 4 nor S. 6 of the Land Acquisition Act can, therefore, be held to infringe Art. 19 of the Constitution. 67 Bom L R 101 : 1965 Mah L J 290 : I L R (1965) Bom 394 : AIR 1965 Bom 224 (238) (Pt C) (Pr 34) (DB).

——Arts. 19 (1) (f) and (3) and 31 (2) — Eminent domain—Requisition—Applicability of Art. 19 (1) (f) and (5) to requisition under Bombay Land Acquisition Act — (Bombay Land Requisition Act (33 of 1948), S. 6 (4) (a)).

Where a case is of the exercise of the power of eminent domain, Art. 31 applies and the requirements thereof have to be satisfied. Article 19 (1) (f) does not apply to such a case. Article 19 (1) (f) applies to cases where the person entitled to a right to property is in enjoyment of that right and restrictions are sought to be placed on such enjoyment. Requisition is included within the term "acquisition" in Art 31 (2) and the power that is exercised under the Bombay Land Requisition Act is under the sphere of eminent domain and the Act does not provide for the exercise of this power without fulfilling the conditions of Art. 31 (2). No question, therefore, arises of considering whether any restrictions placed on the enjoyment of property are reasonable restrictions as Art. 19 (5) does not come into play and Art. 19 (1) (f) does not apply to a case under Act. 56 Bom L R 966 : A I R 1955 Bom 271 (272) (Pt B) (Pr 4).

——Art. 19 — West Bengal Closing of Canals Act (2 of 1959) — Validity — Art. 31 (1) does not afford protection against legislative expropriation — Substantial abridgement of right of ownership—No compensation payable under Art. 31 — Closing of canals for considerations of health and growth of city of Calcutta — Action of Government is saved under Art. 19 (5) (6) — West Bengal Closing of Canals Act is valid. See Ibid, Art. 31. AIR 1964 Cal 45.

——Art. 19 (1) (f) — Validity of West Bengal Land (Requisition and Acquisition) Act. See West Bengal Land (Requisition and Acquisition) Act (2 of 1948). AIR 1963 Cal 373.

——Art. 19 — West Bengal Estates Acquisition Act (1 of 1954), S. 5-A — Applies to Khasmahal lands — Constitutional validity — No excessive or unguided delegation — Word 'may' meaning of — West Bengal Estates Acquisition (1954), Rule 3-A — Rule for procedure of enquiry and not for forming opinion. See Tenancy Laws — West Bengal Estates' Acquisition Act (1 of 1954), S. 52. ('63) 67 Cal W N 129.

——Art. 19 (1) (f) — Validity of S. 7, W. B. Act (21 of 1948). See West Bengal Land Development and Planning Act (21 of 1948), S. 7. A I R 1954 Cal 248 (DB).

[Reversed on another point in AIR 1961 S C 16].

——Art. 19 (1) (f) — Section 4, West Bengal Land Development and Planning Act, even if offends Art. 19 (1) (f) is saved by Art. 19 (5). See West Bengal Land Development and Planning Act (21 of 1948), S. 4. **AIR 1953 Cal 704 (DB).**

——Art. 19 (1) (f) — Land Acquisition Act (1894) (as amended by Act 31 of 1962), S 40 (1) (aa)—Effect of amendment — Amendments are not ultra vires — Constitution of India, Arts 14, 19 (1) (f), 31 (2). See Land Acquisition Act (1894) (as amended by Act 31 of 1962), S. 40 (1) (aa). **AIR 1964 Guj 82.**

——Art. 19 (1) (f)—Travancore Land Acqusition Act — Procedure for acquisition – Not discriminatory—Act not invalid — Act is an "existing law" within protection of Art. 31 (5) (a) of Constitution. See Travancore Land Acquisition Act 11 of 1914, S. 4. **1964 Ker L J 85.**

——Arts. 19 (1) (f) and 31 (2) — Scope and effect. See Land Acquisition Act, S. 6. AIR 1952 Mad 756.

——Arts. 19 (1) (f), 31 (2) — Valid acquisition under Art. 31 (2)—Effect on Art. 19 (1) (f).

Article 19 (1) (f) must be read subject to Art. 31 (2) and where there is a valid acquisition under that Article there is no property in respect of which the rights conferred under Art. 19 (1) (f) could be claimed. 1950 F L J 174; 1951 F L J 29; A I R 1951 All 674 (FB) : A I R 1951 Bom 86, Rel. on. **65 Mad L W 747: 1952-2 Mad L J 298 : 1952 Mad W N 677 : I L R (1952) Mad 982 : A I R 1952 Mad 756 (757) (Pt B) (Pr 4) (DB).**

——Art. 19 (1) (f)—Madras Electricity Supply Undertakings (Acquisition) Act (1949) -Validity — Government of India Act (1935), Sch. VII, List, I Item 33, List III Item 31. See Madras Electricity Supply Undertakings (Acquisition) Act 43 of 1949. AIR 1951 Mad 979 (DB).

[Reversed on another point in A I R 1954 S C 251]

——Art. 19—Khasmahal lease — Determination of lease by Government as per terms of lease — Clause providing for compulsory acquisition without compensation for leasehold interest held not unconstitutional—Government acting as a private lessor and not in exercise of powers of eminent domain—Fundamental rights not contravened. See Ibid, Art. 31. **ILR (1962) Cut 27**

——Art. 19 (1) (f) and (g)—S. 48 Bihar Town Planning and Improvement Trust Act—Validity—Provision does not contravene Art. 19.

The law is not unconstitutional or invalid merely because it has not provided for service of notice on all the occupiers of the premises sought to be acquired, whether such occupiers are entered in the municipal assessment list or not. It would be throwing an unreasonable burden on the Improvement Trust to to make a roving enquiry about all the occupiers of the premises and to serve notice on them. It is always open to, rather it is the duty of, the occupier to get his name entered as such in the municipal assessment list at the time of its preparation and publication or even thereafter, but, if he does not do so either due to negligence or to avoid his liability to pay the latrine or the drainage tax, he cannot complain that his property right has been affected without giving him any notice and opportunity of being heard and that such procedural defect in the law will make it unconstitutional and invalid. **1963 B L J R 254 : AIR 1963 Pat 201 (205, 206) (Pt C) (Pr 11) (DB).**

——Art. 19 (1) (f) — Land Acquisition Act (1894), Ss. 4 and 6 – Validity —Do not contravene Art. 19 (1) (f). See Land Acquisition Act (1894), S. 4. AIR 1958 Pat 183 (DB).

——Art. 19 (1) (f)—Invasion of fundamental rights—Other remedy open—Deprivation of property without notification under S. 4, Land Acquisition Act (1894)—Alternative remedy by way of Civil suit available—High Court can still exercise its power where alternative remedy is not equally effectual and the petitioner is likely to suffer irretrievable loss and damage. See Ibid, Art. 226. **('65) 67 Punj L R 616.**

——Arts. 19 (1) (f) and 226—Land Acquisition—Petitioners dissatisfied by amount of compensation offered by the Land Acquistion Officer, and therefore, applying under Art. 226 –Motive of petitioners will not and should not debar them from enforcing their fundamental right by applying under Art. 226, if it is in fact infringed. **61 Pun L R 609 : AIR 1959 Punj 544 (547) (Pt B) (Pr 7) (DB).**

—— Art. 19—Question regarding urgency—Not open for judicial review. See Rajasthan Land Acquisition Act (24 of 1953), S. 17. AIR 1964 Raj 270 (DB).

56. Restraint on alienation.

See also Ibid, Note 54.

——Art. 19 (1) (f)—Hindu widow—Restrictions on power of disposal of property—Validity—Hindu Law—Widow's estate. See Ibid, Art. 13 (1). **AIR 1952 Him Pra 42.**

● ——Art. 19 (1) (f)—Right of easement is not unreasonable restriction on power of alienation. See J. & K. Right of Prior Purchase Act (2 of 1996), S. 15. **A I R 1965 J & K 62 (FB).**

——Art. 19 (1) (f)—S. 69, T. P. Act—Validity—Does not offend Art 19 (1) (f) of the Constitution. See T. P. Act (1882), S. 69. **AIR 1955 Mad 135.**

57. Evacuee property legislation.

● ——Arts. 19 (1) (f) and 31—Decision of Custodian-General that property is evacuee property and that petitioner's husband who transferred the same to petioner was evacuee, becoming final — Petitioner cannot complain of any infringement of his fundamental right—Administration of Evacuee Property Act (1950), Ss. 2 (d), 28.

Where the alleged fundamental right of the petitioner is really dependent on whether her husband who had transferred his property in favour of the petitioner was an evacuee and whether his property is evacuee property if the decision of the appropriate authorities of competent jurisdiction on these questions has become final, the petitioner not having moved the appropriate High Court against the decision of the Custodian-general or not having moved the Supreme Court by way of Special leave, and cannot be treated as a nullity or cannot be otherwise got rid of, the petitioner cannot complain of any infringement of her fundamental right under Arts. 19 (1) (f) and 31 of the Constitution. AIR 1960 S C 768 Applied. Aniyoth Kunhamina Umma v. Ministry of Rehabilatation, Government of India, New Delhi, **(1961) 2 S C J 621 : (1962) 1 S C R 505 : AIR 1962 S C 1616 (1618, 1619) (Pt B) (Prs 4, 6).**

● ——Arts. 19 (1) (f) and 31 — Evacuee Interest (Separation) Act (1951), S. 10, Cl. (a)—Composite property comprising sugar mill — Order of sale of property—Validity.

The composite property comprised of a sugar mill, which in the very nature of things could not be partitioned. The money value of the share of the non-evacuees represented a large sum of money. The non-evacuees had not claimed the payment of that sum from the Custodian. Nor were the non evacuee co-sharers prepared to pay to the Custodian the money value of the shares of the evacuees ;

Held, that in the circumstances, the sale of the property and division of the sale proceeds was the only mode of separation available and the order of the Competent Officer for sale could not be termed

unreasonable or violative of Art. 19 (1) (f) of the Constitution nor did it violate Art. 31 because it could not be said to be deprivation of the non-evacuees of their property without the authority of law. Azimunnissa v. Deputy Custodian, Evacuee Properties District Deoria, (1961) 2 S C R 91 : (1962) 1 S C J 324 : AIR 1961 S C 365 (371, 372) (Pt B) (Pr 22).

● —Arts. 19 (1) (f), 31 (1) and 31 (2) — 'Property'—Rights of quasi-permanent allottee under East Punjab Act 14 of 1947—If property — (E P. Evacuees (Administration of Property) Act (14 of 1947), Ss. 9-A and 2 (2) and (ff) — (Administration of Evacuee Property Act (1950), Ss. 12 and 55) — (Administration of Evacuee Property (Central Rules (1950), R. 14) (Displaced Persons (Compensation and Rehabilitation) Act (1954), Ss. 10, 12 and 19) — (Displaced Persons Compensation and Rehabilitation Rules (1957), Rr. 72 (2) and 102).

Rule (6), as it originally stood until 6th February, 1950, must be read with S. 9-A of the East Punjab Act (14 of 1947) as amended in 1948, in so far as it relates to allotment. Similarly, Central Rules of 1950, and the delegated State Rules of 1950 and 1951 must be read to harmonise with S. 12 of the Central Act (31 of 1950). Reading these powers of cancellation under the Act and the Rules together, it will be found that the power of cancellation of such allotments is wide and varied and depends to a substantial extent on administrative orders and considerations. As to the position of a displaced landholder to whom evacuee agricultural land has been allotted, there can be no doubt that he is in a definitely better legal position than the allottee of other kinds of property under the Central Act (31 of 1950), and the Central Rules, 1950. But even so, it is still far short of what can be considered as being in itself 'property'.

Section 19 of the Displaced Persons (Compensation and Rehabilitation) Act and R 109 framed under the Act are in terms wide enough to include quasi-permanent allotments. The position of a quasi-permanent allottee is that his rights are subject to powers of cancellation exercisable by the appropriate authorities in accordance with the changing requirements of the evacuee property law and its administration.

It cannot be held that the interest of a quasi-permanent allottee is 'property' within the concept of that word so as to attract the protection of fundamental rights. 59 Punj L R 103, Disapproved.

Property to fall within the scope of Art 19 (1) (f) must be capable of being the subject matter of 'acquisition and disposal'. Art. 31 (2) as recently amended, taken with Art. 31 (2 A) contemplates acquisition or requisitioning (and taking possession) as a result to transfer of the ownership or of the right to possession.

In order that Art. 31 (1) may apply, it is not enough that there is deprivation but it must also be deprivation without the authority of law. The allottees whose quasi permanent allotment has been cancelled in order to work out re adjustment consequent upon the order of the higher authority cannot invoke the protection of Art. 31 (1), as it is not an illegal usurpation of jurisdiction by the authority so as to constitute negation of authority of law. Though quasi-permanent allotment does not carry with it a fundamental right to property under the Constitution, the rights of the allottee as recognised in the statutory rules are important and constitute the essential basis of a satisfactory rehabilitation and settlement of displaced landholders. Until such time as the landholders obtain sanads to the lands, these rights are entitled to zealous protection of the constituted authorities. Amar Singh v. Custodian Evacuee Property, Punjab, **1957 S C J 574 : 1958 S C A 171 : 1957 S C R 801 : AIR 1957 S C 599 (607, 612) (Prs 17, 18, 19, 21, 22, 23, 24, 25, 29).**

● —Arts. 19 (5) and 31 — East Punjab Evacuees (Administration of Property) Act (14 of 1947 as amended by Act 26 of 1948), S. 5-A — Validity. See Ibid, Art. 31. AIR 1956 S C 43.

—Art. 19 (1) (f) and (5) - Administration of Evacuee Property Act (1950), S. 43 - Validity — Restrictions on rights of evacuee's heirs — Reasonable in public interest—No infringement of Art. 19 (1) (f) of Constitution.

Section 43 of the Act does not unreasonably restrict the rights of an evacuee's heirs to hold property, so as to be void for infringement of Art. 19 (1) (f). The restrictions which the Act imposes are reasonable from the point of view of the interests of the general public AIR 1963 All 101 (104, 105) (Pt C) (Pr 12).

—Arts. 19 (1) (f), 19 (5)—Scope and applicability—Evacuee Interest (Separation) Act (1951) S. 10 (a) (iii) —Constitutionality — Section is not unconstitutional having regard to Art. 19 (5) of the Constitution. See Evacuee Interest (Separation) Act (64 of 1951), S. 10 (a) (iii). AIR 1957 All 561.

● —Arts. 19 (1) (f), 31 — Administration of Evacuee Property Act (1950)—Validity.

The words "a citizen shall have the right to" must be interpreted as equal to "a citizen shall not suffer any disability from exercising his free choice to acquire, hold or dispose of property." Article 19 does not rule out reasonable restrictions in the general interest, to control the rights. Undoubtedly, the provisions of the Administration of Evacuee Property Act are of a very drastic nature. They enable the Custodian to hold and manage the property of the evacuee and also of his co-sharers. But this control or regulation cannot, under all the circumstances which existed in India by reason of the fact that this country which was at one time one had been partitioned and that that partition had given rise to a number of problems between the two countries, be said to be opposed to public interest. The enactment can be justified as satisfying the requirements of Art. 19 (5). The Act is not void under Art. 19 (1) (f) or under Art. 31 of the Constitution. AIR 1951 All 257, Referred. Asiatic Engineering v. Achhru Ram, 1951 R D (H C) 241 : 1951 All L J 576 : ILR (1952) 2 All 838 : AIR 1951 All 746 (773) (Pt N) (Prs 86, 88, 89) (FB).

—Art. 19 — Fundamental rights—Not violated by either Administration of Evacuee Property Ordinance (1949) or Administration of Evacuee Property Act (1950) 53 Bom L R 621 : AIR 1951 Bom 440 (454) (Pt L) (Pr 24) (DB).

—Art. 19 (1) (f) — Reasonable restriction on the right of a citizen to acquire property. See Administration of Evacuee Property Act (31 of 1950), S. 40. AIR 1953 Hyd 157 (DB).

● —Art. 19 (1) (f)—'Property'—Interest of allottee under J. & K. State Evacuees' (Administration of Property) Act (2006) is not property.

An allottee under J & K State Evacuees' (Administration of Property) Act (2006) has no insignia or characteristics of proprietary rights vested in him in respect of land allotted to him. Whatever may be the interest of an allottee in the land, it does not constitute 'property' as used in Art. 19 (1) (f) of the Constitution of India. Hence ejectment of an allottee from the land allotted to him would not amount to infringement of his fundamental rights vested in him under Art. 19 (1) (f). Gain Kour v Provincial Rehabilitation Officer. AIR 1956 J & K 33 (34) (Pt C) (Prs 5, 6) (FB).

——Arts. 19 (1) (f) and 31 —Deprivation of property under S. 40 of Administration of Evacuee Property Act (1950)—Administration of Evacuee Property Act (1950), S. 40.

The right to hold, acquire and dispose of property is not absolute. It is subject to the limitations specified in Art. 19 (5) and to the provisions contained in Art. 31. The question of the right of a citizen to hold, acquire or dispose of the property can arise only so long as his property has not been taken away under Art. 31. If he has been deprived of his property under Art. 31 (1) or if his property has been acquired or taken possession of under Art. 31 (2) no question of his acquiring, holding or disposing of that property could possibly arise under Art. 19 (1) (f). If the petitioner has been deprived of his property under S. 40 of the Administration of Evacuee Property Act, 1950 then Art. 19 (1) (f). of the Constitution has no application to his case. The applicant must then show that quite apart from Art 19 (1)(f) the Act in question is otherwise invalid. AIR 1950 S C 27, A I R 1951 S C 41 Foll. AIR 1951 Bom 440 Rel. on. **A I R 1952 Madh.Bha 181 (185) (Pt A) (Prs 8, 9) (DB).**

——Art. 19 (1) (f) and (5) — Administration of Evacuee Property Act (1950) — Validity.

(Obiter):—The restrictions imposed by the Administration of Evacuee Property Act are reasonable and in the interests of the general public. Having regard to the events which happened soon after the partition in 1947 and also taking into consideration the entire scheme of the Act which is to make a provision for the custody, management and the administration of evacuee property until a satisfactory and final settlement takes place between India and the Dominion of Pakistan, it cannot be said that the Administration of Evacuee Property Act, 1950 does not satisfy the requirements of Art. 19 (5) Case law Rel. on. **A I R 1952 Madh Bha 181 (186) (Pt C) (Pr 10) (DB).**

——Art. 19 — Administration of Evacuee Property Ordinance (1949), S. 19 — Fundamental rights of a person declared to be an intending evacuee — Not affected. 1951 Mad W N 477: 1951-2 Mad L J 1 : AIR 1951 Mad 930 (934) (Pt G) (Prs 18, 19) (DB).

——Art. 19 (1) (f), (5) — Administration of Evacuee Property Ordinance (1949), S. 21. Validity.

None of the restrictions contained in S. 21 of the Administration of Evacuee Property Ordinance (1949) can be said to be not reasonably imposed. **1951 Mad W N 477 : 1951-2 Mad L J 1 : AIR 1951 Mad 930 (935) (Pt I) (Pr 21) (DB).**

——Art. 19 (1) (f) — Administration of Evacuee Property Ordinance (1949), S 20— Validity.

The restriction on the power of disposal of immovable property contained in S. 20 of the Administration of Evacuee Property Ordinance, as it stands, is an unreasonable restriction on the exercise of the intending evacuee's right as a citizen under Art 19 (1) (f) of the Constitution. **1951 Mad W N 477: 1951-2 Mad L J 1 : A I R 1951 Mad 930 (935) (Pt J) (Pr 22) (DB).**

——Art. 19 - Evacuee Property Legislation—Administration of Evacuee Property Act (31 of 1950), S. 1 — Provisions of Act are mandatory— Violation would mean abridgement of fundamental rights. A I R 1957 Orissa 194 DB).

—— Art. 19 (1) (f), (5)—Unreasonable restriction.

Administration of Evacuee Property Act, although in certain cases, may work some hardship cannot be said to be an unreasonable legislation placing undue fetters upon the right to manage and hold property. **32 Pat 181 : 1953 B L J R 185 : AIR 1953 Pat 112 (115) (Pt C) (Pr 4A) (DB).**

——Arts. 19 (1) (f) and 31— Scope and applicability — Administration of Evacuee Property Act (1950), S. 17 (2).

Article 19 (1) (f) can have no application to the provisions of S. 17 (2) of the impugned Act, for in a case of total deprivation of property it is Art. 31 that is attracted. While Art. 19 (1) (f) speaks of general rights of a citizen to acquire, hold and dispose of property, Art 31 deals with the specific rights of a person (whether a citizen or not) in the property that he owns, Art. 31 prescribes the conditions under which a person may be deprived of his property by the State or under which the property may be acquired or taken possession of by the State for puhlic purpose. Where a person is deprived of his property, or where his property has been acquired or taken possession of by the State, validity of the proceedings can be tested only with reference to Art. 31 and not with reference to Art. 19 (1) (f). Such a case falls within the specific provisions contained in Art. 31 and therefore will not be covered by the general provisions of Art. 19 (1) (f). **AIR 1956 Pepsu 58 (63) (Pt F) (Pr 19) (DB).**

——Art. 19 — 'General public' includes part of public —Restriction prescribed by Evacuee Interest (Separation) Act (1951), S 9 - Reasonableness of.

The term 'general public' is comprehensive enough to include a part of the public. On this interpretation the restriction, if any created by S 9, Evacuee Interest (Separation) Act which operates in lawful and proper aid of or protects a section of the general public is in public interest.

The restriction prescribed by S. 9 of the Act with regard to the rate of interest on the principal advanced against evacuee property or on the rights of the mortgagees that they can hold in usufructuary mortgage for a maximum period of 20 years whereafter the mortgages would be extinguished, are valid restrictions falling within the purview of Cl. (5) of Art 19 of the Constitution. **ILR (1956) Patiala 205 : AIR 1955 Pepsu 148 (152) (Pt F) (Pr 12) (DB).**

——Art. 19 (1) (f) and (5)—Evacuee Interest (Separation) Act (1951), S. 9— Validity.

All property is subject to reasonable regulation by the state. It has always been in the interest of the public that the rate of interest charged by a creditor should not be excessive Even if Art. 19 applies to S 9, Evacuee Interest (Separation) Act, the restrictions imposed by the Legislatuture are reasonable and in the interest of the public. **I L R (1955) Punj 509 : 56 Punj L R 443 : AIR 1954 Punj 261 (263, 264) (Pt E) (Pr 11) (DB).**

—— Arts. 19, 31 & 14 — Administration of Evacuee Property Act (1950), Ss. 8 to 12 — Validity.

Ss. 8 to 12 of the Administration of Evacuee Property Act cannot be held to be ultra vires as being inconsistent with the fundamental rights guaranteed under Arts. 19 and 31 of the Constitution of India. The Administration of Evacuee Property Act does not also contravene Art. 14 of the Constitution. 53 Bom L R 821 and Misc. Application 198 of 1950 (Bom) Rel. on. **4 Sau L R 268 : AIR 1953 Sau 73 (74) (Pt B) (Pr 4) (DB).**

58. Debt laws.

——Art. 19 (1) (f) and (5) — U. P. Zamindars' Debt Reduction Act (15 of 1953), Ss. 3, 4, 7, 8 and 9 — Restrictions on right of creditor to realise full amount of compensation and rehabilitation grant —Right of creditor under Art. 19 (1) (f) not violated. AIR 1962 All 521 (534, 537, 541) (Pt D) (Prs 46, 62, 63, 65, 68, 80) (DB).

——Art 19 (1) (f) — U. P. Encumbered Estates Act (25 of 1934), S. 7 (2) — Validity — Not ultra vires

Art. 19 (1) (f) of the Constitution. See Debt Laws —U. P. Encumbered Estates Act (25 of 1934), S. 7 (2). 1962 All L J 573.

——Art. 19 (1) (f), (5) — Restrictions in the interest of general public—Hyderabad Jagirdars Debt Settlement Act (12 of 1952)—Validity.

Where the constitutionality of the Act is challenged under Art. 19 (1) (f), in order to succeed, it must be shown that the alleged infringement does not amount to reasonable restriction in the interest of the general public; for such restriction on freedom to hold property has been permitted by Cl (5) of Art. 19. A few hard cases do not make the provisions of a legislation, which is otherwise reasonable and in public interest, void on the ground of the guarantee contained in Art. 19 (1) (f) having been infringed thereby.

To justify the complaint, the limitations under the impugned enactment must be arbitrary, excessive and without any reasonable relation to the object it seeks to attain. If the limitations be found to have reasonable relation to the purpose in view, they are saved by Art. 19 (5).

Of course, however reasonably related the provisions of an Act may be to the object, it is obvious that it alone would not save them from being void unless the object be also in the 'interest of general public'. Though the object of affording relief to the class of former Jagirdars or their co sharers may not directly benefit the public, yet it indirectly served a public purpose. The Jagir Abolition Regulation, the Jagir Commutation Regulation and the impugned Act should be taken together and in considering the public interest the enactment should not be divorced from the earlier legislations.

For the chronic incapacity to pay the debt which the impugned Act sets out to relieve was in a large number of cases due to the passing of the two earlier Regulations, which could not but be held to have been in the interest of the general public. The inability having so arisen all the three Acts should be considered as inter-related. Their central object was land reform and the prevention of injurious consequences and hardships to which the reform might give rise.

It could not therefore be said that the impugned Act violated guarantee of freedom of properties on the ground that the various limitations in the Act had no reasonable relation to the object of the Act. Case law discussed. **ILR (1955) Hyd 510 : AIR 1955 Hyd 194 (196, 198, 199) (Pt A) (Prs 5, 15, 17, 18, 21, 22) (DB).**

● ——Art. 19 — S. 11A, Kerala Agriculturists Debt Relief Act (31 of 1958) is valid and does not infringe Art. 19—See Debt Laws — Kerala Agriculturists Debt Relief Act (31 of 1958), S. 11A. **AIR 1965 Ker 39 (FB).**

——Art. 19 – Debt Laws — Madras Agriculturists' Relief Act (4 of 1938) — Validity — See Debt Laws — Madras Agriculturists' Relief Act (4 of 1938). **AIR 1952 Mad 11 (DB).**

——Arts. 19 (1) (f), 13 (1), 14, 15—Debt Laws – Bihar Money Lenders (Regulation of Transaction) Act (1939), S. 4 — Validity — See Debt Laws — Bihar Money Lenders (Regulation of Transaction) Act (7 of 1939), S. 4. **AIR 1953 Pat 259.**

——Art. 19 (1) (f) — Rajasthan Jagirdars' Debt Reduction Act (9 of 1957), Ss. 3, 4, 6, 7, 8 – Validity — [Rajasthan Jagirdars' Debt Reduction Act (9 of 1957), Ss. 3, 4, 6, 7, 8].

So far as the reduction of the secured debt apportioned on the jagir land by 1/5th is concerned, it is a reasonable restriction imposed on the exercise of property rights by the creditors in public interest to save the Jagirdars from being ruined as a result of resumption of jagirs, which is saved under Art. 19 (5) of the Constitution. Similarly the provisions contained in S. 7 (1) and S. 8 appear to be reasonable restrictions imposed in public interest. But the provision contained in S. 7 (2) appears to be an excessive invasion on the rights of the creditors. A jagirdar may have considerable non Jagir property which can be taken in execution by an unsecured creditor in spite of the impugned Act without any restriction. It is wholly unfair to prevent a secured creditor from laying hands on this property in execution. Hence S. 7 (2) of the impugned Act is void in view of Art. 19 (1) (f) of the Constitution. **1959 Raj L W 466: ILR (1959) 9 Raj 547.**

——Art. 19(1)(f), (5)—Debt Laws—Travancore-Cochin Holdings (Stay of Execution Proceedings) Act (1950) —Preamble — Restrictions coming within Art. 19 (5) —Clause (1) (f) of Articles is not offended — See Debt Laws—Travancore-Cochin Holdings (Stay of Execution Proceedings) Act (8 of 1950), Preamble. **AIR 1953 T C 327.**

59. Clause (1) (f)—Illustrative examples—Valid restrictions.

● ——Art. 19 (1) (f) — Calcutta Municipal Act (33 of 1951), S. 548 (2) — Levy of Licence fee in 1948 on cinema house—Increase of fee from Rs. 400 to 6,000 per year in 1958 — Does not amount to expropriation —Levy not invalid as violating Art. 19 (1) (f) and (g) of Constitution—See Municipalities — Calcutta Municipal Act (33 of 1951), S. 548 (2). **AIR 1965 S C 1107.**

● ——Art. 19 (1) (f), (g) — Madras Essential Articles Control and Requisitioning (Temporary Powers) Act (29 of 1949), S. 3 (1)—Order under, by State Government increasing agreed tariff rate for supply of electricity to its consumers— Validity — Orders are reasonable and in the interests of general public.

The orders of the State Government increasing the agreed rate of tariff for the supply of electricity to its consumers have been notified by virtue of powers conferred on the State by S. 3 (1) of the Madras Essential Articles Control and Requisitioning (Temporary Powers) Act, 1949 and may therefore be treated as law for purposes of Art. 19 and assuming that the right to receive supply of electricity at the rates agreed is a right of the consumers which falls within Art. 19 (1) (f) and (g), the orders are reasonable and in the interest of the public and cannot be challenged as contravening Article 19 (1) (f) and (g) of the Constitution. V. S. Rice and Oil Mills v. State of Andhra Pradesh, (1965) 1 S C J 318 : (1965) 1 Andh W R (S C) 31 : (1965) 1 Mad L J (SC) 31 : (1965) 2 S C W R 157 : (1964) 7 S C R 456:AIR 1964 S C 1781 (1787, 1788) (Pt E) (Pr 21).

● ——Arts. 19, 23 — Rule 3.26 (d), Punjab Civil Services Rules (1959) — Validity — Does not contravene Art. 19 or Art. 23.

Per Raghubar Dayal and Mudholkar, JJ. — Rule 3.26 (d) of the Punjab Civil Services Rules does not infringe the fundamental rights of the Government servant as a citizen of India under Art. 19 and Art. 23 of the Constitution. Rule 3.26 (d) simply provides that the service which the Government servant took up voluntarily and on conditions laid down by the relevant rules would continue in certain circumstances even though the Goverment servant has attained the age of superannuation. Further, any restriction the rule imposes on any alleged fundamental right under Cls. (f) and (g) of Art. 19 is a reasonable restriction in the interest of the general public. The Government servant is not forced to do any work. Even if it be assumed that the retention in

service of the Government servant, in view of the provisions of R. 3.26 (d), can come within the expression 'forced labour' this rule would be valid in view of Art. 23 (2) which provides that nothing in that article shall prevent the State from imposing compulsory service for public purposes. S. Partap Singh v. State of Punjab. (1965) 1 S C A 259 : AIR 1964 S C 72 (100) (Pt R) (Pr 70).

● ——Art. 19 (5) — Finance Act (1951) S. 7 (2) — Constitutionality — Levy of excise duty with retrospective effect — Not unconstitutional on ground of violation of Art. 19 (1) (f) read with Art. 19 (5) of Constitution — Not an unreasonable restraint on right to hold property—See Finance Act (1951), S. 7 (2). AIR 1962 S C 1006.

● ——Art. 19 (1) (f) — Hyderabad Atiyat Enquiries Act (10 of 1952), S. 13 (2) — In view of special character of property dealt with, validity of S. 13 (2) cannot be challenged on the ground that it contravenes Art. 19 (1) (f). Sikander Jehan Begum v. Andhra-Pradesh State Government, 1962 (2) S C R 226 : (1964) 1 S C J 222 : AIR 1962 S C 996 (1002) (Pt B) (Pr 21).

● ——Art 19 (1) (f)—Tibbia College Act (5 of 1952), S. 9 (1)—Validity — Dissolution of old society and vesting of its property in new society created by Act —Right of old Board to property of society — Nature of — Not a right to dispose of property within Art. 19 (1) (f)—Section does not infringe Art. 19 (1) (f) of the Constitution — See Tibbia College Act (5 of 1952), S. 9 (1). AIR 1962 S C 458.

● ——Art. 19 (1) (f) and (g) Cls. (5) and (6)—Reasonable restrictions on fundamental rights under Art. 19 —Test of reasonableness—'Interests of the general public'—What amounts to—Rule of evidence casting burden of proof upon person from whom specified goods have been seized, to establish that they are not smuggled—Whether violates Art. 19 (1) (f) and (g) and is not saved by Cls. (5) and (6)—Sea Customs Act (1878), S. 178-A — Not constitutionally invalid. AIR 1959 Mad 142, Reversed; AIR 1961 Bom 227, Overruled.

The test for ascertaining the 'reasonableness' postulated of the restrictions in Cls. (2) to (6) of Art. 19, should be applied to each individual statute impugned, the nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed and the extent and urgency of the evil sought to be remedied thereby should all enter into the judicial verdict. The reasonableness of the restraint would have to be judged by the magnitude of the evil which it is the purpose of the restraint to curb or eliminate.

Adopting the test to S. 178-A, Sea Customs Act, which operates to cast the burden of proof on the person from whose possession gold is seized to establish that the goods are not smuggled, the impugned legislation (S. 178-A) cannot be said to have overstepped the limits of reasonableness in imposing restraint on the freedom guaranteed by Art. 19 (1) (f) and (g) and the provision is not constitutionally invalid on that ground. AIR 1952 S C 196, AIR 1961 S C 418 and AIR 1961 S C 1559, Applied. AIR 1959 Mad 142, Reversed. A I R 1960 Punj 664 and ILR (1959) Bom 1771, Affirmed; Decision of K. T. Desai, J., in AIR 1961 Bom 227, Overruled; (1948) 1 All E R 769, Rel. on. Collector of Customs, Madras v. Nathella Sampathu, (1962) 1 S C J 68 : (1962) Mad L J (Cr) 1 : (1962) 1 Mad L J (S C) 43 : (1962) 1 Andh W R (SC) 43 : 1962 (1) Cr L J 364 : (1962) 3 S C R 786 : AIR 1962 S C 316 (332, 333, 334) (Pt A) (Prs 35, 36).

● ——Art. 19 (1) (f) and (g), (5) and (6)—Notification issued under S. 15 of Forward Contracts (Regulation) Act, 1952—Rights under subsisting contract affected by—Power given under S. 15 is valid — Restrictions imposed by S. 15 are reasonable and pass the tests for a valid law. AIR 1952 S C 196 Rel. on. Raghubar Dayal Jai Parkash v. Union of India, (1962) 3 S C R 547, (1962) 2 S C J 445 : AIR 1962 S C 263 (273, 274) (Pt E) (Prs 25, 26).

● ——Art. 19 (1) (f) — Income tax Act (1922), S. 16 (3) (a) (i) and (ii) — Validity — Test of reasonableness of restriction—S. 16 (3) amounts to reasonable restriction on rights under Art 19 (1) (f) and 19 (1) (g). See Income-tax Act (1922), S. 16 (3) (a) (i). AIR 1962 S C 123.

● ——Art. 19 (1) (f) — Slum Areas (Improvement and Clearance) Act (1956), S. 19—Not unconstitutional as being violative of Art. 19 (1) (f) of Constitution — Restrictions imposed are reasonable and in interest of general public — Constitution of India, Art 19 (1) (f) and (5) — Tests of reasonableness indicated. See Slum Areas (Improvement and Clearance) Act (1956), S 19. AIR 1961 S C 1602.

● ——Art. 19 (1) (g)—Iron and Steel Control of Production and Distribution) Order (1941), Cl. 11B—Notification under D/- 10-12-1949—Not invalid on ground of violation of Art. 19 (1) (f) and (g) of the Constitution—See Iron and Steel (Control of Production and Distribution) Order (1941), Cl. 11B. A I R 1960 S C 475.

● ——Art. 19 (5)—Bihar Mica Act (10 of 1948), S. 25 (1) (c) — Validity of— Amounts to reasonable restriction within Arts. 19 (5) and 19 (6). See Bihar Mica Act (10 of 1948), S. 25 (1) (c). AIR 1960 S C 468.

● ——Art. 19 (1) (f) and (g) and (5)—Electricity Act, S. 28 (1)—Validity— Electricty Act (1910), S 28 (1) (as it stood prior to its amendment by Act 32 of 1959).

The limitations imposed by S. 28 (1) quite clearly are reasonable restrictions and have been imposed in the interest of the general public within the meaning of Art. 19 (5) of the Constitution — Such limitations are generally imposed on the business of supplying energy and their reasonableness cannot be seriously challenged. Therefore the vires of S. 28 cannot be successfully challenged on the ground that it offends Art. 19 (1) (f) or (g). Okara Electric Supply Co. Ltd. v. State of Punjab, 1960 S C J 502 : (1960) 2 S C R 239 : AIR 1960 S C 284 (289) (Pt B) (Pr 18).

● ——Art. 19 (1) (f) — Sugar Export Promotion Act (1958), S. 1—Validity of the Act — Does not infringe Arts. 19 (1) (f), 19 (1) (g) and 31 of Constitution — Amounts to reasonable restriction. See Sugar Export Promotion Act (1958), S. 1. AIR 1959 S C 1124.

● ——Art. 19 (1) (f) and (g)—Validity of Cl. 3 of the Cotton Textiles (Control of Movement) Order, 1948 —Does not contravene Art. 19 (1) (f) and (g). See Cotton Textiles (Control of Movement) Order (1948) Cl. 3. AIR 1954 S C 465.

——Arts. 19 (1) (f) and 19 (5) — U. P. Imposition of Ceiling on Land Holdings Act (1 of 1961) — Act imposes reasonable restrictions in interest of public and is valid. See U. P. Imposition of Ceiling on Land Holdings Act (1 of 1961). AIR 1965 All 175 (DB).

——Art. 19 (1) (f) — Electricity Act (1910), S. 6 not created any option; it merely regulates procedure and manner of exercise of option—S. 6 merely empowered the State Electricity Board to exercise already existing option and not placed any burden or restriction on right of licensee — Held, S. 6 did not violate Arts. 14 or 19 (1) (f) or 31, and was not invalid. 1965 All L J 187.

——Arts. 19 (1) (f) and 48 — U. P. Kans Eradication Act (22 of 1951), Ss. 3, 4, 6 and 7 — Act is valid — It does not abridge rights of cultivators— Provisions are not arbitrary — Person who has taken benefit

cannot refuse payment of costs. **1961 All W R (H C) 254 : 1961 All L J 370.**

——Arts. 19 (1) (f) and 226 — Intermediate Education Act (U P. Act 2 of 1921) Ss 13, 14 and 15 — Regulations under S 15, Chap 6, Para 1 (1) - Students using unfair means at examination — Cancellation of results by Examination Committee in ex parte proceedings - Failure to provide opportunity of being heard — Effect on order of cancellation — Penalty imposed held within power of committee — Infringement of student's rights under Art 19 (1 (f) — See U P Intermediate Education Act (2 of 1921), S. 13. **AIR 1956 All 539.**

——Art. 19 (1 (f) — Applicability — Order refusing to allow certain construction in contravention of a scheme — Validity — Order held valid being reasonable limitation on right under Art. 19 (1 (f) See Municipalities — U. P. Town Improvement Act (8 of 1919) S. 29 (1) (b). **AIR 1954 All 520.**

——Art. 19 (1) (f) and (g), (5) and (6) — Andhra Pradesh Notification, G. O. M. S. No 1576, Revenue, dated 5th September 1962 — Restrictions imposed by Notification in respect of Chloral Hydrate are reasonable and in the interest of general public — Notification cannot be challenged as violative of rights under Art 19 (1) (f) and (g) **(1964) (1) Andh L T 285 : ILR (1964) Andh Pra 1092 : A I R 1964 Andh Pra 430 (433) (Pt D) (Pr 13) (DB).**

——Art. 19 (1 (f) and 19 (5)—Sanction for construction of building accorded with certain conditions and restriction —Fundamental rights not infringed— Restrictions held reasonable in public interest. **A I R 1961 Andh Pra 489 (491) (Pt ( ) (Pr 5).**

●——Art. 19 (1) (f), 19 (5)— S. 99A, Criminal P. C., has no impact on Art 19 (1) f)—Assuming it has such effect it is protected by Art. 19 (5) — (Per Special Bench). N. Veerabrahman v. State of Andh-Pra, **1959 Andh L T 575 : (1959) 2 Andh W R 269 : 1959 Mad L J (Cri) 703 : 1959 Cri L J 1280 : A I R 1959 Andh Pra 572 (576, 583) (Pt B) (Prs 14, 52) (SB).**

[Overruled on another point in AIR 1962 S C 1662.]

——Art. 19 (1) (f), (g) — Cotton Textiles (Control) Order (1948), Cl. 21 (3) (c)— Restrictions imposed by are not unreasonable. See Cotton Textiles (Control) Order (1948), Cl. 21 (3) (c). **AIR 1960 Bom 453 (DB).**

——Art. 19 (6) — Essential Supplies (Temporary Powers) Act (1946), S. 3 (1) — Validity - Restrictions imposed by S 3 (1) on rights conferred by Art. 19 (1) (f) or (g) are reasonable restrictions in public interest. See Essential Supplies (Temporary Powers) Act (1946) S. 3 (1). **AIR 1953 Cal 548.**

——Art. 19 (1) (f), (g), (5) (6) — **(West Bengal Food Grains (Intensive Procurement) Order (1952).)**

The provisions of the West Bengal Food Grains (Intensive Procurement) Order are reasonable and in the public interest. A I R 1952 Pat 220 Rel. on **57 Cal W N 397 : I L R (1955) 1 Cal 401 : A I R 1953 Cal 548 (556, 557) (Pt G) (Pr 37).**

——Art. 19 (1) (f) and (g)—Essential Supplies Act (24 of 1946), S 3 (f) (i) and (j) and S. 4 — Validity — Do not impose unreasonable restrictions on rights guaranteed by Art. 19 (1) (f) and (g) of the Constitution and are not ultra vires. **55 Cal W N 686 : AIR 1952 Cal 502 (505) (Pt A) (Pr 33).**

——Art. 19 (1) (f) — Conditions in S. 18 (a) of Arms Act (1878) are reasonable restrictions on rights of citizen. See Arms Act (1878), S. 18 (a). **I L R (1965) Guj 571.**

——Arts. 19 (1) (f) and 19 (1) (g) — Constitutional validity of R. 9 (2) of Central Excise Rules 1944 — Provision for confiscaring goods without providing machinery and procedure — Restriction still not unreasonable as right to hold goods is affected only when demand is made under R. 9 (2) and right to object has been provided under R. 33. See Central Excises and Salt Act (1944), S. 33. **AIR 1965 Guj 215 (DB).**

——Art. 19 (1) (f) and (5) —Customary right of pasturage Villagers claiming right to graze their cattle on landlord's land during kharif season without their permission— User for period of 30 years—Acquisition of right—Reasonableness of right — Such right has not become void after coming into force of Constitution - Restrictions imposed on landlord's fundamental right under Art. 19 (1) (f) are reasonable and in interest of general public. See Easements Act (1882), S. 18. **AIR 1962 Him Pra 28.**

● ——Art. 19 (1) (f) and (7) (added by the Constitution (Application to Jammu and Kashmir) Order, 1954) — Jammu and Kashmir Right to Prior Purchase Act (1993), Ss. 14 and 15 — Reasonableness of restrictions is not justiciable — Ss. 14 and 15 are not ultra vires.

In the State of Jammu and Kashmir, Cl. (7) added to Art. 19 of the Constitution under Para. 4 (d) (iii) of the Constitution (Application to Jammu and Kashmir) Order, 1954, specially lays down that the words "reasonable restrictions" occurring in Cl. (5) of Art. 19 shall be construed as meaning such restrictions as the appropriate Legislature deems reasonable. Hence, if the Legislature has considered the restrictions to be reasonable keeping in view the fact that they are for the benefit of the public in general it is not open to the Courts in the State of Jammu and Kashmir to examine those restrictions in order to find out whether they are reasonable or not. The Constitution under Cl. (7) has itself ousted the jurisdiction of the Courts to examine the reasonableness of the restrictions which have been imposed by appropriate Legislature The provisions, therefore, of Ss 14 and 15 of the Right of Prior Purchase Act, 1993, do not contravene Art. 19 (1) (f) read with the new Cl (7) added to the Article under paragraph 4 (d) (iii) of the Constitution (Application to Jammu and Kashmir) Order, 1954. AIR 1954 Hyd 161; AIR 1953 Punj 20; AIR 1954 Punj 55, Ref. Galodhu v. Nanak Chand, **AIR 1955 J & K 25 (26) (Prs 4, 5) (FB).**

[This case was held **Overruled** by AIR 1982 S C 1476 as interpreted in AIR 1965 J & K 62 (FB)].

——Art. 19 (1) (f) — Banking Companies Act (1949), S. 38 (3) (b) (iii)—Provisions of, though affect fundamental rights granted under Art. 19 (1) (f) and (g) of the Constitution are saved by Cls. (5) and (6) of the Article. See Banking Companies Act (1949), S. 38 (3) (b) (iii). **AIR 1961 Ker 268.**

——Arts. 19 (1) (f) and 19 (5) — Scope—Kerala Land Utilisation Order (1958), Cl. 3—Validity—Not an unreasonable restriction on fundamental right under Art. 19 (1) (f). See Kerala Land Utilisation Order 1958, Cl. 4A. **1960 Ker L T 1335.**

——Arts. 19 (1) (f), 19 (1) (g) — Forest Act (1927), S. 41—Rules under, published on 23-6-1961—Rr. 3, 4 —Validity—Rules requiring permit for transit of timber — When valid — Rules held not contravening Art. 19 (1) (f) or 19 (1) (g) due to amplitude of discretionary powers vested in Government officers. AIR 1954 S C 465 and AIR 1961 S C 1602, Rel. on **1965 M P L J 541 : 1965 Jab L J 1017 : AIR 1965 Madh Pra 211 (213, 214, 216) (Pt A) (Prs 7, 21 to 23) (DB).**

——Arts. 19 (1) (f) and 19 (5) — Opium Act (1878), S. 11 (d) (Madhya Pradesh)—Section though it is hit by Cl. (f) of the Article is saved by Cl. (5) and is constitutionally valid.

Clause (d) of S. 11, Opium Act, as it stands amended in the State of M. P. is no doubt directly hit by Art. 19 (1) (f) of the Constitution inasmuch as it leaves no

option in the matter of confiscation of any conveyance not necessarily of an accused but also belonging to an innocent person but it is saved by Cl. (5) of Art. 19 as it imposes reasonable restriction on a person's fundamental right to property in the interests of the general public. AIR 960 S C 1080 and AIR 1951 S C 118 and AIR 1952 S C 196 and AIR 1962 S C 316, Rel. on. The object of the Opium Act is clearly to regulate the cultivation of the poppy, the manufacture of opium, and the sale and distribution of opium in the interest of public health and public morals. The fact that Cl. (d) of S. 11 covers the confiscation of conveyance even of an innocent person will not make it constitutionally invalid. If the cases of confiscation of vehicles belonging to a person other than the accused person were to be excluded from the operation of S. 11 (d), its effectiveness would be greatly reduced, and a door would open out for easy evasion of confiscation of vehicles and other property belonging to the accused persons by just setting up third persons to claim title to the property. The provision providing for confiscation of property belonging to innocent persons will not be unconstitutional or unreasonable where confiscation is necessary to ensure the effective enforcement of the law. 1964 M P L J 845 : 1964 Jab L J 546 : 1965 (1) Cri L J 182 : AIR 1965 Madh Pra 36 (37, 38) (Prs 4 to 7) (DB).

——Art. 19 (1) (f) – M. P. Minimum Wages Fixation Act (16 of 1962), Ss. 3, 4 — Validity — Do not impose unreasonable restrictions. See M. P. Minimum Wages Fixation Act (16 of 1962), S. 3. AIR 1964 Madh Pra 45 (DB).

——Art. 19 (1) (f) — M. P. Sugarcane (Regulation of Supply and Purchases) Act, S. 21—State is competent to impose fee under S. 21 – Section does not contravene Art. 19 (1) (f) — Delegation of power to frame rules under the Act is not bad on the ground of being excessive. See M. P. Sugarcane (Regulation of Supply and Purchases) Act (1959), S. 21. 1964 M P L J (Notes) 1.

——Art 19 (1) (f) – M B Municipalities Act, S. 112 (2)—Validity — If reasonable restriction. See Municipalities – M. B. Municipalities Act (1 of 1954), S. 112 (2). 1960 M P L J 949.

——Art. 19 (1) (f) and (g) — Printing and Publishing of School text books by Government – Right of Private Publishers under Art. 19 (1) (f) and (g) not affected. 1958 MP L J (Notes) 132 : 1959 M P L J 525 : 1959 M P C 485 : 1959 Jab L J 498 : AIR 1959 Madh Pra 183 (186) (Pt B) (Pr 14) (DB).

● ——Art 19 (1) (f) and (g) – Iron and Steel (Control of Production and Distribution) Order (1941) Cl. 11-B – Validity – Cl. 11 B of the Order is ultra vires as it amounts to unreasonable restriction on fundamental rights under Art. 19 (1) (f) and (g). State v. Haidarali, 1957 Jab L J 658 : 1957 M P C 473 : 1957 M P L J 549 : 1957 Cr L J 1266 : AIR 1957 Madh Pra 179 (191) (Pt I) (Prs 45, 46) (FB).

——Art. 19 (5), (1) (f)—Scope—Restriction imposed by S. 87 of Madras Act 19 of 1951 — Is reasonable. (1957) 2 Mad L J 617 : (1957) Mad L J (Cr) 864 : 1958 Cr L J 523 : AIR 1958 Mad 147 (148) (Pt C) (Pr 8).

——Art. 19 (5)—S. 33, Laccadive Island and Minicoy Regulation (1912) is saved by Art. 19 (5), Constitution of India. See Laccadive Island and Minicoy Regulation (1 of 1912), S. 33. AIR 1957 Mad 433.

——Art. 19 (1) (f)—S. 153-B, Companies Act (1913)—Validity—(Companies Act (1913), Ss. 2 (16), 153-B) – (Companies Act (1956), S. 395).

No person can claim a right created by a statute and at the same time insist that he should be able to exercise that right free from and untrammelled by the limitations and conditions imposed by the statute. What S. 153-B of the Companies Act does is only to impose a limitation on the untrammelled power of transfer of shares. It may be that the persons who are in a minority are farsighted, but, if they cannot convert the majority to their point of view and the deadlock persists, a way out must be provided and that is what S. 153-B of the Act seeks to do.

Obiter — The limitation imposed by S. 153 B of the Act is a reasonable one and also in the public interest. S. 153-B is not ultra vires the Constitution. 70 Mad L W 157 : (1957) 27 Com Cas 175 : I L R (1957) Mad 614 : AIR 1957 Mad 341 (342, 343, 344, 345) (Pt A) (Prs 6, 9, 13, 14).

——Art. 19 (1) (f) and (5)—Customary law prohibiting individuals from holding land in excess of fixed extent – Validity—Government resolution based on such law—Validity—(Obiter.)

A customary law of the Manipur State that one could not hold more than ten parts of land is not ultra vires. AIR 1957 Manipur 25 (29) (Pt B) (Pr 22).

——Art. 19 (1) (f) — C. P and States Land Tenure Order (1949), Cls. 22 and 23 (1) – Cl. 23 (1) has not become void. See C. P. and States Land Tenure Order (1949), Cl. 22. A I R 1953 Nag 51.

——Art. 19 (1) (f)—Berar Land Revenue Code (1928), Ss. 73 (1), Proviso and 73-A (4) enacted by Berar Land Revenue Code (Amendment) Act (10 of 1948) — Latter read with former is not ultra vires. See Berar Land Revenue Code (1928), S. 73 (1), Proviso A I R 1953 Nag 40 (DB).

——Art 19 (5), (1) (f) – Nayagarh Land Transfer Rules, R. 3 — Validity of the Rule — Restriction imposed on transfer by the rule is for the good of general public and also reasonable — Rule therefore does not offend Art. 19 (1)(f). ILR (1963) Cut 714 : A I R 1964 Orissa 49 (50) (Prs 7, 8) (DB).

—Arts. 19 (1) (f) and (g) and 301 and 305—Orissa Timber and Forest Produce Transit Rules (1958), Rr. 4 and 6 – Constitutionality—Rules do not offend Art. 19 (1) (f) and (g) or Art 301. ILR (1963) Cut 59 : 29 Cut L T 150 : AIR 1963 Orissa 24 (26, 27) (Pt C) (Pr 8) (DB).

——Art 19 (1) (f), (6) — Notification No 41668 S. T. dated 15th November, 1950 of the Government of Orissa in the Department of Supply and Transport is not invalid A I R 1952 S C 196, Foll. 1953 Cr L J 544 : AIR 1953 Orissa 53 (55) (Pt B) (Pr 8).

—— Arts. 19, 245 — Orissa Essential Articles Control and Requisitioning (Temporary Powers) Act (1 of 1947), Ss 2 (a), 3 and 8 Orissa Kendu Leaves (Control and Distribution) Order 1949, Cl. 7 – Provisions are not unconstitutional — The restrictions imposed by the order are reasonable and in public interests and are saved by Art. 19 (5) and (6) — Government of India Act (1935), Ss. 107 (2), 297; Schedule 7 List II, items 27 and 29. 18 Cut L T 234 : 1952 Cri L J 1354 : A I R 1952 Orissa 260 (262, 263 264, 266) (Pt A) (Prs 6, 7, 9, 10, 11, 17, 19, 20, 21) (DB).

——Arts. 19 (1) (f), 19 (5) — Sonthal Parganas Settlement Regulation (3 of 1872), S. 27 — Section is not ultra vires. See Sonthal Parganas Settlement Regulation (3 of 1872), S. 27. A I R 1961 Pat 276.

——Art. 19 (5) — Cantonments Act, if violates Art. 19 (5)—Section 126 of the Cantonments Act does nothing beyond imposing reasonable restrictions upon the fundamental right of the petitioner to hold his property. ILR 36 Pat 1264 : A I R 1958 Pat 71 (74) (Pt E) (Pr 5) (DB).

——Art. 19 (1) (f) — Reasonable restrictions—Bihar Public Irrigation and Drainage Works Act (10 of 1947), S. 5 A — Absence of provisions for service of notice and hearing objections—Validity of section.

The provisions of S. 5-A are to be applied only in cases of emergency and it is not unreasonable for the Legislature to provide that the State Government may dispense with the service of the notice or hearing objections in cases of emergency. Moreover, the publication of the proposed scheme of work by the State Government in the prescribed manner is itself tantamount to a notice to the parties affected. Section 5-A therefore does not violate the guarantee under Art. 19 (1) (f), nor is the restriction imposed under the section on the right of property unreasonable. **1956 Pat L R 402 : 1957 B L J R 348 : A I R 1956 Pat 493 (495) (Pt A) (Pr 5) (DB).**

——Art. 19 (5)—Mines and Minerals (Regulation and Development) Act (1948), S. 5—Rules under—Mineral Concession Rules, Rr. 6, 7, 41, 47, 49, 52 and 54 — Validity — Rules not unconstitutional as restrictions imposed by them are not unreasonable within Art. 19 (5). See Mines and Mineral (Regulation and Development) Act (1948), S. 5. **AIR 1954 Pat 340 (DB).**

——Art. 19 (1) (f) & (g) & (5) — Bihar Agriculturists Levy Order (1950)—Validity.

The substantive provision in the Bihar Agriculturists Levy Order, 1950, which imposes on a person a restriction in the exercise of his fundamental right to acquire, hold and dispose of property is contained in clause (5) of the order, which requires him to deliver, on demand, such quantity of food-grains as may be specified in the order making the demand. It cannot, however, be said that that was an unreasonable restriction, or a restriction which was not imposed in the interests of the general public. It cannot be said that if under this order arbitrary and unreasonable action may conceivably be taken, the order must, on that ground, be held to be an invalid order. There is some risk of abuse when wide power is committed to a large body of men, but the constitutional validity of a law cannot be contested on the ground of such apprehension. It is, therefore, impossible to hold that either the substantive or procedural part of the Bihar Agriculturists levy order is unreasonable, that is, not necessary or appropriate for the accomplishment of the object aimed at. A I R 1950 S C 211, A I R 1950 Bom 363, Disting. Mohammad Anzar v. State of Bihar, **1952 Cri L J 710 : 31 Pat 203 : A I R 1952 Pat 220 (223, 229) (Pt B) (Prs 7, 23) (SB).**

——Art. 19 (1) (f)—Central Excise Rules (1944), R. 8—Validity—No excessive delegation of power—Does not contravene Art. 14 or 19 (1) (f) of the Constitution. See Central Excises and Salt Act (1944), S. 37 (2) (xvii). **A I R 1964 Punj 192 (DB).**

——Art. 19—Employees' Provident Funds Act (1952), S. 5—S. 5 is not ultra vires. See Ibid, Art. 14. **A I R 1964 Punj 85 (DB).**

——Art. 19 (1) (f) — Reasonable restriction — Employees' Provident Funds Act (1952), S. 6 — Restriction imposed by Employees' Provident Funds Act on employer is not unreasonable.

The Employees' Provident Funds Act has been enacted in the public interest, and the restriction placed by it is in no manner unreasonable :for all it demands is that a certain contribution, the maximum limit of which is contained in the Act, should be made by the employers for the benefit of the employees. The legislation is essentially calculated to harmonise the relations between the employer and the employee in certain industries, and in the modern context this can in no sense be called unreasonable. **(1962) 2 Lab L J 604 : 64 Punj L R 524 : (1962-63) 22 F J R 278 : ILR (1962) 2 Punj 456 : (1962) 2 Lab L J 604 : 1962 Cur L J 256 : A I R 1962 Punj 507 (510) (Pt B) (Pr 7) (DB).**

——Art. 19 (1) (f), (g) — Sea Customs Act (1878), S. 178-A—Validity.

The right guaranteed by Art. 19 (1) (f) and (g) is in respect of property which has been lawfully acquired. Where the Legislature imposes a certain kind of restriction upon smuggled goods which obviously could not have been acquired lawfully, no fundamental right can be said to have been infringed. Hence S. 178-A of the Sea Customs Act by placing the burden of proving his innocence on the accused in respect of goods believed to be smuggled cannot be said to have contravened Art. 19 (1) (f) and (g). A I R 1961 Bom 227, Diss. from., 1957 S C J 828 : (1957) M L J (Cr) 765; A I R 1957 S C 877, Foll. **61 Punj L R 937 : 1960 Cri L J 1659 : A I R 1960 Punj 664 (665, 666) (Pt B) (Pr 5) (DB).**

——Art. 19 (1) (f), (g) and (5) and (6) — Sea Customs Act (1878), S. 178-A (1)—Validity.

Section 178-A (1) of the Sea Customs Act is not violative of Art. 19 (1) (f) and (g) of the Constitution. The impugned provisions are by no means too drastic or unnecessarily harsh and they do not :override the object to achieve which the legislative measure in question has been enacted. A I R 1960 Punj 664 and Criminal Revn. No. 1566 of 1958 (Punj) Foll.; **A I R** 1959 Mad 142, Diss. from. **62 Punj L R 549 : 1960 Cri L J 1236 : A I R 1960 Punj 488 (490) (Pt A) (Prs 8, 9) (DB).**

——Arts. 19 (1) (f), (g), 31 (2)—Insurance Act (1938), Ss. 52A to 52G—Validity—Do not abridge the rights under Art. 19 and are not void — See Insurance Act (1938), S. 52A. **AIR 1952 Punj 9 (DB).**

——Arts. 19 and 15 — Ancestral property in possession of male proprietor in Punjab—Power to dispose by alienation — Restrictions on, whether infringe Arts. 19 (1) (f) and 15—Custom (Punjab).

The rights of a male proprietor in the Punjab governed by custom in ancestral land are that he holds the land as a full owner but in regard to his powers of alienation there is in his male descendants or in the collaterals connected with him from the common ancestor from whom the land has descended, the right to object to the alienation if it is not with their consent or is not for necessity. The reversioners have a residuary power vested in them of controlling the alienations made by a proprietor. Such being the right of a male proprietor it cannot be said that he has not the right to dispose of his property and if the alienation is challenged by one who has the right to challenge, it is an interference with the right guaranteed by Art.19 (1) (f) of the Constitution. 107 P R 1887; 73 P R 1895 (FB), Ref.

The owner of ancestral land, which has come into the hands of a male proprietor, has not the whole and sole interest in the property or power to dispose of it as this is the nature of ownership in custom and is attached to ancestral land, and it cannot be said that this is an unreasonable restriction on the exercise of any rights even if it were held that the matter falls within Art 19 (1) (f), as is clear from Art. 19 (5).

Dicta : "It was also submitted that the true rule is that the limitation is not on the man but on the ancestral property. Whichever way we may look at it, whether it is the nature of ownership under custom or view it as a limitation which attaches to the land itself it is not an infringement of any fundamental right."

Further, whoever lives in the Punjab whether he is a Jat or Rajput or anybody and whatever be his race, he has these limitations imposed upon his power of alienation. The estate which he has is of a limited nature. By the very nature of the estate that he inherits from his ancestors the power of alienation is a limited one and there is no infringement

of Article 15 either. **A I R 1951 Punj 445 (446) (Prs 5, 6, 7, 8).**

——**Art. 19 (1) (f)** – Scope – Sea Customs Act, S. 178A – Validity—Section is not hit by Art. 19 (1) (f) and (g) so far as gold is concerned. See Sea Customs Act (1878), S. 178A. **1961 (2) Cr L J 406 (Raj).**

60. Clause (1) (f)—Illustrative examples — Invalid restrictions.

● ——**Art. 19 (1) (f)**—Bhopal Reclamation and Development of Lands (Eradication of Kans) Act (13 of 1954), Ss. 4 (1) and (4)—Validity—Provisions violate Art. 19 (1) (f) of the Constitution and are invalid. See Bhopal Reclamation and Development of Lands (Eradication of Kans) Act (13 of 1954), S. 4 (1). **AIR 1965 S C 124.**

——**Art. 19 (1) (f)** — Travancore-Cochin Land Tax Act (1955) as amended by Act (10 of 1957), Ss. 4, 5A and 7—Constitutionality — Act is confiscatory, discriminatory and imposes unreasonable restrictions on holding property — Ss. 4 and 7 offend Art. 14 and Ss. 4, 5A and 7 offend Art. 19 (1) (f)—Whole Act is invalid as its main provisions are unconstitutional. See Travancore-Cochin Land Tax Act (15 of 1955) as amended by Act (10 of 1957), S. 4. **AIR 1961 S C 552.**

● ——**Art. 19 (1) (f)** — Madras Marumakkathayam (Removal of Doubts) Act (32 of 1955) — Validity—Act infringes Art. 19 (1) (f) and is not saved by Art. 19 (5). Kochuni v. States of Madras & Kerala, **A I R 1960 S C 1080 (1104) (Pt N) (Pr 53).**

——**Art. 19 (1) (f)** — Forest Act (1927), S. 38-B — Notification, dated 11-3-61 prohibiting all acts mentioned in Cls (a) to (e) — No time limit for prohibition fixed — Notification held ultra vires, Art. 19 (1) (f) of Constitution of India. See Forest Act (1927), S. 38-B as amended by Forest (U. P. Amendment) Act (1956). **AIR 1963 All 480 (DB).**

——**Art. 19 (1) (f)—Scope—Refusal of permission by District Magistrate to hold cattle market on petitioner's own land — Legality—Quashing of—Certiorari—Police Regulations, Para. 183.**

The District Magistrate possesses no power to grant or refuse permission to hold a market. An order passed by the District Magistrate refusing permission to the petitioner to hold a cattle market on a portion of his plot amounts to an unwarranted interference with his right to use his own land and can be quashed by a writ of certiorari. **1960 All W R (H C) 563 : 1960 All Cr R 358 : 1960 All L J 761.**

—— **Art. 19 (1) (f)** — Andhra Pradesh Land Revenue (Assessment and Cess Revision) Act (22 of 1962), Ss. 3 to 5—As amended by Andhra Act (23 of 1962), Ss. 3 to 5 are unconstitutional as offending Arts. 14 and 19 (1) (f) of the Constitution. See Andhra Pradesh Land Revenue (Assessment and Cess Revision) Act (22 of 1962), S 3. **(1965) 2 Andh L T 297.**

● ——**Arts. 19 (1) (f) and (1) (g)**—Search of premises of person and seizure of documents, books, etc., or property belonging to him — Constitute invasions of fundamental rights—Income-tax Act (1922), S. 37 (2)—Validity—Section is unconstitutional being violative of Art. 19 (1) (g)—Section does not amount to reasonable restriction within Art. 19 (6)—Per Majority.

Search of the premises of a person and seizure of documents, books, etc., or any property belonging to that person constitute invasions of his fundamental rights not only under Art 19 (1) (g) but also under Art 19 (1) (f), although temporary seizure of property as the result of a search in execution of a warrant issued by a Magistrate in exercise of his judicial power vested in him under law, may be regarded in the particular circumstances of the case as amounting to a reasonable restriction on the fundamental right under Art. 19 (1) (f). Such search of the premises and seizure of various account books, documents, etc., necessary and useful for carrying on the trade or business of a person, undoubtedly constitute invasions of the fundamental right to practise any profession, or to carry on any occupation, trade or business, guaranteed under Art. 19 (1) (g) of the Constitution particularly when any such invasion is not the result of or effected during the enforcement of a judicial process or warrant issued by a Magistrate under the Cr. P. Code.

Majority view : S. 37 (2), Income-tax Act (1892), is unconstitutional and invalid by reason of its being violative of Art. 19 (1) (g) of the Constitution and it cannot be saved on the ground that it could be regarded as amounting to a reasonable restriction falling under Art. 19 (6) of the Constitution. A I R 1961 Cal 578, Diss.

Per Mehrotra, C. J., Contra :

Having regard to the scheme of the Act and the internal evidence in S 37 (2) itself, it cannot be said that the power conferred on the Income-tax authorities is uncanalised and there is no guidance and is thus arbitrary. It cannot be said that the restriction on the assessee is in its very nature unreasonable, and not in the public interest. Hence, S. 37 (2) cannot be struck down as being unreasonable restriction : Senairam Doongarmal Agency (P.) Ltd. v. K. E. Johnson, **(1964) 52 I T R 637 : AIR 1964 Assam 1 (19, 27, 38, 39, 40, 47, 50, 51) (Pt B) (Prs 72, 107, 170, 176, 197, 204, 205) (FB).**

——Arr. 19—Section 167 (8) Sea Customs Act (1878), would offend against Art. 19 (1) (f) of the Constitution if it were held that the burden of showing lawful importation was upon the person whose goods were sought to be conflscated even though the special statutory exception in S. 178A, Sea Customs Act 1878 was not attracted. A I R 1962 S C 316, Rel. on. **68 Cal W N 383 : 1965 (2) Cri L J 477 : A I R 1965 Cal 507 (516) (Pr 44) (DB).**

——**Art. 19 (1) (f)**—Validity—S. 6, Gift Tax Act (1958)—Provisions put unreasonable restriction on donee's right to acquire and hold property — Violates Art. 19 (1) (f). See Gift Tax Act (1958), S. 6. **A I R 1963 Cal 127.**

——**Art. 19**—Bengal Land Revenue Sales (West Bengal Amendment) Act, (7 of 1950), S. 7 — Section is ultra vires—Constitution of India, Arts. 13 (1), 19 (1) (f) and (5). See Bengal Land Revenue Sales (West Bengal Amendment) Act (7 of 1950), S. 7. **AIR 1951 Cal 85.**

——**Art. 19 (1) (f)**—Surety or partner of a contractor is not a contractor within the meaning of sub-cl. (3) of S 34, J & K. Town Areas Act (17 of 2011) — Proceedings taken against them under sub-cl. (1) of S. 34 of the Act (17 of 2011 Smt.) to recover arrears of contract money due from contractor amounts to direct interference with their fundamental rights to hold property and is without jurisdiction. See J & K Town Area Act (17 of 2011 Smt.) (1954 A. D.), S. 54 (3). **AIR 1964 J & K 86.**

——Arts. 19, 13, 31—Sections 48 to 51, Kerala Forest Act 1961 (4 of 1962)—Validity—Provisions contravene Arts. 19 (1) (f) and (g) and 31 — Entire group of the sections has to be struck down as unconstitutional—Provisions are void so far as private forests and their owners in the Malabar area of Kerala State are concerned. See Ibid, Art. 13. **AIR 1964 Ker 287.**

——**Art. 19 (1) (f)** — Madras District Boards (Amendment) Act, 1957 (Kerala Act IV of 1958) — Validity—Act infringes Arts. 14 and (19) (1) (f) and is ultra vires. See Ibid, Art. 14. **AIR 1963 Ker 31.**

——Art. 19 (1) (f) and (5) — Public safety — Bihar Maintenance of Public Order Act, 1949 (3 of 1950), S. 8 (1)—S. 8 (1) is indefinite, vague and unreasonable both from aspects of substantive and procedural law.

The language of a statute must be precise and must be sufficiently objective so as to guard against an arbitrary or 'ad hominem' result on the part of the persons who are called upon to administer the statute. If this important requirement is not satisfied, the statute will be an unreasonable restriction on the constitutional guarantee under Art. 19 (1) (f) and will not fall within the language of the exception contained in Art. 19 (5) of the Constitution.

The restriction imposed by S. 8 (1) of the Bihar Maintenance of Public Order Act is unreasonable from the substantive aspect because the statute is indefinite and vague. If vicarious liability is intended to be imposed, the section is unreasonable on the ground that such punishment violates the juristic principle that all criminal responsibility is personal. Section 8 (1) authorises the State Government to impose a collective fine merely on its subjective satisfaction. The factual existence of the grounds mentioned in S. 8 (1) is not a justiciable issue. The vesting of such an absolute unfettered authority in the State Government is an unreasonable restriction and there is an infringement of the guarantee under Art. 19 (1) of the Constitution.

Section 8 (1), Bihar Maintenance of Public Order Act is therefore invalid. **1956 B L J R 210 : 1956 Cr L J 640 : ILR 35 Pat 102 : A I R 1956 Pat 137 (139, 140, 141, 142) (Pt A) (Prs 8, 9, 10, 11, 12, 20) (DB).**

——Art. 19 (1) (f) — Public safety—Bihar Maintenance of Public Order Act, 1949 (3 of 1950), S. 8 (2)—S. 8 (2) of the Act violates guarantee under Art. 19 (1) (f) of the Constitution.

Section 8 (2), Bihar Maintenance of Public Order Act confers an arbitrary power on the State Government to grant exemption to any person or body of persons from payment of the collective fine, and so it violates the guarantee under Art. 19 (1) (f) of the Constitution. Section 8 (2) is, therefore, invalid. **ILR 35 Pat 102 : 1956 B L J R 210 : 1956 Cr L J 640 : AIR 1956 Pat 137 (141) (Pt C) (Pr 16) (DB).**

● ——Art. 19 (1) (f), (5)—Bihar Land Encroachment Act (31 of 1950), S. 2 (ii) (d) - Validity (Bihar Land Encroachment Act (31 of 1950), S. 2 (ii) (d)).

Article 19 (1) (f) protects possessory titles as well as titles made perfect by the lapses of the statutory period. Whether Cl. (d) of S. 2 (ii) of Bihar Act (31 of 1950) is considered along with the amendment or separately from the amendment, it does violate fundamental rights as guaranteed by the Constitution. Any law which takes away or abridges the rights conferred by Art. 19 (1) (f), is void to the extent of the contravention.

There is no justification for interfering with the rights of those who on the different kinds of lands specified in Cl. (d) of S. 2 (ii) have acquired title by adverse possession. Article 19 (5) cannot be invoked, because the restrictions imposed under the statute can by no means be regarded as reasonable. This is certainly a case in which the law deprives a person of possession of his property on the subjective determination of an executive officer. The fundamental right is thus put in jeopardy. Brij Bhukan v. S. D. O. Siwan, **1954 B L J R 513 : 33 Pat 690 : AIR 1955 Pat 1 (16, 17, 18) (Pt J) (Prs 12, 13) (SB).**

——Art 19 (5 —Bihar Cotton Cloth and Yarn (Control) Order (1948) Cl. 4 (3) — Validity—The restrictions imposed transgress the limit contemplated in Art. 19 (5) and, are therefore constitutionally invalid. Bihar Cotton and Yarn Control Order, 1948, cannot operate in an effective manner unless the provisions in question are so amended as to conform to the constitutional requirements. **1954 B L J R 276 : 33 Pat 219 : AIR 1954 Pat 325 (326) (Prs 4, 5) (DB).**

——Art. 19 (1) (f ,(5) — Bihar Private Forests Act (19 of 1948) — Validity—Act imposed unreasonable restrictions upon the right of an owner of the forest to hold it as guaranteed by Art. 19 (1) (f) of the Constitution of India. **AIR 1953 Pat 65 (72, 74, 75) (Pt F) (Prs 12, 28, 30) (DB).**

——Art. 19 (1) (f) — Applicability — Custom against gift to persons outside circle of collaterals and caste-man - Is unreasonable restriction. See Custom — Wajib-Ul-Arz. **AIR 1958 Raj 199 (DB).**

61. Prohibition law.

●——Arts. 19 (6) and 47 — Basis of restriction on trade of intoxicating liquor.

That when the liquors are taken in excess the injuries are confined to the party offending is a fact which does not exist. The injury, it is true, first falls upon him in his health, which the habit undermines; in his morals, which it weakens; and in the self-abasement which it creates. But as it leads to neglect of business and waste of property and general demoralisation, it affects those who are immediately connected with and dependent upon him. By the general concurrence of opinion of every civilized community, there are few sources of crime and misery to society equal to the dram shop, where intoxicating liquors, in small quantities, to be drunk at the time, are sold indiscriminately to all parties applying. The sale of such liquors in this way has therefore been, at all times, by the Courts of every State, considered as the proper subject of legislative regulation. (1890) 34 Law Ed 620 (623), Foll. Cooverjee B. Bharucha v. Excise Commissioner. **1954 S C J 246 : 1954 S C A 256 : 1954 S C R 873 : AIR 1954 S C 220 (223) (Pt F) (Pr 7).**

——Art. 19 (1) (g) — Assam Liquor Prohibition Act (1 of 1953), Ss. 2 (3), 3 — Validity.

In the definition of 'liquor' in S. 2 (3) of the Assam Liquor Prohibition Act, it has been made clear hat it does not apply to any toilet preparation or medicine containing alcohol. The substances, restriction on which would have been considered unreasonable so far as the rights of the citizens to carry on any profession or trade were concerned, have been expressly omitted from the definition of 'intoxicating liquor.' The Act, therefore, cannot be struck down on that ground. **ILR (1960) 12 Assam 396: AIR 1961 Assam 16 (18) (Pt D) (Pr 7) (DB).**

——Arts. 19 (1) (f), 19 (5), 14, 47 and 245 — Eastern Bengal and Assam Excise Act (1 of 1910), S. 17 (3) — Restrictions on use of intoxicants as beverage—Constitutional validity — Section 17 (3) whether contravenes Arts. 19 and 14 — Whether is piece of excessive delegation of legislative power. See East Bengal and Assam Excise Act (1 of 1910), S. 17 (3). **AIR 1958 Assam 173.**

——Art. 19 (1) (f) — Bombay Prohibition Act (25 of 1949), S. 129 A — Validity. See Prohibition - Bombay Prohibition Act (25 of 1949) S. 129-A. **1964 (2) Cr L J 523 : AIR 1964 Bom 253 (DB).**

——Art. 19 — Bombay Prohibition Act (25 of 1949), S. 129-A (as amended by Act (12 of 1959) — Validity — Consumption of prohibited intoxicant — Medical Examination — Section 129-A applicable to persons 'accused of an offence' — Accused merely required to submit to evidence being collected from him — Compulsion only in case of active resistance — Section held not violating protection against testimonial com-

pulsion guaranteed by Art. 20 (3) — Does not relate to any right guaranteed under Art. 19. See Ibid, Art. 20 (3). ILR (1961) Bom 360.

——Art. 19 — Scope — Bombay Prohibition Act, 1949, as amended by Act (26 of 1952) — Validity — Bombay Spirituous Medicinal Preparations (Sales) Rules, 1954, Rr. 2, 3 — Scope of. See Prohibition — Bombay Prohibition Act (25 of 1949 as amended by Act 26 of 1952), S. 24-A. 1958 Cr L J 607 : AIR 1958 Bom 181 (DB).

——Art. 19 (1) (f) — Bombay Spirituous Medicinal Preparations (Sale) Rules (1954), R. 7 — Rule 7 is reasonable. See Bombay Spirtuous Medicinal Preparations (Sale) Rules (1954), R. 7. AIR 1956 Bom 304.

——Art. 19 (1) (f) — Prohibition law — Bombay Prohibition Act (25 of 1949) (as amended by Act (26 of 1952), Ss. 12 (c) and (d) and 13 (b) — Validity.

The scheme of regulation introduced by the amended Prohibition Act, in so far as it relates to medicinal and toilet preparations which are fit for the use as intoxicating liquor is reasonable and it is reasonable in regard to preparations which are unfit for such use, with the result that the whole of that scheme is reasonable; and since it is reasonable it leads to the further consequence that Ss. 12 (c) and (d), 13 (b) which are declared to be void in the unamended Act by the Supreme Court in AIR 1951 S C 318 are valid qua such preparations in the amended Act. The challenge therefore to the legislative competence on the ground that it contravenes fundamental rights must fail AIR 1956 Bom 304 (318, 319) (Pt N) (Pr 25).

● ——Art. 19 (1) (f) — Scope — Bombay Prohibition Act — If void —See Prohibition — Bombay Prohibition Act. AIR 1951 Bom 210 (FB).

——Art. 19 — Gujarat Denatured Spirituous Preparation Rules (1962), R. 37 — Validity — Rule 37 is invalid under Arts. 301, 304 and 19. See Ibid, Art. 301. AIR 1964 Guj 59 (DB).

——Art. 19 — Gujarat Denatured Spirituous Preparations Rules (1962), R. 22, Proviso, R. 24 — Validity —Provisions are unreasonable restrictions.

Prevention of a subject to conduct his business both as a wholesaler as well as a retailer is not a check required for the enforcement of the policy and the objective of the Bombay Prohibition Act. The proviso to R. 22, therefore, is an unreasonable restriction in so far as it prevents a person who holds a licence for retail sale from being granted a wholesaler's licence. Rule 24 likewise also would be invalid in so far as it prevents a wholesaler from obtaining a retailer's licence. (1963) 4 Guj L R 1033 : (ILR 1964) Guj 96: AIR 1964 Guj 59 (78) (Pt H) (Pr 35) (DB).

—— Art. 19 (6) — Restrictions on trade or business — Reasonableness of — Business of selling liquor — Law prohibiting or restricting sale — Validity.

There is a well marked and well recognised distinction between an ordinary lawful trade or business which every citizen is entitled to pursue and a trade or business which is of a dangerous character, or which is illegal immoral or injurious to the health, morality and welfare of the public The business of selling intoxicating liquors undoubtedly falls within the latter category. Therefore a law which restricts or even prohibits this trade or business will obviously be saved by Cl. (6) of Art. 19. AIR 1954 S C 220, Rel. on.

Where the Excise Act gives discretion to authorities to grant licences to sell liquor the authorities in whom the discretion vests must necessarily look to the reputation and personal fitness of the applicant. It is not possible or practicable in such cases to lay down definite or comprehensive rules to guide or control the exercise of discretion. AIR 1959 J and K 83 (83, 84) (Pt A) (Prs 3, 5, 6).

——Arts. 19 and 14 — Right to sell liquor by retail is not inherent right — Bidding for individual shops changed to collective bidding — Equal opportunity given to all bidders — There is no discrimination — (M. B. Excise Act Smt. 2009), S. 68 — Rules under — Rules for Distribution of Shops and Grant of Licenses (Smt. 2009), Rr. 25 and 27). See Ibid, S. 14. AIR 1955 Madh Bha 161.

——Art. 19 (5) — Madras Prohibition Act (1937), S. 4 — Rules under Act — Rules 6 and 10 — Validity — Restrictions held not unreasonable. AIR 1955 NUC (Mad) 5946.

——Art. 19 (1) (f) — Madras Prohibition Act (10 of 1937), Sections 28 to 32—Article 19 (1) (f) of Constitution is not infringed. See Madras Prohibition Act (10 of 1937), S. 28. AIR 1954 Mad 993.

——Art. 19 (1) (f) — Prohibition law — Contravention of. See Madras Prohibition Act (10 of 1937), S. 3 (9). AIR 1954 Mad 643 (DB).

——Art 19—C. P. and Berar Prohibition Act (1938) —Madhya Pradesh Prohibition (Amendment) Act (30 of 1953) C. P. and Berar Rectified Spirit Rules, 1942 —Seizure of rectified Spirit imported on valid permit —Validity. See C. P. and Berar Prohibition Act (7 of 1938) AIR 1956 Nag 1.

——Art. 19 C. P. and Berar Prohibition Act (1938), S. 28-II — Manufacture of medicinal preparation is outside operation of S 6 —See C. P. and Berar Prohibition Act (7 of 1938), S. 28-II. AIR 1956 Nag 1.

——Art. 19 — State when is not person — Licence to vend liquor — Disparity between State and citizen — Discrimination not unreasonable — C. P. and Berar Excise Act (2 of 1915) is not repugnant to Art. 14. See Ibid, Art 14. AIR 1953 Nag 177 (DB).

——Art. 19 — Punjab Opium (Restriction on Oral Consumption) Rules (1957) — Validity — Rules are not inconsistent with s. 5 Opium Act, 1875 — Regulation — Meaning — Whether includes total prohibition — (Words and Phrases—Regulation). See Punjab Opium (Restriction on Oral Consumption) Rules (1957). AIR 1958 Punj 400.

——Art 19 (1) (f) and (g) and (5) and (6) — Scope — Right to possess and sell liquor — Restrictions — Notifications under Punjab Excise Act introducing prohibition in social clubs — Validity — (Punjab Excise Act (1 of 1914), Ss. 24 (4) and 54.)

It may be that in the absence of a restraining enactment, a citizen of this country has a right to carry on business in the purchase and sale of intoxicating liquor, but it is within the power of the Legislature, in view of the provisions of Art. 19 (6) to impose such reasonable restrictions on the exercise of this right as it may consider fit or proper.

The notification issued by the Government under the Punjab Excise Act, prohibiting a club from distributing liquor to its members and a notification issued under S 24 (4) prohibiting members from keeping their own intoxicating liquor in an unlicensed club do not constitute a direct interference with the liberty of the subject or violate the fundamental rights guaranteed by Art 19 of the Constitution. 58 Pun L R 426 : I L R (1957) Punj 166 : A I R 1957 Punj 20 (22) (Pt B) (Pr 5) (DB).

——Arts. 19 (6) and 14 — Restriction on sale of liquor — Discretion to execute authority under Punjab Excise Act to grant or refuse licence — Discrimination in issuing licences — (Punjab Excise Act (1 of 1914), S. 35).

It may be that a discretion has been vested in the

Excise Commissioner under the Punjab Excise Act to grant or withhold licences at his own will and pleasure, but that discretion must be used impartially and without unjust discrimination and after a careful consideration of all the relevant facts and circumstances.

Where in pursuance of Government's decision to prohibit licensed drinking of liquor in civilian clubs the Excise Commissioner had banned the sale of liquor to the members of the Lumsden club but he had not issued a similar direction in respect of the other civilian clubs, although their rules were similar in many ways to the rules framed by the Lumsden Club:

Held, that there was no warrant for unjust discrimination between these two sets of associations, and the order refusing to grant a licence to the Lumsden Club contravened Art. 14 and must therefore be deemed to be void and of no effect. **58 Punj L R 426 : I L R (1957) Punj 166 : A I R 1957 Punj 20 (23, 24) (Pt D) (Pr 13) (DB).**

——Art. 19 (1) (f), (5)—Punjab Intoxicating Spirituous Preparations, Import, Export, Transport, Possession and Sale Rules (1952) — Validity. See Punjab Intoxicating Spirituous Preparations Import, Export, Transport Possession and Sale Rules (1952). **AIR 1953 Punj 77 (DB).**

● ——**Art.** 19 (1) — Notifications by Rajasthan State withdrawing privileges granted by Ruler of Udaipur to Zamindars, to manufacture liquor for private consumption — Privilege held not right to property—No infringement of fundamental right. See Ibid, Art. 31. **AIR 1954 Raj 85 (FB).**

——**Art. 19 (1) (g)** — Rules framed under Travancore Abkari Act, 1073 on 17-1-1953 — Rules dealing with licence fee, gallonage fee, etc.—Validity. See Travancore Abkari Act (4 of 1073), S. 26. **A I R 1954 Trav-Co 504 (DB)**

——Art. 19—Abkari Rules under Travancore Abkari Act (4 of 1073, M. E.) — Selection of site for liquor shop — Restriction on — Validity of. See Travancore Abkari Act (4 of 1073) as amended by Act (6 of 1125, M. E.). **AIR 1951 Trav.Co 197.**

62. Clause (1) (g)—(General).

● ——**Arts. 19 (1) (g), (6) and 301 to 305 — Scope—Freedom of trade, commerce and intercourse — Extent of.**

Articles 19(1)(g) and 301 are two facets of the same thing the freedom of trade. Article 19(1)(g) looks at the matter from the point of the view of the individual citizens and protects their individual right to carry on their trade or business. Article 301 looks at the matter from the point of view of the country's trade and commerce as a whole, as distinct from the individual interests of the citizens and it relates to trade, commerce or intercourse both with and within the States.

The guaranteed right under Art. 19(1)(g) is, subject to Art. 19 (6) which protects a law which imposes, in the interest of the general public, reasonable restrictions on the exercise of the fundamental right guaranteed by Art. 19(1)(g). Our Constitution also proclaims by Art. 301 the freedom of trade, commerce and intercourse throughout the territory of India subject to the provisions of Arts. 302-305, State of Bombay v. R. M. D. Chamarbaugwala, **1957 Mad W N (SC) 64 : 1957 S C R 874 : 35 Mys L J 283 : (1957) 2 Mad L J (SC) 87 : (1957) 2 Andh W R (SC) 87 : 1957 S C J 607 : 58 Bom L R 945 : 1957 S C A 867 : (1957) Mad L J (Cr) 558 (SC) : A I R 1957 S C 699 (713, 718) (Pt F) (Prs 27, 36).**

——**Art. 19 (1) (g)**—Scope—If abrogates law of Torts relating to private nuisance — Suit for injunction to prevent defendant from running flour mill—If barred under Art. 19 (1)(g). See Ibid, Part III (General). **AIR 1960 All 632.**

● ——**Arts. 19 (1) (g), 301**—Articles do not overlap—Their respective scope indicated. Motilal v. Government of Uttar Pradesh, **I L R (1951) 1 All 269 : A I R 1951 All 257(270, 313) (Pt H) (Prs 63, 284) (FB).**

● ——**Arts 19 (1) (g), 301 — Distinction between — Nature of rights under.**

While Art. 19 (1) (g) guarantees to the citizens freedom in the matter of trade, profession or business, Art. 301 provides for freedom of trade, commerce and intercourse within the territory of India. While the one provides freedom for the individual in the matter of the choice of his trade, profession or business, the other provides for freedom of trade and commerce not in a particular State but in the whole of the territory of India. Free flow of traffic subject to the provisions contained in Part 13 is secured by Art. 301, for traffic is surely within the scope of the expression 'commerce'. It follows that if the freedom of individuals to carry on trade or business is restricted, the case falls under Art 19 (1) (g), but if the restriction embraces within its scope a particular trade or business with reference to movement from one place to another, the case would fall within the ambit of Art. 301. A I R 1951 All 257 (FB), Rel. on. Barua v. State of Assam, **A I R 1955 Assam 249 (268) (Pt O) (Pr 56) (SB).**

[Reversed on another point in AIR 1961 S C 232.]

——**Arts. 19 (1) (g), 301 and 304 (b) — Scope — Complaint regarding right of individual to carry on business unrelated to question of passage of goods—Proper Article to be invoked is Art. 19 (1) (g) and not Art. 301 read with Art. 304 (b).**

Looking to the language used in Part 13 "trade, commerce and intercourse within the territory of India" it is clear that that Part essentially deals with the free passage of persons and goods throughout the territory of India. What is emphasised is the freedom of trade and not the freedom of the individual to carry on his business. If an individual is prevented from sending his goods across the State or even if he is prevented from sending his goods from one part of the State to another, he may come to Court and complain of an infringement of Art. 301 read with Art. 304 (b). But when the complaint is with regard to the right of an individual to carry on business unrelated to the question of passage of goods or irrespective of the question of the passage of goods, then the proper article which he can invoke is Art. 19 (1) (g) and not the provisions of Art. 301 read with Art. 304 (b). **ILR (1955) Bom 870 : 57 Bom L R 892 : AIR 1956 Bom 21 (26) (Pt C) (Prs 14, 15) (DB).**

——**Art. 19 (1) (g)**—Applies to citizens as well as to corporations. **ILR (1955) Bom 680 : 57 Bom L R 288 : AIR 1956 Bom 1 (19) (Pt Q) (Pr 47):(DB).**

● ——**Arts. 19 (1) (g), 19(6), 31 (2), 31(2-A) and 374(2) —Government of India Act (1935), S. 299—Calcutta Police Act (1866), S. 61-A—Calcutta Suburban Police Act (1866), S. 33 A—Notifications in 1959 by Police Commissioner prohibiting use of cycle-carts in Calcutta and suburbs—Validity.**

• Under Art. 374 (2) of the Constitution, the decision of the Federal Court in AIR 1944 F C 62 will have as much binding force and effect as a decision of the Supreme Court and as the impugned sections of the Calcutta Police Act (S. 61 A) and the Calcutta Suburban Police Act (S. 38-A) were enacted in 1948 when S. 299 of the Government of India Act, 1935 was in force, they cannot possibly be declared void on the ground that the sections deal with acquisition of property in the wide sense given to that expression

in AIR 1954 S C 728 or AIR 1954 S C 92. There can be no question, therefore, that the two impugned sections which empowered the Commissioner of Police to prohibit certain types of vehicles plying on the streets and public places in the town of Calcutta and its suburbs were validily enacted and 'were existing laws' within the meaning of that expression as defined in Art. 366 (10) of the Constitution, till the Constitution came into force. If it be assumed that the two Sections were rendered invalid by Art. 31 (2) of the Constitution then these laws must be held to have remained dormant till the Constitution was amended in 1955 and Cl. (2 A) was inserted in Art. 31 by S. 2 of the Constitution (Fourth Amendment) Act, applying the eclipse theory as propounded by the Supreme Court in AIR 1955 S C 781 which was approved of in 1956 S C J 293 : AIR 1956 S C 298 and in AIR 1959 S C 648 and revived again after the insertion of Cl. (2 A) in Art. 31 in 1955 and Cl. (6) in Art. 19. The notifications of 1959 prohibiting use of cycle-carts in town of Calcutta and its suburbs issued under the two sections were therefore quite valid. Paschim Banga Malbahi Cycle Mazdoor Union v. Commr. of Police, Calcutta, 65 Cal W N 213 : AIR 1961 Cal 125 (131, 132, 137, 138) (Pt H) (Prs 21, 45, 47, 49) (SB).

——Art. 19 (1) (g) — Essential Commodities Act (1955), S. 3 (2) (f) — Order mentioning purchasers — Power of Court to go behind order and determine the real purchaser. See Essential Commodities Act (1955), S. 3 (2) (f). AIR 1958 Cal 257.

——Arts. 19 (1) (g) and 226—Right to carry on business — There is no right to carry it in particular fashion — Existence of rival business cannot be termed as an invasion of fundamental right—Mandamus against order shifting a liquor shop nearer to petitioner's will not be issued. AIR 1955 N U C (Cal) 4290.

——Art. 19 (1) (g)—Negative stipulation not to serve another employer, in contract of service during currency of contract — Injunction can be granted to restrain breach of negative stipulation — Granting or refusal to grant injunction to limited extent does not affect freedom of contract or trade. See Specific Relief Act (1963), S. 38 (2). (1965) 2 Lab L J 284 : AIR 1966 Guj 189.

——Art. 19 (1) (g) — Service agreement — Agreement not to serve any other person during particular period —Not void under Art. 19 (1) (g) — But injunction to restrain servant from serving other person offends Art. 19 (1) (g) and cannot be granted. (1963) 2 Lab L J 522 : A I R 1964 Guj 215 (218, 219) (Pt B) (Prs 10, 11, 13).

——Art. 19 (1) (g) — Unreasonable restriction on employee's right to follow occupation of his choice—Contract of personal service — Breach of Power of Court to issues injunction to prevent breach of contract of personal service. (1963) 4 Guj L R 795 : ILR (1963) Guj 891 : AIR 1964 Guj 115 (121, 122), (Pt B) (Prs 9, 10).

——Arts. 19 (1) (g), 19 (6) and 226—Person entitled to exemption from duty — Denial of benefit — Remedy — Interference under Art. 226 — Central Excises and Salt Act (1944), S. 37 (2) — Central Excise Rules (1944), R. 1.

Notification under R. 8 of Central Excise Rules, 1944 granting exemption from payment of duty — Denial of benefit of exemption is to impose larger levy on manufacture — If constitutes violation of petitioners' fundamental right to carry on trade which is guaranteed to him under Art. 19 (1) (g)—In such cases, rule against interference under Art. 226 when alternative remedies exist, is not to be applied rigorously — That the notification is not impugned as violative of fundamental right and that notices issued under it are alone the subject of challenges, is immaterial — If in sending notices, the authorities act outside the scope of the notification, the action is not deemed to be in pursuance of a law, which is saved by Art. 19 (6). A restriction which is not founded upon a law within the exception in Art. 19 (6) must per se constitute an infringement of fundamental right under Art. 19 (1) (g) — High Court will interfere notwithstanding alternative remedy under Central Excises and Salt Act. 1960 Ker L J 1205 : 1960 Ker L T 1087.

——Art. 19 (1) (g) — Scope—Refusal of Government to deal with black-listed contractor—If infringement of fundamental right or rule of law — Art. 226. See Ibid, Art. 13, AIR 1958 Ker 333 (DB).

——Art. 19 (1) (g) — Scope—Irregularity in auction-sale under Excise Act.

Mere irregularity committed in conducting any auction sale held under the provisions of the Excise Act cannot be said to have abridged or infringed licence-holder's fundamental rights. AIR 1954 S C 220, Rel. on. Madh B L R 1956 Civ 688:Madh B L J 1955 H C R 1253 : AIR 1956 Madh B 21 (22) (Pt B) (Pr 4) (DB).

——Art. 19 (1) (g) — Scope — Right to close down one's business.

The carrying on of any business being a right and not an obligation, any industrial concern ought to have as much liberty to carry it on as to close it down particularly when it does not yield a profit. 1960 M P L J 841 : 1960 M P C 510 : (1960-61) 19 F J R 77 : (1960) 1 Lab L R 326 : (1960) 2 Lab L J 543 : 1960 Jab L J 543 : AIR 1960 Madh Pra 307 (308) (Pt C) (Pr 5) (DB).

——Art. 19 (1) (g) and (6)—Reasonable restriction—Principles—C. P. and Berar Municipalities Act (2 of 1922), S. 99 (2)—If violates fundamental rights.

The phrase 'reasonable restriction' connotes that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature beyond what is required in the interests of the public. The word 'reasonable' implies intelligent care and deliberation, that is, the choice of a course which reason dictates. A I R 1951 S C 118, Rel. on.

The restriction must be reasonable from the substantive as well as procedural standpoints. It is not possible to formulate an effective test which would enable the Court to pronounce any particular restriction to be reasonable or unreasonable per se. All the attendant circumstances must be taken into consideration and one cannot dissociate the actual contents of the restrictions from the manner of their imposition or the mode of putting them into practice. A I R 1950 S C 211 and A I R 1952 S C 211, Rel on. 1957 Jab L J 86 : 1957 M P C 32 : A I R 1957 Madh Pra 50 (51, 52) (Pt A) (Prs 6, 7).

——Art. 19 (1) (g) — Right to carry on business—Restriction on—Contract with Government — Insistence by Government for production of income-tax clearance certificate.

The Government, as well as any individual, has got a right to enter or not into a contract with a particular person, and has also the right to decide on the terms of the contract. For instance, a private body can say that it will entrust its work only to a solvent person who should file a statement of his immovable properties and produce a nil encumbrance certificate. It cannot be said that an insistence on such a term being fulfilled in any way infringes the fundamental right of the person with whom the contract is being entered into. Similarly, an insistence by the Government on the production by a party of proof of sol-

vency or an income-tax clearance certificate would not amount to a restriction on the right to carry on a business. 67 Mad L W 216 : (1955) 27 I T R 494 : (1955) 1 Mad L J 234 : A I R 1955 Mad 365 (366) (Pr 2) (DB).

—— Art. 19 (1) (f) (g) and (6) —Explosives Act (1884) not ultra vires.

Explosives should not be manufactured and explosive sub tances should not be stocked except under conditions which would not be detrimental to the public safety, health and convenience Therefore the restrictions imposed on the acquisition, holding and disposal of property, that is to say, explosives and explosive substances and the right to practice one's profession, trade, etc., in manufacturing explosives are restrictions permissible under clause (6) of Art 19 of the Constitution. Consequently, the Explosives Act is not ultra vires of the Constitution and can be justified under the proviso in Art. 19 (6) of the Constitution. The Explosives Act does not constitute a violation of the freedom guaranteed under clauses (f) and (g) of Art 19 (1) of the Constitution. (1952) 2 Mad L J 748 : 1953 Cri L J 333 : 1952 Mad W N 906 : 1952 Mad W N (Cri) 262 : A I R 1953 Mad 142 (143) (Prs 6, 7).

——Art. 19 (1) (g) — Scope — Manipur Foodgrains (Movement) Control Order—If void – Test of reasonableness—(Manipur Foodgrains (Movement) Control Order (1955), Para. 3).

Legislation which arbitrarily or excessively invades a right cannot be said to contain the quality of reasonableness and unless it strikes a proper balance between the freedom guaranteed under Art. 19 (1) (g) and the social control permitted by Cl. 6 of Art. 19, it must be held to be wanting in reasonableness.

Paragraph 3 of Manipur Foodgrains (Movement) Control Order, 1955, infringes the fundamental rights of the petitioners under Art. 19 (1) (g) of the Constitution and so the provisions of this paragraph are void. 1956 Cri L J 1008 : A I R 1956 Manipur 25 (29, 30, 31) (Pt B) (Prs 22, 31).

——Arts. 19 (1) (g) and 19 (6) — Reasonable restrictions—Power of Executive to impose.

There can be no doubt that the freedom guaranteed under Art 19 (1) (g) of the Constitution is a qualified freedom. It is subject to reasonable restriction including complete prohibition if the interests of the general public demand it But the best Judge of the matter in the first instance is the Legislature and the power in clause (6) to impose such restrictions is conferred on the Legislature. It is not conferred on the Executives.

The Legislature in its turn can confer it on the Executive An exercise of the power by the Executive must have the authority of the Legislature. Even where there is such delegation, the Courts must see that the limits are well defined and not exceeded. I L R (1956) Nag 157 : A I R 1956 Nag 1 (6) (Pt D) (Pr 34) (DB).

——Art. 19 (1) (g) — C P. States Land Tenure Order (1949), Cl. 23 (1) — Government notification — Purchases of tendu leaves from particular class of persons—Infringement of fundamental right to carry on trade or business — (Constitution of India, Art. 19 (1) (g)) See C. P. States Land Tenure Order (1949), Cl. 23 (1). A I R 1953 Nag 51.

——Art. 19 (1) (g) and (6) —Statute, when and when cannot be struck down as unconstitutional — Principles S 5 (3), Orissa Cinema (Regulation) Act (2 of 1954)—Validity.

A statute cannot be struck down as unconstitutional merely because it confers wide discretion on an authority to regulate certain classes of trade or business, by issuing permits or licenses. No one has a fundamental right to carry on any business at a particular place chosen by him and a local authority should have discretion to change the place in the interests of public convenience or safety. One of the important tests to determine whether restrictions are reasonable or not, is whether there is a provision for a superior authority to examine the propriety of the order of the lower authority and revise or review its decision. (1959) 1 O J D 655 : I L R (1959) Cut 667: A I R 1960 Orissa 88 (92, 93) (Pt A) (Prs 12, 17) (DB).

——Art. 19 (6) — Reasonable restrictions — Duty of Court.

It is primarily the function of the Legislature to decide what type of control in the field of business is reasonable in public interests. But the Court has to see that under the guise of imposing reasonable restrictions as permitted by clause 6) of Art. 19, the freedom guaranteed by sub-clause (g) of clause (1) of Art. 19 is not taken away. A I R 1952 Orissa 42 (46) (Pt I) (Pr 10) (DB).

——Arts. 19 (6) and 265 — Scope — Punjab Tobacco Vend Fees Act (12 of 1954), S. 4 — Punjab Tobacco Vend Rules (1955), R. 4—Validity of.

The provisions of the Punjab Tobacco Vend Fees Act, 1954, indicate that the Act has been enacted principally with the object of regulating and restraining the sale of tobacco and not with the object of providing revenue for State. Neither the Act nor the rules which have been framed in exercise of the powers conferred by the said Act can be invalidated on the ground that the imposition yields a revenue in excess of that required for the purpose of regulation. 58 Punj L R 480 : I L R (1957) Punj 184 : A I R 1957 Punj 45 (48) (Pt B) (Pr 10) (DB).

63. Practise any profession.

● ——Art. 19 — Suit for declaration of plaintiff's exclusive right to purohitgiri does not lie — Infringement of right to practice freely any profession to be protective. See Civil P. C. (1908), S. 9. I L R (1952) Hyd 481 : A I R 1953 Hyd 1 (FB).

——Art. 19 (1) (g) — Kerala Civil Service (Classification, Control and Appeal) Rules, R. 25—If ultra vires —Rule 25 which enables Government to enhance punishment does not operate as unreasonable restriction on right to carry on profession under the article. See Kerala Civil Service (Classification, Control and Appeal) Rules, R. 13. A I R 1960 Ker 224.

——Arts. 19 (1) (g) and 19 (6)—'Profession' and 'trade or business' – Distinction — Words and Phrases — 'Profession', 'trade or business'.

Article 19 (6) of the Constitution which enables the State to make laws imposing reasonable restrictions on the exercise of the right conferred by Art. 19 (1) (g) clearly makes a distinction between the carrying on of a profession on the one hand and the carrying on of a trade or business on the other. It cannot therefore be said that the carrying on of a profession is the same thing as the carrying on of a trade or business. A fundamental difference between a profession and a trade or business seems to be implicit in the reference to 'profession, occupation, trade or business' in Art. 19. It is normally understood that trade or business is carried on with a profit motive But though a 'profession' or an 'occupation' are carried on for the purpose of earning a livelihood, it cannot be said that a profit motive underlies the carrying on of these activities. (1963) 2 Lab L J 747 (Mad) : 77 Mad L W 90 : (1964) 1 Mad L J 379 : (1964-65) 26 F J R 113 : I L R (1964) 2 Mad 167 : A I R 1964 Mad 131 (133) (Pt B) (Pr 6).

——Art. 19 (1) (g) — Right to carry on a profession conferred by — S. 61 (3) of the Income-tax Act if

unreasonable restraint on—See I. T. Act (11 of 1922), S. 61 (3). AIR 1951 Mad 897.

64. Carry on any occupation, etc.

● —Art. 19 (1) (g)—A person cannot assert any fundamental right under Art. 19 (1) to carry on business in adulterated food stuffs. State of U. P. v. Kartar Singh, 1964 (2) Cr L J 229 : (1964) 1 S C W R 435 : 1964 All L J 732 : (1964) 2 S C J 666 : 1964 Mad L J (Cr) 633 : 1964 S C D 939 : (1965) 1 Andh L T 1 : 1965 Mad W N 97 : AIR 1964 S C 1135 (1138) (Pt B) (Pr 15).

● —Art 19 (6)—Carries on business — Application to Government—Running of Railways — Is a business even in hands of Government — Profit motive not necessary — Principal place of railway administration is place of business for S. 20, Civil P. C. — See Civil P. C. (1908), S. 20 (a). AIR 1963 S C 1681.

● —Arts. 19 (1) (g), (6), 301 and 304 — 'Trade, business or commerce', meaning of—Gambling prize competitions — If trade or commerce — Bombay Lotteries and Prize Competitions Control and Tax Act (54 of 1948) — Validity of. AIR 1956 Bom 1, Reversed.

The words 'trade' or 'business' or 'commerce' should not be read in their widest amplitude as meaning any activity which is undertaken or carried on with a view to earning profit. Gambling activities from their very nature and in essence are extra-commercium although the external forms, formalities and instruments of trade may be employed and they are not protected either by Art 19 (1) (g) or Art. 301 of the Constitution. The fact that regulatory provisions have been enacted to control gambling by issuing licences and by imposing taxes does not in any way alter the nature of gambling which is inherently vicious and pernicious.

Held, that in point of fact the prize competitions run by the petitioners under the name of 'R. M. D. C. Cross Words' partake of a gambling nature and, therefore, fall within the definition and are to be governed by the regulatory and taxing provisions of the Act. When Art. 19 (1) (g) guarantees or Art. 301 declares the freedom of trade they describe human activities in a specific aspect. The freedom secured by the two Articles implies that no unreasonable restraint or burden shall be placed upon an act falling under that description because it is trade or commerce or intercourse. AIR 1956 Bom 1, Reversed. State of Bombay v. R. M. D. Chamarbaugwala, (1957) 2 M L J (S C) 87 : (1957) 2 An W R (S C) 87 ; 1957 S C J 607 : 1957 S C R 874 : 35 Mys L J 283 : 1957 Mad W N (S C) 64 : 1957 S C A 867 : 59 Bom L R 945 : (1957) M L J (Cr) 558 : A I R 1957 S C 699 (718 to 722) (Pt H) (Prs 36, 42, 43, 44, 46, 47).

—Art. 19 (1) (g) and (6) — Right to carry on business or cease to carry on business.

The right to carry on a business under Art. 19 (1) (g) of the Constitution and therefore to cease to carry it on is not an absolute right as Cl. (6) of Art. 19 of the Constitution confers powers on the State to impose reasonable restrictions on this right. AIR 1954 Bhopal 17 (20) (Pt D) (Pr 23).

—Art. 19 (1) (g) — Right to carry on trade or business.

The right to carry on cloth business is a fundamental right guaranteed by Art. 19 (1) (g) of the Constitution though subject to the limitations contained in Cl. (6) of that Article. The mere fact that cloth is a controlled commodity and that a person is carrying on the business only by virtue of licence cannot affect the fundamental character of the right. AIR 1952 Trav-Co 260 Criticised. AIR 1953 Him Pra 41 (45) (Pt B) (Pr 19).

● —Art. 19 (1) (g) — Right to carry on business — Right to ply motor vehicles on public routes.

Within the limits imposed by State regulations any member of the public can ply motor vehicles on a public road. To that extent he can also carry on the business of transporting passengers with the aid of the vehicles. It is to this carrying on of the trade or business that the guarantee in Art. 19 (1) (g) is attracted and a citizen can legitimately complain if any legislation takes away or curtails that right any more than is permissible under Cl. (6) of that Article. AIR 1954 S C 728, Foll C. Balakrishna Panicker v. State Transport Appellate Tribunal, Ernakulam, 1962 Ker L J 775 : ILR (1962) 2 Ker 223 : 1962 Ker L T 441 : AIR 1963 Ker 1 (3) (Pt D) (Pr 18) (FB).

—Art. 19 (1) (g) — Right to carry on business — Scope of.

Under the fundamental right guaranteed by Art. 19 (1) (g) of the Constitution, a man has a right to relinquish his business, to close down without being coerced to continue or to recommence, a right to transfer his business elsewhere, to self or to split up his business into several subsidiary units. These rights are not unqualified. (1960) 1 Lab L J 351 : AIR 1961 Mad 331 (336) (Pt B) (Pr 18) (DB).

—Art. 19 (1) (g) — Fundamental right to carry on business — Violation of — Banking Companies Act (10 of 1949), S. 22 — Validity — If opposed to Art. 19 (1) (g)—If unconstitutional.

Section 22 of the Banking Companies Act, 1949 which introduces a complete system of licensing of Banks by the Reserve Bank is not unconstitutional and is not opposed to the fundamental right of a citizen to carry on banking business. Nor could it be said that the delegation of the power to the Reserve Bank is in any way invalid. 72 Mad L W 790 : (1960) 30 Comp Cas 146: 1960 Mad W N 207 : (1959) 2 Mad L J 455 : A I R 1961 Mad 8 (12, 13) (Pt B) (Prs 10, 13).

● —Art. 19 (1) (g) and (6)—Carry on any occupation—Reasonable restrictions -Landholder's right to till—(Tenancy Laws — Berar Regulation of Agricultural Leases Act (24 of 1951), S. 3).

The provisions of the Berar Regulation of Agricultural Leases Act, 1951, do not abridge the freedom of the landlord to carry on his occupation as a tiller of the soil. Since provision is made in the Act to secure the landholders a holding of 50 acres, there is really no unreasonable abridgment of this fundamental right. At any rate, the restriction is reasonable and is necessary for efficient agriculture. Bhaurao v. S. D. O., Chandur-Morsi, 1954 Nag L J 667 : I L R (1954) Nag 816 : A I R 1955 Nag 1 (6) (Pt E) (Pr 19) (FB).

—Art. 19 (1) (g)—Business—Market.

When the owner of the market is also the owner of the land he cannot be said to be carrying on a business by collecting fees from people who come to the market to expose their goods for sale. Such collecting is only a mode of enjoyment of his ownership of the land. AIR 1954 Mad 754, Rel. on. 23 Cut L T 265 : ILR (1957) Cut 13.

—Arts. 19 (1) (g) and (6) and 13 — Occupation — Service is not occupation — Removal of servant in accordance with terms of contract — Art. 19 (1) (g) not violated.

A person's service in pursuance of a contract is not an occupation of the kind contemplated in Cl. (g) of Art 19 (1). Assuming that it is an occupation, Art. 19 (1) (g) does not mean that a person who has been employed under the terms of a contract cannot be removed in accordance with those terms. To give

such a meaning to Art. 19 (1) (g) will lead to a manifest absurdity.

Held, that assuming that the bye-laws of the staff regulations of the Bank under which the petitioner was removed from service came within the meaning of 'law' in Art. 13 (3) they were not unreasonable restrictions and therefore were saved by Art. 19 (6). **AIR 1955 Pat 223 (225) (Pt C) (Pr 7) (DB).**

——**Art. 19 (1) (g)** — Bye-laws under S. 28, Punjab Agricultural Produce Markets Act — Bye-law 9 A of Tarn Taran Market Committee — Whether invalid as imposing unreasonable restriction on a person's liberty to carry on trade—Quaere. See Punjab Agricultural Produce Markets Act (5 of 1939), S. 28. **('57) 59 Punj L R 628.**

——**Art. 19 (1) (g)**—Provision of S. 29 of Ajmer Land and Revenue Regulation (2 of 1877) is violative of Art. 19 (1)(g)—Hence S. 29 of the Regulation must be struck down. See Tenancy Laws—Ajmer Land and Revenue Regulation (2 of 1877), S. 29. **A I R 1965 Raj 188 (DB).**

——**Art. 19 (5) (g)**—Scope— S. 7 does not give power to the Government to control mining leases in land in protected areas — Notification No. F, 6 (123)/Rev./B/58, dated 21-2-1959 issued under the section in that respect is ultra vires—No restriction on the right to carry on business for which valid leases have already been granted under relevant provisions, can be imposed under the section. See Rajasthan Colonisation Act (27 of 1954), S. 7 (1). **1963 Raj L W 423.**

——**Art. 19 (1) (g) and (6) — Right to carry on business of bus operator.**

A person has the fundamental right to carry on the business of a bus operator under Art 19 (1) (g) of the Constitution subject to such reasonable restrictions as may be placed on that right under Art. 19 (6). **ILR (1953) 3 Raj 931 : 1954 R L W 649 : AIR 1955 Raj 19 (27) (Pt G) (Pr 22) (DB).**

65. Legal profession—Restrictions as to.
See also Ibid, Note 73

●——**Art. 19 (1) (g)**—Legal Practitioners Act (1879) Ss. 9, 11—Scope—General Rules and Circular Orders of High Court of Judicature at Patna (Civil) (1922), Part 7, Chap 3, R. 2—Validity—Rule is not in excess of rule-making power under S. 11. See Legal Practitioners Act (1879), S. 9. **AIR 1962 S C 201.**

●——**Art. 19 (1) (g)** — Validity of Bar Councils Act, S. 9 (1), Proviso—Contravention of Art. 19 (1) (g). See Bar Councils Act (1926), S. 9 (1), Proviso. **AIR 1954 S C 524.**

——**Art. 19 (1) (g)—Right under—Art. 19 (6) — Restrictions — Legal Practitioners Act — Touts and Revenue agents—Prohibitions against—Validity.**

Article 19 (1) (g) does not grant an unfettered right to practise any profession a citizen may choose. It is subject to Art. 19 (6) providing for the imposition of reasonable restrictions upon the very right conferred by Art. 19 (1) (g) in the interest of the general public and not in the exercise of a particular profession adopted by a citizen.

The provisions in the Legal Practitioners Act in respect of touts, involving total prohibition (Sections 36, 13-e and 22-d) are very reasonable restrictions in the interest of the public and for the proper administration of justice; and they are saved by Art. 19, sub-cl. (6). **1952 Cr L J 910 : ILR (1953) 1 All 930 : A I R 1952 All 491 (493, 494) (Pt A) (Prs 13, 14, 16, 17) (DB).**

——**Art. 19 (1) (g) and (6)** — Advocates Act (1961), S. 50 (2)—Provision does not violate Art. 19 (1) (g) of the Constitution and is covered by Art. 19 (6). See Advocates Act (1961), S. 50 (2). **A I R 1963 Cal 614 (DB).**

——**Arts. 19 (1) (g), 6 and 22 — Scope — Right to be defended by lawyer.**

Right to be represented by a lawyer is not expressly recognised by the Indian Constitution with perhaps one exception. It is not a fundamental right under the Constitution of India except under Art 22 of the Constitution in the case of preventive detention where a personal liberty is involved. Refusal to permit lawyers representing parties in a civil dispute over a contract before the Arbitrators cannot, therefore be regarded as an infraction of any constitutional provision. The right recognised in Art. 19 (1) (g) is confined to the right of a citizen to practise a profession (which in this case was profession of law). It is not necessarily the same thing for an applicant to claim a right to be defended by a lawyer in a civil dispute over a contract. It is not the applicant's but the lawyer's right. Where the arbitration agreement expressly incorporates the Rules of the Bengal Chamber of Commerce specifically recognising the right to exclude lawyers except with the permission of the Arbitrators it is not a denial of the citizen's right to practise the profession of law Even were it a denial, it would be justified as a reasonable restriction imposed by the existing law under sub-cl. (6) of Art. 19 of the Constitution. **60 Cal W N 810 : A I R 1956 Cal 476 (478) (Pt A) (Prs 4, 5).**

——**Art. 19 (1) (g)**—Whether an accused lawyer can be permitted to appear as lawyer for co-accused in the same case—Rights of the lawyer to carry profession. See Criminal P. C. (1898), S. 561A. **(1965) 6 Guj L R 531.**

——**Art 19—Right to appear by advocate, nature of—Civil P.C. (1908), O. 3, R. 11—Criminal P. C. (1898), S. 340.**

The right to appear by an Advocate is, if at all, a procedural right conferred by Statute and not a substantive right and, therefore there can be no question of infringement of any fundamental right whatsoever if a Statute leaves it to the sweet will and pleasure of the tribunal to allow a party to appear by pleader. **I L R (1953) Hyd 648 : A I R 1954 Hyd 28 (31, 32) (Pt D) (Pr 6) (DB).**

——**Art. 19 (1) (g)—Right to practise as a lawyer.**

There is no absolute right to be an advocate. The privilege to practise is conditioned by limitations circumscribed by the provisions of any Special Law. Hence a provision in a Statute that a lawyer could appear only when permitted by the Tribunal does not infringe Art. 19 (1) (g) of the Constitution **ILR (1953) Hyd 648 : A I R 1954 Hyd 28 (31, 32) (Pt E) (Pr 6) (DB).**

●——Art. 19—Hyderabad Legal Practitioners Act (6 of 13 8F), S. 3—Unreasonable restriction on the right of citizen to practise his profession. See Hyderabad Legal Practitioners Act (6 of 1318F), S. 3. **AIR 1951 Hyd 140 (FB).**

——**Art. 19 (1) (g)** — Industrial Disputes Act (1947), S 36 (4) (as amended by Industrial Disputes (Appellate Tribunal) Act (1950)) — Lawyer's right to practise before Tribunal— (Bar Council's Act (1926) Ss 9 (1) and 14 (1)). See Industrial Disputes Act (1947), S. 36 (4). **AIR 1953 Mad 447.**

——**Art 19 (1) (g) and Stamp Act (2 of 1899) as amended by Madras Stamp Amendment Act (6 of 1922), Sch I-A, Art. 25 Fundamental rights to practise advocate's profession —Powes of State to tax —Reconciliation.**

The stamp duty levied under Art. 30 of Sch. I of the Indian Stamp Act or Art. 25 of Sch. I-A of the

Act as amended in Madras is not of the same nature as the licence-tax or privilege-tax, examples of which are to be found in some American cases. It is not a periodical or recurring levy depending on the practice of the profession or on which the practice of the profession depends. Besides acting and pleading in Courts there are many ways in which a lawyer can pursue his profession. If any one wants the additional privilege of being entitled as of right to act and plead in the High Court he has got to be enrolled on the rolls of that Court Enrolment consists in making an entry on the roll and the Legislature says that the particular entry should bear stamp duty. This entry is an instrument as defined in the Indian Stamp Act. There is no evidence that the purpose of the stamp duty is to destroy the practice of the profession of law or that it was prompted by improper motives. Even assuming a tax otherwise lawfully levied can be held to be an unreasonable restriction on the exercise of any of the freedoms guaranteed by Art. 19, it cannot be said in this case that the imposition of the stamp duty is not a reasonable restriction and not in the interests of the general public. So long as the monetary exaction is, in the opinion of the Court, reasonable, it cannot be said that it is invalid as being unconstitutional.

Though any system of permits which eventually depends upon the discretion of executive authority would be bad when the system curtails any fundamental right, it cannot be said that in this case, it is in anybody's discretion to enrol or not to enrol a person otherwise qualified for being enrolled. There being thus neither discrimination nor any possibility of the exercise of naked arbitrary power, the practice of the profession is not dependent on the will and pleasure of any individual.

The right to plead and act on behalf of suitors in Court is not a right flowing from citizenship. It is not only a citizen who is entitled to be enrolled as an Advocate. Even a foreigner if he fulfils the prescribed qualifications and requirements can be enrolled as such. The exclusive right to represent suitors in a Court which an Advocate possesses is really in the nature of a privilege though the fact that it is a privilege does not imply that on the conferment of the privilege there can be discrimination. Art. 14 is a sufficient safeguard against any unequal treatment. The charge of a fee by way of levy of stamp duty for such privilege cannot be invalid as unconstitutional.

Even if the right to act and plead is deemed to be a right comprised in the right to practice the profession guaranteed under Art. 19 (1) (g), there is nothing in the Constitution to exempt such right wholly from the taxing power of the State. Art. 265 which says 'no tax shall be levied except by authority of law' does not provide for any exemptions. A number of entries in the Legislative Lists clearly indicate the scope of the taxing power as extending even to rights covered by Art. 19 (1). The right to levy stamp duty in respect of documents is specifically enumerated in both Lists I and II. The proper way to reconcile the fundamental rights guaranteed under Art. 19 and the power to tax contained in the several provisions of the Constitution is that if the taxation is only for legitimate revenue purpose that it is not invalid merely because it may adversely affect any of the fundamental rights. This way of reconciling would tend to give room for judicial review in exceptional cases and a power in the Court to declare a particular instance of taxation as unconstitutional.

As the enrolment fee is not with the object of deliberately abridging or destroying the right to carry on the legal profession nor is it so excessive and oppressive as to virtually abridge or destroy such right it must be held proper and constitutional.

There is abundant authority for the proposition that fundamental rights are not immune from taxation. The Stamp Act is a measure of taxation. The power to tax is an attribute of sovereignty; it carries with it the power to determine when and how the tax shall be levied and it is no objection to its validity that it is levied before the commencement of the trade and not after. Hence the theory of previous restraint on the exercise of the fundamental right being void in the sense that the imposition of the tax as a condition precedent to the exercise of the profession is illegal and opposed to Art. 19 (1) of the Constitution has no application. While the levy of income tax cannot be questioned in Courts the levy of profession-tax might be challenged on the ground that it is unreasonable and excessive as to be prohibitive of the right to carry on trade. Any question whether a tax in a particular case is so unreasonable as to amount to a destruction of the right will, of course, be a matter for determination by Courts in the same manner as questions of reasonableness under Art. 19 Cls. (3) to (5) 65 L W 114 : 1952 Mad W N 72 : I L R (1952) Mad 933 : (1952) I M L J 208 : A I R 1952 Mad 395 (403, 404, 407, 408, 409) (Pt A) (Prs 30, 33, 44, 52, 54) (DB).

——Art. 19 (1) (f) —Orissa Co-operative Societies Act (11 of 1952), S. 133—Validity.

Section 133 is not unconstitutional on the ground that it imposes an unreasonable restriction on the right of a legal practitioner to carry on his profession guaranteed under Art. 19 (1) (g) of the Constitution. It cannot also be said that it imposes an unreasonable restriction on the right of a litigant to engage a legal practitioner. A I R 1957 Orissa 56 and A I R 1957 Orissa 281, Rel. on. ILR (1958) Cut 286 : A I R 1958 Orissa 217 (218) (Pt A) (Pr 4) (DB).

——Art. 19 (1) (g)—Restriction on right of lawyer to carry on profession—Validity. See Panchayats—Orissa Gram Panchayats Act (15 of 1948), S. 94. **1957 Cr L J 1437 : AIR 1957 Orissa 281.**

——Art. 19 — Validity—Section does not restrict the right of the legal practitioner to carry on his profession. See Municipalities—Orissa Municipal Act (23 of 1950), S. 16 (1) (ix). AIR **1952 Orissa 11 (DB).**

66. Licence, requirement of.

● ——Art. 19 (1) (g)— Calcutta Municipal Act (33 of 1951), S. 548 (2) — Levy of Licence fee in 1948 on cinema house - Increase of fee from Rs. 400 to 6 000 per year in 1958 —Does not amount to expropriation —Levy not invalid as violating. Art. 19 (1) (f) and (g) of Constitution. See Municipalities — Calcutta Municipal Act (33 of 1951), S. 548 (2). **AIR 1963 SC 1107.**

● ——Art. 19 (6)—Export promotion policy regarding art silk yarn and fabrics — Power of Controller of Imports to grant licences up to certain percentage of value of exported goods — Nature of — No right in exporter to obtain licence for full value — Malpractices of exporters Reduction in percentage of import value on scrutiny of each application — Does not amount to unreasonable restriction on right under Art. 19 (1) (g) of the Constitution. See Import Trade Control Policy (for Oct 58 to March, 59), Appl. 42, Cl. 2. **A I R 1963 S C 563.**

● ——Art 19 (1) (g) —Assam Food Grains (Licensing and Control) Order (1961); Clause 5 (e) - Petitioner's application for license refused and license granted to co-operative society, on footing of creating monopolies in favour of co-operative societies —Order is discriminatory and violates rights guaranteed under Arts. 14 and 19 of the Constitution. See Assam Food Grains (Licensing and Control) Order (1961), Cl. 5 (e). **A I R 1962 S C 386**

● ——Art. 19—Sea Customs Act (1878) (as amended in 1955), Ss. 202 (2), 9— Rules under, Custom House

Agents Licensing Rules (1960) —Validity — Whether offend against Arts. 14 and 19 of the Constitution or go beyond rule-making power under S. 202 (2). See Sea Customs Act (1878) (As amended in 1955), S. 202 (2). AIR 1962 S C 204.

● ——Arts. 19, 31 and Part 3—Bihar Private Forests Act (3 of 1946), S. 22 — Termination of licence to cut forest trees under S. 22 long prior to Constitution—Protection of Part 3 of Constitution cannot be invoked.

Where the lease or licence which the appellant had obtained by contract from the landholder was put an end to once and for all, long before the Constitution came into force by virtue of the provisions contained in S. 22 of the Bihar Private Forests Act, 1946 which was a valid law and which made provision for compensation for the extinguishment of those rights the appellant could have no rights which could survive the Constitution so as to enable him to invoke the protection of Part 3 thereof. AIR 1955 S C 624, Disting. Guru Datta Sharma v. State of Bihar, ILR 41 Pat 47 : (1962) 2 S C R 292 : (1962) 1 S C J 382 : AIR 1961 S C 1684 (1697, 1698) (Pt E) (Pr 32).

● ——Art. 19 (1) (g), (6) — Restrictions on the right to carry on trade—Reasonableness—Provision requiring licence for conducting eating house — S. 39 of Calcutta Police Act — Validity — S. 39 is not unreasonable restriction on the right to carry on trade and is not unconstitutional.

(Per Majority, Sinha, C. J. and Subba Rao, J. Contra) :—

When the Court is judging S. 39 of the Calcutta Police Act passed in 1866 to decide whether it satisfies the test of constitutionality based on Art. 19 (1) (g) and Art. 19 (6) it should take the section as a whole and see whether on a fair reading of the section it can be said that there is no guidance for the Commissioner in the matter of granting or refusing licences. Section 39 clearly provides that the Commissioner will use his discretion in deciding whether the person applying for a licence is in actual and effective control and possession of the place where the eating house is to be kept and is thus the keeper thereof. He will also satisfy himself that the keeper is a person of good behaviour and further that he is able to prevent drunkenness and disorder in the eating house. If he is satisfied on these three matters, the section contemplates that the discretion will be exercised in favour of the grant of a licence. Thus it cannot be held that S. 39 confers an arbitrary and uncanalised power without any criteria for guiding the discretion of the licensing authority and the section cannot be held to be an unreasonable restriction on the right to carry on trade on this ground. Kishan Chand Arora v. Commr. of Police, Calcutta, (1961) 2 S C A 150 : (1961) 2 S C J 309 : (1961) M L J (Cr) 541 : (1961) 3 S C R 135 : AIR 1961 S C 705 (708, 709) (Pt A) (Prs 3, 4).

● ——Art. 19 (1) (g)— Imports Control Order (1955), Cl. 9 (a)—Cancellation of licence on ground that it has been obtained by fraud—It is reasonable restriction—No infringement of fundamental right. See Imports Control Order (1955), Cl. 9 (a). AIR 1960 S C 415.

● ——Art. 19 (1) (g) and (6) — Cinematograph Act (2 of 1918).

Section 8—G. O. Mis. 1054 Home, D/- 28-3-1948 and G. O. Mis. 3422, D/- 15-9-1945 issued by Madras State under S. 8—Condition (4) (a) and special condition 3 imposed in licence in pursuance of notifications—Validity—AIR 1952 Mad 120, Reversed. See Cinematograph Act (1918), S. 8. AIR 1954 S C 747.

——Art. 19 (1) (g) and (6) - U. P. Cinemas Regulation Act, 1955 (U. P. 3 of 1956), S. 5 (2) — Reasonable restriction—Order passed laying restrictions on cinema house proprietors in respect of daily shows —Order impugned as infringing Art. 19 (1) (g)— Reasonability of order to be tested with reference to object of Act — Held, the impugned order was reasonable and valid.

There is a limitation placed on the power exercisable, whether by the State Government or the licensing authority, in respect of the issue of a licence under S. 5 (2) of the Act. No absolute power to impose any and whatever condition they should desire is vested thereby. For judging the reasonableness of the restrictions, the purpose and object of the Act will be a very relevant consideration. If the Act is not limited in its scope to the making of provision for licensing of places alone where exhibition by cinematograph can be given but travels beyond, provision can also be made under it for other matters such as education and health conditions and restrictions which concern those matters can also be included in the licence.

Purporting to act under S. 5 (2) of the U. P. Cinemas Regulation Act, 1955, the Additional District Magistrate, Lucknow, passed an order ordering thereby to include certain additional conditions in the licences for cinematograph exhibitions. Four restrictions were contemplated in the order made. The petitioners claimed that the restrictions contained in the above conditions were per se unreasonable; that they were not in the interest of the general public and that they infringed the fundamental right guaranteed by sub-cl. (g) of Cl. (1) of Art. 19 of the Constitution.

Held, that as reasons of health, safety and public morality demand that such a limit should be placed, these conditions and restrictions required in the order were reasonable restrictions and that the impugned order was valid. (1915) 2 K B 49, Disting. AIR 1961 All 600 (603, 604, 606) (Pt B) (Prs 9, 11, 25).

——Arts. 19, 14, 226 — Revocation of licence to carry on cinema house under S. 9-A of the U. P. Entertainment and Betting Tax Act—Opportunity of being heard must be given to proprietor—Rule of natural justice applies— U. P. Entertainment and Betting Tax Act (8 of 1937), S. 9-A—Natural Justice.

An order cancelling or suspending a licence under S. 9-A of the U. P. Entertainment and Betting Tax Act is an order which affects the fundamental right of the person entitled to carry on the business. In order that the restriction under Art. 19 (6) of the Constitution should satisfy the requirements of reasonableness, it is necessary that the person affected is afforded an opportunity before the cancellation or suspension is ordered. The obligation exists under the Constitution itself which is the basic law and if the opportunity is not given, the order is liable to be quashed. 1960 All W R (HC) 685 : 1960 All L J 894.

——Art 19 (1) (g)—Scope — Conditions in permit of motor bicycle—Reasonableness of. See Motor Vehicles Act (1939), S. 52. AIR 1959 All 373.

——Art 19 (1) (g)—Bye-laws imposing restrictions on number of rickshaws and issue of licences and detention of unlicensed rickshaws—Validity of. See Municipalities—U. P. Municipalities Act (2 of 1916), S. 111. AIR 1958 All 853 (DB).

——Art. 19 (1) (g)— Right to carry on business of plying rickshaw—Restriction on—Validity.

The right of a citizen to carry on the business of plying rickshaws is within the protection afforded by Art. 19 (1) (g) of the Constitution; it is a right guaranteed and the validity of any restriction or any refusal

to let a person exercise that guaranteed right of his can only be upheld if it could be justified on the ground of its being a reasonable restriction placed on that right as provided for by the Constitution. 1958 All L J 643 : AIR 1958 All 853 (858) (Pt C) (Pr 24) (DB).

——Art. 19 (1) (d) and (g)— U. P. Municipalities Act (1916), S. 298 (2)—Bye-laws under, for regulation and control of rickshaws—Validity of. See Municipalities — U. P. Municipalities Act (2 of 1916), S. 298 (2). 1958 All L J 539.

——Art. 19 (1) (g) and (6)—U. P. Butter, Ghee and Fat Licensing Rules, Rr. 3 and 11—Validity.

Rules 3 and 11 are discretionary and so long as the discretion is not exercised arbitrarily, unjustly or oppressively it is not open to challenge. The Rules, if correctly interpreted do not impose any obligation upon the Municipal Board or the local authority to issue a license when in the interest of public health they do not consider it proper to do so. The restriction which may by implication be imported into the matter would be a reasonable restriction protected by Cl. (6) of Art. 19 of the Constitution. AIR 1956 All 562, Distinguished. 1957 Cr L J 915 :AIR 1957 All 548 (549) (Pt B) (Pr 3) (DB).

——Arts. 19 (1) (g) and 226 — Scope — License to carry on profession.

A petition writer has no legal right, let alone a fundamental right, to carry on his profession or business in the Collectorate compound. His case is wholly distinguishable from that of a person who is required by law to obtain a licence as a condition of carrying on his business or profession at all. Where the law lays down that a particular occupation cannot be carried on save under a licence, then the withdrawal of a licence has the obvious consequences of wholly preventing the person concerned from carrying on that business, and the question may arise whether there has been contravention of the provisions of Art. 19 (1) (g) of the Constitution. The petition writer has no right to carry on his business in the Collectorate compound save with the permission of the Collector, and if that permission is withdrawn it would still be open to him to carry on his occupation anywhere other than the Collectorate compound. He may have a grievance by the withdrawal of the permission but no legal remedy unless it can be founded on breach of contract. The remedy for breach of contract is by way of suit, and not a petition under Art. 226.

A provision in the order withdrawing the permission that 'No application or papers written by him should be entertained in any Court' is however in excess of the powers of the officer making the order. 1954 All L J 12 : 1954 All W R (H C) 63 : I L R (1954) 2 All 300 : 1954 Cri L J 726 : AIR 1954 All 317 (318, 319) (Prs 3, 4, 8, 9) (DB).

——Art. 19 (1) (g)—Power to interfere with administrative orders—Refusal to renew license in Form B 1, under U. P. Controlled Cotton Cloth and Yarn Dealer's Licensing Order 1948, on grounds irrelevant to the consideration of application for renewal — Order of refusal quashed and direction to consider application on merits issued. See Ibid, Art. 226. A I R 1954 All 144 (DB).

——Art. 19 (1) (g), (6) — Municipalities — Madras District Municipalities Act (5 of 1920), Ss. 249 (3), 321 (4) and 322 (c) — S. 249 (3) is not ultra vires on the ground that it is opposed to the fundamental rights guaranteed to a citizen. It is not repugnant to fundamental rights under Art. 19 (1) (g) — Power in Municipality to grant or refuse licence for the reasons given in the order passed by it is not arbitrary — Municipalities — Madras District Municipalities Act (5 of 1920), Ss. 249, 321, 322. A I R 1956 Mad 181; 1959 M L J (Cri) 923, Diss. from; A I R 1958 T C 249; AIR 1959 Bom 26; A I R 1954 S C 465, Rel. on. (1962) 1 Andh W R 112 : 1962 Andh L T 42 : (1962) 1 Andh L T 113 : 1962 Mad L J (Cr) 135 : 1962 (2) Cri L J 461 : AIR 1962 Andh-Pra 379 (381) (Prs 8, 10).

——Art. 19 (1) (g) — Central Excise Rules (1944), R. 225 — Validity — Casting vicarious liability on licensee — If violative of fundamental right under Art. 19 (1) (g). See Central Excise Rules (1944), R. 225. AIR 1961 Andh-Pra 350.

——Arts. 19 (1) (g) and 19 (6)—Condition in license to cinema house, that it should exhibit approved films of certain length — Approved films of educational value—It is a reasonable restriction on trade in interest of general public — Hyderabad Cinemas (Regulation) Act (49 of 1952)—Hyderabad Cinematograph Rules (1953)—Hyderabad Cinematograph Act (1 of 1952).

Conditions 3 (a) and (b) in the license granted under Hyderabad Cinematograph Rules, 1953 to a Cinema house, requiring the licensee to exhibit films of length not exceeding 2000 ft. approved and certified by the Central Government and the Films Advisory Board, depicting educational, cultural and other current events and also documentaries, are reasonable restrictions in the interest of the general public, within the meaning of Art. 19 (1) (g) read with Art. 19 (6). AIR 1961 Andh-Pra 126 (128) (Pr 7).

——Art. 19 (1) (g) — Central Excise Rules (1945) Rr. 15, 18, 21, 22, 23, 34 and 36—Validity. See Central Excise Rules (1944), R. 15. A I R 1960 Andh-Pra 498 (DB).

——Art. 19 (1) (f) — Scope — Cancellation of Licence to hold arms under S. 18, Arms Act, without assigning any reason—Order will be quashed. See Ibid, Art. 226. AIR 1960 Andh-Pra 420.

——Art. 19 (5) — Arms Rules (1951), R. 26 — Validity — Licencing machinery for sale of arms — Reasonable restriction — Art. 19 (1) (g) not contravened. See Arms Rules (1951), R. 26. A I R 1960 Andh-Pra 384.

——Arts. 19 (1) (g) and 226 — Assam Cement Control Act (7 of 1953), S. 3 and Assam Cement Control Order, Cl. 14 — Right to carry on business in cement — Reasonable restriction — Cancellation of licence under Cl. 14 and the petitioner's distributing agency in respect of Government stock — Reasonable opportunity against cancellation of licence held necessary — Bias.

Held on facts that under the Assam Cement Control Act it was open to Government to appoint any dealers they choose as their distributing agents and as such the petitioner was not entitled to any relief so far as the cancellation of his distributing agency for Government stock was concerned. But cl. 14 of the Assam Cement Control Order imposing a complete prohibition to carry on business in cement without obtaining a licence was a restriction on the fundamental right of the petitioner to carry on business and before a licence could be cancelled the licensee ought to be given a reasonable opportunity to show cause against the cancellation. Held, further that the petitioner could rightly allege bias and say that he was not given any reasonable opportunity to disprove the charges against him. The order cancelling his licence should therefore be quashed. A I R 1962 Assam 80 (81, 82) (Prs 3, 5, 6, 11) (DB).

——Art. 19 (1) (g) — Assam Drug Rules, R. 62-A — Validity—Discretion of licensing authority arbitrary and unregulated —Rule hit by Arts. 14 and 19 of the Constitution. See Assam Drug Rules (1945), R. 62-A. AIR 1960 Assam 94 (DB).

Agents Licensing Rules (1960) —Validity — Whether offend against Arts. 14 and 19 of the Constitution or go beyond rule-making power under S. 202 (2). See Sea Customs Act (1878) (As amended in 1955), S. 202 (2). AIR 1962 S C 204.

● ——Arts. 19, 31 and Part 3—Bihar Private Forests Act (3 of 1946), S. 22 — Termination of licence to cut forest trees under S. 22 long prior to Constitution—Protection of Part 3 of Constitution cannot be invoked.

Where the lease or licence which the appellant had obtained by contract from the landholder was put an end to once and for all, long before the Constitution came into force by virtue of the provisions contained in S. 22 of the Bihar Private Forests Act, 1946 which was a valid law and which made provision for compensation for the extinguishment of those rights the appellant could have no rights which could survive the Constitution so as to enable him to invoke the protection of Part 3 thereof. AIR 1955 S C 624, Disting. Guru Datta Sharma v. State of Bihar, ILR 41 Pat 47 : (1962) 2 S C R 292 : (1962) 1 S C J 382 : AIR 1961 S C 1684 (1697, 1698) (Pt E) (Pr 32).

● ——Art. 19 (1) (g), (6) — Restrictions on the right to carry on trade—Reasonableness—Provision requiring licence for conducting eating house — S. 39 of Calcutta Police Act — Validity — S. 39 is not unreasonable restriction on the right to carry on trade and is not unconstitutional.

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When the Court is judging S. 39 of the Calcutta Police Act passed in 1866 to decide whether it satisfies the test of constitutionality based on Art. 19 (1) (g) and Art. 19 (6) it should take the section as a whole and see whether on a fair reading of the section it can be said that there is no guidance for the Commissioner in the matter of granting or refusing licences. Section 39 clearly provides that the Commissioner will use his discretion in deciding whether the person applying for a licence is in actual and effective control and possession of the place where the eating house is to be kept and is thus the keeper thereof. He will also satisfy himself that the keeper is a person of good behaviour and further that he is able to prevent drunkenness and disorder in the eating house. If he is satisfied on these three matters, the section contemplates that the discretion will be exercised in favour of the grant of a licence. Thus it cannot be held that S. 39 confers an arbitrary and uncanalised power without any criteria for guiding the discretion of the licensing authority and the section cannot be held to be an unreasonable restriction on the right to carry on trade on this ground. Kishan Chand Arora v. Commr. of Police, Calcutta, (1961) 2 S C A 150 : (1961) 2 S C J 309 : (1961) M L J (Cr) 541 : (1961) 3 S C R 135 : AIR 1961 S C 705 (708, 709) (Pt A) (Prs 3, 4).

● ——Art. 19 (1) (g)— Imports Control Order (1955), Cl. 9 (a)—Cancellation of licence on ground that it has been obtained by fraud—It is reasonable restriction—No infringement of fundamental right. See Imports Control Order (1955), Cl. 9 (a). AIR 1960 S C 415.

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Section 8—G. O. Mis. 1054 Home, D/- 28-3-1948 and G. O. Mis. 3422, D/- 15-9-1945 issued by Madras State under S. 8—Condition (4) (a) and special condition 3 imposed in licence in pursuance of notifications—Validity—AIR 1952 Mad 120, Reversed. See Cinematograph Act (1918), S. 8. AIR 1954 S C 747.

——Art. 19 (1) (g) and (6) - U. P. Cinemas Regulation Act, 1955 (U. P. 3 of 1956), S. 5 (2) — Reasonable restriction—Order passed laying restrictions on cinema house proprietors in respect of daily shows —Order impugned as infringing Art. 19 (1) (g)—Reasonability of order to be tested with reference to object of Act — Held, the impugned order was reasonable and valid.

There is a limitation placed on the power exercisable, whether by the State Government or the licensing authority, in respect of the issue of a licence under S. 5 (2) of the Act. No absolute power to impose any and whatever condition they should desire is vested thereby. For judging the reasonableness of the restrictions, the purpose and object of the Act will be a very relevant consideration. If the Act is not limited in its scope to the making of provision for licensing of places alone where exhibition by cinematograph can be given but travels beyond, provision can also be made under it for other matters such as education and health conditions and restrictions which concern those matters can also be included in the licence.

Purporting to act under S. 5 (2) of the U. P. Cinemas Regulation Act, 1955, the Additional District Magistrate, Lucknow, passed an order ordering thereby to include certain additional conditions in the licences for cinematograph exhibitions. Four restrictions were contemplated in the order made. The petitioners claimed that the restrictions contained in the above conditions were per se unreasonable; that they were not in the interest of the general public and that they infringed the fundamental right guaranteed by sub-cl. (g) of Cl. (1) of Art. 19 of the Constitution.

Held, that as reasons of health, safety and public morality demand that such a limit should be placed, these conditions and restrictions required in the order were reasonable restrictions and that the impugned order was valid. (1915) 2 K B 49, Disting. AIR 1961 All 600 (603, 604, 606) (Pt B) (Prs 9, 11, 25).

——Arts. 19, 14, 226 — Revocation of licence to carry on cinema house under S. 9-A of the U. P. Entertainment and Betting Tax Act—Opportunity of being heard must be given to proprietor—Rule of natural justice applies— U. P. Entertainment and Betting Tax Act (8 of 1937), S. 9-A—Natural Justice.

An order cancelling or suspending a licence under S. 9-A of the U. P. Entertainment and Betting Tax Act is an order which affects the fundamental right of the person entitled to carry on the business. In order that the restriction under Art. 19 (6) of the Constitution should satisfy the requirements of reasonableness, it is necessary that the person affected is afforded an opportunity before the cancellation or suspension is ordered. The obligation exists under the Constitution itself which is the basic law and if the opportunity is not given, the order is liable to be quashed. 1960 All W R (HC) 685 : 1960 All L J 894.

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——Art. 19 (1) (g)—Bye-laws imposing restrictions on number of rickshaws and issue of licences and detention of unlicensed rickshaws—Validity of. See Municipalities—U. P. Municipalities Act (2 of 1916), S. 111. AIR 1958 All 853 (DB).

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The right of a citizen to carry on the business of plying rickshaws is within the protection afforded by Art. 19 (1) (g) of the Constitution; it is a right guaranteed and the validity of any restriction or any refusal

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——Art. 19 (1) (d) and (g)— U. P. Municipalities Act (1916), S. 298 (2)—Bye-laws under, for regulation and control of rickshaws—Validity of. See Municipalities — U. P. Municipalities Act (2 of 1916), S. 298 (2). 1958 All L J 539.

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——Arts. 19 (1) (g) and 226 — Scope — License to carry on profession.

A petition writer has no legal right, let alone a fundamental right, to carry on his profession or business in the Collectorate compound. His case is wholly distinguishable from that of a person who is required by law to obtain a licence as a condition of carrying on his business or profession at all. Where the law lays down that a particular occupation cannot be carried on save under a licence, then the withdrawal of a licence has the obvious consequences of wholly preventing the person concerned from carrying on that business, and the question may arise whether there has been contravention of the provisions of Art. 19 (1) (g) of the Constitution. The petition writer has no right to carry on his business in the Collectorate compound save with the permission of the Collector, and if that permission is withdrawn it would still be open to him to carry on his occupation anywhere other than the Collectorate compound. He may have a grievance by the withdrawal of the permission but no legal remedy unless it can be founded on breach of contract. The remedy for breach of contract is by way of suit, and not a petition under Art. 226.

A provision in the order withdrawing the permission that 'No application or papers written by him should be entertained in any Court' is however in excess of the powers of the officer making the order. 1954 All L J 12 : 1954 All W R (H C) 63 : I L R (1954) 2 All 300 : 1954 Cri L J 726 : AIR 1954 All 317 (318, 319) (Prs 3, 4, 8, 9) (DB).

——Art. 19 (1) (g)—Power to interfere with administrative orders—Refusal to renew license in Form B 1, under U. P. Controlled Cotton Cloth and Yarn Dealer's Licensing Order 1948, on grounds irrelevant to the consideration of application for renewal — Order of refusal quashed and direction to consider application on merits issued. See Ibid, Art. 226. A I R 1954 All 144 (DB).

——Art. 19 (1) (g), (6) — Municipalities — Madras District Municipalities Act (5 of 1920), Ss. 249 (3), 321 (4) and 322 (c) — S. 249 (3) is not ultra vires on the ground that it is opposed to the fundamental rights guaranteed to a citizen. It is not repugnant to fundamental rights under Art. 19 (1) (g) — Power in Municipality to grant or refuse licence for the reasons given in the order passed by it is not arbitrary — Municipalities — Madras District Municipalities Act (5 of 1920), Ss. 249, 321, 322. A I R 1958 Mad 181; 1959 M L J (Cri) 923, Diss. from; A I R 1958 T C 249; AIR 1959 Bom 26; A I R 1954 S C 465, Rel. on. (1962) 1 Andh W R 112 : 1962 Andh L T 42 : (1962) 1 Andh L T 113 : 1962 Mad L J (Cr) 135 : 1962 (2) Cri L J 461 : AIR 1962 Andh-Pra 379 (381) (Prs 8, 10).

——Art. 19 (1) (g) — Central Excise Rules (1944), R. 225 — Validity — Casting vicarious liability on licensee — If violative of fundamental right under Art. 19 (1) (g). See Central Excise Rules (1944), R. 225. AIR 1961 Andh-Pra 350.

——Arts. 19 (1) (g) and 19 (6)—Condition in license to cinema house, that it should exhibit approved films of certain length — Approved films of educational value—It is a reasonable restriction on trade in interest of general public — Hyderabad Cinemas (Regulation) Act (49 of 1952)—Hyderabad Cinematograph Rules (1953)—Hyderabad Cinematograph Act (1 of 1952).

Conditions 3 (a) and (b) in the license granted under Hyderabad Cinematograph Rules, 1953 to a Cinema house, requiring the licensee to exhibit films of length not exceeding 2000 ft. approved and certified by the Central Government and the Films Advisory Board, depicting educational, cultural and other current events and also documentaries, are reasonable restrictions in the interest of the general public, within the meaning of Art. 19 (1) (g) read with Art. 19 (6). AIR 1961 Andh-Pra 126 (128) (Pr 7).

——Art. 19 (1) (g) — Central Excise Rules (1945) Rr. 15, 18, 21, 22, 23, 34 and 36—Validity. See Central Excise Rules (1944), R. 15. A I R 1960 Andh-Pra 498 (DB).

——Art. 19 (1) (f) — Scope — Cancellation of Licence to hold arms under S. 18, Arms Act, without assigning any reason—Order will be quashed. See Ibid, Art. 226. AIR 1960 Andh-Pra 420.

——Art. 19 (5) — Arms Rules (1951), R. 26 — Validity — Licencing machinery for sale of arms — Reasonable restriction — Art. 19 (1) (g) not contravened. See Arms Rules (1951), R. 26. A I R 1960 Andh-Pra 384.

——Arts. 19 (1) (g) and 226 — Assam Cement Control Act (7 of 1953), S. 3 and Assam Cement Control Order, Cl. 14 — Right to carry on business in cement — Reasonable restriction — Cancellation of licence under Cl. 14 and the petitioner's distributing agency in respect of Government stock — Reasonable opportunity against cancellation of licence held necessary—Bias.

Held on facts that under the Assam Cement Control Act it was open to Government to appoint any dealers they choose as their distributing agents and as such the petitioner was not entitled to any relief so far as the cancellation of his distributing agency for Government stock was concerned. But cl. 14 of the Assam Cement Control Order imposing a complete prohibition to carry on business in cement without obtaining a licence was a restriction on the fundamental right of the petitioner to carry on business and before a licence could be cancelled the licensee ought to be given a reasonable opportunity to show cause against the cancellation. Held, further that the petitioner could rightly allege bias and say that he was not given any reasonable opportunity to disprove the charges against him. The order cancelling his licence should therefore be quashed. A I R 1962 Assam 80 (81, 82) (Prs 3, 5, 6, 11) (DB).

——Art. 19 (1) (g) — Assam Drug Rules, R. 62-A — Validity—Discretion of licensing authority arbitrary and unregulated —Rule hit by Arts. 14 and 19 of the Constitution. See Assam Drug Rules (1945), R. 62-A. AIR 1960 Assam 94 (DB).

● —Art. 19 (1) (g) — Scope — Assam Act (25 of 1953) Validity - Use of land as market — Requiremen of taking out a license on payment of certain fee—Not an unreasonable restriction on fundamental right — Does not contravene Arts. 14 and 19 of the Constitution. See Assam Local Self-Government Act (25 of 1953), S. 62. AIR 1959 Assam 221 (SB).

—Art. 19 (1) (g)—To hold licence or trade under it.

To hold a license for the collection of tolls in a Municipal Market is not a citizen's fundamental right, it being limited by the rules that exist and is subject to the approval of the Municipal Board. To hold a license or to trade under a license therefor, is not a fundamental right — Nor is it one of the seven freedoms enjoined under the Indian Constitution. I L R (1953) 5 Assam 263 : A I R 1953 Assam 145 (146) (Pt 3) Pr 8) (DB).

—Art. 19 (1) (g) — Bhopal Cotton Cloth Dealers' Licensing Order (18 of 1949), Cl. 20 — Validity — Clause if infringes Art. 19 (1) (g), Constitution of India —Applicant not challenging parent Act under which Order was issued — Right to challenge Order how far affected — See Bhopal Cotton Cloth Dealers Licening Order, 1949, Cl. 20. AIR 1951 Bhopal 5.

—Art. 19 (1) (g) — Object and purpose of export control Licence for export of ferrous scrap—Mandatory direction against exporter directing him to purchase melting scrap in local market for delivery thereof to nominated furnace owner locally in India —Condition is not consistent with Act or Order and hence illegal—Iron and Steel (Control) Order (1956) —Powers under Cannot be resorted to for imposing conditions in export licence. See Imports and Exports (Control) Act (1947), Pre. AIR 1963 Bom 50.

—Art. 19 — Municipalities — Bombay Provincial Municipal Corporations Act (1949), S. 376 (5) — Power of Commissioner to revoke licence — Discretionary power — Exercise of. See Municipalities — Bombay Provincial Municipal Corporations Act (59 of 1949), S. 376 (5). AIR 1959 Bom 26.

—Art. 19 (1) (f) and (5) — Right to carry on business — Reasonable restriction on — Condition to obtain licence — (Municipalities) — (Bombay Provincial Municipal Corporations Act (59 of 1949), S. 376) — Validity.

Section 376, Bombay Provincial Municipal Corporations Act, does not constitute an unreasonable restriction upon the fundamental right of the timber merchant to carry on his business which has been granted to him under Art. 19 of the Constitution. 59 Bom L R 129 : ILR (1957) Bom 147 : AIR 1959 Bom 26 (30) (Pt D) (Pr 15) (DB).

—Art. 19 (1) (g) — R. 62A does not offend Art. 19 of the Constitution on ground that it grants unfettered discretion to the authority to grant or refuse license. See Bombay Drugs Rules (1946), R. 62A. ILR (1956) Bom 349.

—Art. 19 — Incumbrance — Meaning of —Right to ply private ferries recognised in India - Person can carry on business of ferry on tidal navigable river — Ferry not an incumbrance within S. 5—Person applying for licence under Bengal Ferries Act to ply ferry on tidal navigable river — Application to be considered on merits. See Tenancy Laws — West Bengal Estates Acquisition Act, 1963 (1 of 1964), S. 5. AIR 1963 Cal 74.

—Arts. 19 and 14 — Calcutta Police Act (1860), S. 39 — Section does not confer arbitrary power on Commissioner of Police in granting license for running eating houses. See Calcutta Police Act (1860), S. 39. AIR 1962 Cal 556

— Art 19 (1) (g) — Iron and Steel (Control) Order (1956), Cls. 7 and 8—Validity of.

The power of revocation of permit or written order given by Controller under Cl. 4 has not been expressly granted anywhere in the Control Order. Assuming that there is an implied power to revoke or cancel the authorisation under Cl 8, the power is absolute and unfettered and without any direction given by the Central Government under Cl 17, is naked and arbitrary. In the absence of such direction, no restriction is put upon the absolute power of the Controller to cancel an authorisation. Once the revocation is made, there is no appeal provided and no recourse is given to the Courts. The power constitutes an unreasonable restriction on the fundamental right of a citizen to carry on its business under Art. 19 (1) (g) of the Constitution and is therefore void. AIR 1954 S C 224 Rel. on; AIR 1954 S C 465, Disting. (1961) 31 Comp Cas 714 : 65 Cal W N 1142 : AIR 1961 Cal 258 (266, 267) (Pt B) (Prs 22, 24, 25).

[Impliedly overruled on another point in AIR 1963 S C 1811.]

—Art. 19 (1) (g) — Issue of notice before rejecting prayer for license — Communication of reasons for refusal — Necessity — Discretion — Interference. See Calcutta Police Act (4 of 1866), S. 39. 1959 Cri L J 180 : AIR 1959 Cal 123.

—Art. 19 (1) (g) and (6) — Fundamental right to carry on trade or business - Reasonable restriction — S. 39, Calcutta Police Act (4 of 1866)—Validity.

A citizen of India has the fundamental right under Art. 19 (1) (g) of the Constitution to carry on a trade or business of his choice. But the law may impose a reasonable restriction thereon, in the interests of the general public. The phrase 'reasonable restriction' in Art. 19 (6) connotes that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature beyond what is required in the interests of the public. A naked or arbitrary power granted to executive authority, without limit, is not a reasonable restriction and will be struck down. An arbitrary exercise of such power will also be declared void.

The provision contained in S. 39 of the Calcutta Police Act, 1866, whereby a citizen, in order to carry on the business of an eating house, is required to take out a licence from the Commissioner of Police is a reasonable restriction within the meaning of the phrase as used in Cl. (6) of Art. 19, imposed in the interests of the public. It is, however, a reasonable restriction only because the power is not naked and arbitrary. The exercise of the power is restricted by the underlying object of the Act, which is to create a police force and invest it with sufficient powers to protect public safety, peace, and tranquillity, within the town of Calcutta. 62 Cal W N 799 : 1959 Cri L J 180 : AIR 1959 Cal 123 (127, 128) (Pt A) (Pr 18).

—Art. 19 (1) (g) and (6) — Unreasonable restrictions — Validity of Paras. 3, 4 (c), 13 (2) and 17 of W. B. Food Grains Control Order — (W B. Food Grains Control Order (1951), Paras. 3, 4 (c), 13 (2) and 17).

The powers conferred on the State Government by paras. 4, 13 (2) and 17 of the Order are arbitrary and uncontrolled, because under the Order the State Government is authorised to cancel revoke or modify any licence granted under that Order without assigning any reason and without even issuing any notice to the licensee and the power of delegation is also unrestricted. Paras. 3, 4, 13 (2) and 17 of the Order are therefore invalid. 60 Cal W N 202 : 1955 Cr L J 1249 : AIR 1955 Cal 478 (482) (Pt F) (Pr 19).

—Art. 19 (1) (g) — Calcutta Police Act, 1886, S. 39 —Discretion under.

Under the Constitution, Art. 19 (1) (g), all citizens have the right to carry on any occupation, trade or business. To refuse licence to the citizen except for valid reasons will be to interfere with this fundamental right as guaranteed by the Constitution. The discretionary power which has been conferred on the Commissioner of Police under S. 39, is to be exercised in a reasonable manner and unless proper grounds are forthcoming to justify an act of refusal of the licence the act of the respondent is an arbitrary exercise of the power vested in him under S. 39 of the Act 5 A C 214; (1946) 51 C W N 833, Ref. **AIR 1955 NUC (Cal) 403.**

—Art. 19 (1) (g) — West Bengal Rice Mills Control Order (1949), Para. 11 –Validity—Issuing of licences under Not unreasonable restriction on fundamental right to carry on trade or business. See West Bengal Rice Mills Control Order, 1949, Para. 11. **AIR 1952 Cal 72.**

—Arts. 19 (1) (f), (g), (5), (6), 32, 226 — Ss. 4 and 5 of Electricity Act (1910) — Validity — Provisions do not contravene Art. 19 (1) (f) and (g) and further are reasonable restrictions under Art. 19 (5) and (6) —Electricity Act (1910), Ss. 4 and 5.

There are several statutes whereunder special jurisdiction has been given to authorities functioning thereunder and the jurisdiction of Courts has been taken away in respect of such matters; and nevertheless those statutes have not been held to be unreasonable. In any event even if the jurisdiction of the Civil Courts has been specifically barred by such statutes, that does not affect the jurisdiction of the High Court under Art. 226 or of the Supreme Court under Art. 32 to interfere in proper cases. AIR 1963 S C 222, Rel. on.

There is no exclusion of jurisdiction of the Civil Courts in the Electricity Act (1910) either expressly or impliedly. Section 4 (1) of the Electricity Act provides the conditions under which alone the State Government can take action by way of revoking the license. Under S. 4 (1) the State Government must form an opinion that the public interest requires the revocation of the license. It has also to form an opinion under S 4 (1) (a) that the licensee has made wilful and reasonably prolonged default in doing anything required of him by or under the Act. There is a further check provided in S. 4 (1) of the Act imposing an obligation on the part of the State Government to consult the State Electricity Board before revoking a license. There is also another mandatory provision in sub s. (3) of S. 4 casting a duty on the State Government to issue a notice to the licensee in a manner provided thereunder, and an opportunity given to the licensee to show cause. In view of these restrictions and limitations imposed by S. 4 (1) (a), it cannot be held that an arbitrary and uncontrolled power has been vested in the State Government in the matter of revoking licenses. The power given under S. 4 is to the State Government which can ordinarily be relied on to discharge its duties honestly, impartially and in the interest of the public. Therefore Ss. 4 and 5 of the Act are not violative of Art. 19 (1) (f) and (g) of the Constitution. Even if there are any restrictions the restrictions imposed are reasonable restrictions in the interest of the general public and are amply protected by cls. (5) and (6) of Art. 19 of the Constitution. AIR 1959 S C 926 and AIR 1962 S C 1371 and AIR 1963 S C 222 and AIR 1964 S C 1279, Disting. **I L R (1965) 1 Ker 578 : 1965 Ker L T 531 : 1965 Ker L J 548 : AIR 1965 Ker 253 (264, 265, 266) (Pt B) (Prs 43, 47, 48, 50) (DB).**

—Art. 19 (1) (g) — Notification prohibiting storing of certain items without licence — Does not offend Art. 19 (1) (g) of Constitution. See Municipalities — Travancore District Municipalities Act (23 of 1116), S. 261. **1963 Ker L J 23.**

—Art. 19 (1) (g) — S. 261 (3) of Travancore District Municipalities Act (1116)—Validity—Provision is not ultra vires Art. 19 (1) (g).

The power of granting or refusing licence under S. 261 (3) of the Travancore District Municipalities Act has to be exercised, so as to promote the object of the Act and consistently with its policy and provisions, and if it is exercised arbitrarily, the remedy by way of appeal is open. Section 261 (3) is valid and cannot be struck down on the ground of its imposing an unreasonable restriction on the fundamental rights guaranteed by Art. 19 (1) (g). **A I R 1958 Mad 181** Not foll.; **A I R 1957 Trav-Co 249,** Rel. on. **(1960) 2 Ker L R 342 : I L R (1960) Ker 1159 : 1961 Ker L J 40 : 1961 Ker L T 475 : A I R 1962 Ker 30 (33) (Pt A) (Pr 8).**

—Art. 19 (1) (g), (6) — Order under S. 261 (3), Travancore District Municipalities Act, refusing licence to carry on certain trade in particular premises and not in whole of Municipality—Order does not contravene Art. 19 (1) (g). (1960) 2 Ker L R 342 : I L R (1960) Ker 1159 : 1961 Ker L J 40 : 1961 Ker L T 475 : AIR 1962 Ker 30 (32) (Pt B) (Pr 4).

—Art. 19 (1) (g) — Sea Customs Act (1878), S. 202 (as it stood after its amendment by Act 21 of 1955) — Rules under S. 202 (2) prohibiting carrying on of business as Custom House Broker without licence, framed but notification contemplated under S. 202 (1) not issued — Fundamental right to carry on business as Custom House Broker without licence not affected. See Sea Customs Act (1878), S. 202 (Act 21 of 1955). **AIR 1960 Ker 356.**

—Art. 19 — Travancore Tobacco Act (1 of 1087 M. E.), S. 31 and Rules framed under — Rules 14 and 18 — Levy of licence fee under — Does not violate Art. 19 (1) (g) because it is no more than a reasonable impost for legitimate revenue purposes. **A I R 1952 Mad 895** and **A I R 1958 Mad 158,** Rel. on. **T. K. Abraham v. State of Trav.-Co., 1957 Ker L J 1146 : I L R (1958) Ker 148 : (1957) 1 Mad L J (Cri) 855 : AIR 1958 Ker 129 (132) (Pt C) (Pr 13) (FB).**

[Reversed on another point in AIR 1962 S C 922.]

—Arts. 19 (1) (g) and 19 (6)—Scope—Excise Commissioner forbidding licence-holder to bid at auction of excise shops — There is no violation of Arts. 19 (1) (g) and 19 (6).

There is no inherent or fundamental right in a citizen to sell intoxicating liquors. As it is a business attended with danger to the community it can be permitted only under such conditions as will limit to the utmost its evils. The manner and extent of regulation rest in the discretion of the governing authority. Hence where an Excise Commissioner forbids a licence holder to bid at an auction of excise shops there is no question of the violation of Arts. 19 (1) (g) and 19 (6). **Madh B L R 1956 Civ 688 : Madh B L J 1955 H C R 1253 : A I R 1956 Madh B 21 (22) (Pt A) (Pr 4) (DB).**

—Art. 19 (1) (g)—Forest Act (1927), S. 41 — Rules under, published on 23-6-1961—Rules 3, 4 —Validity — Rules requiring permit for transit of timber — When valid—Rules held not contravening Art. 19 (1) (f) or 19 (1) (g) due to amplitude of discretionary powers vested in Government Officers. 1965 M P L J 541 : 1965 Jab L J 1017 : A I R 1965 M P 211 (214, 216) (Pt A) (Prs 7, 21, 22, 23) (DB).

—Art. 19 (1) (g) — Cantonments Act, S. 210 does not impose unreasonable restriction to carry on trade and is not invalid — Refusal to grant licence to carry on trade in charcoal — Absence of provision to give

reasons or for appeal or for opportunity to be heard does not make provisions invalid — Natural justice requires hearing of applicant — No such opportunity given—Order quashed. See Cantonments Act (1924), S. 210. **AIR 1961 Madh Pra 361 (DB).**

——**Art. 19 (1) (g)** — Validity — Grant of licence — Refusal confined to specified categories only — Decision on application for licence—Principles of natural justice to be followed—Opportunity to hear applicant to be given even though no provision in the Act. See Cantonments Act (1924), S. 210. **1960 M P L J (Notes) 24.**

——**Art. 19 (1) (g)—Requirement of licence — Validity of.**

Requiring a person, who is not liable to tax, to obtain licence and registration certificate as required by the Sales Tax Act and imposing a penalty for failure amounts to unreasonable restriction on his fundamental right to carry on trade. A I R 1952 S C 115 and A I R 1955 S C 661, Rel. on. **1957 M P C 214 : 1957 Jab L J 373 : (1957) 8 S T C 429 : 1957 M P L J 317 : I L R (1957) Madh Pra 236 : AIR 1957 Madh Pra 109 (111) (Pt A) (Pr 13) (DB).**

——**Arts. 19 (1) (g), 19 (6) and 245** — Permit and license—Distinction—Power under S. 22 (1), Banking Companies Act, is mere licence — Section not unconstitutional — (Banking Companies Act (1949), S 22 (1)). **(1959) 2 Mad L J 455 : 72 Mad L W 790 : (1960) 30 Com Cas 146 : A I R 1961 Mad 8 (12, 13) (Pt B) (Prs 10, 13).**

——**Art. 19 (1) (g), Sch. 7, List 2, Entry 54 - Madras General Sales Tax Act (9 of 1939), Ss. 5, 8, 6-A, 8-A, 19 and Rules—Validity of.**

The provisions of the Madras General Sales Tax Act, 1939, requiring dealers of certain classes of goods, which were subject to tax at a single point under S. 5, to take out licences and pay the fees prescribed therefor by the rules framed under the Act are not an unreasonable restriction on the freedom of trade guaranteed by Art. 19 (1) (g) of the Constitution. A I R 1954 S C 465 ; AIR 1955 S C 33 and AIR 1951 S C 118, Rel on.

Non-selective licensing or registration was a feature of modern systems of taxation, while selective licensing was adopted for the control or regulation of industry. It is not therefore correct to regard licensing as confined to selective licensing. 1934 A C 45 ; 1943 A C 550 and 52 C L R 85, Rel. on. The system of licensing becomes, so to speak, an integral and inseparable part of the tax measures. In such a situation the tests which such licensing ought to satisfy are not those set out in Art. 19 (6) but would rather be ancillary to an exercise of the taxing power of the State.

The licensing introduced by the Sales Tax Rules was within the power of the State as incidental to the power to levy taxes on the sale of goods and is not unconstitutional even if the licensing did not satisfy the tests of reasonableness laid down by Art. 19 (6). **70 Mad L W 770 : (1957) 8 S T C 690 : (1957) 2 Mad L J 469 : I L R (1958) Mad 35 : A I R 1958 Mad 158 (166, 167, 168, 169) (Pt B) (Prs 33, 36, 42) (DB).**

——**Art. 19 (6) — Licence for carrying on trade — Validity.**

There is no ground for confining the permissible restrictions on freedom of trade under Art. 19 (6) to those which operate to regulate a business in existence as contrasted with a restriction which prevented a business from being started unless its conditions were fulfilled. There can, therefore, be no constitutional objection to the licensing being made a prerequisite for carrying on a particular trade. **70 Mad L W 770 : (1957) 8 S T C 690 : (1957) 2 Mad L J 469 : I L R (1958) Mad 35 : AIR 1958 Mad 158 (167) (Pt C) (Pr 35) (DB).**

——**Art. 19 (1) (g) — Scope — Madras Pawnbrokers Act (23 of 1943), Ss. 3, 4 — Validity.**

The liability to take out a licence, though it constitutes a restriction on the right to carry on business, by itself does not constitute an unreasonable restriction on that right. S. 4 (2) of the Madras Pawnbrokers Act which provides for refusal of the licence in the contingencies specified therein does not constitute an unreasonable restriction. S. 4 (2) (b) is even more precise in its scope than S. 4 (2) (a) of the Act. Apart from the easily understood and applied tests prescribed by Ss. 4 (2) (a) and 4 (2) (b), S. 4 (3) provides for a right of appeal against the refusal of a licence. This is another factor to establish the reasonableness of the restriction imposed by S. 4 (2) of the Act. **(1957) 1 M L J 329 : ILR (1957) Mad 937 : 1957 Mad L J (Cri) 196 : 70 Mad L W 1022 : 1957 Cr L J 962 : AIR 1957 Mad 514 (518, 519) (Pt B) (Prs 20, 22, 23, 24).**

——**Art. 19 (1) (g)** — Scope — License fee for Cotton Yarn — If unreasonable restriction. See Sales Tax — Madras General Sales Tax Act (9 of 1939), S. 6 (4) (a). **(1957) Mad L J (Cri) 721 : (1957) 2 Mad L J 533.**

——**Art. 19 (1) (g) and (6)—Madras District Municipalities Act (5 of (1920), S. 249 (2) — Validity — Application for licence for storing and selling fireworks—Rejection on ground that place was not within 150 feet away from residential building—Relevancy of ground.**

Where an application for a licence for storing and selling fireworks in certain premises was rejected by the Municipal Health Officer for the reason that the premises were not 150 feet at least away from any residential building :

Held (1) that under sub-s. (3) of S. 249, Madras District Municipalities Act, the executive authority is given an absolute power of refusing to grant the licence as also the power of imposing such restrictions and conditions as he might think fit, without any guidance by the Legislature as to the relevant conditions and restrictions. The sub-section in its present form is in contravention of Art. 19 (6) and has to be struck down as violating the fundamental rights guaranteed by Art. 19 (1) (g).

(2) But even apart from this the Municipal Health Officer, who was the executive authority, had exercised his discretion to refuse the application on irrelevant ground because the ground was applicable under the Indian Explosives Rules only in the case of manufacture of explosives His order was therefore, liable to be quashed. **(1955) 2 M L J 684 : 68 Mad L W 823 : 1955 Mad W N 874 : AIR 1956 Mad 181 (183) (Pt A) (Pr 6).**

——**Art. 19 (1) (g) — Trade restrictions — Import trade control — Rules and Procedure — Import license - Condition to produce Income-tax verification certificate — Validity — Imports and Exports (Control) Act (1947), S. 3 (1).**

The condition requiring the production of an Income-tax verification certificate along with an application for the grant of an import licence is not an unreasonable restriction on the fundamental right to carry on business. The contention that the condition was really intended to enable the Government to collect the income-tax due from the defaulters and was, therefore, not in the bona fide exercise of the power of the Government to impose conditions for the grant of an import licence has no substance. It may be that in some cases the insistence on the condition might cause hardship; but that is a matter to be taken into account by the Import and Export Con-

troller, and that would not by itself render the condition unconstitutional or invalid. AIR 1953 Mad 84; (1952) 2 M L J 544, Disting. (1955) 28 ITR 553: 69 Mad L W 1026 : 1955 Mad W N 870 : IL R (1956) Mad 196 : (1955) 2 M L J 564 : AIR 1955 Mad 699 (700, 701, 702) (Prs 4, 13) (DB).

——Art. 19 (5)—Restrictions created by Rule 43, Arms Act Rules, on fundamental right to hold a gun are reasonable restrictions and in interest of public —Refusal to grant license should not be arbitrary—Discretion should be judicial—Order refusing license held arbitrary—(Arms Act (1878), S. 17—Rules under, R. 43). 1953 Mad W N 168 : (1953) 1 M L J 418 : 1953 Cri L J 917 : A I R 1953 Mad 476 (478) (Pt C) (Prs 6, 7).

——Art. 19 (1) (f) and (g) — Is not infringed by requirement of license for manufacture of explosives, fireworks, etc., in a residential locality under Explosives Act (4 of 1884). See Explosives Act (4 of 1884). AIR 1953 Mad 142.

——Arts. 19 (1) (g), 304 (b) and 14 — Right to carry on business — Business to be carried on under licence—Imposition of licence-fees—Reasonableness — Tests for determination — Enhancement of licence-fees leviable under Madras Manure Dealers' Licensing Order, 1949 — Discrimination between Oil-millers and other manure dealers—Validity of enhancement —(Madras Manure Dealers Licensing Order (1949).)

There is a fundamental difference between a tax and a licence fee. For the grant of a licence a fee may be charged to cover probable expenses which may have to be incurred for the regulation of the particular trade or business or calling in respect of which the licence is required. The licence fee is not intended to raise revenues for the general purpose of the authority levying the fee For such purposes levy should be in the shape of a tax. The licence fee must be reasonable, whereas a tax need not be.

Though, ultimately the decision in each case must depend upon the particular facts of that case, certain general tests have been formulated by the Courts in various decisions to decide whether a particular fee is reasonable in the circumstances. They are : (1) the licence fee may reasonably cover the cost of all special services necessitated by the duties and liabilities imposed on the authority in respect of the supervision and regulation of the particular trade or calling in respect of which the licence is issued. 9 Rang 440 (PC), Foll.

(2) there must be some relation between the expenses incurred in the issue of licences and in regulating the licensed trade and other occupation and the amount of fees leviable. When the licencing authority issues a number of licences to persons engaged in different trades and occupations it would be unreasonable if they so fix the fees that the whole cost incurred by them in connection with all the licences or a grossly disproportionate part of it was imposed on the particular trade or a few particular traders. AIR 1930 Mad 55, Foll.

Tested on the above principles, the enhancement of the licence-fee in so far as it related to the Oil Mills in the State brought about by G. O. Ms. No. 2435 (Food and Agriculture) dated 29th December 1950 which amended the Madras Manure Dealers' Licencing Order, 1949 is unreasonable as the total fees that would be collected from all the mills in the State would be disproportionately high in comparison with the expenditure which according to Government's own statement it would incur.

Further the G. O. in fixing a higher rate of fee for the oil-millers while making all other manure dealers pay at flat rate of Rs. 20 irrespective of the fact that they might stock and sell more than the oil millers could even produce is discriminatory and offends Art. 14 of the Constitution.

Therefore the enhanced fee imposed by the G. O. is unconstitutional and invalid both as imposing an unreasonable restriction upon the right to carry on business guaranteed by the Constitution as well as being discriminatory and as contravening Art. 14 of the Constitution. (1952)-2 Mad L J 410 : 1952 Mad W N 712 : 65 Mad L W 845 : I L R (1953) Mad 217 : A I R 1952 Mad 764 (765, 767) (Prs 3, 4, 5, 12, 13, 14) (DB).

——Art. 19 (1) (f) and (6)—Refusal by licensing authority of licence to a touring cinema on ground of instructions from State Government in the shape of orders—If violation of fundamental rights under the Constitution.

Where a touring cinematograph company was refused a licence on the basis of certain instructions issued by the Provincial Government in certain orders, to ensure public health and safety, on a contention that the refusal of the licence was based on instructions which were beyond the scope of the Cinematograph Act and that the fundamental right of the party to carry on a business was violated by such a refusal : Held (i) that these instructions could not be said to be Rules under S. 8 of Cinematograph Act (1918) and therefore the question whether they went beyond the rule-making power did not arise (ii) that the instructions did not contravene Art. 19. Art. 19 (6) contemplated imposition of restrictions on exercise of right conferred by Art. 19 (1) (g) and that these instructions were in the interest of the safety and the health of the general public and designed to prevent unhealthy competition which itself indirectly would have deleterious influence on the general public. 65 LW 71 : (1952) 1 M L J 279 : AIR 1952 Mad 528 (529) (Pr 4) (DB).

——Art. 19 — Madras District Municipalities Act (5 of 1920), S. 249 (3) — Constitutiunal validity of section—Section 249 (3) held void for contravening Article.

Sub-section (3) of S. 249 of the Madras District Municipalities Act, which confers absolute and arbitrary discretion on the executive authority, namely, the Municipal Health Officer to grant or refuse a licence at his own sweet will and pleasure, violates the fundamental right guaranteed under Article 19 (1) (g) of the Constitution and should be struck down as invalid. AIR 1956 Mad 181, Foll. A I R 1952 Mad 565 and A I R 1954 S C 224 Rel. on.

Under S. 249 (3) the executive authority who refuses to grant a licence is not bound to assign reasons for doing so. Further no provision is also made for an appeal under the Act against an order of the executive authority. I L R (1959) Mys 304 : 1959 Mad L J (Cri) 923.

——Arts. 19 (1) (g) and 226—Suspension of licence during prosecution—It is possible but not without finding as to contravention — D. M. suspending licence without the finding — There is interference with fundamental right — (Essential Supplies (Temporary Powers) Act, S. 3). See C. P. and Berar Rice Mills Licensing Order, Cl. 5. 1952 Nag L J (Note) 4.

——Art. 19 (1) (g)—Scope—Tax on trade, profession etc.—Requirements as to taking out license—Validity. See Municipalities—Bihar and Orissa Municipal Act 7 of 1922, as amended by Amending Act (32 of 1955), S. 82. AIR 1957 Pat 386.

——Art. 19 (1) (g), (5)—Bihar Cotton Cloth and Yarn (Control) Order (1948) — Validity — Restrictions as to renewal of licence are unreasonable. See Bihar Cotton Cloth and Yarn (Control) Order (1948), Cls. 5 (1), (2). AIR 1954 Pat 325 (DB).

——Arts. 19 (1) (g) and 226 — License to carry on trade in cement — Restrictions—Legality and reasonableness of.

The Indian Constitution in Art. 19(1) (g) guarantees to all the citizens the right to practice any profession or to carry on any occupation, trade or business, but this right is subject to reasonable restrictions imposed in the interests of the general public.

It is in the interests of the public that the distribution of cement and its price should be controlled. One of the essential elements of such a control is that the selected distributors should be amenable to the instructions issued from time to time by the authorities and the only way to control the distributors effectively is that licences should be issued which are liable to be cancelled if the distributors do not carry out the instructions given from time to time. The conditions in a particular trade are liable to quick changes and the causes of changed conditions may be so varied that it is not possible to lay down any satisfactory test for cancelling a licence once granted. Ordinarily the High Court would not interfere with an order of cancellation of licence to sell cement, but when it becomes clear that the order has been made by the authority concerned under a misapprehension of the licencee's conduct that the High Court has ample power to interfere with it under Art. 226 of the Constitution. **ILR (1958) Punj 36.**

——**Arts. 19 (6) and 226**—Laches - Fundamental right —Infringement of—Continuing wrong—Order refusing renewal of licence. See Ibid, Art. 226. **AIR 1957 Punj 220.**

——**Art. 19 (1) (g) and (6)—Scope—Punjab Tobacco Vend Fees Act (12 of 1954)—Validity.**

The Punjab Tobacco Vend Fees Act of 1954 is not obnoxious to the provisions of Art. 19 for although every citizen of India is at liberty to pursue a lawful calling of his own choosing, this right is subject to the paramount right of the State to impose such reasonable restrictions as the protection of the public may require. The Legislature has decided that no person shall carry on any business in tobacco unless he has obtained a licence in this behalf and it cannot be said that this requirement is unreasonable, or not in the public interest. **58 Pun L R 480 : ILR (1957) Punj 184 : AIR 1957 Punj 45 (49) (Pt E) (Pr 15) (DB).**

——**Art. 19 (1) (g) — Excise law — Liquor—Issue of licence to sell liquor is a matter of grace—(Punjab Excise Act (1 of 1914), S. 26). ILR 1956 Punj 390 : AIR 1956 Punj 97 (98, 99) (Pt B) (Pr 5) (DB).**

——**Art. 19 (1) (g) and (6) — Right to carry on business of motor transport—Imposition of condition as to lower rate in permit—Unreasonable restriction.**

No one has an inherent right to a permit and a permit may not be granted even if the applicant satisfied all the prescribed conditions. It is wrong to insist that the petitioner is entitled to a renewal of a permit at the old rates and even if the petitioner was the sole applicant the Regional Transport Authority could have validly required the petitioner to offer more facilities to the travelling public (in the shape of lower fares) and could have even refused to renew the permit at the old rate. The granting of a permit at a lower rate does not constitute an unreasonable restriction and it does not violate the petitioner's right to carry on business in motor transport on public street. **8 Sau L R 90 : AIR 1955 Sau 57 (62) (Pt C) (Pr 14) (DB).**

——Art 19 Refusal to issue licence in individual case. See Municipalities—Punjab Municipal Act (3 of 1911), S. 121. **AIR 1954 Punj 143.**

——**Art. 19 (1) (g)** — Panchayats — T. C Panchayats ct (1950), S. 44—Scope—Absence of rules under—Effect—Refusal to grant licence to a vendor of meat—Exclusive right granted to another Legality—Breach of fundamental right. See Panchayats—Travancore-Cochin Panchayats Act (2 of 1950), S 44. **AIR 1957 Trav-Co 2.**

● ——**Art 19 (1) (f) and (g) and (5) and (6)—Reasonable restrictions—Issue of license to regulate making holding or dealing with things (Municipalities—Trivandrum City Municipal Act (4 of 1116), S. 295 and Sch. 4).**

Clauses (v) and (vi) of Art. 19 authorise the imposition of reasonable restrictions in the public interest on the fundamental rights referred to in Cls (f) and (g). To regulate the making, holding or dealing with things within the Municipal area by the issue of a license is a reasonable restriction upon the rights of a person under Cls. (f) and (g). Parameswaram Pillai, In re, **1955 Ker L T 454 : ILR (1955) T C 541 : 1955 Cr L J 1536 : AIR 1955 T C 268 (269) (Pt B) (Pr 5) (FB).**

——**Art. 19 (1) (g) — Scheme of distribution of yarn through licensed private yarn dealers and co-operative societies—Change in scheme envisaging distribution only through co-operative societies—No infringement of fundamental right of private yarn dealers—Travancore Cotton Yarn Dealers Licensing Order (1124), Cl. 6.**

Till 1-10-1950, the distribution of yarn to the weavers had been effected both through the licensed private yarn dealers and Co-operative Societies. Since 1-10-1950 the policy of distribution entirely through the Co-operative Societies was adopted as a step towards the development of the handloom industry so that the new scheme would provide better opportunities for marketing finished products and the needed finance for indigent weavers. Due notice of this change in the policy was given by the Textile Commissioner to the former private yarn dealers, who were informed that with effect from 1-10-1950 no allotment of yarn would be given to them. The petitioner who was a private yarn dealer contended that the order discontinuing allotment was illegal and beyond the powers of the Government of the State of Travancore-Cochin and their Textile Commissioner for it offended Art. 19 (1) (g) of the Constitution of India.

Held, that under Cl. 6 of the Travancore Cotton Yarn Dealers' Licensing Order, 1124, the Textile Commissioner was given absolute discretion to grant or refuse license to any applicant without assigning any reason. Such powers were necessary, for if all persons apply for licenses to distribute yarn it would be impossible to oblige every one and to carry on the spirit with which the Control Order was made. Reasonable restrictions will have therefore to be made in such matters. The petitioner got the freedom to deal in yarn which was a legally controlled commodity only by virtue of a license obtained from the officer appointed for the purpose. It was not a fundamental right but a right obtained by leave or permission from the Textile Commissioner who was only acting under the Control Order. He cannot therefore call in question a scheme of distribution adopted by the officer with the approval of the State Government; AIR 1950 S C 163, AIR 1951 S C 118 and AIR 1951 Cal 90. Disting. **AIR 1952 Trav-Co 260 (261, 262) (Prs 4, 6).**

67. Trade restrictions.

(a) By Shops and Establishments Acts. See Ibid, Note 70.
(b) By Municipal and Local Boards Acts.
(c) By Control Orders.
(d) By Agricultural Produce Markets Acts.
(e) By Police Acts.
(f) By other Statutes.

67. Trade restrictions.

● —Arts. 19 (1) (g) and 32 — Scope of right conferred by Art. 19 (1) (g).

Under Art. 19 (1) (g) of the Constitution, the citizen has the right to carry on any occupation, trade or business which right under that clause is apparently to be unfettered. The only restriction to this unfettered right is the authority of the State to make a law relating to the carrying on of such occupation, trade or business as mentioned in Cl (6) of that Article as amended by the Constitution (First Amendment) Act, 1951. If therefore a licence fee to carry on a trade, etc., cannot be justified on the basis of any valid law, no question of its reasonableness can arise, for an illegal impost must at all times be an unreasonable restriction and will necessarily infringe the right of the citizen to carry on his occupation, trade or business under Art. 19 (1) (g) and such infringement can properly be made the subject-matter of a challenge under Art. 32 of the Constitution. Mohammed Yasin v. Town Area Committee, (1952) S C R 572 : 1952 All L J 313 : 1952 Mad W N 492 : (1952) S C J 162 : 1952 S C A 237 : A I R 1952 S C 115 (117) (Pt C) (Pr 8).

67 (a). By Shops and Establishments Acts.

See Ibid, Note 70.

67 (b). By Municipal and Local Boards Acts.

● —Arts. 19 (1) (g), (6), 13, 245 and Preamble — Restriction on trade — Licence — Imposition of — Calcutta Municipal Act (33 of 1951), S. 487 (1) (b) — Validity — Parenthetical clause consisting of words 'which opinion shall be conclusive and shall not be challenged in any Court' constitutes unreasonable restriction on right to carry on trade and is void — Such clause is however, severable so that rest of the section is valid. AIR 1961 Cal 121, Partialy Reversed.

Provisions of the parenthetical clause in S. 487 (1) (b) of the Calcutta Municipal Act consisting of the words 'which opinion shall be conclusive and shall not be challenged in any Court' which make the opinion of the corporation conclusive and non-justiciable in any Court amount to an unreasonable restriction on the right to carry on trade etc., enshrined in Art. 19 (1) (g) of the Constitution. AIR 1961 Cal 121, Affirmed. Such clause is, however, distinct and separate and severable from the rest of the S. 487 (1) (b) and only the provisions of this clause are void. Rest of the section is valid. A I R 1961 Cal 121, Partially reversed. AIR 1957 S C 628, Applied.

The parenthetical clause which makes the opinion of the Corporation conclusive and non justiciable is in the nature of a procedural provision. The vice in the provision is that it makes the opinion of the corporation, howsoever capricious or arbitrary it may be or howsoever unreasonable on the face of it may be, conclusive and non-justiciable. The conferment of such a power on a municipal body which has the effect of imposing restrictions on carrying on trade etc. cannot be said to be a reasonable restriction within the meaning of Art 19 (6) Such a provision puts carrying on trade by those residing within the limits of the municipal Corporation entirely at its mercy, if it chooses to exercise that power capriciously, arbitrarily or unreasonably, though not mala fide. Corporation of Calcutta v Calcutta Tramway Co. Ltd Calcutta. 1964 (2) Cri L J 354 : (1965) 1 S C A 124 : (1964) 5 S C R 25 : AIR 1964 S C 1279 (1281, 1282) (Pr 6).

● —Art. 19 (1) (g) — Bye-law under sub-s. (2) (l) of S. 174 U. P. District Boards Act, 1922, prohibiting holding of market — Validity See U. P. District Boards Act (10 of 1922), S. 174. AIR 1954 S C 630.

● —Art 19 (1) (g) —Town Area Committee, Jalalabad - Bye-laws 1 and 4 (b)—Validity.

The bye laws do not, in terms, prohibit anybody from dealing in vegetables and fruits. But although, in form, there is no prohibition against carrying on any wholesale business by anybody, in effect and in substance the bye-laws have brought about a total stoppage of the wholesale dealers' business in a commercial sense. (1950) S C R 566, Disting. Mohammad Yasin v. Town Area Committee, Jalalabad. 1952 S C J 162 : 1952 Mad W N 492 : 1952 S C R 572 : 1952 All L J 313 (1952) S C A 237 : AIR 1952 SC 115 (116) (Pt A) (Pr 5).

● —Arts. 19 (1) (g) and 32—Licence fee levied on whole-sale sale of vegetables by a Town Area Committee under bye-laws framed under powers conferred by the U. P. Municipalities Act—Legality.

The bye-laws made by a Town Area Committee provided by Cl. (1) that no person shall sell or purchase any vegetable or fruit within the prescribed limits of the Town Area Committee, by wholesale or auction, without paying the fee fixed under these bye laws to the licensee appointed by the Town Magistrate Bye-law (4) (b) expressly provided that any person can sell in wholesale at any place in the Town Areas provided he pays the prescribed fees to the licensee On a contention that the effect of the bye-laws was to bring about a total prohibition of the business of wholesale dealers in vegetables and fruits and thereby infringe their fundamental right under Art. 19 (1) (g) of the Constitution and further that the levy is an unauthorised impost constituting an illegal restraint on their fundamental right under Art. 19 (1) (g):

Held, the bye-laws do not in terms prohibit anybody from dealing in vegetables and fruits as contended. But the contention that though in form there is no prohibition, in effect, the bye-laws have brought about a total prohibition of the business of the wholesale dealers in a commercial sense and from a practical point of view, cannot be said to be unsound or untenable.

The bye-laws do not purport to fix a fee for the use or occupation of an immovable property vested in or entrusted to the management of the Town Area Committee including any public street or place of which it allows the use or occupation. Sections 293 (1) and 298 (j) and (d) of the U. P. Municipalities Act as amended at the time they were extended to the town areas in the Uttar Pradesh do not empower the Town Area Committee to make any bye-law authorising it to charge any fee otherwise than for the use or occupation of any property vested in or entrusted to the management of the Town Area Committee including any public street. Therefore the bye-laws which impose a charge on the wholesale dealer in the shape of a prescribed fee, irrespective of any use or occupation by him of immovable property vested in or entrusted, to the management of the Town Area Committee including any public street are obviously ultra vires the powers of the Committee and therefore the bye-laws cannot be said to constitute a valid law which alone may under Art. 19 (6) of the Constitution impose a restriction on the right conferred by Art. 19 (1) (g). Such illegal imposition must undoubtedly operate as an illegal restraint and must infringe the unfettered right of the wholesale dealer to carry on his occupation, trade or business which is guaranteed to him by Art. 19 (1) (g). Mohammad Yasin v Town Area Committee, Jalalabad, (1952) S C R 572 : 1952 A L J 313 : 1952 Mad WLN 492 : (1952) S C J 162 : 1952 S C A 237 : AIR 1952 S C 115 (117, 118) (Pt C) (Pr 8).

● ——Art. 19 (1) (g) and (6) — Kairana Municipality — Bye-laws 2 and 4 — Validity of — Order of Municipality prohibiting person from carrying on trade within Municipal limits — Application under Art. 32 for enforcement of fundamental right of trade — Municipalities — U. P. Municipalities Act (2 of 1916), Ss. 298 and 318. See Ibid, Art. 13 (1). **A I R 1950 S C 163.**

——**Art. 19** — Bye-law 12 (a) of Lucknow Municipal Board — Validity — Bye-law does not violate Arts. 14 and 19 of the Constitution—Not ultra vires the Board. See Municipalities — U. P. Municipalities Act (1916), S. 298 (2). **AIR 1964 All 46 (DB).**

——**Art. 19 (1) (g) and (6)** — Municipalities — U. P. Municipalities Act (2 of 1916), S. 298 (1) — Bye-laws under, for Regulation and Control of Power — Driven Kolhus—Bye law No. 6—'Premises' — Meaning of — Test to determine validity of bye-laws — Installation of oil crusher — Bye-law necessitating consent of owners and occupiers of adjoining residential premises—Held void—Person not liable for infringing it. See Municipalities - U. P. Municipalities Act (2 of 1916), S. 298 (1). **1961 All L J 563.**

——**Art. 19 (1) (g)** — Restriction on number of rickshaws plying for hire—Bye-law 9 and orders Nos. 828 and 829 dated 11th January, 1958 of Lucknow Municipality—Validity. See Municipalities Act (2 of 1916), S. 298 (1). **A I R 1959 All 186 (DB).**

——**Art. 19 (6) Limitation on number of rickshaws plying for hire—Validity of—(Municipalities—U. P. Municipalities Act (2 of 1916), S. 298 (1)).**

Where the consideration which guided certain municipal board to limit the number of rickshaws plying for hire within its limits was in the general interest of the public, including the gradual elimination of the use of human labour for transporting human beings and avoiding congestion on the roads; the restriction is imposed in the interest of the general public within the meaning of Art. 19 (6) of the Constitution. The determination of the actual number of rickshaws which shall be entitled to ply for hire is a matter for the Boards and unless it is clear that in fixing the number it has taken into account matters with which it has no concern or has acted in bad faith, its decision cannot be questioned. **ILR (1958) 2 All 13 : A I R 1959 All 186 (190) (Pt C) (Pr 15) (DB).**

——**Art. 19 — U. P. Municipalities Act (2 of 1916), S. 247 - Validity.**

Section 247 of the Act neither seeks to abolish any particular profession, occupation, trade or business nor to prohibit its practice. It merely seeks to regulate its practice by imposing certain restrictions of a most reasonable character in the manner of carrying on of the particular profession, business or occupation. It cannot also be said that the qualification of respectability is a vague one and the law therefore, is bad on that ground. **1958 All L J 398 ; 1958 All W R (HC) 505 ; AIR 1958 All 603 (606) (Pt D) (Prs 12, 13) (DB).**

——**Art 19 (1) (d) and (5)—Reasonable restriction — Question of fact — Burden of proof — Tax imposed under Ss. 108 and 114, U. P District Boards Act — If infringement of Art. 19 (1) (d) — (U. P. District Boards Act (10 of 1922), Ss. 108 and 114)—(Evidence Act (1872), Ss. 101 to 104).**

Whether the imposition of a tax constitutes an unreasonable restriction would depend upon the facts and circumstances of each case, and the burden of making out the case that the restriction was an unreasonable one lies on the tax-payer. In view of the restriction imposed on the District Board on the levy of a tax on circumstances and property upto the maximum amount of Rs. 2,000 under Ss. 108 and 114 of the District Boards Act, the taxation cannot be said to be unreasonable and there is no infringement of Art. 19 (1) (d). The imposition of the tax itself does not impose any direct restriction on the trade. The restriction, if any, is an indirect one. It comes into operation only after a trade is carried on, and is as a result of it. **A I R 1957 All 527 (534, 535) (Pt H) (Pr 20) (DB).**

——**Art. 19 (1) (g)—Reasonable restriction—Restriction on carrying on trade of public prostitution.**

The restriction on carrying on trade of public prostitution within a specified area of the Municipality is eminently a reasonable one, and a Municipal Board has power to frame a bye-law imposing such restriction. **1956 All L J 591 : 1956 All W R (HC) 614 ; A I R 1956 All 736 (736) (Pr 6) (DB).**

——**Arts. 19 (1) (g), 19 (6)** — Bye-laws framed by Municipal Board of Mirzapur, for regulation and control of rolling mills within municipal limits—Bye-laws Nos. 7 (a) and (b), 8 (b) and (c) and 9—Do not contravene Art. 19 (1) (g) or Art. 14. See Municipalities—U. P. Municipalities Act (2 of 1916), S. 298. **AIR 1955 N U C (All) 2274.**

——**Art. 19 (1) (g)** — U. P. District Boards Act (10 of 1922), S. 174—Bye laws under — Bye-law No. 1 of District Board, Rai Bareli—Validity — Not ultra vires —Art. 19 (1) (g) does not apply. See U. P. District Boards Act (10 of 1922), S. 174. **A I R 1953 All 95.**

● ——**Art. 19 (1) (g)**—Municipalities — U. P. Municipalities Act (2 of 1916), S. 298—Bye-law 1 (3) (Allahabad Municipality)—Bye law prohibiting slaughter of cows is not unreasonable and is not hit by Art. 19 (1) (g). See Municipalities — U. P. Municipalities Act (2 of 1916), S. 298. **A I R 1952 All 753 (FB).**

——**Art. 19** — Madras District Municipalities Act, (1920), S. 270 — Tax on persons vending articles on road margins is a fee and not tax — Fee held unreasonable and void. See Municipalities—Madras District Municipalities Act (5 of 1920), S. 270. **AIR 1957 Andh.Pra 103.**

——**Art. 19 (1) (g)**—Scope—S. 140, Assam Municipal Act — Validity of — Section conferring power to impose tolls and fees — Does not offend Art. 19 (1) (g). See Municipalities—Assam Municipal Act (1 of 1923), S. 140. **A I R 1958 Assam 156 (DB).**

67 (c). By Control Orders.

● ——**Art. 19 (1) (f) and (g)**—Restrictions imposed by Fruit Products Order, 1955, are reasonable and in interest of public—Order is valid. See Essential Commodities Act (1955), S. 3 (1). **A I R 1965 S C 1167.**

● ——**Art. 19 (1) (g) and Art. 19 (6)** — Imports and Exports Control Act (1947), S. 3 — Exports Control Order (1958), Cl. 6 (h) — Constitutional validity — Power under Cl. 6 (h) to canalise exports through special or specialised agencies or channels is intra vires of Central Government under S. 3 — Central Government Notification, dated 26-5-1958—If imposes unreasonable restriction on fundamental right of trade under Art. 19 (1) (g). See Imports and Exports Control Act (1947), S. 3. **A I R 1962 S C 1796.**

● ——**Arts. 19 (1) (f) and (g), 31 and 14** — Imports and Exports (Control) Act (1947), S. 3 — Imports (Control) Order (1955), Para. 6 (h)—Validity—Canalization of imports through special or specialized agencies or channels — Refusal of import licences to applicants outside agencies or channels whether contravention of Art. 19 (1) (f) and (g) or Art. 31 — Restriction on right to carry on trade, if can be attacked as not in the interests of general public.

It may be difficult for any Court to have adequate materials to come to a proper decision whether a

particular policy as regards imports is in the general interests of the public. When the Government decides under para. 6 (h) in respect of any particular commodity that its import should be by a selected channel or through selected agencies, the Court would proceed on the assumption that that decision is in the interests of the general public unless the contrary is clearly shown. Consequently, a decision that imports shall be canalised, is per se a reasonable restriction in the interests of the general public. The selection of the particular channel or agency decided upon in implementing the decision of canalisation may well be challenged on the ground that it infringes Art. 14 of the Constitution or some other fundamental rights. If a canalization of imports is in the interests of the general public, the refusal of import licences to applicants outside the agencies must necessarily be held in the interests of the general public. Article 31 has no application. Glass Chatons Importers and Users Association v. Union of India, 1961 S C D 871 : (1962) 1 S C R 862 : (1962) 2 S C J 213 : A I R 1961 S C 1514 (1516, 1517) (Prs 5, 6, 7).

● ——Art. 19 (1) (g) — Iron and Steel Control, etc., Act — If ultra vires—See Iron and Steel Control of Production and Distribution Order (1941), Cl. 11-B. 1961 (2) Cri L J 24 : A I R 1961 S C 928.

● ——Art. 19 (5)—Non-ferrous Metal Control Order (1958), Cls. 3 and 8 — Validity — Clauses amount to reasonable restrictions within Arts. 19 (5) and 19 (6) of the Constitution — Principles not discriminatory but not complying with S. 3 (5) or 3 (6) of Act 10 of 1955 — Held invalid. See Non-ferrous Metals Control Order (1958), Cl. 3. AIR 1960 S C 430.

● ——Arts. 19 (5) and 19 (1)(g)—Cotton Control Order (1950), Cl. 4—Validity—Does not contravene Art. 19 (1) (g) — (Essential Supplies (Temporary Powers) Act (1946), S. 2 (a)). See Cotton Control Order (1950), Cl. 4. AIR 1954 S C 634.

● ——Art. 19 (1) (g) — Validity of Rajasthan Foodgrains Control Order, 1949. See Rajasthan Foodgrains Control Order (1949), Cl. 25. AIR 1954 S C 307.

● Art 19 (1) (g) and (6)—U. P. Coal Control Order (1953), Cl. 4 (3) — Validity — Reasonable restrictions. See U. P. Coal Control Order (1953), Cl. 4 (3). AIR 1954 S C 224.

——Art. 19—U. P. Bricks Control Order (1956), Cl. 3 (2) — Clause not hit by Article. 1964 All L J 451: I L R (1964) 1 All 748 : 1965 (2) Cri L J 326 : A I R 1965 All 412 (414) (Pt B) (Pr 19).

——Art 19 (1) (g)—U. P. Wheat (Restriction on Movement) Order, 1949, Cl. (3)—Essential Commodities Act (10 of 1955), Ss. 1 and 3—Validity of Cl. (3)—Nor for regulation of permits provided in Preamble to U. P. Act (10 of 1955)—Clause does not violate Art. 19(1)(g) of Constitution See U. P. Wheat (Restriction of Movement) Order (1949), Cl. (3). 1962 (2) Cri L J 161 : AIR 1962 All 359 (DB).

——Art. 19 (1) (g)—Delegation under Ss. 3 and 4 of Act 24 of 1946—Effect—Order not unconstitutional. See Iron and Steel (Control of Production and Distribution) Order (1941), Cl. 11-B. 1959 Cri L J 663 : AIR 1959 All 332.

——Art 19 (1) (g), (6)—Unreasonable retriction upon freedom of trade — Cotton Textiles (Control) Order (1948), Cl. 6 (a), 11 — Validity — (U. P. Controlled Cotton Cloth and Yarn Dealers' Licensing Order (1948), Cls. 4, 11)—Validity.

The provisions of Cl. 6 (a) of the Cotton Textiles (Control) Order, 1948 are so interwoven with Cl. 11 of that Order, and likewise the provisions of Cl. 4, U. P. Controlled Cotton Cloth and Yarn Dealers' Licensing Order, 1948, are so interwoven with Cl. 11 of that Order that the ultra vires character of Cl. 11 of both the Orders would make the operation of Cl. 6 (a), Cotton Textiles (Control) Order, 1948 and Cl. 4, U. P Controlled Cotton Cloth and Yarn Dealers' Licensing Order, 1948, practically nugatory. The provisions form an integral part of the entire structure of the two Control Orders and Cl. 6 (a) of the one and Cl. 4 of the other cannot operate properly unless the provisions of Cl. 11 of the two Control Orders are brought in conformity with the constitutional provisions. The provisions of Cl. 6 (a), Cotton Textiles (Control) Order, 1948 read with Cl. 11 of that Order and Cl. 4, U. P. Controlled Cotton Cloth and Yarn Dealers' Licensing Order, 1948 read with Cl. 11 of that Order must be held to be void as imposing an unreasonable restriction upon freedom of trade and business guaranteed under Art. 19 (1) (g) of the Constitution and not coming within the protection afforded by Cl. 6 of the Article. 1956 All W R (HC) 539: 1956 Cri L J 1141: 1956 All L J 836: AIR 1956 All 562 (564) (Pr 3).

——Arts. 19 (1)(g) and 19(6)—U. P. Foodgrains Movement Control Order, 1949, Cl. 3 (vii) — Constitutionality — Amounts to reasonable restriction within Art. 19 (6) and is valid. See U. P. Foodgrains Movement Control Order (1949), Cl. 3 (vii). AIR 1953 All 545 (DB).

——Art. 19 (1) (f) and (g)—Cotton Textiles (Control) Order (1948), Cl. 21 (3) (c) — Validity See Cotton Textiles (Control) Order (1948), Cl. 21(3)(c). 1960 Cri L J 1321: AIR 1960 Bom 453 (DB).

——Arts. 19 (1) (f) and 19 (1) (g)—Controller has implied power of termination of appointment of registered stockist, or of cancellation of declaration of controlled source — But in passing such order he must observe rules of natural justice. See Iron and Steel (Control) Order (1956), Cl. 4. ('63) 67 Cal W N 36.

——Arts. 19 (1) (f) and 19 (1) (g) — Powers of Controller are not arbitrary. See Iron and Steel (Control) Order (1956), Cl. 3. ('63) 67 Cal W N 36.

——Art. 19 (1) (g) — Freedom of trade — Restrictions on — Vegetable Oil Products Control Order (1947), Cl. 5 (1) — Notification under — Notification No. S. R. O. 1090, dated 23-12-1950 is not ultra vires the Essential Supplies (Temporary Powers) Act (1946), S. 3. AIR 1955 N U C (Cal) 1800.

——Art. 19 (1) (g) — Unreasonable restriction.

The fact that the imposition of a control renders the running of the applicant's rice mills uneconomical cannot be said to be an unreasonable restriction of the appellant's fundamental rights within the meaning of Art. 19 (1) (g). A I R 1951 S C 118, Disting. 57 Cal W N 194: I L R (1954) 2 Cal 281 : AIR 1953 Cal 187 (188) (Pt B) (Pr 8) (DB).

——Art. 19 (1) (5) (6) — Cotton Textiles (Control) Order (1948), Cls. 12 (4) and 33—Provisions of Cl. 12 (4) are not valid—They are not reasonable restrictions within Art. 19 (5) and (6) — If read with Cl. 33, it gives absolute and unfettered discretion to Textile Commissioner—Rules for use of discretion should be framed. See Cotton Textiles (Control) Order (1948), Cl. 12 (4). AIR 1952 Mad 565 (DB).

——Arts. 19 (1) (f), (g) and 19 (5), (6) — Cotton Textile (Control) Order (1948) Cl. 30 — Power of Textile Commissioner to use his discretion arbitrarily in issuing directions under the clause — Petitioner alleging discrimination in the matter of allotment and citing instances — Cl. 30 though restrictive of free trade is not unconstitutional, so long as restrictions are necessary in interest of general public and are reasonable — In the absence of any justification for discriminating against the petitioner in the matter, it was held that there was a breach of guarantee of equal protection of laws vouchsafed by Art. 14 and of fundamental rights declared by Art. 19 (1) — Clause 30 could not

be declared totally void—Textile Commissioner asked to evolve a proper scheme for proper distribution which does not offend either against Art. 14 or Art. 19 (1) (f) and (g) read with Art. 19 (5) and (6). See Cotton Textile (Control) Order (1948), Cl. 30. **AIR 1952 Mad 565 (DB).**

——**Art. 19 (1) (f), (g), (5) and (6) — Notifications under Cls. 18 and 6 respectively of the Cotton Control Order, 1950, prohibiting export of cotton outside an area without permission of Government and sale or purchase of cotton unless it is sold to any of the specified "nominees' — Validity of.**

As the object of the notification, S. R. O. No. 379, dated 19th March, 1951 issued under Cl. 18 of the Cotton Control Order, 1950, which prohibits the export of cotton in any area to any place outside that area except with the permission of the Government, is clearly to regulate the supply and demand of cotton and to control the price, it cannot be doubted that it is in the interests of the public and is reasonable, and must be held to fall within Art. 19(5) of the Constitution.

Notification S. R. O. No. 388, dated 19th March, 1951, issued under Cl. (6) of the Cotton Control Order which provides that there should be no sale or purchase of cotton to any person in any area unless such cotton is sold to any of the "nominees' specified therein, has the effect of eliminating a large class of merchants and substituting in their place a close oligarchy of middlemen and all this for no demonstrable advantage to the public and is not a reasonable restriction on the fundamental rights mentioned in Art. 19(1)(g); that notification is therefore unconstitutional and void **(1951) 2 M L J 658: ILR (1953) Mad 51 : AIR 1952 Mad 409 (409, 410) (Pts A, B) (Prs 4, 6) (DB).**

——**Art. 19 (1) (g) and (6) —** Reasonable restrictions. See Manipur Food Grains Movement Control Order (1956), S. 3 (1). **1959 Cr L J 1448: AIR 1959 Manipur 43.**

——**Art. 19 (1) (g) —** Sugar (Movement Control) Order, 1959 of 27th July, 1959 — Order does not contravene Art. 301 — Restrictions are in public interest and reasonable. See Essential Commodities Act (1955), S. 3. **1963 (1) Cr L J 372 (Mys).**

——**Art. 19 —** C. P. and Berar Cotton Cloth Trade Regulation Order (1948), Cl. 3 — Clause is within ambit of saving Cl (6) of Art. 19, Constitution of India. See C. P. and Berar Cotton Cloth Trade Regulation Order (1948), Cl. 3. **AIR 1953 Nag 141.**

——**Art. 19 (1) (g) —** Punjab Khandsari and Gur Dealers Licensing Order (1963) — Essential Commodities Act (1955), S. 3 — Rights under Art. 19 of Constitution are suspended during emergency — Order cannot be challenged as being violative of Art. 19. See Ibid, Art. 358. **AIR 1965 Punj 74 (DB).**

——**Art. 19 —** Reasonableness of order — Duty of Court during emergency—Essential Commodities Act (1955) S. 3 — Order under — Punjab Khandsari and Gur Dealers Licensing Order (1963) — Validity of Order can be challenged on score of being outside scope of S. 3 — Restrictions imposed by order found reasonable under Art 19 of Constitution — Order is within scope of S. 3. See Essential Commodities Act (1955), S. 3. **AIR 1965 Punj 74 (DB).**

——**Art. 19 (1) (g)** Order issued under Cl. 10 of Punjab Coal Control Order (1955) being illegal and ultra vires and affecting fundamental right of a person to carry on his trade or business under Art 19 (1) (g) — Held, writ under Art. 226 should issue. See Ibid, Art. 226. **AIR 1962 Punj 32 (DB).**

——**Art 19 —** Rajasthan Gram and Barley (Regulation of Distribution) Order (1964) — Validity — Order does not contravene Arts. 14 and 19. See Ibid, Art 14. **ILR (1965) 15 Raj 684 : AIR 1966 Raj 105 (DB).**

——**Art. 19 - Clause 25—**Rajasthan Foodgrains Control Order is not saved by Art 19 (6), and, therefore, it being not in conformity with Part III of the Constitution is void. See Rajasthan Food Grains Control Order (1949) Cl. 25. **AIR 1952 Raj 74 (DB).**

67 (d). By Agricultural Produce Markets Acts.

● —**Art. 19 (1) (g) —** Provisions of Bombay Act 22 of 1939 cannot be struck down as an unreasonable restriction on fundamental right to carry on trade. See Bombay Agricultural Produce Markets Act (22 of 1939), S. 4 (2). **AIR 1962 S C 1517.**

● —**Art. 19 (1) (g) and (6) — Bombay Agricultural Produce Markets Act, 1939 (Bom 22 of 1939), Ss. 4, 4-A, 5, 5-A and 5-AA — Sections intra vires.**

Sections 4, 4-A, 5, 5-A and 5-AA of the Bombay Agricultural Produce Markets Act, 1939, are constitutional and intra vires and do not impose unreasonable restrictions on the right to carry on trade in the agricultural produce regulated under the Act : (1959) 1 Mad L J (SC) 133 : (1959) 1 Andh W R (SC) 133 : AIR 1959 S C 300. Foll. Mohammad Hussain Gulam Mohammad v State of Bombay, (1961) **2 Guj L R (SC) 21 : (1962) 2 S C R 659 : AIR 1962 S C 97 (102) (Pt A) (Pr 5).**

● —**Art. 19 (1) (g) — Madras Commercial Crops Markets Act (20 of 1933) — Constitutional validity.**

The Madras Commercial Crops Markets Act, (20 of 1933), cannot be said to create unreasonable restrictions on the citizens' right to do business unless it is clearly established that the provisions are too drastic, and overreach the scope of the object to achieve which it is enacted. The Act, Rules and the By-laws framed thereunder have a long term target of providing a net-work of markets so that the growers may bring their commercial crops to the market and sell them at reasonable prices.

Having regard to the entire scheme of the Act, the provisions of the Act, including S. 5 constitute reasonable restriction on a citizen's right to do business and therefore, they are valid : Decision in AIR 1954 Mad 621, so far as it holds that s. 5 (4) (a) was void, Reversed M. C. V. S. Arunachala Nadar v. State of Madras, 1959 S C J 297: (1959) 1 M L J (SC) 133: (1959) 1 Andh W R (SC) 133: (1959) Supp (1) S C R 92 : AIR 1959 S C 300 (304, 305, 306) (Pt B) (Prs 7, 9, 13).

——**Art. 19 (1) (g) and (6) — Hyderabad Markets Act (2 of 1339-F), Preamble — Validity — Right to carry business in fruits and vegetables — Provisions do not impose unreasonable restrictions — Hyderabad Markets Act (2 of 1339 F), Preamble.**

Provisions of the Hyderabad Markets Act do not impose unreasonable restrictions on the right of persons to carry on business in vegetables and fruits and are not repugnant to the rights guaranteed under Part III of the Constitution. The regulatory provisions of the Act are reasonable restrictions conceived in the interests of the growers of agricultural produce and the community at large : AIR 1959 S C 300; AIR 1962 S C 97, Rel on.

The Act cannot also be challenged by contending that being a Telangana Act it cannot have for its objective protection of the interests of ryots growing vegetables and fruits outside the area. The purpose of the Act being to eliminate exploitation at the stage of marketing of agricultural produce the place of residence of the grower and the place where the

produce is grown are not material. The Act governs the purchase and sale of agricultural produce and for the application of the Act only two tests must be satisfied :

(1) Whether it is agricultural produce ?

(2) Whether there is a transaction of sale or purchase of that produce within the area covered by the Act ? AIR 1962 S C 1517, Rel. on. (1963) 2 Andh L T 485 : ILR (1964) Andh-Pra 1223 : AIR 1964 Andh-Pra 373 (376 377) (Pt B) (Prs 14, 19, 27) (DB).

——Art. 19 (1) (g) — Bombay Agricultural Produce Markets Act (22 of 1939) — Act does not infringe Art. 19 (1) (g).

It is perfectly competent to the State Legislature to prohibit business being done in a particular place and also permit a business being done under certain conditions if public interest demands that a particular business should only be carried on under restrictions and limitations.

Under the Bombay Agricultural Produce Markets Act setting up of a proper market yard, the prohibition as to different businesses within a prohibited belt are all reasonable restrictions in the interest of the producers. The necessity for obtaining licences is also justified. Hence the Act cannot be challenged on the ground that it infringes Art. 19 (1) (g) of the Constitution. ILR (1955) Bom 870 : 57 Bom L R 892 : AIR 1956 Bom 21 (25) (Pt H) (Pr 9) (DB).

[Reversed on another point in AIR 1957 S C 699.]

——Art. 19 (1) (g) — Madhya Pradesh Agricultural Produce Markets (Validation) Act, 1962 (12 of 1962), S. 3, Madhya Pradesh Agricultural Produce Markets (Validation) Ordinance, 1962 (II of 1962) — Notification prohibiting use of particular place for transacting business in agricultural commodity — Notification struck down by judgment — Enactments purporting to validate notification do not violate Art. 19 (1) (g) or Constitution—Restrictions are not unreasonable. See Madhya Pradesh Agricultural Produce Markets (Validation) Act, 1962 (12 of 1962), S. 3. AIR 1965 Madh Pra 6 (DB).

—— Arts. 19 (1) (g) and 265 — Madras Agricultural Produce Markets Act (23 of 1959), S. 18—Imposition of cess under the section — Levy is not unconstitutional.

Cess is levied under S. 18, Madras Agricultural Produce Markets Act, 1959, by way of sales tax and not as a fee. Therefore the levy under the section is not unconstitutional on the ground that it is imposed upon persons carrying on business in notified commodities within the notified area, whether they make use of the facilities provided by the Market Committee or not AIR 1954 Mad 621 and AIR 1959 S C 300 and AIR 1961 S C 459 and A I R 1960 Mad 160, Rel. on.

Since the levy is by way of tax it does not amount to an unreasonable restriction upon the right of freedom of trade guaranteed by Art. 19 (1) (g) to a private market owner carrying on business within the notified area. It is well established by authority that the imposition of a tax by the State cannot be regarded as in any way amounting to an unreasonable restriction upon the fundamental right of a citizen to carry on a business or profession. 77 Mad L W 100 : AIR 1964 Mad 458 (460) (Prs 9, 10).

——Art. 19 (1) (g) - Extension of Madras Commercial Crops Markets Act where petitioners were holding markets — Whether infringement of right to hold market. See Madras Commercial Crops Markets Act (20 of 1933), S. 4 AIR 1954 Mad 621 (DB).

[Reversed on another point in AIR 1959 S C 300.]

——Art. 19 (1) (g) — Validity of Madras Commercial Crops Markets Act (XX of 1933). See Madras Commercial Crops Markets Act (XX of 1933), S. 5 (4) (a). A I R 1954 Mad 621 (DB).

[Reversed in AIR 1959 S C 300, in so far as it holds that S. 5 (4) (a) was void.]

—— Arts 19 (1) (g) and 19 (6) — Madras Commercial Crops Markets Act (1933), Ss. 5 (1) and 5 (3) — Validity -Provisions held have reasonable relationship with the object of Act. See Madras Commercial Crops Markets Act (20 of 1933), S. 5 (1). A I R 1959 Mys 29 (DB).

——Art. 19 (1) (g) — Constitutionality—Orissa Agricultural Produce Markets Rules (1958), R. 48 Imposition of market fees and licence fees is not a tax Act does not impose unreasonable restriction on fundamental right of trade or trade within State. See Orissa Agricultural Produce Markets Act (III of 1957), S. 4. AIR 1961 Orissa 81 (DB).

——Art. 19 (1) (g) — Provisions of S. 4, Bihar Agricultural Produce Markets Act (1960) — Power of the State to declare market area for agricultural produce — Valid See Bihar Agricultural Produce Markets Act (XVI of 1960), S. 4. AIR 1965 Pat 267 (DB).

——Art. 19 (1) (g), (6)—Punjab Agricultural Produce Markets (General) Rules (1962), R. 26 — Validity — Does not contravene Art. 19 (1) (g). AIR 1951 S C 118, A I R 1961 S C 448, Disting.; A I R 1959 S C 300, Rel on. 66 Punj L R 836 : I L R (1964) 2 Punj 523 : AIR 1965 Punj 33 (36, 37) (Pt B) (Prs 5, 6, 7) (DB).

——Arts. 19 (1) (g) and 14 - Bombay Agricultural Produce Markets Act (22 of 1939), Ss. 4 (2), Proviso and 5-A — Validity— Provisions are valid. See Ibid, Art. 14. AIR 1960 Punj 439.

——Art. 19 (1) (g) — Rajasthan Agricultural Produce Markets Act (38 of 1961), S. 1—Restrictions under, to carry on trade in agricultural commodities — Restrictions have rational relation to object of Act and do not go in excess of that object — Restrictions are reasonable —Act held valid—AIR 1959 S C 300, Rel. on. 1965 Raj L W 358 : I L R (1965) 15 Raj 897 : A I R 1966 Raj 142 (147, 148) (Pt A) (Prs 28, 30) (DB).

67 (e). By Police Acts.

● ——Art. 19 (1) (g)— Notifications under S. 61-A of Calcutta Police Act and S. 38 A of Calcutta Suburban Police Act, prohibiting use of cycle carts within limits of town and suburbs of Calcutta.

There is no violation of Art. 19 (1) (g) — Notifications only regulate the manner of carrying the business of transport by controlling type of vehicles to be permitted on roads— No right to intangible assets are involved. A I R 1954 S C 728 Expl. and Disting. Paschim Banga Malbahi Cycle Mazdoor Union v. Commr. of Police, Calcutta, 65 Cal W N 213 : AIR 1961 Cal 125 (132, 138) (Pt B) (Prs 23, 49) (SB).

——Art. 19 (1) (g) and Cl. (6)— Total prohibition of plying of hand carts in daytime on main road in business area —Restriction on the fundamental right under Article held unreasonable — Test of reasonableness.

The right to ply a vehicle over a public road is a fundamental right, particularly when it is associated with the carrying on of a business by a citizen. While other causes contributing to the congestion of traffic might be removed, this one cannot be done except in conformity with Art. 19 (6) of the Constitution. The restriction of a right under Art 19 (1) must, in order to be valid have the quality of reasonableness and be one necessary in the interests of the public It will not be enough to say that as an efficient regulation of traffic is essential in the interests of the public, any human right that stands in the

way of the achievement of that object should be done away with. It is necessary first to find out whether the invasion of that right is essential in the interests of the public, in order to remedy the evil. Then the restriction sought to be imposed should correlate to the evil and be reasonably necessary for securing the remedy. It must not be arbitrarily imposed without due care and consideration, or in excess ot the needs of the situation. AIR 1952 S C 196, Foll.

Speaking broadly, it must be competent for the authority enacting the law or issuing the notification to curb tendencies or potential developments reasonably apprehended which would create the mischief sought to be prevented. Preventive legislation for anticipated evil is not unknown ; the question of its legality depends on the need for it and whether the provisions do not unduly interfere with human rights. It is not necessary, therefore that actual mischief should have been done or the evil should be existing before the regulation is imposed; for what is attempted is the avoidance of the evils. This has to be distinguished from a case where the need for the restriction is not apparent but where it is imposed by way of an experiment to see whether the infringement on fundamental rights would yield beneficial results to the public. A I R 1957 S C 620 and (1932) 76 Law Ed. 747, Foll.

Whenever any law is impugned as unreasonably imposing restrictions on rights guaranteed by the Constitution, its validity has to be judged in the circumstances and conditions prevailing at the time when it is enacted. Further, there is and can be no absolute standards of testing the reasonableness of an encroachment made by law on the rights, except in relation to the context in which it is made. What would be unreasonable at one time and in certain circumstances might be perfectly reasonable at a later time or in a different situation.

There are certain broad and objective tests for finding out whether any restriction imposed on a fundamental right is reasonable or not. First it has to be seen whether there is any proximate connection or nexus between the restriction imposed and the evil sought to be remedied. Secondly, even where the restriction imposed is held to have a nexus or relation to the object which the law-making body seeks to achieve the restriction, unless it be within the necessary limits, will be unreasonable.

Held, on the facts of the case, that the notification in question issued by the Commissioner of Police on 20-3-1962 by virtue of the powers conferred on him under the Motor Vehicles Act and the Madras Traffic Rules totally prohibiting passage of hand carts on a certain main road during day time, was invalid but it would not prejudice the Commissioner of Police to regulate the time during which such carts or other slow moving vehicles should be allowed to pass and also to regulate the weight and capacity of such carts. A I R 1951 S C 118, Foll. 77 Mad L W 542 : ILR (1964) 2 Mad 33 : 1964 Mad W N 421 : A I R 1965 Mad 301 (302, 303, 304, 305) (Prs 6, 8, 10, 13, 14, 16) (DB).

67 (f). By other statutes.

●——Art. 19 (6) (ii) (as amended by Constitution (First Amendment) Act (1951) — Orissa Kendu Leaves (Control of Trade) Act (28 of 1961), S 18— Rules under — R. 7 (5) — Validity — R 7 (5 is bad in that it leaves it to the sweet will of officer concerned to fix terms and conditions of agreement on ad hoc basis.

Rule 7 (5) of the Rules framed under S. 18 of the Orissa Kendu Leaves (Control of Trade) Act provides that on appointment as agent the person appointed shall execute an agreement in such form as Government may direct within ten days of the date of receipt of the order of appointment failing which the appointment shall be liable to cancellation and the amount deposited as earnest money shall be liable to forfeiture. It is significant that though the Form for an application which has to be made by a person applying for agency is prescribed, no form has been prescribed for the agreement which the State Government enters into with the agent. If the State Government intends that for carrying on the State monopoly authorised, by the Act, agents must be appointed, it must take care to appoint agent on such terms and conditions as would justify the conclusion that the relationship between them and the State Government is that of agent and principal; and if such a result is intended to be achieved, it is necessary that the principal terms and conditions of the agency agreement must be prescribed, by the rules. Then it would be open to the citizens to examine the said terms and conditions and challenge their validity if they contravene any provisions of the Constitution, or are inconsistent with the provisions of the Act itself. Therefore R. 7 (5) is bad in that it leaves it to the sweet will and pleasure of the officer concerned to fix any terms and conditions on an ad hoc basis that is beyond the competence of the State Government and such terms and conditions must be prescribed by the rules made under S 18 of the Act. Akadasi Padhan v. State of Orissa, (1964) 1 S C A 187 : (1964) 2 S C J 37 : (1963) Supp 2 S C R 691 : AIR 1963 S C 1047 (1058, 1059) (Pt C) (Pr 31).

●——Art. 19 (6) (ii) (as amended by Constitution (First Amendment) Act (1951)) — Orissa Kendu Leaves (Control of Trade) Act (28 of 1961), Ss. 18, 3 (1) (c) — S. 18 — Rules under — R. 7 (5) — Validity — Under agreement entered into by person with Government all loss to be borne by the agent—Agreement held inconsistent with requirements of S. 3 (1) (c) of the Act

Agency which can be legitimately allowed under Art 19 (6) (ii) is agency in the strict and narrow sense of the term; it includes only agents who can be said to carry on the monopoly at every stage on behalf of the State for its benefit and not for their own benefit at all. All that such agents would be entitled to would be remuneration for their work as agents. That being so, the extended meaning of the word 'agent' in a commercial sense is wholly inapplicable in the context of Art. 19 (6) (ii). Where the agreement entered into by a person with the Government provides that subject to other terms and conditions, all charges and outgoings shall be paid by the agent and he shall not be entitled to any compensation whatsoever for any loss that may be sustained this clearly shows that the agent becomes personally liable to bear the loss which, under the normal rules of agency, the principal would have to bear. The agent appointed under this agreement seems to carry on the trade substantially on his own account, subject, of course, to the payment of the amount specified in the contract If he makes any profit after complying with the said terms, the profit is his; if he incurs any loss owing to circumstances specified in the agreement, the loss is his In terms, he is not made accountable to the State Government; and in terms, the State Government is not responsible for his actions. In such a case it is impossible to hold that the agreement in question is consistent with the terms of S. 3 of the Orissa Kendu Leaves (Control of Trade) Act. The agreement is invalid inasmuch as it is wholly inconsistent with the requirements of S 3 (1) (c). (1879) 10 Ch D 566 and (1910) 1 K B 285, Disting Akadasi Padhan v State of Orissa, (1964) 1 S C A 187:(1964) 2 S C J 37 : (1963) Supp 2 S C R 691 : AIR 1963 S C 1047 (1059, 1060) (Pt D) (Pr 33).

● ——**Arts. 19 (1)(f) and (g), 32 and 226—Patiala Recovery of State Dues Act (4 of 2002 Bk.)—Procedure laid down in the Act for settlement of disputes between Patiala State Bank and its customers — No infringement of Art. 19 (1) (f) and (g).**

Per Majority ;

The Patiala Recovery of State Dues Act (4 of 2002 Bk.) and the Rules made thereunder cannot be attacked as contravening Art. 19 (1) (g) of the Constitution, because the impugned enactments do not trench either directly or indirectly on the right of a person to carry on trade or business. A law with respect of the recovery of debts is not one with respect to the carrying on of trade or business, though the debtor might be a trader.

Nor do the impugned Act and the Rules infringe Art. 19 (1) (f) of the Constitution. Examining the provisions of the Act and the Rules as a whole they are reasonable and do not violate any rules of natural justice.

An important factor to be taken into account is that the impugned Act and Rules are not legislation confined to the recovery of money due to the Patiala State Bank. It is a general law applicable to the realisation of all revenue due to the State, dues to the Bank being expressly included in the definition of 'State dues' in S. 3 (1) of the Act, and it is the pattern usually adopted in Revenue Laws. If State Revenues can be diverted for Banking purposes, it seems reasonable that their recovery should be governed by the Revenue Laws.

It is too late in the day to contend that provisions in statutes creating a special jurisdiction and taking away the jurisdiction of Civil Courts in respect of matters falling within that jurisdiction are unreasonable, or opposed to rules of natural justice. It has only to be remembered that provisions excluding the jurisdiction of Civil Courts in such cases do not affect the jurisdiction of either the High Court under Art. 226 or of the Supreme Court under Art. 32 or Art. 136 to interfere when grounds therefor are established. Lachhman Das v. State of Punjab, (1963) 2 S C R 353 : AIR 1963 S C 222 (234, 235, 236) (Pt D) (Prs 28, 30, 33, 36, 37, 38, 40).

● ——Arts. 19 (6) and 14—Notification issued under S. 15 of Forward Contracts (Regulation) Act—Consequence of — Closing out of contract by operation of notification—Power vested in Government to fix rates at which differences are payable — Power so vested is valid — It is not open to attack either as excessive delegation of legislative power or as an infringement of Art. 14. See Constitution of India, Art. 14. A I R 1962 S C 263.

● ——Arts. 19 (5) and (6), 19 (1) (f) — Notification issued under S. 15 of Forward Contracts (Regulation) Act, 1952 — Rights under subsisting contract affected by — Power given under S. 15 is valid — Restriction imposed by S. 15 is reasonable. Raghubar Dayal v. Union of India, (1965) 3 S C R 547 : (1962) 2 S C J 445 : AIR 1962 S C 263 (273, 274) (Pt C) (Prs 25, 26).

● ——Art. 19 (1) (g) — Coal Bearing Areas (Acquisition and Development) Act (1957), S. 4 —Section does not invade fundamental rights under Art. 19 (1) (g). See Coal Bearing Areas (Acquisition and Development) Act (1957), S. 4. AIR 1961 S C 954.

● ——**Art. 19 (1) (g) and (6)—Notification dated 31st August, 1957 under S. 4 of Securities Contracts (Regulation) Act recognising Native Share and Stock Brokers' Association and notification dated 30th November, 1957 applying S. 13 of the Act to Greater Bombay — Validity.**

The Stock Exchange Rules do not operate as a bar against a person becoming a member of the Stock Exchange subject to the rules governing the application for the membership. He has the right to do business in shares; in spite of the notifications dated 31st August, 1957 and dated 30th November, 1957, he can still do business in spot delivery contracts. The Act enables the State to give or refuse recognition to any Stock Exchange and it has chosen to give recognition to the Stock Exchange, Bombay, subject to the conditions prescribed. The restrictions are not unreasonable, having regard to the importance of the business of a stock exchange in the country's national economy. The notification, dated 31st August, 1957 issued under S 4 of the Securities Contracts (Regulation) Act (1956) and the notification dated 30th November, 1957 under S. 13 of the Act do not contravene Art. 19. Madhubhai Amathalal Gandhi v. Union of India, (1961) 2 S C A 108 : (1961) 1 S C J 442 : (1961) 1 S C R 191 : (1960) 30 Com Cas 667 : AIR 1961 S C 21 (26, 27) (Pt B) (Pr 12).

● ——Art. 19(6)—Vindhya Pradesh Tendu Leaves Act (6 of 1954), S. 4 (3) (c) — Vindhya Pradesh Tendu Leaves Rules (1954), R. 4—Condition in licence restricting it to purchases from contractors only — If ultra vires and void.

A licencee, who is not a contractor, is free under the Vindhya Pradesh Tendu Leaves Act, 1953, and the Vindhya Pradesh Tendu Leaves Rules, 1954, to deal with Jagirdars and tenants in respect of leaves from trees belonging to them The inclusion of a term in the licence restricting the operation of the licence to purchases from contractors only is not justified by S. 3 (2) (c) of the Act nor does R. 4 save it The clause itself amounts to an unreasonable restriction upon the rights of the petitioner-licencee guaranteed under Part 3. Hence, the condition must be declared to be both ultra vires and void. AIR 1950 S C 163, Rel. on. Hamid Raza v. State of Madhya Pradesh, AIR 1960 S C 994 (996, 997) (Prs 10, 12, 13).

● ——Art. 19(6)—Central Excises and Salt Act (1944) —Validity.

The Central Excises and Salt Act cannot be challenged on the ground that the restrictions imposed on the fundamental right of the petitioner to trade in tobacco are unreasonable and therefore not saved by Art. 19 (6) of the Constitution of India. There is no breach of the principles of natural justice of audi alteram partem involved in the provisions of the Act. Chaturbhai M. Patel v. Union of India, 1960 S C J 224 : 1960 All L J 262 : (1960) 1 S C A 425 : (1960) 2 S C R 362: AIR 1960 S C 424 (429, 430) (Pt D) (Pr 13).

● ——Arts. 19 (1) (f) and (g) and 31—U. P. Sugarcane (Regulation of Supply and Purchase) Act (24 of 1953) — Notifications under — If offend Article 19 (1) (f) and (g) and Art 31.

The power which is given to the Cane Commissioner under S. 15, U. P Sugarcane (Regulation of Supply and Purchase) Act for declaring reserved or assigned areas is guided by the considerations set out in R. 22 of Chap. 6 of the U. P. Sugarcane (Regulation of Supply and Purchase) Rules, 1954 and is further conditioned that he has to consult the factory and the Canegrowers' Co-operative Society, and his orders made thereunder are subject to an appeal to the State Government at the instance of the party aggrieved. This cannot by any means be treated as an uncontrolled or an unfettered power. The power does not fall within the mischief of Article 19 (1) (f) and (g) and the notifications thereunder cannot be impugned. The restriction which is imposed upon the cane-growers in regard to sales of their sugarcane to the occupiers of factories in areas where the membership of the Cane-growers' Co-operative Society is not less than 75 per cent. of the total cane growers within the area is a reasonable

restriction. That being so, it comes well within the protection of Art. 19 (6) and the impugned notifications cannot be challenged as violative of the fundamental right guaranteed under Art. 19 (1) (f) and (g). If these impugned notifications are intra vires the State Legislature, they cannot be challenged also under Art. 31 as none of the petitioners is being deprived of his property, if any, save by authority of law. Tika Ramji v. State of Uttar Pradesh, 1956 S C A 979 : 1956 S C J 625 : 1956 All W R (H C) 657 : 1956 S C R 393 : AIR 1956 S C 676 (711, 712) (Pt I) (Pr 51).

——Art. 19 (1) (g) — Scope — U. P. Gaon Samaj Manual, Para. 63, second proviso — Whether inconsistent with Arts. 14 and 19 (1) (g) of Constitution and invalid—See U. P. Gaon Samaj Manual, Para. 63, Proviso 2. AIR 1957 All 487.

——Art. 19 — Notification appointing controller of Sugar Company — Controller given power to authorise Board of Directors, to dispose of sugar and funds of company — Direction does not imply prohibition to Board of Directors to dispose of sugar or funds without authority of Controller— See Essential Supplies (Temporary Powers) Act (1946), S. 3 (4). AIR 1955 N U C (All) 3594.

——Art. 19 — Scope — Essential Commodities Act (1955), S. 3—Validity of vested right to get specific quantities of coal.

There is no vested right in the petitioners to get the specific quantities of coal which were allotted to them previously, and they cannot claim that the system which was prevailing during the previous years should be continued during the current year also. 1958 Andh L T 587.

——Arts. 19 (1) (g) and 19 (6) — Common law right of seller in markets —Restrictions on—Limits of — Prohibition by Nagpur Corporation of sale of meat in weekly markets — Legality— (Municipalities—City of Nagpur Corporation Act (2 of 1950), S. 57 (1) (m)).

The right of a seller available to him in Common Law, is now enshrined in and is guaranteed to him under Art. 19 (1) (g) of the Constitution. The only restriction to this unfettered right is the authority of the State to make a law relating to the carrying on of such occupation, trade or a business as mentioned in Cl. (6) of that Article: AIR 1952 S C 115, Rel. on. Those restrictions are that the law must be in the interests of the general public and the restrictions must be reasonable.

Held, that the action of the Nagpur Corporation in prohibiting the sale of meat in weekly markets by its resolution No. 77, dated 28-3-1958 not being authorised by law had to be struck down, as contravening Art. 19 (1) (g) of the Constitution as restricting the freedom of the sellers of meat in weekly markets. 61 Bom L R 468 : ILR (1959) Bom 1047 : 1958 N L J 625 : AIR 1959 Bom 112 (116, 119) (Pt B) (Prs 17, 18, 29) (DB).

——Art. 19 (6) —S. 3 (2) (f) and (3A) of the Essential Commodities Act, 1955—Direction to sell to Government — Question of compensation — Justiciability of —See Essential Commodities Act (1955), S. 3 (2) (f). AIR 1958 Cal 257.

——Art. 19 (1)—Prevention of Food Adulteration Act (1954), S. 13 (5), Proviso — Proviso is not unconstitutional as infringing Art. 19 (1) of the Constitution—See Prevention of Food Adulteration Act (1954), S. 13 (5), Proviso. AIR 1962 Guj 44 (DB).

——Art. 19 (1) (g) and (6)—Validity of order directing retail dealers in cloth to carry on business through Co-operative Societies —Restriction imposed held was reasonable and in the interest of general public within the meaning of Art. 19 (6). AIR 1958 Him Pra 41 (47) (Pt C) (Pr 29).

——Arts. 19, 13 and 305 — Jammu and Kashmir Essential Supplies (Temporary Powers) Ordinance (2003), S. 3 — Notification under dated 26-10-1955 — Validity — (Constitution (Application to Jammu and Kashmir) Order (1954), Para. 4 (d))—See Jammu and Kashmir Essential Supplies (Tempoary Powers) Ordinance (2003), S. 3. AIR 1956 J & K 26.

●——Arts. 19 (1) (g) and 19 (6)—Prevention of Food Adulteration Act (1954), S. 23 (1) (f) and Prevention of Food Adulteration Rules (1955), R. 44-A, Cl. (b)—Reasonable restriction — Prohibition on trade of Kesari dal is reasonable restriction and is covered by Art. 19 (6).

A complete prohibition of trade in Kesari dal would be in the interests of the general public even if its effect would be to reduce the amount of fodder available for the cattle in the country, and, having regard to the serious consequences that the consumption of Kesari dal by human beings entails, it can scarcely be contended that the prohibition is not a reasonable restriction (restriction, it is now well settled, is wide enough to cover a prohibition) on the fundamental right to trade. Therefore, even if trade in a poisonous food-grain like Kesari dal were not to be regarded as res extra commercium so that it would attract the fundamental right in Art. 19 (1) (g) of the Constitution, the prohibition would clearly come within the saving in Art. 19 (6). Moreover the rule imposing the prohibition was made, required by S. 23 of the Act, in consultation with the expert committee constituted under S. 3 and after "previous publication". Also the rule was laid before both Houses of Parliament. Govinda Pillai v. Padmanabha Pillai, 1964 Ker L T 1023 : 1965 Ker L J 18 : ILR (1965) 1 Ker 12 : 1965 Mad L J (Cri) 23 : (1965) 1 Ker L R 10 : 1965 (1) Cri L J 446 : AIR 1965 Ker 123 (127, 128) (Pt B) (Pr 15) (FB).

●——Art. 19 (1) (g) and 245— Delegation of powers —Validity of Essential Supplies (Temporary Powers) Act (1946), S. 3—See Ibid, Art. 245. AIR 1957 Madh Pra. 179 (FB).

[Held reversed on another point by Cri. App. No. 162 of 1957 dated 16-12-1959 (SC) as interpreted in (1961) 1 Cr L J 674 (MP).]

——Art. 19 — Essential Commodities Act (1955) — Validity — See Essential Commodities Act (1955), S. 3 (2) (f). AIR 1960 Mys 192 (DB).

——Art. 19 (1) — Madras Money-lenders Act (26 of 1957), is valid. See Ibid, Art. 14. AIR 1964 Mad 30 (DB).

——Art. 19 (1) (g) — Scope — Madras Pawnbrokers Act (23 of 1943), S. 5 (a)—Validity.

All that S. 5 (a) requires is that there should be no difficulty in identifying a pawnbroker's shop, and it prescribes a name board for that shop. That is not unreasonable. (1957) 1 M L J 329 : ILR (1957) Mad 937 : 1957 Mad L J (Cri) 196 : 70 Mad L W 1022 : 1957 Cr L J 962 : AIR 1957 Mad 514 (519) (Pt C) (Pr 25).

——Art. 19 (1) (g) — Scope — Madras Pawnbrokers Act (23 of 1943), S. 6—Validity.

Prima facie, a statutory control of the rate of interest does abridge the freedom of contract. Freedom of contract can be claimed as incidental to and in fact necessary for carrying on any business including that of a pawn-broker. The statutory maxima by themselves not reasonable, were designed in the interests of a section of the public. The statutory maxima prescribed by S. 6 (i) of the Act do not constitute an unreasonable restriction on the right of the pawn-broker to carry on his business. (1957) 1

M L J 329 : ILR (1957) Mad 937 : 1957 Mad L J (Cri) 196 : 1957 Cr L J 962 : 70 Mad L W 1022 : AIR 1957 Mad 514 (519) (Pt D) (Pr 26).

——Art. 19 (1) (g) — Scope — Madras Pawn-brokers Act (23 of 1943), S. 10—Validity.

S. 10 (2) of the Act requires that all records or entries made in the books, accounts and documents referred to in S. 10 (1) of the Act shall be either in English or in such language of the locality as may be prescribed by authority. If the restriction imposed by S. 10 (2) was designed to facilitate maintenance of law and order, that would be sufficient to bring it within the scope of Art. 19 (6) of the Constitution. If the legislature chose to provide for the protection of the larger community of the debtors and in that endeavour chose to prescribe what prima facie appears to be a restriction on the right of the pawn-broker to maintain his accounts in his own language, it is not for the Courts to say that it constitutes an unreasonable restriction outside the purview of Art. 19 (6) of the Constitution. Neither S. 10 (2) by itself nor any other provision of the Act authorises the police to effect forcible entry into the premises of a pawn-broker by breaking open, for example, premises which have been locked. Neither part of S. 10 (2) constitutes an unreasonable restriction on the right of a pawn-broker to carry on his business. (1957) 1 M L J 329 : I L R (1957) Mad 937 : 1957 Mad L J (Cri) 196 : (1957) Cr L J 962 : 70 Mad L W 1022 : A I R 1957 Mad 514 (519, 520) (Pt E) (Prs 27, 28, 29, 30).

——Art. 19 (1) (g) — Scope — Madras Pawn-brokers Act (23 of 1943), S. 11—Validity.

S. 11 of Madras Act (23 of 1943), as it stands, does not really compel a pawn-broker to continue his business against his wishes. The statute safeguarded the rights of his debtors. That the legislature was entitled to do. There is nothing unreasonable in the statutory conditions imposed by S. 11. (1957) 1 M L J 329 : I L R (1957) Mad 937 : 1957 Mad L J (Cri) 196 : 1957 Cr L J 962 : 70 Mad L W 1022 : AIR 1957 Mad 514 (521) (Pt F) (Pr 31).

——Art. 19 (1) (g) — Scope — Madras Pawn-brokers Act (23 of 1943), S. 12—Validity.

Conceived obviously in the interests of a larger section of the public other than the pawn-brokers, i. e., the debtors, S. 12 (3) does not fall outside the scope of Art. 19 (6) of the Constitution. (1957) 1 M L J 329 : I L R (1957) Mad 937 : 1957 Mad L J (Cri) 196 : 1957 Cri L J 962 : 70 Mad L W 1022 : AIR 1957 Mad 514 (521) (Pt G) (Pr 32).

——Art. 19 (1) (g) — Scope — Madras Pawn-brokers Act (23 of 1943), S. 13 (1)—Validity.

The debtor has a subsisting interest in the articles he has pawned and he is entitled to redeem those articles under the terms of the contract with the pawn-broker. It is basically that right that S. 13 (1) is designed to safeguard S. 13 (1) does not constitute an unreasonable restriction on the pawn-broker's right to carry on his business. (1957) 1 M L J 329 : I L R (1957) Mad 937 : 1957 Mad L J (Cri) 196 : 1957 Cri L J 962 : 70 Mad L W 1022 : A I R 1957 Mad 514 (521) (Pt H) (Pr 33).

——Art. 19 (1) (g) — Scope — Madras Pawn-brokers Act (23 of 1943), S. 15—Validity.

The validity of S. 15 of the Act should really be linked up with that of S. 6 for the contravention of which penalties have been provided in S. 15. As S. 6 is valid, it follows the constitutional validity of S. 15 also is unassailable. (1957) 1 M L J 329 : ILR (1957) Mad 937 : 1957 Mad L J (Cri) 196 : 1957 Cr L J 962 : 70 Mad L J 1022 : AIR 1957 Mad 514 (521) (Pt I) (Pr 34).

——Art. 19 (1) (g) — Scope — Madras Pawn-brokers Act (23 of 1943), S. 17 (2)—Validity.

The statutory obligation with a corresponding statutory right to seize and detain does not constitute an unreasonable restriction on the pawn-broker's right to carry on his business. One of the objects of the control imposed by the Act was to prevent clandestine disposal of stolen property. That was conceived in the interests of the society as a whole. The State was bound to provide safeguards against the commission of such offences. There is certainly nothing unreasonable in the State imposing an obligation on a citizen to give information to the police, entrusted with the duty of maintaining law and order, when a citizen has reasonable grounds to believe that a cognisable offence has been committed. It is only that normal duty of a citizen that has been converted into a statutory obligation under the limited circumstances specified in S. 17 (2) of the Act. S. 17 (2) does not impose an unreasonable restriction on a pawn-broker. (1957) 1 M L J 329 : ILR (1957) Mad 937 : 1957 Mad L J (Cri) 196 : 1957 Cr L J 962 : 70 Mad L W 1022 : AIR 1957 Mad 514 (521) (Pt J) (Pr 35).

——Art. 19 (1) (g) — Scope — Madras Pawn-brokers Act (23 of 1943), S. 20—Validity—(Cr. P. C. (1898), S. 59).

A statutory provision enabling a police officer, whose primary duty is maintenance of law and order to arrest without a warrant when a person commits an offence in the presence of the police officer cannot be challenged as unreasonable in its scope. Section 20 gives a limited right to the police officer to arrest a person without a warrant, if that person commits an offence made punishable under the Act itself, the Pawn-brokers Act. AIR 1928 Pat 53; AIR 1933 Pat 503, Rel. on. (1957) 1 M L J 329 : ILR (1957) Mad 937 : 1957 Mad L J 196 : 1957 Cr L J 962 : 70 Mad L W 1022 : AIR 1957 Mad 514 (521) (Pt K) (Pr 36).

——Art. 19 (1) (f) — Essential Supplies (Temporary Powers) Act (1946), Section 3 (2) (f)—Whether invalid. See Essential Supplies (Temporary Powers) Act (1946). S. 3 (2) (f). AIR 1953 Orissa 277.

——Art. 19 (1) (g) — Opium trade — Restrictions on — Validity. See Punjab Opium (Restriction on Oral Consumption) Rules (1957). **AIR 1958 Punj 400.**

——Art. 19 (1) (g) — Right to carry on trade — Restrictions on.

The petitioner, a publisher of educational books for schools and colleges had got himself registered under Reg. 16 (1) of the Rajasthan Secondary Education Regulation, 1957, framed under Rajasthan Secondary Education Act, 1957. The petitioner had submitted certain books to the Board for approval for study in various subjects in Higher Secondary Schools but was informed that his registration had been cancelled and that the books submitted would not be considered by the Courses Committee for a period of three years.

Held, that the petitioner's right to carry on his trade or business in the matter of publication of books cannot be said to be infringed by any action of the Board. Article 19 guarantees the freedom of trade or business but it does not guarantee that conditions must be created by the State or any statutory subordinate body to make the trade lucrative or to bring customers to the trade or business man : AIR 1955 S C 549, Rel. on. 1960 Raj L W 209 : ILR (1960) 10 Raj 760 : AIR 1960 Raj 185 (187, 188) (Pt A) (Pr 6) (DB).

——Arts. 19 (1) (g) and 14—Prohibition of carrying on of business without Government permission invalid—(Bharatpur State Khas Industries Act (1943), Ss. 6, 11, 18 and 21).

Sections 6, 11, 18 and 21 in particular, are ultra vires of the Constitution. Other sections so far as they deal with matters covered by S. 6 or 18 are also ultra vires to that extent. (Section 6 provides that no person shall carry on business in Khas or manufacture Khas or Khas essential oil unless specially permitted so to do by the Bharatpur Government. The other sections are ancillary to S. 6 and make various provisions for giving effect to it, such as provisions relating to penalties etc. 1958 Raj L W 432.

68. Price control.

——Art. 19 (6)—Scope — Price Control Order (1957) —Validity.

If any enactment is to be saved under Art. 19 (6) of the Constitution, the law should be conceived in the interests of the general public and the restrictions should be reasonable. The reasonableness of a law or an order has to be judged with reference to the purpose the enactment seeks to accomplish, the extent to which it affects the fundamental rights of an individual and the service it renders to the general public. The law should strike a balance between the rights guaranteed under Part 3 of the Constitution and the social demands. A statute under the guise of safeguarding the interests of the general public should not impose unduly restrictive regulations upon freedom of trade and commerce. There should be a nexus between the policy underlying the Act and the restrictions that the law seeks to levy : A I R 1954 S C 465, Rel. on. A I R 1960 Andh Pra 431 (440) (Pt G) (Pr 46) (DB).

——Art. 19 (1) (f) and (g) and (5) and (6) — Scope— Bihar Milled Rice Procurement (Levy) Order and Milled Rice (Bihar) Price Control Order—Constitutional validity — (Bihar Milled Rice Procurement (Levy) Order (1958), S. (1) — (Milled Rice (Bihar) Price Control Order (1958), S, 17) — Essential Commodities Act (1955), S. 3 (1)).

The right of property under Art. 19 (1) (f) or the right of carrying on trade or business under Art. 19 (1) (g), which the Constitution guarantees are not absolute rights. It is manifest that the rights guaranteed under Art. 19 (1) (f) and 19 (1) (g) are rights to be enjoyed in the context and setting of a social organization which requires the protection of law against evils which menace the health, safety and welfare of the people.

The restrictions imposed by the Bihar Milled Rice Procurement (Levy) Order and the Milled Rice (Bihar) Price Control Order are reasonable restrictions in the interest of the guarantee under Art. 19 (1) (f) or Art. 19 (1) (g) of the Constitution. The object of price fixation as mentioned in S. 3 (1) of the Essential Commodities Act is to maintain the supplies of essential commodities at a fair price to the general public. The mere fact that in consequence of fixation of price some loss may fall upon an individual trade cannot lead to the implication that the provisions of the Central Order are constitutionally invalid. 1959 Pat L R 72 : 1959 B L J R 366 : I L R 38 Pat 756 : AIR 1959 Pat 268 (271) (Prs 6, 7) (DB).

——Art. 19 (1) (g) — Scope — Legislation violating sanctity of contracts — Effect—Price fixation order made by Union of India — Legislation not to be held as ultra vires in absence of material that it was aimed at particular person. See Ibid, Art. 13. AIR 1961 Punj 136.

69. Monopolies.

See also Ibid, Note 74.

● ——Art. 19 (6) (as amended by Constitution (First Amendment) Act (1951))—Law creating State monopoly—Basic provisions of law creating monopoly are protected by latter part of Art. 19 (6)—Validity of incidental provisions to be judged by first part of Art. 19 (6)—Effect of such law on other rights under Art. 19 (1) — Law directly controlling right under Art. 19 (1) (g) and only incidentally under other clauses of Art. 19 (1) (g) — Validity to be tested under Art. 19 (6)—Orissa Kendu Leaves (Control of Trade) Act (28 of 1961)—Validity—Ss. 4, 3 and 8 are valid.

'A law relating to' a State monopoly cannot, in the context, include all the provisions contained in the said law whether they have direct relation with the creation of the monopoly or not. It is only the essential and basic provisions which are protected by the latter part of Art. 19 (6). If there are other provisions made by the Act which are subsidiary incidental or helpful to the operation of the monopoly, their validity must be judged under the first part of Art. 19 (6).

The several rights guaranteed by the 7 sub-clauses of Art. 19 (1) are separate and distinct fundamental rights and they can be regulated only if the provisions contained in Cls. (2) to (6) are respectively satisfied. But in dealing with the question as to the effect of a law which seeks to regulate the fundamental right guaranteed by Art. 19 (1) (g) on the citizen's right guaranteed by Art. 19 (1) (f), it will be necessary to distinguish between the direct purpose of the Act and its indirect or incidental effect. If the legislation seeks directly to control the citizen's right under Art. 19 (1) (g), its validity has to be tested in the light of the provisions contained in Art. 19 (6), and if such a legislation, as for instance, a law creating a State monopoly, indirectly or incidentally affects a citizen's right under any other clause of Art. 19 (1), as for instance, Art. 19 (1) (f), that will not introduce any infirmity in the Act itself. AIR 1950 S C 27 and A I R 1951 S C 270 and AIR 1958 S C 578 and AIR 1957 S C 699, Rel. on.

Having regard to the scheme of the State monopoly envisaged by the Orissa Kendu Leaves (Control of Trade) Act, S. 4 cannot be said to be such an essential part of the said monopoly as to fall within the expression 'law relating to' under Art. 19 (6). Therefore, the validity of S. 4 must be tested in the light of the first part of Art. 19 (6) so far as a person's rights under Art. 19 (1) (g) are concerned, and under Art. 19 (5) so far as his rights under Art. 19 (1) (f) are concerned. The restrictions in regard to the fixing of price prescribed by S. 4 are reasonable and in the interests of the general public both under Art. 19 (5) and Art. 19 (6). Thus S. 4 must be held to be valid. A I R 1954 S C 728, AIR 1960 S C 891, AIR 1961 S C 82 and AIR 1960 S C 1073, Disting.

If a law is passed creating a State monopoly and the working of the monopoly is left either to the State or to the officers of the State appointed in that behalf, or to the department of the State, or to persons appointed as agents to carry on the work of the monopoly strictly on behalf of the State, that would satisfy the requirements of Art. 19 (6) (ii). S. 3 of the Orissa Kendu Leaves (Control of Trade) Act allows either the Government or an officer of the Government authorised in that behalf to purchase or transport Kendu leaves. The two categories of persons specified in Cls. (b) and (c) are intended to work as agents of the Government and all their actions and their dealings in pursuance of the provisions of the Act would be actions and dealings on behalf of the Government and for the benefit of the Government. If S. 3 is valid, then S. 8 which authorises the appointment of agents must also be held to be valid. Akadasi Padhan v. State of Orissa, (1964) 1 S C A 187 : (1964) 2 S C J 37 : (1963) Supp

(2) S C R 691: AIR 1963 S C 1047 (1054, 1055, 1056, 1057, 1058) (Pt B) (Prs 17, 18, 20, 23, 24, 29).

●——**Art. 19 (1) (g) — Import and export control—Right to carry on trade—There cannot be unfettered and unrestricted freedom of export and import—Policy statement in the Press Note dated 3-2-1955 and Public Notice No. 25 ITC (PN)/56 dated 20-6-1956—No monopoly has been created.** Bhatnagars & Co. v. The Union of India, **(1957) S C J 546 : (1957) S C A 810 : 1957 S C R 700 : A I R 1957 S C 478 (482, 483) (Pt A) (Prs 6, 7).**

●——**Art. 19 (1) (g) and (6)—Reasonable restrictions.**

The question whether the restrictions imposed by a particular legislation on the exercise of the fundamental right under Art. 19 (1) (g) are reasonable or not would depend on the nature of the trade and the conditions prevalent in it. A I R 1954 S C 220 : 1954 S C J 246, Rel. on.

In order to judge whether State monopoly is reasonable or not regard therefore must be had to the facts of each particular case in its own setting of time and circumstances. It is not enough to say that as an efficient transport service is conducive to the interests of the people a legislation which makes provision for such service must always be held valid irrespective of the fact as to what the effect of such legislation would be and irrespective of the particular conditions and circumstances under which the legislation was passed. It is not enough that the restrictions are for the benefit of the public, they must be reasonable as well and the reasonableness could be decided only on a conspectus of all the relevant facts and circumstances. 1950 A C 235, Relied on. Saghir Ahmad v. State of U. P., **1954 S C A 1218 : 1955 All W R 23 : 68 Mad L W 8 : 1955 All L J 38 : 1955 S C R 707 : 1954 S C J 819 : (1954) 2 Mad L J 622 : I L R (1955) 1 All 211 : A I R 1954 S C 728 (738) (Pt E) (Pr 22).**

●——**Art. 19 (1) (g) and (6) — Business relating to intoxicating liquors—Competency of State to regulate it—Provisions of Excise Regulation held valid.** See (Ajmer) Excise Regulation (1 of 1915), S. 1. **A I R 1954 S C 220.**

●——**Art. 19 (6) — Business relating to intoxicating liquors—Monopoly rights, conferment of — Abridgment of right to carry on liquor business — (Ajmer) Excise Regulation (1 of 1915), S. 18.**

The contention that the effect of some of the provisions of Excise Regulation (1 of 1915) is to enable Government to confer monopoly rights on one or more persons to the exclusion of others and that creation of such monopoly rights could not be sustained under Art. 19 (6), Constitution of India, is without force. Elimination and exclusion from business is inherent in the nature of liquor business and it will hardly be proper to apply to such a business principles applicable to trades which all can carry. The provisions of the Excise Regulation (1 of 1915) cannot be attacked merely on the ground that they create a monopoly.

There can be a monopoly only when a trade which can be carried on by all persons is entrusted by law to one or more persons to the exclusion of the general public. But when a contract is thrown open to public auction, it cannot be said that there is exclusion of competition and thereby a monopoly is created. Further in certain circumstances exclusion of competition so as to create a monopoly either in a State or in some other body may be justified. Every case must be judged on its own facts and its own setting of time.

For these reasons the contention that the provisions of the Excise Regulation (1 of 1915) are unconstitutional as they abridge the rights of the petitioner to carry on liquor trade freely cannot be sustained. (1950) A C 235, Foll.; A I R 1950 S C 163. Disting. Cooverjee B. Bharucha v. Excise Commissioner, **1954 S C J 246 : 1954 S C R 873 : 1954 S C A 256 : A I R 1954 S C 220 (223, 224) (Pt C) (Pr 8).**

——**Art. 19 — Applicability — Overt or covert monopoly — Prohibition against creation of — Number of shops grouped into one lump and sold—Similar lump sales held in respect of other shops as well — No monopoly can be said to have been created by such sales—Further as there was a public auction in which any member of the public was entitled to bid, Arts. 14 and 19 of the Constitution cannot also apply.** See U. P. Excise Manuals, R. 358 (9). **I L R (1962) 2 All 409.**

——**Art. 19 (6) (as amended by the First Amendment)—Monopoly in favour of State—Legality.**

The provision in Art. 19 (6) after the amendment entitles the Legislature to make an appropriate law for creation of State monopolies and since Cl. (6) is a limitation on sub-clause (g) of Art. 19 (1), it follows that the right of a citizen guaranteed by the sub-clause is subordinate to the right of the State to create a monopoly in its own favour. **61 Bom L R 1572 : I L R (1960) Bom 87 : A I R 1960 Bom 278 (281) (Pt A) (Pr 12) (DB).**

——**Art. 19 (1) (g)—Right to monopoly in business.**

There is no fundamental right to monopoly in any business. **('57) 61 Cal W N 590.**

——**Art. 19—Custom — Elements of — Custom establishing monopoly—Inconsistency with fundamental rights.** See Evidence Act (1872), S. 13. **A I R 1955 N U C (Madh B) 3078.**

——**Art. 19 (1) (g)—Fundamental right threatened — Petition under Art. 226, maintainability.** See Ibid, Art. 226. **A I R 1954 Mad 621 (DB).**

——**Art. 19 (1) (g)—Notification by Director of Public Instruction prescribing certain copy books for use in schools — Order arbitrary and creating monopoly—Notification quashed.** See Ibid, Art. 226. **A I R 1955 Mys 81 (DB).**

——**Arts. 19 (1) (g), 19 (6) and 226—'Reasonable restriction'—What is — Order sanctioning sale of entire resin from Government stock to Co-operative Society —Held order created virtual monopoly and violated petitioners' right to get resin in their business and violation was not in interests of general public—Held further that order was tainted with mala fides. I L R (1965) 2 Punj 32 : 67 Pun L R 921 : A I R 1966 Punj 16 (24) (Pt C) (Prs 15, 16, 17) (DB).**

——**Arts. 19 (1) (g) and (6) and 13 (1) — Creation of monopoly — Bye-law of Municipality restricting sale of fruits and vegetables to particular area leased by auction — Effect — Monopoly in favour of highest bidders created—Bye law void.** See Ibid, Art. 13 (1). **A I R 1962 Punj 364.**

——**Art. 19 (1) (g)—Monopoly contract executed on a pre-Constitution date—Such contract is not favoured by Art. 19 (1) (g) of Constitution.** See Contract Act (1872), S. 23. **A I R 1964 Raj 205 (DB).**

——**Art. 19 — Bombay District Municipal Act (3 of 1901) (as adapted and applied to Saurashtra), S. 50 (2) —Notification No. 84 dated 29-8-1950 — Constitution of India, Arts. 19 and 31 — Municipality farming out monopoly to take away hides to Ijardars—Monopoly, in so far as it purports to divest private ownership of carcasses and vest it in Ijardars is void — Notification No. 84 does not vest such ownership of hides in Municipality and cannot be assailed under Art. 19 or 31.** See Municipalities — Bombay District Municipal Act (3 of 1901) (as adapted and applied to Saurashtra), S. 50 (2). **(1956) 9 Sau L R 184.**

——Art. 19 (6)—State monopoly in liquor.

The claim that liquor is a monopoly of the State cannot be accepted. There should be a 'law' to sustain a claim for monopoly by the State and in its absence the claim for monopoly cannot be sustained. I L R (1954) Trav.Co 806 : A I R 1954 Trav-Co 504 (509) (Pt C) (Pr 8) (DB).

——Art. 19 (1) (g)—Government granting monopoly-cum-royalty lease to fell bamboo for umbrella sticks to one person — Fundamental right under Art. 19 (1) (g) of other persons is infringed—Granting of monopoly amounts also to discrimination. See Ibid, Art. 14. A I R 1963 Tripura 14.

70. Labour laws.

See also Ibid, Note 71.

(a) Employees' Provident Funds Act (1952).
(b) Minimum Wages Act (1948).
(c) Shops and Establishments Acts.
(d) Other Acts.

70. Labour laws.

——Art. 19 (1) (g) — Employees' State Insurance Act (1948), Ss. 1 (3), 73-A — Validity — Power of Central Government to bring parts of the Act into force in different areas on different dates — No violation of Art. 15 — Levy of special contribution under S. 73-A before benefit sections are brought into force—Not an unreasonable restriction on right of employers — No violation of Art. 19. See Ibid, Art. 14. **A I R 1962 Assam 120 (DB).**

——Art. 19—Labour laws — Freedom referred to in Art. 19 (1) (g) does not mean freedom to carry on trade in manner prejudicial to public interest.

The Indian Constitution avoids controversy by providing in Art. 19 (6) that any business or trade, irrespective of its nature, is liable to be controlled or restricted by the State if necessary in the interests of the general public. The expressions 'reasonable' and 'interests of the general public' are both elastic terms.

In order to determine the reasonableness of the restriction regard must be had to the nature of the business. No hard and fast rules concerning all trades can be laid down.

The freedom referred to in Art. 19 (1) (g) of the Constitution of India does not mean freedom to carry on trade or profession in a way which may be prejudicial to the public interest. **70 Mad L W 62 : (1957) 1 Mad L J 34 : 1957 Cri L J 374 : (1957) 1 Lab L J 524 : A I R 1957 Mad 144 (148) (Pt C) (Prs 26 to 31).**

70 (a). Employees' Provident Funds Act (1952).

● ——Art. 19 (1) (g)—Employees' Provident Funds Act (1952), Ss. 5 (1), 6 (1), 7 (1)—Notifications under S. 7 (1) — Notifications No. S. R. O. 331, dated 15-1-1958 and No. G. S. R. 1467, dated 2-12-1960 — Constitutional validity— Employees' Provident Funds Scheme (1952). Paras. 2 (f) (iii), 30, 32, 73-A—Benefits of Scheme, available to direct employees, extended by notifications to contract labour—Right of principal employer to deduct amount of provident fund on account of employee from his wages not available against contract labour—Notifications discriminatory and unreasonable under Art. 19 (1) (g) and (6) and struck down as unconstitutional. See Employees' Provident Funds Act (1952), S. 5 (1). **AIR 1962 S C 1402.**

——Art. 19 (1) (g)—Scope—S. 16 (2) of Employees' Provident Funds Act—If contravenes Art. 14 or 19 (1) (g) — Validity. See Ibid, Art. 14. (S) **AIR 1957 Cal 702.**

——Art. 19 (1) (g)—Scope—S. 19-A, Employees' Provident Funds Act—Validity—If imposes unreasonable restrictions and void under Art. 13 (2). See Ibid, Art. 13 (2). **AIR 1957 Cal 702.**

——Art. 19 (1) (f)—Employees' Provident Funds Act —Validity. See Employees' Provident Funds Act (1952) Before its Amendment by Act (XCIV of 1956), S. 5. **AIR 1959 Punj 27.**

[Reversed on another point in AIR 1962 Punj 507.]

70 (b). Minimum Wages Act (1948).

● ——Art. 19 (1) (g) and (6)— Reasonable restriction —Retrospective operation of Act though relevant is not decisive test—S. 3 of Madhya Pradesh Minimum Wages Fixation Act, 1962 is not unreasonable.

The retrospective operation of legislation is a relevant circumstance in deciding its reasonableness. It is, however, established that this is not necessarily a decisive test. Where after the final judicial verdict is pronounced declaring a notification fixing the minimum rates of wages invalid, the Legislature passes an Act such as the Madhya Pradesh Minimum Wages Fixation Act, 1962, fixing again the minimum rates of wages and makes its provisions retrospective, it may well cover a long period taken by judicial proceedings in Court and yet it would be inappropriate to hold that because the retrospective operation covers a long period, therefore, the restriction imposed by it is unreasonable. AIR 1963 S C 1667, Foll. Narottamdas v. State of Madhya Pradesh, **(1965) 10 Fac L R 59 : (1964) 7 SCR 820 : 1964 Jab L J 693 : (1964) 2 Lab L J 647 : 1965 M P L J 143 : 1965 Mah L J 87 : (1965) 1 S C W R 80 : (1965) 2 S C J 395 : 1965 Mad L J (Cri) 629 : (1964-65) 26 FJR 254 : AIR 1964 S C 1667 (1671) (Pt C) (Prs 9, 10).**

● ——Arts. 19 (1) (g), (6) and 20 (1) — Effect of Ss. 3 and 4 of Madhya Pradesh Minimum Wages Fixation Act (16 of 1962)—No unreasonable restriction is imposed—Sections do not also contravene Art. 20 (1).

The words "be enforceable" in the concluding portion of S. 3 of Madhya Pradesh Minimum Wages Fixation Act, 1962, show that while it was intended that new rates of minimum wages will be enforceable against the employer with effect from the 1st January, 1959, no date is being prescribed by S. 3 as the date on which it became payable. This is done by S. 4 the provision of which contains a clear statement of the Legislature's intention that it is on the 21st June, 1963 that the rates which had become enforceable under S. 3 with effect from 1st January, 1959, became payable. The employer's apprehension that he might be made liable tor payment of compensation under S, 20 (3) or to prosecution under S. 22 of the Minimum Wages Act, 1948, as a result of the mere passing of the Madhya Pradesh Minimum Wages Fixation Act, 1962, is therefore groundless. The contention that S. 3 and S. 4 of the M P. Minimum Wages Fixation Act, 1962, impose unreasonable restrictions on the employer's fundamental rights must therefore be rejected.

Further, as on a proper construction of Ss. 3 and 4, the new rates of wages for the past period become payable not on the 1st January, 1959 but on the 21st June, 1962 the attack on the validity of the sections on the ground of Art. 20 (1) of the Constitution also fails. AIR 1964 Madh Pra 45, Affirmed. Narottamdas v. State of Madhya Pradesh, **(1965) 10 Fac L R 59 : (1964) 7 S C R 820 : 1964 Jab L J 693 : (1964) 2 Lab L J 647 : 1965 M P L J 143 : 1965 Mah L J 87 : (1965) 1 S C W R 80 : (1965) 2 S C J 395 : 1965 Mad L J (Cri) 629 : (1964-65) 26 F J R 254 : AIR 1964 S C 1667 (1672, 1673) (Pt D) (Prs 14, 16, 18, 19).**

● ——Arts. 19 (6) and 19 (1) (g)— Labour Legislation for fixation of Minimum Wages in Industry — Mini-

mum Wages Act (1948), Ss. 3, 4, 5—Power to fix minimum wage rates — Whether violates Art. 19 (1) (g) of the Constitution— Components of minimum wage— Distinction between minimum wage fixed by industrial adjudication and that prescribed by statute — Capacity to pay — Relevancy —Notification of Kerala Government, dated 12-5-1958—Validity. See Minimum Wages Act (1948), S. 3. AIR 1962 S C 12.

●——Art. 19 (1) (g)—Minimum Wages Act (11 of 1948), S. 3— Validity — Restrictions imposed though they interfere with freedom of trade, amount to reasonable restrictions in interest of general public, in view of directive principles of State policy contained in Art. 43. See Minimum Wages Act (1948), S. 3. AIR 1955 S C 33.

——Arts. 19 (1) (g), (6), 43 — Fixation of minimum rates of wages under Minimum Wages Act—Restrictions are protected by Art. 19 (6).

The restrictions, imposed upon the freedom of contract by the fixation of minimum rates of wages under the Minimum Wages Act, though they interfere to some extent with the freedom of trade or business guaranteed under Art. 19 (1) (g) of the Constitution are not unreasonable and as they are imposed in the interest of general public and with a view to carrying out one of the Directive Principles of State Policy as embodied in Art. 43 of the Constitution, they are protected by Cl. (6) of Art. 19. AIR 1955 S C 33, Foll. 63 Bom L R 323 : (1962) 1 Lab L J 702 : 1961 Nag L J 384: ILR (1961) Bom 491: (1961) 3 Fac L R 122: AIR 1962 Bom 97 (103) (Pt F) (Pr 11) (DB).

——Art. 19 (1) (g) —Fixing of minimum wage — Restriction is protected by Art. 19 (6) — Hardship to employer is no consideration. See Minimum Wages Act (1948) S. 3. AIR 1963 Ker 115.

——Art. 19 (1) (g) —M. P. Minimum Wages Fixation Act (16 of 1962), Ss. 3, 4— Validity — Do not impose unreasonable restrictions. See M. P. Minimum Wages Fixation Act (16 of 1962), S. 3. AIR 1964 Madh Pra 45 (DB).

——Art. 19 (1) (g)—Mandamus to compel authority to start legal proceedings—It is in discretion of Court —Minimum Wages Act (1948), Ss. 20, 22—Legal proceedings for enforcement of Act — Person not authorised by Act cannot compel authority to start prosecution against a concern on the ground that enforcement of Act against petitioner alone amounted to flagrant denial of right to equality before law. See Ibid, Art. 226. AIR 1955 Nag 33 (DB).

——Art. 19—Minimum Wages Act (1948), S. 5 (2)—Validity.

The Government's power to fix minimum wages is not in contravention of Art. 19 (1) (g) of the Constitution and it is protected by Art. 19 (6). AIR 1955 S C 33, Foll. AIR 1958 Punj 425 (429) (Pt H) (Pr 15).

70 (c). Shops and Establishments Acts.

●——Art. 19 (1) (g)—Labour laws —Shops and commercial establishments— Limitation as to hours of work of employees and specification of opening and closing hours—Legislation is protected under Art. 19 (6) —Punjab Shops and Commercial Establishments Act (XV of 1958), Ss. 7 and 9—Constitutionally valid.

The provisions contained in Ss. 7 and 9 of the Punjab Shops and Commercial Establishments Act (XV of 1958), regarding the hours of employment of the employees and the opening and closing hours of the establishment, cannot be said to constitute an unreasonable restriction on the right to carry on trade or business guaranteed under Art. 19 (1) (g) of the Constitution and as such are protected by Art. 39 (6). AIR 1961 S C 418, Foll. Ramdhandas v. State of Punjab, 63 Punj L R 835 : (1961-62) 20 F J R 199 : (1962) 1 S C A 257 : (1961) 3 Fac L R 48: (1962) 1 S C R 852 : (1961) 2 Lab L J 102 : AIR 1961 S C 1559 (1563) (Pr 8).

——Arts. 19 (1) (g) and 19 (6) — Reasonable restriction — Right to carry on trade — Order to close shop —Validity— (U. P. Shops and Commercial Establishments Act (22 of 1947), S. 10).

It is only in the interests of the general public that a reasonable restriction can be placed upon the right to carry on any trade or business. Where a person wants to work on every day and his working in this manner does not affect any one else, it cannot be considered to be a reasonable restriction if he is stopped from earning his livelihood. The legislature never intended to include within the orbit of the Shops and Commercial Establishments Act, 1947, those shop-keepers who had no employees and who worked themselves alone. (1958) 1 Lab L J 734: 1958 All L J 333 : 1958 All W R (H C) 465 : 1958 All (Cr) R 308.

——Art. 19 (1) (g) and (6)—U. P. Shops and Commercial Establishments Act (22 of 1947)—Validity.

The freedom referred to in Art. 19 (1) (g) does not mean the freedom to carry on a trade or profession in a way which may be prejudicial to the public interest. The avowed object of the U. P. Shops and Commercial Establishments Act as shown by its preamble is to provide for holidays and to regulate and lay down conditions of and the hours of employment in shops and commercial establishments. It is made applicable to all cases falling outside the purview of section 4 where labour is employed. The regulation of the hours of work of the employees or the prescription of holdidays and sick leave or the insistence on the observance of the legislative requirements to keep proper records of attendance, fines or overtime work, does not deny the freedom of profession. Its underlying purpose is to prevent what is called 'sweating of labour' by persons who by nature of their position as employers have a dominent voice and are apt to use it for their own benefit rather than for the benefit of their own employees. (1952-53) 4 F L R 203 : 1952 All W R (HC) 363 : 1952 All L J 409 : AIR 1952 All 773 (775) (Pt B) (Pr 15) (DB).

——Art. 19 (1) (g) and (6)— Madras Shops and Establishments Act (36 of 1947), S. 11 (1) — Closing of shops once in a week —Shop not engaging any employee —Provision is reasonable and valid — (1958) 1 Lab L J 734 (All), Dissented from. (1959) 2 Lab L J 257 : (1959) 2 Andh W R 259 : 1959 Mad L J (Cri 698 : A I R 1959 Andh Pra 604 (605 to 607) (Pr 2).

——Arts. 19(1) (g), 19 (6)—Contravention of S. 9(1) of C. P. & Berar Act (22 of 1947) by employer—Validity of S. 9 (1) — Amounts to reasonable restriction — Tests of reasonableness — Art. 19 (1) (g) not contravened. See C. P & Berar Shops and Establishments Act (22 of 1947) (As Amended in 1955), S. 9 (1). 1960 Nag L J 15 (Bom H C).

——Art. 19—Labour Laws — Madras Shops and Establishments Act —Validity —Restriction imposed by S. 11 if reasonable — Madras Shops and Establishments Act (36 of 1947), S. 11.

The restrictions in Act (36 of 1947) are not arbitrary or of an excessive nature and do not go beyond what is required in the interests of the public. Powers have also been taken to exempt shops and establishments in regard to which public interest require that they

should be kept open on all days of the week. A I R 1952 All 773, Rel. on. **70 Mad L W 62 : (1957) 1 Mad L J 34 : 1957 Cr L J 374 : (1957) 1 Lab L J 524 : AIR 1957 Mad 144 (148, 149) (Pt C) (Prs 26 to 31).**

——**Art. 19 (1) (g)**—Mysore Shops and Establishments Act (2 of 1948), S. 11 (1) — Validity – Provision for weekly holiday does not offend Art. 19 (1) (g) of the Constitution. See Mysore Shops and Establishments Act (2 of 1948), S. 11 (1). **AIR 1957 Mysore 64.**

——**Art. 19 (1) (g)** —Bihar Shops and Establishments Act (8 of 1954) as amended by Act (26 of 1959), S. 26 (3)—Restrictions imposed are reasonable. See Bihar Shops and Establishments Act (8 of 1954) as amended by Act (26 of 1959), S. 26 (3). **AIR 1964 Pat 180 (DB).**

——**Art. 19 (1) (g)**— Bihar Act (8 of 1954), S. 26 (2)— Validity of — Interest of general public — Rights guaranteed under Art. 19 (1) (g) — If infringed. See Bihar Shops and Establishments Act, 1953 (8 of 1954), S. 26 (2). **AIR 1958 Pat 442 (DB).**

● ——**Art. 19 (1) (g) and (6)—Right to carry on one's trade or business – Restrictions placed on such right by Punjab Shops and Commercial Establishments Act (15 of 1958) are reasonable.**

The Punjab Shops and Commercial Establishments Act, 1958, comes in conflict with the fundamental right of a citizen to carry on his trade, business or profession unhampered. However, this right is subject to reasonable restrictions that may be placed and the Act in question is certainly a piece of legislation which puts reasonable restrictions on the individual's right to carry on trade, business or profession unhampered. Ramchander Baru Ram v. State, **(1963) 1 Lab L J 620 : 65 Punj L R 1 : 1963 All Cr R 39 : 1963 All W R (Sup) 25 : ILR (1963) 1 Punj 259 : 1963 (1) Cr L J 459 : (1963) 1 Lab L J 620 : AIR 1963 Punj 148 (155) (Pt E) (Pr 19) (FB).**

——**Art. 19 (1) (g) and (6)**—Punjab Shops and Commercial Establishments Act (1958), Ss 7, 8, 11, 12, 13, 14, 20, 21, 30, 32 and Form B prescribed under S. 20 (1)– Validity — Provisions not ultra vires as violating fundamental right under Art. 19 (1) (g) — Restrictions imposed are reasonable and in the interest of general public. See Punjab Shops and Commercial Establishments Act (15 of 1958), S. 7. **AIR 1962 Punj 280.**

——**Art. 19 (1) (g)**—Scope — Ajmer Act 4 of 1956 —.Validity — Act does not offend Art. 19 (1) (g), Constitution of India. See Ajmer Shops and Commercial Establishments Act (4 of 1956). **AIR 1959 Raj 257 (DB).**

70 (d). Other Acts.

● ——**Art. 19 (1) (g)** — Power to extend benefits of Factories Act to persons to whom Act has not been extended – Provision for selective application of Act —Bidi making establishments—Maharashtra Government Notification extending benefits of Act to bidi rollers in specified places—Constitutional validity of S. 85 of Act and notification — No contravention of Arts. 14 and 19 (1) (g). See Ibid, Art. 14. **AIR 1963 S C 1591.**

● ——**Art. 19 (1) (g)** — Punjab Trade Employees Act, S. 7 (1)—Validity. See Punjab Trade Employees Act (10 of 1940), S. 7 (1). **1961 (1) Cr L J 570 : AIR 1961 S C 418.**

71. Industrial Disputes Acts.

Industrial Disputes Act (1947).

● ——**Art. 19 (1) (g)**—Industrial Disputes Act (1947), S. 25-FFF — Validity — Restrictions imposed on freedom of employers—Not unreasonable—Tests of reasonableness—Object is to achieve social justice—Section is saved by Art. 19 (6) of the Constitution. See Industrial Disputes Act (1947), S. 25FFF. **AIR 1960 S C 923.**

● ——**Art. 19 (1) (f) and (g)**—Industrial Disputes Act, if infringes Article. See Ibid, Art. 14. **AIR 1957 S C 329.**

——**Art. 19 (1) (g)** — Industrial Disputes Act (1947), S. 2 (k) and (s) — Closure, right of — Discharge of workmen as result of closure—Nature of—There is no right to discharge—Applicability of Art. 19 (1) (g) of the Constitution. See Industrial Disputes Act (1947), Ss. 2 (k) and 2 (s). **AIR 1955 N U C (L A T l) 6115.**

——**Art. 19 (1) (f) and (g)** — Industrial Disputes Act (1947), S. 25F—Scope — It is a fundamental right of an employer to close down his business. **(1956) 2 Lab L J 4 : (1956) 11 F J R 67 : AIR 1956 All 498 (500, 501) (Pt F) (Pr 6).**

——**Art. 19 (1) (g)** — Industrial Disputes Act (1947), S. 10—Not void on ground of infringement of Arts. 14 and 19 (1) (f) and (g) of Constitution. See Industrial Disputes Act (1947), S. 10. **AIR 1960 Assam 39 (DB).**

——**Art. 19 (6)**—Industrial Disputes Act is valid. See Industrial Disputes Act (1947), Pre. **AIR 1954 Assam 161 (DB).**

——**Art. 19 (1) (g)** — Indutsrial Disputes Act (1947), S. 25-F—Validity — Whether contravenes Art. 19 (1) (g). See Industrial Disputes Act (1947) (as amended by Act. 43 of 1953), S. 25-F. **AIR 1955 Bom 294 (DB).**

[Reversed on another point in AIR 1957 S C 121.]

——**Art. 19 (1) (g)** — S. 25F, Cl. (b), Industrial Disputes Act — Validity — Provision does not offend against Art. 19 (1) (g) of the Constitution. AIR 1955 Bom 294, Rel. on. **57 Bom L R 1074 : 1955-2 Lab L J 501.**

——**Art. 19 (1) (g)—Scope—Industrial Disputes Act (1947), S. 36 (4)—If ultra vires.**

Section 36 (4), Industrial Disputes Act does not offend Art. 19 (1) (g) and is therefore not ultra vires. AIR 1952 Bom 296 and AIR 1953 Mad 447 and AIR 1954 Mad 553, Foll. **(1957) 1 Lab L J 63 : 60 Cal W N 648 : AIR 1956 Cal 353 (356) (Pt A) (Pr 12).**

——**Art. 19 (1) (g)** — **Standing order entitling company to take disciplinary action for misconduct against workman—Validity.**

Standing Order No. 22 (8) of a company according to which the company is entitled to take disciplinary action for misconduct contemplated under Standing Order 23, in case there is drunkenness, fighting, riotous or disorderly or indecent behaviour within or without the factory does not offend Art. 19 (1) (g). **1958 Ker L T 456 : 1958 Ker L J 969 : ILR (1958) Ker 728 : (1959) 1 Lab L J 147 : AIR 1959 Ker 62 (63, 64) (Pt B) (Pr 17) (DB).**

——**Art. 19 (1) (g)** — Industrial Tribunal — Award ordering compensation instead of reinstatement — Validity—Does not violate Art. 19 (1) (g). See Industrial Disputes Act (1947), S. 10. **AIR 1958 Ker 135 (DB).**

——**Art. 19 (1) (g)—Scope — Industrial Disputes Act (1947), S. 25-FFF—Validity.**

The provisions contained in S. 25-FFF of the Industrial Disputes Act, 1947, do not violate the constitutional right guaranteed under Art. 19 (1) (g) of the Constitution. nor do they involve unreasonable restriction not in the interest of general public upon

that right. AIR 1952 S C 196 and AIR 1958 S C 731 and AIR 1957 S C 38, Rel. on. 1960 M P L J 841 : 1960 M P C 510 : (1960-61) 19 F J R 77 : (1960) 1 Fac L R 326 : 1960 Jab L J 843 : (1960) 2 Lab L J 543 : AIR 1960 Madh Pra 307 (308) (Pt B) (Pr 4) (DB).

——Art. 19 (1) (g)—Industrial Tribunal directing reinstatement of dismissed workman—No infringement of fundamental right — (Industrial Disputes Act (1947), S. 15).

An award by an Industrial Tribunal directing the reinstatement of a dismissed workman does not in any way curtail the freedom guaranteed to a citizen (employer) under Art. 19 (1) (g) of the Constitution. Even on the assumption that a direction to reinstate a dismissed workman infringes the freedom to carry on business, there can be no doubt that it would be a reasonable restriction on the exercise of the right in the interests ot the general public. To bring about harmonious relationship between the employers and the employees in the interests of industrial peace is not an unreasonable restriction upon the fundamental right guaranteed under Art. 19 (1) (g). AIR 1953 Mad 98; AIR 1953 Mad 102, Rel. on; 52 L Ed. 436, 59 L Ed. 441. Distirg. 68 Mad L W 58 : 1955 Mad WN 372 : (1955) 2 Lab L J 470 : ILR 1955 Mad 1201 : (1955) 1 M L J 240 : AIR 1955 Mad 242 (244) (Pt A) (Prs 6, 8) (DB).

——Art. 19 (1) (g)—Industrial Disputes Act (14 of 1947), Preamble—Act is not unconstitutional. See Industrial Disputes Act (1947), Pre. **AIR 1953 Mad 102.**

——Art. 19 (1) (g) — Right to carry on business — Nature and extent — Award under Industrial Disputes Act compelling continuance of business — Validity—Industrial Disputes Act (1947), S. 10.

Art. 19 (1) (g) gives every citizen a right to practise any profession or to carry on any occupation, trade or business. Clause (6) of the same article confers power on the State to impose restrictions on this right. So far as such restrictions are concerned, the only question to be determined under the Constitution is whether the restrictions are reasonable and in the interests of the general public. Obviously the right conferred by Art. 19 (1) (g) to carry on any business is not absolute. Undeniably, the State has got the right to regulate any business, and this right need not be confined to "public utility business" only. Businesses which are likely to prove dangerous to public safety or public health may be subjected to severe restrictive regulations.

Where, however, a business is admittedly not a public utility service and which has not received any special consideration from the Government, an award made by the Industrial Tribunal appointed under the Industrial Disputes Act cannot direct the management of an industry to continue to carry on any business against their will, as it follows from Art. 19 (1) (g) that if a citizen has a right to carry on business, he must be at liberty not to carry it on if he so chooses. Such an award is therefore void to that extent as it is inconsistent with the Constitution. Case law referred. **65 Mad L W 269 : 1952 Mad W N 293 : 1952-1 Mad L J 481 : 1951-52 F J R 420: (1952) 1 Lab L J 364 : AIR 1953 Mad 98 (101, 102) (Pt A) (Prs 9, 10, 13) (DB).**

——Art. 19 — Industrial Disputes Act (1947), Pre. — Validity — Act if contravenes Arts. 14, 19 and 31, Constitution of India. See Industrial Disputes Act, 1947, Preamble. **AIR 1951 Mad 974 (DB).**

——Art. 19 (1) (f), (g) — Award without consent of employers—Industrial Disputes Act, 1947, S. 15.

It cannot be said that Act 14 of 1947, in so far as it makes the employers bound to act in accordance with the terms of an award, which was passed without the employers being consenting parties to the reference and in spite of the protests of the employers is ultra vires by reason of Art. 19 (1) (f) and (g) of the Constitution. There is no restriction on the carrying on of a trade or business by the cinema employers, as a result of the Industrial Disputes Act. (1951) I Mad L J 527 : 52 Cri L J 744 : 1951 Mad W N 445 : 1951 Mad W N (Cri) 125 : 64 Mad L W 620 : (1951) 52 F J R 95: AIR 1951 Mad 191 (194) (Pt A) (Prs 4, 5) (DB).

——Art. 19 — Strike — Nature of right (Industrial Disputes Act (1947), S. 24).

Every strike is not illegal and the workers enjoy the fundamental right to resort to strike whenever they are so pleased in order to express their grievances or to make certain demands. This fundamental right cannot in any way, be limited by standing orders. Strikes are illegal under the Indian law only when penalties have been imposed for them for contravention of the provisions of Ss. 22, 23 and 24 of the Act. 1958 Cri L J 81: AIR 1958 Pat 51 (56, 57) (Pt D) (Pr 14) (DB).

——Art. 19 (1) (g) and (6)—Reasonable restrictions—(Industrial Disputes Act (1947), S. 10 (3)).

Where the business of a person is not of the nature of public utility service nor has he taken any assistance from the Government to start his business, interference by the Government in the matter of the continuance of his business cannot be deemed to be reasonable. 1953 R L W 569 : ILR (1953) 3 Raj 363: AIR 1953 Raj 188 (192) (Pt C) (Pr 22) (DB).

[Impliedly overruled on another point in AIR 1963 S C 1811].

——Art. 19—Industrial Disputes Act (1947), S. 36 — Whether violates fundamental rights.

No question of violation of Art. 19 (1) (g) is involved in the section. S. 36 does not violate the fundamental right given by Art. 14 also. **1950 Ker L T 121 : AIR 1951 Trav Co 203 (210, 211) (Pt E) (Pr 22).**

Industrial Disputes (Appellate Tribunal) Act (1950).

——Arts. 19 (1) (g) and 14 — Industrial Disputes (Appellate Tribunal) Act (1950), S. 36 (4) — Right to practise any profession — Right of an advocate to appear before Industrial Tribunal—Restriction under S. 36 (4) not unreasonable—(Bar Councils Act (1926), Ss. 9 and 14). 1954 Mad W N 18 : 67 Mad L W 54 : (1954) 1 Mad L J 261 : ILR (1954) Mad 800 : AIR 1954 Mad 553 (555, 556) (Prs 6, 7, 8, 9) (DB).

Bombay Industrial Relations Act (1947).

——Art. 19 (1) (g), (6) — Unreasonable restriction —Bombay Industrial Relations Act, S. 3 (18)—Validity.

The fact that power is given to the industrial Court, which is a quasi-judicial tribunal to decide whether contract labour should be abolished or not would not make the definition of 'industrial matter' in S. 3 (18), an unreasonable restriction on the fundamental right of the employer to carry on trade. The matter being entrusted to a quasi-judicial tribunal would be decided after giving both parties full

opportunity of presenting their case on the question of reasonable restriction. The tribunal would always go into the reasonableness of the matter and if it comes to the conclusion that the mode of employment desired by labour is not reasonable it will not allow it. Godavari Sugar Mills v. Kopergaon Taluka Sakhar Kamgar Sabha, (1961) 1 Lab L J 313 : (1961) 2 S C J 323 : (1961) 3 S C R 342 : (1961) 2 Fac L R 180 : AIR 1961 S C 1016 (1018, 1019) (Pt B) (Pr 5).

——Art. 19 (1) (g)—Bombay Industrial Relations Act, S. 114 (2)—Validity—If unreasonable restrictions on right to carry on trade—Social Justice. See Bombay Industrial Relations Act (11 of 1947), S. 114 (2). **ILR (1958) Bom 176.**

[Reversed in AIR 1961 S C 977.]

U. P. Industrial Disputes Act (1947).

● ——Art. 19 (6) — U. P. Industrial Disqutes Act (1947), S. 2 (i) — Validity — Amounts to a restriction in the interest of general public within Art. 19 (6) of the Constitution. See U. P. Industrial Disputes Act (28 of 1947), S. 2 (i). **AIR 1964 S C 355.**

● ——Art. 19 (1) (g) — U. P. Industrial Disputes Act (28 of 1947), S. 3—Government can pass order under Cl. (b) even after an industrial dispute has arisen — Clause (b) is not violative of Art. 14 of the Constitution—Order passed by the Government does not offend Art. 19 (1) (g) of the Constitution. See U. P. Industrial Disputes Act (28 of 1947), S. 3. **AIR 1961 S C 420.**

● ——Art. 19 (1) (g) — Section 3 of the U. P. Industrial Disputes Act, 1947 is not invalid on the ground that it offends Arts. 19 (1) (f) and 31 of the Constitution. See U. P. Industrial Disputes Act (28 of 1947) S. 3. **AIR 1954 All 538 (FB).**

[**Reversed on another point in AIR 1961 S C 420.**]

72. Clause (1) (g)—Illustrative examples.

● ——**Arts. 19 and 21 — If infringed by Madhya Bharat Gambling Act (51 of 1949), Ss. 6 and 8.**

The law to root out gambling cannot but be in the public interest. Such a law must of necessity provide for special procedure, but so long as it is not arbitrary and contains adequate safeguards it cannot be successfully assailed. The United State of Gwalior, Indore and Malwa (Madhya Bharat) Gambling Act (1949) contains sufficient safeguards to ensure that there is no danger to any one except to those who are proved to the satisfaction of the Court to keep a gaming house or who can be presumed unless the contrary be proved to be there for the purpose of gaming. Sections 6 and 8 of the Act are constitutional and cannot be challenged under Arts. 19 and 21 of the Constitution of India (1950). Krishnachandra v. The State of Madhya Pradesh, 1963 (2) S C J 722 : (1963) 1 S C W R 574 : 1963 Mah L J 624 : 1963 M P L J 656 : 1963 Jab L J 644 : 1963 Mad L J (Cr) 632 : (1964) 1 S C R 765 : 1965 (1) Cri L J 347 : AIR 1965 S C 307 (310, 311) (Prs 7, 8, 9, 10).

● ——Art. 19 (1) (g) — Interference with right of bare management of educational institution — No infringement of Art. 19 (1) (f) or (g). Sidhrajbhai v. State of Gujarat, **1962 Ker L T (SC) 135 : (1963) 2 S C A 394 : AIR 1963 SC 540 (544) (Pt A) (Pr 7).**

● ——Art. 19 (1) (f) and (1) (g) — Central Excise Rules (1944), R. 8 (1)—Constitutional validity — Rule does not suffer from vice of excessive delegation of power to exempt—Notifications under—Notifications Nos. 74 of 1959, dated 31-7-1959 and 70 of 1960, dated 30-4-1960 — Validity—Excise duty on cotton fabrics produced on power looms — Exemption granted to co-operative societies of weavers — No violation of Arts. 14, 19 (1) (f) and (g) of Constitution. See Central Excise Rules (1944), R. 8 (1). **AIR 1963 S C 98.**

● ——Art. 19 (1) (g)—Banking Companies Act (1949), S. 38 (1) and (3) (b) (iii)—Banking Companies — Special law dealing with winding up—Validity — Whether discriminatory—Provision making Reserve Bank sole judge to decide whether affairs of banking company were being conducted prejudicially to interests of depositors and making it mandatory for High Court to order winding up when application was made by Reserve Bank — No violation of Arts. 14, 19 (1) (f) and (g) and 301. See Ibid, Art. 14. **AIR 1962 S C 1371.**

● ——Art. 19 (6) — Bihar Preservation and Improvement of Animals Rules (1960), R. 3 — Validity — Imposes disproportionate restrictions on fundamental rights — Held invalid to that extent. See Bihar Preservation and Improvement of Animals Rules (1960), R. 3. **AIR 1961 S C 448.**

● ——Art. 19 (6) — Bihar Preservation and Improvement of Animals Act, 1955 (2 of 1956), S. 3— Validity —Usefulness of bulls, bullocks and buffaloes—Proper period — Age limit for slaughter increased to 25 — Operates as unreasonable restriction on fundamental rights of butchers — Held invalid to that extent. See Bihar Preservation and (Improvement of Animals) Act (2 of 1956), S. 3. **AIR 1961 S C 448.**

● ——Art. 19 (6)—U. P. Prevention of Cow Slaughter Act (1 of 1956), S. 3 — Validity — Slaughter of bulls and bullocks — Provisions practically putting total ban — Held amounted to unreasonable restriction on rights of butchers and to that extent void. See U. P. Prevention of Cow Slaughter Act (1 of 1956), S. 3. **AIR 1961 S C 448.**

● ——Art. 19 (6) — Madhya Pradesh Agricultural Cattle Preservation Act (18 of 1959), S. 4 (2) (a) and R. 5 — Validity — Slaughter of bulls, bullocks and buffaloes—Conditions laid down by section—Amount to unreasonable restriction on butcher's rights—Held invalid to that extent. See Madhya Pradesh Agricultural Cattle Preservation Act (18 of 1959), S. 4 (2) (a). **AIR 1961 S C 448.**

● ——Art. 19 (1) (g) — Madhya Pradesh Agricultural Cattle Preservation Act (18 of 1959), Ss. 5, 4 (3) — Validity — Slaughter of bulls, bullocks and buffaloes —Provisions putting an end to trade — Held invalid. See Madhya Pradesh Agricultural Cattle Preservation Act (18 of 1959), S. 5. **AIR 1961 S C 448.**

● ——Art. 19 (6) — Reasonable restrictions on fundamental rights under Art. 19 — Test of reasonableness — "Interests of the general public" — What amounts to — Rules of evidence casting burden of proof upon person from whom specified goods have been seized, to establish that they are not smuggled — Whether violates Art. 19 (1) (f) and (g) and is not saved by Cls. (5) and (6) — Sea Customs Act (1878), S. 178-A — Not constitutionally invalid. **A I R 1959 Mad 142, Reversed**; Decision of K. T. Desai J. in 62 Bom L R 1043, Overruled. Collector of Customs v. Sampathuchetty, **(1962) 1 S C J 68 : 1962 Mad L J (Cri) 1 : (1962) 1 Mad L J (SC) 43 : (1962) 1 Andh W R (SC) 43 : (1962) 3 S C R 786 : 1962 (1) Cri L J 364 : AIR 1962 S C 316 (332, 333, 334) (Pt A) (Prs 35, 36).**

● —Art. 19 (1) (g)—Scope—Essential Commodities Act, S. 3 — Central Government Notification, dated 30-7-58 — Validity. See Essential Commodities Act (1955), S. 3. AIR 1959 S C 626.

● —Arts. 19 (1) (g) and 48—Bihar Act (2 of 1956), U. P. Act 1 of 1956 and C. P. and Berar Act 52 of 1949—Validity.

The last part of the directive principles embodied in Art. 48 requires the State to take steps for prohibiting the slaughter of the special animals and this directive can only be carried out by prohibiting the petitioners and other butchers (Kasais) from slaughtering them. There can be no mistake about the directness of these legislations vis-a-vis the petitioners and other butchers and the effect of these legislations on their rights is direct and instantaneous as soon as they are brought into force. A I R 1950 S C 27, Disting. Mahomed Hanif Quareshi v. State of Bihar, 1958 S C A 783 : 1958 S C J 975 : (1958) Mad L J (Cr) 727 : (1959) S C R 629 : AIR 1958 S C 731 (742) (Pt I) (Pr 17).

● —Art. 19 (1) (g) — Bihar Act (2 of 1956) — Validity — (Bihar Preservation and Improvement of Animals Act (2 of 1956), Preamble and S. 3).

The Bihar Act in so far as it prohibits the slaughter of cows of all ages and calves of cows and calves of buffaloes, male and female, is constitutionally valid and in so far as it totally prohibits the slaughter of she-buffaloes, breeding bulls and working bullocks (cattle and buffalo), without prescribing any test or requirement as to their age or usefulness, it infringes the rights of the petitioners (butchers) under Art. 19 (1) (g) and is to that extent void. Mahomed Hanif Quareshi v. State of Bihar, 1958 S C A 783 : 1958 S C J 975 : (1958) Mad L J (Cr) 727 : 1959 S C R 629 : AIR 1958 S C 731 (755, 756) (Pt K) (Pr 45).

● —Art. 19 (1) (g) — U. P. Act (1 of 1956) — Validity.

The U. P. Act is constitutionally valid in so far as it prohibits the slaughter of cows of all ages and calves of cows, male and female, but in so far as it purports to totally prohibit the slaughter of breeding bulls and working bullocks without prescribing any test or requirement as to their age or usefulness, it offends against Art. 19 (1) (g) and is to that extent void. Mahomed Hanif Quareshi v. State of Bihar, 1958 S C A 783 : 1958 S C J 975 : (1958) Mad L J (Cr) 727 : (1959) S C R 629 : AIR 1958 S C 731 (756) (Pt L) (Pr 46).

● —Art. 19 (1) (g) — C. P. and Berar Act (52 of 1949)—Validity (C. P. and Berar (Animal Preservation Act (52 of 1949)) (as amended by M P Acts 23 of 1951 and (10 of 1956), S. 4).

The C. P. and Berar Act is constitutionally valid in so far as it prohibits the slaughter of cows of all ages and calves of cows, male and female, but it is void in so far as it totally prohibitis the slaughter of breeding bulls and working bullocks without prescribing any test or requirement as to their age or usefulness. The Act is valid in so far as it regulates the slaughter of other animals under certificates granted by the authorities mentioned therein. Mahomed Hanif Quareshi v. State of Bihar, 1958 S C A 783 : 1958 S C J 975 : (1958) Mad L J (Cri) 727 : 1959 S C R 629 : AIR 1958 S C 731 (756) (Pt M) (Pr 47).

● —Art. 19 (6) — Scope of Bombay Lotteries and Prize Competitions Control and Tax Act (54 of 1948) —Validity—Whether violates Arts. 19 (1) (g) and 301. —Act does not purport directly to interfere with trade and commerce—It controls and restricts betting and gambling. State of Bombay v. R. M. D. Chamarbaugwala, 1957 S C J 607 : (1957) 2 Andh W R (SC) 87 : (1957) 2 M L J (SC) 87 : (1957) M L J (Cr) 558 (SC) : AIR 1957 S C 699 (718 to 722) (Pt H) (Prs 36, 42, 43, 44, 46, 47).

● —Arts. 19 (1) (g) and (6) and 301—Protection of lawful trading activities—Persons carrying gambling competitions—Right to protection under Art. 19 (1) (g)—(Prize Competitions Act (42 of 1955), Ss. 4, 5, 20—Rules under s. 20, Rr. 11, 12).

Trade and commerce protected by Art. 19 (1) (g) and Art. 301 are only those activities which could be regarded as lawful trading activities. As gambling is not trade but res extra commercium, it does not fall within the purview of those Articles. Hence as regards gambling competitions, the petitioners under Art. 32 cannot seek the protection of Art. 19 (1) (g), and the question whether the restrictions enacted in Ss. 4 and 5, Prize Competitions Act, 1955 and Rr. 11 and 12 framed under S. 20 are reasonable and in the interests of the public within Art. 19 (6) does not therefore arise for consideration. Civil Appeal No. 134 of 1956 (SC), Foll. Chamarbaugwalla v. Union of India, 59 Bom L R 973 : (1957) 2 M L J (SC) 76 : 1957 S C J 593 : (1957) M L J (Cr) 547 : (1957) 2 Andhra W R 76 : (1957) M P C 630 : 1957 S C A 912 : 1957 S C R 930 : AIR 1957 S C 628 (631) (Pt A) (Pr 4).

● —Arts. 19 (1) (g) and (6) — Scope and Applicability—Prize Competitions involving substantial skill — Restrictions on, whether saved by Art. 19 (6) — Prize Competitions Act (42 of 1955), Ss. 4, 5, 20 — Rules under S. 20, Rr. 11, 12).

Even assuming that the Act applies to prize competitions which involves substantial skill, they are business activities the protection of which is guaranteed by Art. 19 (1) (g). The restrictions imposed by Ss. 4 and 5 of the Act and Rr. 11 and 12 framed under S. 20 in respect of such competitions are not reasonable restrictions enacted in the public interest and as such are not saved by Article 19 (6). Chamarbaugwalla v. Union of India, 59 Bom L R 973 : (1957) 2 M L J (S C) 76 : (1957) S C J 593 : (1957) M L J (Cr) 547 : (1957) 2 Andhra W R (S C) 76 : (1957) M P C 630 : (1957) S C A 912 : 1957 S C R 930 : AIR 1957 S C 628 (631) (Pt B) (Pr 5).

● —Art. 19 (1) (g)—Ajmer Laws Regulation (1877), S. 40—Rules under R. 1—Validity—Sub-rules (1) to (4) of R. 1 are invalid. See Ajmer Laws Regulation (3 of 1877), S. 40. AIR 1955 SC 188.

—Arts. 19 (1) (g) and (6) — Prize competitions — Restrictions on entries and prizes offered—Restrictions are reasonable and in public interest—Prize Competitions Act (1955), S. 4 — Provision saved by Art. 19 (6).

While laying down the reasonability or unreasonability of the restriction, the Courts must take a liberal view and should not proceed with the sole intention to find fault in the enactment. If one school of thought could in good faith place the restriction, it must be held to be reasonable though another class of persons may take a contrary view and may not impose any such restriction.

Prize competitions kindle gambling outlook among people and induce them to submit entries far in excess of their means. If, therefore the prizes offered, and the number of entries permitted, is restricted to a smaller number, the restriction so imposed is not only reasonable but is also in the interest of the public. The prohibition contained in S. 4 of the Act is, therefore within constitutional limits and is valid. 1964 All L J 581 : 1964 (2) Cri L J 632 : AIR 1964 All 572 (574) (Pt B) (Prs 6, 10, 11).

——Art. 19 (1) (g)—Suppression of Immoral Traffic in Women and Girls Act (1956), S. 20—Constitutional Validity — Provision abridges fundamental rights guaranteed under Art. 19 (1) (d) and (e) and infringes Art. 14 - It does not however violate Art. 19 (1) (g) — Constitution of India, Arts. 13, 14 and 19 (1) (d), (e) and (g). See Suppression of Immoral Traffic in Women and Girls Act (1956), S. 20. **AIR 1963 All 71.**

[Reversed in AIR 1964 S C 416.]

——Art. 19 (1) (g) — Essential Services Maintenance Ordinance (1960), S. 2 (1) (b) — Does not make unreasonable inroad into fundamental right under Art. 19 (1) (g) —See Essential Services Maintenance Ordinance (1960), S. 2 (1) (b). **1962 (1) Cri L J 629 (All).**

——Art. 19 (1) (g) — Electricity Act (1910), S. 37 — Rules under R. 45 — Notification under—U. P. Govt. Notification No. 877/E 1-86-1938, D/- 2 6-1942, Cl. 21 —Cl. 21. violates Arts. 14 and 19 (1) (g) of the Constitution. See Electricity Act (1910), S. 37. **A I R 1960 All 87.**

——Arts. 19 and 226—Deprivation of right—Certificate for profession of guide—Cancellation—Effect.

A person can carry on his profession of guide whether any certificate from the Superintendent of Police is held or not by him. The certificate is in the nature of a testimonial of good conduct granted to him by the authorities. No person can claim as of right that a certificate shall be granted to him or that any certificate once granted to him shall be continued. There is no right either with respect to it. It was not necessary for the Senior Superintendent of Police to have given an opportunity to the petitioner or to hear him before cancelling the certificate, more so because its cancellation in no way affected the right of the petitioner to carry on the profession of a guide. AIR **1959 All 573 (574) (Prs 4, 5).**

——Art. 19 (1) (g)—Restrictions on the trade or profession of prostitutes — Validity of—Suppression of Immoral Traffic in Women and Girls Act (1956), S. 20.

The work of a prostitute is a profession, occupation or trade within the meaning of Art. 19 (1) (g) of Constitution of India and the Suppression of Immoral Traffic in Women and Girls Act of 1956 has imposed restrictions on the same. But those restrictions cannot be said to have the effect of prohibiting the carrying on of the profession or trade of a prostitute. Ss. 3 to 10, 12, 18 and 20 are penal in character. But none of them has the effect of stopping the profession or trade of a prostitute altogether. Upon an examination it is clear that although there may be some substance in the complaint as to the unconstitutionality of S. 20 and S. 4 (2) the provisions of the other sections are not unreasonable. As Ss. 20 and 4 (2) can be severed from the rest of the Act the entire Act does not fail because these two sections may be unconstitutional. **1959 All Cr R 427 : 1959 All W R (H C) 509 : AIR 1959 All 57 (59, 60, 61, 66, 67) (Pt B) (Prs 2, 3, 4, 20).**

[Overruled in AIR 1964 SC 416.]

——Art. 19 (1) (g)—Bye-law prohibiting slaughter of animals,

The bye-law framed by the Town Area Committee of Amin Nagar Sarai on 23-3-48 prohibiting slaughter of animals and sale of their meat does not contravene Art. 19 (1) (g). AIR 1952 All 753 (FB), Foll. **1958 Cr L J 115 (117) (Pt H) (Pr 17) (All).**

——Art. 19 (1) (g)—Abducted Persons (Recovery and Restoration) Act (65 of 1949), Preamble—Act is not inconsistent with Art. 19 (1) (d), (e) and (g). See Abducted Persons (Recovery and Restoration) Act 1949, Preamble. **A I R 1953 All 613.**

——Art. 19 — Prevention of Food Adulteration Act (1954), S. 10 — Validity cannot be attacked—Restriction reasonable. See Prevention of Food Adulteration Act (1954), S. 10. **A I R 1964 Andh Pra 501.**

——Art. 19 (1) (f) and (g), (5) and (6) — Andhra Pradesh Notification, G. O. Ms. No. 1376, Revenue, D/- 5-9-1962 — Restrictions imposed by Notification in respect of Chloral Hydrate are reasonable and in the interest of general public - Notification cannot be challenged as violative of rights under Art. 19 (1) (f) and (g). **(1964) 1 Andh L T 285 : A I R 1964 Andh Pra 430 (433) (Pt D) (Pr 13) (DB).**

——Arts. 19 (1) (g), 19 (5) and 19 (6) — Suppression of Immoral Traffic in Women and Girls Act (1956), S. 20—Constitutional validity—S. 20 does not offend Art. 14 or Art. 19 (1) (d), (e) and (g) read with Art. 19 (5) and (6) of the Constitution of India—See Suppression of Immoral Traffic in Women and Girls Act (1956), S. 20. **A I R 1964 Andh Pra 400.**

——Art. 19 (1) (g); (6) — Section 99A, Criminal P. C., is saved by Art. 19 (6) — (Criminal P. C. (1898), S. 99A).

(Bhimasankaram, J.) Preventing a book-seller from publishing a matter which has the effect of disrupting the public order is clearly no more than imposing a reasonable restriction on the exercise of his right to carry on business. Section 99-A does not infringe any of the rights guaranteed by Art. 19 of the Constitution. N. Veerabrahmam v. State Andh Pra., **1959 Andh L T 575 : (1959) 2 Andh W R 269 : 1959 Mad L J (Cri) 703 : 1959 Cri L J 1280 : A I R 1959 Andh Pra 572 (582, 583) (Pt I) (Pr 53) (SB).**

[Overruled on another point in AIR 1962 S C 1662.]

——Art. 19 (1) (g) and (f) — Madras Act 29 of 1949 — Constitutional validity — If violates Art. 19 (1) (f) and (g). See Madras Essential Articles Control and Requisitioning (Temporary Powers) Act (29 of 1949) (As Amended by Andhra Act 1 of 1955). **A I R 1959 Andh Pra 538 (DB).**

——Art. 19 (1) (g) and (f) — Search of premises of person and seizure of documents, books etc., or property belonging to him — Constitute invasions of fundamental rights—Income-tax Act (1922), S. 37 (2) —Validity — Section is unconstitutional being violative of Art. 19 (1) (g) — Section does not amount to reasonable restriction within Art. 19 (6) — Per Majority. S. Doongarmal Agency v. K. E. Johnson, (1964) 52 I T R 637 : A I R 1964 Assam 16 (19, 27, 39, 40, 47, 48, 50) (Pt B) (Prs 72, 107, 170, 176, 197, 204, 205) (FB).

——Art. 19 (1) (g) and (f) — Villagers holding market on land belonging to Government — Permissive user—District Council taking over management of market and right to collect tolls under Act — No infringement of fundamental rights under Art. 19 (1) (g), or Art. 19 (1) (f)—(United Khasi Jaintia Hills Autonomous District (Management and Control of Markets) Act (5 of 1953).

The land on which the market was held belonged to the Government. At no point of time the villagers acquired any interest in the land. The Government permitted the villagers to hold market on the land and to levy and collect tolls from those who carried on business on that land. The Government retained full control over the affairs of the market and also reserved to itself the right of stopping villagers from holding the market and levying and collecting tolls. This indicated that the right which the villagers acquired was only permissive and the ownership of the market vested in the Government which owned the land. Under the United Khasi Jaintia Hills Autonomous District (Management and Control of Markets) Act (5 of 1953) the District Council took over the manage-

ment of the market. In a writ petition for the issue of certiorari by the villagers:

Held, that the villagers could not be said to have any common law right in the land to hold market which might be regarded as a property and the question of applicability of Art. 19 (1) (f) and Art. 31 of the Constitution would thus not arise.

Held, also that since the District Council had in no way restrained the villagers from selling their goods on the land and they had still right to carry on their business on the land and the District Council had only taken over the management of the market and the right to levy and collect tolls, it could not be said that any right of the villagers to carry on business conferred by Art. 19 (1) (g) had been infringed by the impugned order.

Held further even assuming that the right claimed by the villagers was a right to carry on business and Art. 19 (1) (g) of the Constitution was attracted, unless they were able to establish that the Act under which the District Council exercised its right was ultra vires, the order passed by the District Council in the exercise of its powers under the Act could not give any right to the villagers to get a relief under Art. 226 of the Constitution. ILR (1960) 12 Assam 26.

——Arts. 19 (1) (g), 14—Arms Act, S. 18 (b)— Whether contravenes Arts. 14 and 19 (1) (f) and (g) of the Constitution (Quaere). See Arms Act, S. 18 (b). AIR 1955 Assam 183.

● ——Art. 19 (1) (g) and (a) and (2) — Notice under S. 11, Press (Objectionable Matter) Act by Assam Government on certificate by Legal Rembrancer—Validity—Validity of S. 11. See Press (Objectionable Matters) Act (1951), S. 11. A I R 1954 Assam 193 (SB).

——Art. 19 (1) (g) and (f) — Sea Customs Act (1878), S. 178-A—Section does not contravene fundamental rights under Art. 19 (1) (f) and (g) and is not invalid. 62 Bom L R 634 : 1961 (1) Cri L J 229 : A I R 1961 Bom 48 (55, 56) (Pt E) (Pr 23).

——Art. 19 (1) (g) — Registration Act (1908), S. 80-G (W. B.)—Rules under R. 11—Validity—Rule does not infringe fundamental right of licenced deed writers guaranteed under Art. 19 (1) (g) and does not violate Art. 14 — No discrimination between two classes of deed writers created. See Registration Act (1908), S. 80-G (W. B.). A I R 1963 Cal 124.

——Art. 19 (1) (g) and 19 (6)—Essential Commodities Act (1956), S. 3 (1) — Validity — No excessive delegation without guides — Clause imposes reasonable restriction within Art. 19 (6) of Constitution. See Essential Commodities Act (1955), S. 3 (1). 1963 (1) Cri L J 49 : A I R 1963 Cal 61.

——Art. 19 (1) (g) — Calcutta Port Act (3 of 1890), S. 126 — Stevedores — Licenses issued to — Bye-laws under—Bye-law 4 A—Calcutta Dock Workers (Regulation of Employment) Scheme, 1956, Cl. 15 (1) (c)—New Bye-law 4-A is invalid having not been framed in accordance with S. 126—Old Bye-law and Cl. 15 (1) (c) of the Scheme are also invalid being violative of Art. 19 (1) (g) of the Constitution. See Calcutta Port Act (3 of 1890), S. 126. A I R 1961 Cal 365.

[Reversed in A I R 1962 Cal 530.]

——Arts. 19 (1) (g), 19 (1) (d), 19 (5), 19 (6) — Police Act (1861), S. 17—Appointment as police officer under—Validity—Does not contravene Arts. 19 (1) (g) and 19 (1) (d). See Police Act (1861), S. 17. AIR 1958 Cal 365.

——Art. 19 (6)—Prescribing foreign qualification does not constitute extra-territorial operation of law. AIR 1955 N U C (Cal) 5922.

——Art. 19 (6) — W. B. Clinical Establishments Act (56 of 1950)—Rules framed under Rule 11 (11) — Prescribing foreign qualification — Discrimination between citizen possessing foreign qualification and citizen not possessing same, See Ibid, Art. 14. AIR 1955 N U C (Cal) 5922.

——Art. 19 (1) (g) and (6)—West Bengal Clinical Establishments Act (56 of 1950)—Act does not infringe Art. 19 (1) (g) of Constitution. AIR 1955 N U C (Cal) 5922.

——Art. 19 (1) (g)—Validity of West Bengal Clinical Establishments Rules (1951) (as amended by Notification No. 2210/2-A — 9/52 — 9.8-1952), R. 11 (iii) (c). See West Bengal Clinical Establishments Act (56 of 1950), S. 9. AIR 1954 Cal 571.

——Arts. 19(1) (g) and 19 (6) — West Bengal Clinical Establishments Act (1950) — Constitutionality. See West Bengal Clinical Establishments Act (56 of 1950). AIR 1954 Cal 138.

——Art. 19 (1) (g) — Regulations under S. 25, Universities Act do not violate the Article. See Universities Act (1904), S. 25. AIR 1953 Cal 783.

——Art. 19 (1) (g)—Essential Supplies (Temporary Powers) Act (1946), S. 3 (2) (c) (d), (h), (i), and (j) are valid. 57 Cal W N 397 : A I R 1953 Cal 548 (556) (Pt F) (Prs 35, 36).

——Art. 19 (1) (g)—Keeping police watch over business activities of a person — If breach of his fundamantal right.

To keep a watch over the activities of a particular baths and massage clinic by the posting of policemen in plain clothes near about the premises where such business is carried on to see whether any unlawful acts are being committed in the said premises, will not amount to a breach of the fundamental rights of the persons who carry on such business of baths and massage clinic. 1952 Cri L J 345: I L R (1952) 1 Cal 94 : AIR 1952 Cal 137 (138, 139) (Prs 10, 11).

——Arts. 19 (1) (g), 14, 15—West Bengal Hindu Social Disabilities Removal Act (1943), Preamble—Validity of Act — Does not contravene Art. 19 (1) (g). See West Bengal Hindu Social Disabilities Removal Act (37 of 1948), Pre. AIR 1951 Cal 167 (DB).

——Art. 19 (1) (g) — Banking Companies Act (1949), S. 35-B (1) (b) — Provision for previous approval of Reserve Bank being in the interests of depositors and general public, restrictions imposed are reasonable within Art. 19. See Banking Companies Act (1949), S. 35-B (1) (b). 1964 Ker L J 1150 : (1965) 35 Com Cas 299 : AIR 1966 Ker 6.

——Art. 19 (g) and (6)—Banking Companies Act (1949), S. 49-A — Law prohibiting private bankers from receiving deposits withdrawable by cheque—Legislation satisfies test of reasonableness under Art. 19 (6).

The provisions of the Banking Companies Act clearly indicate that the object of the Legislature was to control the business of banking. It was essential that certain restrictions had to be imposed on the receipt of deposits by private banks. Even the restrictions imposed by S. 49-A do not in any way, interfere with the private bankers' activity to carry on their banking business in other respects. The only restriction that has been placed is to prohibit the receipt of deposit of money withdrawable by cheque. No restriction or prohibition has been placed by S. 49-A in respect of receipt of deposits of money repayable by draft, order or otherwise.

Section 49-A in so far as it prohibits private bankers from receiving any deposits from the public withdrawable by cheque, amply satisfies the test of reasonable restrictions in the interests of the general public under Art. 19 (6) of the Constitution. A I R 1959 S C 300 and AIR 1960 S C 430 and (1952) S C J 253 : (1952) 2 Mad L J 135; A I R 1953 S C 196 and A I R 1960 S C 468 and A I R 1961 Mad 8, Rel. on. I L R

(1961) 1 Ker 551 : 1961 Ker L J 725 : AIR 1962 Ker 267 (282) (Pt B) (Prs 111, 112).

——Art. 19 (1) (g) — Banking Companies Act (1949), S. 38 (3) (b) (iii) — Provisions of, though affect fundamental rights granted under Art. 19 (1) (f) and (g) of the Constitution are saved by Cls. (5) and (6) of the Article. See Banking Companies Act (1949), S. 38 (3) (b) (iii). **AIR 1961 Ker 268.**

——Art. 19 (1) (g)— Travancore Education Code (1909 M. E.), R. 146 (a) — Madras Grant-in-aid Code, R. 2—Madras Elementary Schools Rules, Part II, Chap. 1, R. 14– Grant-in-aid—Legal right to — Effect of on right under Art. 19 (1) (g) — Discrimation. See Travancore Education Code (1909), R. 146 (a). **A I R 1958 Ker 290.**

——Art. 19 (1) (g)—Custom giving exclusive right to some chamars to take carcasses of animals dying in village—Custom violates Art. 19 (1) (f) and (g) — Custom is void and unenforceable. **1962 Jab L J 58 : 1962 M P L J (Notes) 115 : AIR 1962 M P 275 (276) (Prs 12, 13).**

——Art. 19 (1) (g)—M. B. Krishi Udyogi Pashu Rakshan Vidhan (41 of 2006 Smt.)—Validity—Act is not ultra vires—Prosecution for slaughter of cows and calves is valid. See Madhya Bharat Krishi Udyogi Pashu Rakshan Vidhan (41 of 2006 Smt.), S. 6. **1961 M P L J (Notes) 217.**

——Art. 19 (6)—Drugs Act (23 of 1940) (as amended by Act 11 of 1955), S. 18 (a) (iii)—Validity—Right of purchasers to know what they purchase — Requirement of S. 18 (a) (iii) to indicate ingredients on container—Held reasonable restriction—Amendment held valid. See Drugs Act (1940) (as amended by Act 11 of 1955), S. 18 (a) (iii). **AIR 1960 Madh Pra 389.**

——Art. 19 (1) (f)and (g)—Printing and publishing of school text books by Government — Right of private publishers under Art. 19 (1) (f) and (g) not affected. **1959 M P L J 525 : 1958 M P L J (Notes) 132 : 1959 M P C 485 : 1959 Jab L J 498 : A I R 1959 M P 183 (186) (Pt B) (Pr 14) (DB).**

——Arts. 19 (1) (g) and 301—Scope—Madhya Bharat Customs Regulation Ordinance (8 of 1948)—Notification No. 7 of 1948, dated 14-8-1948 — Validity — If contravenes Art. 19 (1) (g). See Madhya Bharat Customs Regulation Ordinance Smt. 2005 (No. 8 of 1948), S. 9. **1958 Cri L J 181 : AIR 1958 Madh Pra 33 (DB).**

——Art. 19 (1) (g)—Scope—State publishing textbooks—If infringement of fundamental right. See M. P. Secondary Education Board Act (12 of 1951), S. 18. **1958 M P L J (Notes) 132.**

——Art. 19 (1) (g) and (6) — C. P. and Berar Municipalities Act, S. 99 (2), if violate, fundamental rights.

Sub-section (2) of S. 99 of the C. P. and Berar Municipalities Act, 1922 does not give the executive authority an absolute power to refuse sanction. One of the conditions on which sanction can be refused is that the construction of the building should not be against the interests of the residents of the locality. The sub-section therefore is not in contravention of Art. 19 (6) of the Constitution. The restrictions imposed are reasonable restrictions. **1957 Jab L J 86 : 1957 M P C 32 : A I R 1957 Madh Pra 50 (51, 52) (Pt A) (Prs 6, 7).**

——Art. 19 (6)—Resolution of Port Trust Board "to take over export cargo and do the landing on shore" is not ultra vires—Provisions of Art. 19 (1) (g) not infringed — "State" in Art. 12 includes "Local authority". See Madras Port Trust Act (2 of 1905), S. 39. **AIR 1961 Mad 234 (DB).**

——Arts. 19 (1) (g) and (b) and 14—Madras City Police Act (3 of 1888), S. 41—Validity. See Madras City Police Act (3 of 1888), S. 41. **AIR 1959 Mad 63.**

——Arts. 19 (1) (g), 14—Violation of — Special permission granted to certain cooperative societies to export quantities of dry chillies. (Imports and Exports (Control) Act (1947), S. 3) — (Exports (Control) Order (1954), Cl. 7). See Ibid, Art. 14. **AIR 1958 Mad 218.**

——Art. 19 (1) (g)—Scope — Income-tax Act (1922), S. 42 (1)—Validity of.

Though S. 42 (1) of the Act does in effect impose a vicarious liability on the agent of a non-resident principal to be assessed to tax leviable on the income of the non-resident principal and to pay the tax so assessed and that prima facie constitutes a restriction on the agent's right to carry on his business, that restriction is not outside the purview of Art 19 (6). The agent pays the tax, but the real liability discharged by that payment is that of his principal, who is no doubt not resident in the taxable territories. The imposition of liability to tax on the income of a non-resident principal cannot obviously be an unreasonable restriction on the right to trade, either of the principal or of his agent. The imposition of that liability on the agent, not to the exclusion of the principal, but normally where the non-resident principal cannot be reached at all, cannot be viewed as an unreasonable restriction placed on the right of the agent to engage himself in the business of his choice. Section 42 (1) shifts the incidence of tax to the agent in the circumstances mentioned therein. To that extent it provides the machinery for the levy and collection of the tax lawfully due. That does not constitute any unreasonable restriction on the rights of the agent. Section 42 (1) does not violate the fundamental right guaranteed by Art. 19(1)(g). **70 Mad L W 755: (1957) 2 Mad L J 421 : (1958) 33 I T R 154 : I L R (1957) Mad 1186: A I R 1958 Mad 1 (6, 7, 8) (Pt D) (Prs 27, 28, 32, 33) (DB).**

——Art. 19 (1) (g) and (6)—Madras Cultivating Tenants' Protection Act is not repugnant to Art. 19 (1) (g).

The freedom guaranteed by Art. 19 (1) (g) is not one to carry on an occupation or business in any particular place, but the clause is designed to ensure that no unreasonable fetters shall be imposed if one were minded to engage one-self in it. The right of an owner personally to cultivate his land is not a right to carry on an occupation but only a right to hold or enjoy the property. This apart, there is no restriction on his right to carry on business as an agriculturist because he can still carry it on provided he can acquire land on which to do so. The impugned Act is not, therefore, repugnant to Art. 19 (1) (g). **70 Mad L W 221: (1957) 1 Mad L J 307: I L R (1957) Mad 571 : A I R 1957 Mad 333 (337) (Pt C) (Pr 20) (DB).**

——Art. 19 (1) (g)—Section 16 (3) (a) (ii), Income-tax Act does not offend Art. 19 (1) (g). See Income-tax Act (1922), S. 16 (3) (a) (ii). **AIR 1954 Mad 1120 (DB).**

——Art. 19 (6)—Imports and Exports (Control) Act (18 of 1947), S. 3—Restrictions on export trade issued —Validity — Restrictions are reasonable within the meaning of Art. 19 (6), Constitution of India and are valid. See Imports and Exports (Control) Act (1947), S. 3. **AIR 1952 Mad 840.**

——Arts. 19 (1) (g), 25 and 13—Ruler granting exclusive right to person to practise priesthood in certain villages—Order is not a grant but has a force of law and offends against Art. 25 and becomes void. See Ibid, Art. 13. **AIR 1960 Manipur 34.**

——Arts. 19 (1) (g) and 226—Right to trade in beef —License granted to petitioner by Municipality on certain conditions — Cancellation of license without any allegation or proof as to breach of conditions— Opportunity to show cause not given to petitioner— Fundamental right to trade is violated by such cancellation— Order quashed.

The right in trade in beef, as in any other commodity is without doubt, a fundamental right guaranteed by Art. 19 (1) (g) of the Constitution. But such right can certainly be subjected to reasonable restrictions. AIR 1958 S C 731, Rel. on. The right to trade in beef being a fundamental right, the cancellation of a license granted thereof should be made on some reasonable ground and no ground can be considered reasonable unless the licensee is given an opportunity to show cause against the charges levelled against him. An arbitrary power to cancel a license cannot be considered as a reasonable restriction on the right to trade. The reasonable restriction provision not only governs the conditions to be imposed but must be held to apply also to the conditions relating to the cancellation of the license. If absolute power is granted to any authority to cancel a license granted in respect of a trade, then, the contents of the fundamental right under Art. 19 (1) (g) would become illusory. Where the license to trade in beef granted to the petitioner by the Municipality was cancelled by it apparently to respect the sentiments of the Hindu public of the locality and there was neither any allegation nor enquiry nor proof as to the violation of conditions of license by the petitioner who was not given any opportunity to show cause, the order cancelling the license has to be quashed under Art. 226. **A I R 1965 Mys 281 (282, 283) (Prs 4, 5, 6) (DB).**

——**Art. 19 (1) (a) and (g)**—Election to Central Council of Institute of Chartered Accountants of India—Prohibition imposed by Notification against canvassing of votes by visiting places of business or residence of voters or in any other manner—No unreasonable restriction on any fundamental right (1964) 1 Com L J 289 : **AIR 1965 Mys 112 (116) (Pt B) (Pr 5) (DB).**

——**Art. 19 (1) (g)** — Mysore Town Municipalities Act (21 of 1951), S 150 (2) — Validity — Does not infringe Art. 19 (1) (g) of the Constitution. See Municipalities — Mysore Town Municipalities Act (21 of 1951), S. 150 (2). **I L R (1961) Mys 572.**

——**Arts. 19 (1) (g) and 226**—Hyderabad Agricultural Markets Act (2 of 1339-F), S. 5—Rules under R. 40—Tax and fee—Distinction—Petitioners having oil mill at R — Petitioners purchasing groundnut from other places for their own use — Levy of fee on groundnut by Market Committee of R—Legality. See Hyderabad Agricultural Markets Act (2 of 1339-F), S. 5. **A I R 1960 Mys 73.**

——**Art. 19 (6)** — Madras District Municipalities Act (5 of 1920), S. 249 (3) — Constitutional validity. See Municipalities — Madras District Municipalities Act (5 of 1920), S. 249 (3). (1959) **37 Mys L J 613.**

——**Art. 19** — C. P. Municipalities Act, S. 140 — Exercise of power — Opening slaughter house is discretionary — Municipal Committee closing down slaughter house for beef and cancelling license for same — No interference under Art. 226. See Municipalities—C. P. Municipalities Act, S. 140. ('51) **1951 Nag L J (Notes) 112.**

——**Art. 19 (1) (f) and (g)**—Orissa Timber and Forest Produce Transit Rules (1958), Rr. 4 and 6—Constitutionality — Rules do not offend Art. 19 (1) (f) and (g) or Art. 301. 29 **Cut L T 150 : I L R (1962) Cut 59 : AIR 1963 Orissa 24 (26, 27) (Pt C) (Pr 8) (DB).**

——**Art. 19 (1) (g)**—Order requiring compulsory exhibition of approved films of certain minimum length constitutes a serious encroachment on the right of the holder of license for running cinema under Cinematograph Act 1918 to carry on his business. A I R 1954 S C 747, Foll. — (Cinematograph Act (1918), Cl. 6 (a)). **AIR 1955 N U C (Orissa) 6085.**

——**Aft. 19 (1) (g)** — Restriction on cinema hours in the interests of public peace, imposed throughout the district without distinction or discrimination. **Held**, was not unreasonable. **AIR 1955 NUC (Orissa) 6085.**

——**Art. 19 (1) (g)—Grant of ferry right by District Board—Settlement of paimali rights by Government—If infringes Art. 19 (1) (g) — (Bengal Ferries Act (I of 1885)).**

A settlee of a ferry right has, apart from the right guaranteed to him under the Bengal Ferries Act and the Rules thereunder, a right to use the lands on both sides of the river so as to enable him to embark and disembark his passengers, by way of easement of necessity. But beyond that he does not get any right over the said lands. The proprietor of the soil is entitled to the use of the soil in any way he likes provided it does not interfere with the enjoyment of the ferry rights acquired by the petitioner under a lease from the District Board. This, however, does not mean that the Government cannot levy any toll for the use of the khas mahal lands or settle the paimali lands independent of the settlement of the ferry right by the District Board. The two rights are different and independent of each other.

Held, that the Government was perfectly entitled to settle the paimali rights over the lands. Such a settlement did not infringe the fundamental right of the petitioner guaranteed to him under Art. 19 (1) (g) of the Constitution of India. 1958 **B L J R 343 : AIR 1959 Pat 72 (74, 75) (Pt D) (Prs 7, 8, 9) (DB).**

——**Art. 19 (6)** — Bihar Mica Act, 1947 (10 of 1948), S. 6 (6)—Validity. See Bihar Mica Act, 1947 (10 of 1948), S. 6 (6). **AIR 1958 Pat 496 (DB).**

——**Art. 19 (1) (g)** — Coal Mines Regulations (1926), Reg. 48—Validity—Power to suspend or cancel certificate — Effect — If violation of Art. 19 (1) (g). See Coal Mines Regulations (1926), Reg. 48. **A I R 1958 Pat 378 (DB).**

[Reversed on another point in AIR 1961 S C 838.]

——**Art. 19 (1) (f) and (g)** — Notification under S. 3 (14) of Punjab Excise Act (1 of 1914) (as in force in Delhi) — Validity — Notification is consistent with object of Act and does not impose unreasonable restrictions on trade, medical practitioners or general public—See Punjab Excise Act (1 of 1914) (as in force in Delhi), S. 3 (14). **I L R (1965) 1 Punj 775 : AIR 1966 Punj 4 (FB).**

——**Art. 19 (1) (g)**—Punjab Government Order, dated 6-11-1963 prohibiting production of gur by power crushers in mill supply areas— Validity — Proclamation of emergency in operation when Order passed—Art. 19 (1) (g) cannot be invoked to invalidate Order. See Defence of India Rules (1962), R. 125 (2). **A I R 1964 Punj 307 (DB).**

——**Art. 19 (1) (g) and (6)** — Suppression of Immoral Traffic in Women and Girls Act (1956), S. 20 — Constitutional validity — Provisions do not offend Arts. 14 or 19 (1) (d) (e) and (g), of the Constitution. See Suppression of Immoral Traffic in Women and Girls Act (1956), S. 20. **1963 (1) Cri L J 59 : A I R 1963 Punj 36.**

——**Art. 19 (1) (g), (f)** — Sea Customs Act (1878), S. 178-A — Validity — Section 178-A does not infringe cls. (f) and (g) of Art. 19 (1) because smuggled goods cannot be said to be goods in which any one can claim fundamental right. AIR 1960 Punj 664 and A I R 1960 Punj 488 and Cr. R. No. 1566 of 1958 (Punj), Foll. **62 Punj L R 772 : (1961) 1 Cri L J 150 : A I R 1961 Punj 21 (23) (Pt B) (Pr 5).**

——**Art. 19 (1) (g) and (f) and (5) and (6)** — Sea Customs Act (1878), S. 178-A (1)—Validity—Section not violative of Art. 19 (1) (f) and (g) — Restriction im-

posed in shape of rule of evidence not unreasonable. 62 Pun L R 549 : 1960 Cri L J 1236 : AIR 1960 Pun 488 (490) (Pt A) (Prs 8, 9) (DB).

——Art. 19 (1) (g) — Punjab Municipal Act (3 of 1911), S. 152—Restriction on practising prostitution is not unreasonable See Municipalities - Punjab Municipal Act (3 of 1911), S. 152. 1960 Cri L J 111 : A I R 1960 Punj 18 (DB).

——Art. 19 (1) (g) and (6) — Dangerous Drugs Act (1930), S. 8 (2) — Punjab Manufactured Drugs Rules, 1932, R 27 30 — Renewal of licence at discretion of authority — Authority not bound to state or give reasons for refusal — Power is arbitrary — Reasonableness — Rule violates fundamental right guaranteed by Art. 19 (1) (g) and Art. 19 (6) — AIR 1959 Punj 528, Reversed. See Dangerous Durgs Act (1930), S. 8 (2). AIR 1959 Punj 606.

——Art. 19 (1) (g) — Patiala Act 4 of 2002 B. K. — Validity —If offends Art. 19 (1) (f) and 19 (1) (g). See Patiala Recovery of State Dues Act (4 of 2002 B. K.), S. 1. AIR 1959 Punj 440 (DB).

[[Reversed on another point in AIR 1963 S C 222.]

——Art. 19 (1) (g) — Mineral Concession Rules 1949, Rr. 32, 57 and 59 — Validity — Review application —Decision of Central Government, is not judicial or quasi-judicial but merely administrative — Does not infringe any rights under Art. 19 (1) (f) or (g). See Mines and Minerals (Regulation and Development) Act (1948), S. 5. ILR (1957) Punj 39.

——Art. 19 (1) (g) — Punjab Excise Act (I of 1914), S. 1—Excise Act is valid.

The Punjab Exise Act regulating trade in intoxicant liquor does not contravene Art. 19 (1) (g) and is valid. AIR 1954 S C 220, Foll. ILR (1956) Punj 390 : AIR 1956 Punj 97 (99) (Pt G) (Pr 9) (DB)

[Reversed on facts in AIR 1959 S C 65.]

——Art. 19 (1) (g) — Durgah Khwaja Saheb Act, S. 11 (h) - Section whether hit by Article. See Ibid, Art. 14. AIR 1959 Raj 177 (DB).

[Reversed in AIR 1961 S C 1402].

——Art. 19 (6) — Explosives Act (1884), S. 5 — Explosives Rules, R. 85 (3) — Restrictions on person dealing with explosives — Validity — Power given to District Magistrate to recommend refusal of licence to particular person because he is undesirable — Validity. See Explosives Act (1884), S. 5. AIR 1956 Raj 153.

——Art. 19 (1) (g) and (6) — Licence-fee levied by Rajasthan State under Factories Act, S. 6 read with S. 112 — Levy is not unreasonable and is not void under Art. 19 (1) (g) read with Cl. (6). See Ibid, Art. 265. AIR 1954 Raj 178 (DB).

——Arts. 19 (1) (g) and (6)—Rajasthan Dramatic Performances and Entertainments Ordinance (29 of 1949), S. 3—Validity—Not enforceable and not within the limits of reasonableness of Art. 19 (6). See Rajasthan Dramatic Performances and Entertainments Ordinance (29 of 1949), S. 3. AIR 1953 Raj 162 (DB).

——Art. 19 (1) (g) and (6) — Rajasthan Dramatic Performances and Entertainments Ordinance (1949), S. 3 (c) — District Magistrate prohibiting performance or entertainment under S. 3 (c) — Necessity to record opinion. See Rajasthan Dramatic Performances and Entertainments Ordinance (29 of 1949), S. 3 (c). AIR 1953 Raj 101.

——Art. 19 (1) (f) and (g) — Saurashtra Grants (Resumption) Ordinance (84 of 1949) and Amending Ordinance 6 of 1950—Validity.

The Saurashtra Grants (Resumption) Ordinance (84 of 1949 and the Amending Ordinance (6 of 1950) and the Notification issued thereunder by the Government do not contravene the provisions of Art. 19 (1) (f) and (g) of the Constitution of India. AIR 1956 Sau 32 (34) (Pt A) (Pr 4) (DB).

——Art. 19 (1) (g) and (6) — Scope — Cochin Municipal Act (18 of 1113), S. 255 (3)—If ultra vires.

Section 255 (3), Cochin Municipal Act does not confer on the executive authority a power that is naked and arbitrary and therefore it is not ultra vires of the Constitution on the ground of infringement of Art. 19 (1) (g). As adequate checks and controls are available, the provision impugned does no more than strike "a proper balance" between the freedom guaranteed under Art 19 (1) (g) and the social control permitted by Cl. (6) of Art. 19.

Under S. 298 (4) a speaking order that is, an order which sets out the grounds of the decision, is postulated and it goes without saying that the grounds will have to be according to the rules of reason and justice, not to private opinion, according to law, and not humour, not arbitrary, vague, and fanciful, but legal and regular.

Reading S. 255 (3), Cochin Municipal Act in the context in which it appears and in the light of the trammels under which the power conferred by that sub-section is to be exercised, it is clear that the function of the executive authority under that sub-section is a judicial or quasi-judicial function and not an act which can be considered as merely administrative in character. Apart from the direction for a speaking order and the liability to judicial review which such an order affords, sub-ss. (1) and (2) of S. 329, Cochin Municipal Act also provides for appeals to the Council and the Government. ILR (1956) Trav-Co 177 : A I R 1957 Trav-Co 249 (250, 251) (Prs 6, 7, 9, 10, 11) (DB).

73. Clause (6) (i)—Professional or technical qualifications.

See also Ibid, Note 65.

● ——Art. 19 (1) (g) and (5) — Section 16 (1) (ix), Orissa Municipal Act does not violate Art. 19 (1) (g) — (Municipalities — Orissa Municipal Act (23 of 1950), S. 16 (1) (ix)).

The right of a person to practice the profession of law guaranteed by Art. 19 (1) (g) cannot be said to have been violated by S. 16 (1) (ix) because in laying down the disqualification in S. 16 (1) (ix) of the Act the Legislature does not prevent him from practising his profession of law but it only lays down that if he wants to stand as a candidate for election he shall not either be employed as a paid legal practitioner on behalf of the municipality or act as a legal practitioner against the municipality. There is no fundamental right in any person to stand as a candidate for election to the municipality. The only fundamental right which is guaranteed is that of practising any profession or carrying on any occupation, trade or business. There is no violation of the latter right in prescribing the disqualification of the type enacted in S. 16 (1) (ix) of the Act. Even if it be taken as a restriction on his right to practice his profession of law, such restriction would be a reasonable one and well within the ambit of Art. 19, Cl. 5. Sakhawant Ali v. State of Orissa, 21 Cut L T 88 : 1955 S C A 353 : 1955 S C J 262 : 1955 S C R 1004 : A I R 1955 S C 166 (170) (Pt D) (Pr 11).

——Art. 19 (1) (f) and (g)—Right of lawyer to practise — Nature of right — Rule 36 framed under Bombay Co-operative Societies Act does not violate Article — (Bombay Co-operative Societies Act (7 of 1925), S. 71 (2) (u) and R. 36) — (Bar Councils Act (1926), S. 14 (1)—Bombay Pleaders Act (17 of 1920), S. 8).

According to the Bar Councils Act and also the Bombay Pleaders Act, the right of a lawyer to practise before a tribunal is not an absolute right. It is a right subject to the provisions of any law for the

time being in force. Therefore, the only right of a lawyer that has been safeguarded under the Constitution is the right to practise his profession. Now, that right not being an absolute right, no absolute right is conferred upon the lawyer by the provisions of the Constitution. The Constitution guarantees to the lawyer such right as he has under his charter. If any such right is affected or contravened then undoubtedly he can rely upon the provisions of Art. 19 (1) (f). But if the right given to him is a limited right and that right is not in any way affected, he cannot claim a wider right or a larger right under the Constitution. **ILR (1952) Bom 766 : 54 Bom L R 285 : AIR 1952 Bom 296 (297) (Pt B) (Pr 4) (DB).**

● **——Art. 19 (1) (g) and (6) as amended by S. 3 (1) (b) of the Constitution (First Amendment) Act (1951) —Right to practise as Advocate or Attorney — Prescribing professional qualifications — Infringement of fundamental right.**

Fundamental rights are rights which all citizens of India have by virtue of being such citizens. It could certainly not be said that any citizen of India has, merely by virtue of his being such citizen, the right to practise the profession of an Advocate or an Attorney in a High Court, nor could it be said, particularly in view of Cl. (6) of Art. 19, whether as it stood originally or as it stands now, that the prescribing of professional qualifications necessary for practising the profession of an Attorney in a High Court, constitutes an infringement of the fundamental right guaranteed by Art. 19 (1) (g). Aswini Kumar v. Arabindo Bose, **56 Cal W N 145 : AIR 1952 Cal 178 (179) (Pt A) (Pr 5) (SB).**

[Reversed on another point in AIR 1952 S C 369.]

——Art. 19 (1) (g) — Bar Councils Act (1926), Section 24 – Rules under – Rule 1 (V-B) – Constitution of India, Art. 19 (1) (g) — Requirement of University degree under the Rules is a reasonable restriction. See Bar Councils Act (1926), S. 24 — Rules under — Rule 1 (V-B). **A I R 1964 Mad 390.**

——Art. 19 (1) (g) –Advocate — Right to practise — Nature of right—If an absolute right — Restrictions on the right of audience before certain Tribunals — If repugnant to the guaranteed fundamental rights — Bar Councils Act (38 of 1926), Ss. 9 (1) and 14 (1) (a), (b), (c) and Industrial Disputes Act (14 of 1947), S. 36 (4) — If repugnant to Art. 14 of the Constitution.

A barrister under the English Practice has the right to practise, when called to the bar, before the superior Courts and most of the inferior Courts. So far as tribunals are concerned that right is limited by the statutes under which the tribunals are set up. In America the right of an individual to practise at the bar has been held to be not an absolute right but a privilege or a franchise. The right of an advocate to plead and act on behalf of suitors in a Court is not a right flowing from citizenship. It is really in the nature of a privilege Ex parte, In the matter of A. H. Garland, 18 L Ed. 366; Bradwell v. Illinois, 21 L. Ed. 442; (1952) 1 M L J 208; I L R (1952) Mad 933; AIR 1952 Bom 296, Ref.

• A person who has obtained the requisite legal qualifications is not entitled on that ground alone to a right of audience in Court. He must, further be admitted to the Bar before he could practise. That is a matter which is regulated by statutes and the extent of the right to practise must depend on the terms of those statutes. In this country the right of an advocate to practise is just what is conferred on him by Ss. 9 and 14 (1) (a) (b) and (c) of the Bar Councils Act, neither more nor less, and when the particular right claimed by him cannot be found within the four corners of those sections then there is nothing in respect of which the guarantee under Art. 19 (1) (g) of the Constitution could be invoked. That Article merely operates to protect the rights which a person otherwise possesses under the law. It does not create any new rights in him.

The right of an Advocate to appear before an Industrial Tribunal is under S. 14 (1) (b) of the Bar Councils Act subject to any law for the time being in force; S. 36 (4) of the Industrial Disputes Act is such a law and under that section he has a right to appear only when the other parties consent.

There are essential differences between Courts of law and tribunals and the enactment of special rules with reference to tribunals is not open to attack as discriminatory under Art. 14 of the Constitution. Subject to rules of natural justice they enjoy in the matter of procedure and trial a freedom which the Courts do not possess. **1954 Mad W N 18 : 67 Mad L W 54 : (1954) 1 M L J 261 : ILR (1954) Mad 800 : AIR 1954 Mad 553 (555, 556) (Prs 6, 7, 8, 9) (DB).**

74. Clause (6) (ii)—Transport business—General.

(a) Motor Vehicles Act (1939).

(b) State Acts and Rules.

74. Clause (6) (ii)—Transport business—General.

● **——Art. 19 (1) (g) and (6)—Government can enter business in competition with private citizens.**

Article 19 (6) indicates that the State may carry on any business either as a monopoly, complete or partial, or in competition with any citizen and that would not have the effect of infringing any fundamental rights of such citizen. Parbhani Transport Co-operative Society, Ltd. v. Regional Transport Authority, Aurangabad, **62 Bom L R 521 : 1960 Nag L J 563 : (1960) 3 S C R 177 : 1960 Andh L T 400 : 1960 S C J 1250 : A I R 1960 S C 801 (805, 806) (Pt C) (Pr 14).**

● **——Arts. 19 (1) (g) and (6), 13 and 31 (2) — C. P. and Berar Motor Vehicles (Amendment) Act — Constitutional validity cannot be challenged after Constitution (Fourth Amendment) Act, 1955.** See Ibid, Art. 13. **AIR 1955 S C 781.**

[Held overruled by A I R 1959 S C 648 as interpreted in AIR 1961 Mys 3.]

● **— Art. 19 (1) (g) — Right to carry on business of transporting passengers on public highway—Nature of — Doctrine of franchise — Applicability in India —(Highway —Nature and extent of right of public over highway).**

The right of the public to use motor vehicles on the public road cannot, in any sense, be regarded as a right created by the Motor Vehicles Act. The right exists anterior to any legislation on this subject as an incident of public rights over a highway. The State only controls and regulates it for the purpose of ensuring safety, peace, health and good morals of the public. Once the position is accepted that a member of the public is entitled to ply motor vehicles on the public road as an incident of his right of passage over highway, the question is really immaterial, whether he plies a vehicle for pleasure or pastime or for the purpose of trade and business. The nature of the right in respect to the highway is not in any way affected thereby and it cannot be said that the user of a public road for purposes of trade is an extraordinary or special use of the highway which can be acquired only under special sanction from the State.

The American doctrine of franchise has no place in our Constitution. Under the Indian Constitution the contract carriers as well as the common carriers would occupy the same position so far as the guaranteed right under Art. 19 (1) (g) is concerned and both

are liable to be controlled by appropriate regulations under Cl. (6) of that Article. AIR 1951 All 257 (FB) and A I R 1953 Mad 279, Approved ; (1923) 68 Law Ed. 596 ; (1925) 70 Law Ed. 288, Ref. to.

Within the limits imposed by State regulations any member of the public can ply motor vehicles on a public road. To that extent he can also carry on the business of transporting passengers with the aid of the vehicles. It is to this carrying on of the trade or business that the guarantee in Art. 19 (1) (g) is attracted and a citizen can legitimately complain if any legislation takes away or curtails that right any more than is permissible under Cl. (6) of that Article. Saghir Ahmad v. State of U. P., 1954 S C J 819 : (1954) 2 M L J 622 : I L R (1955) 1 All 211 : 1954 S C A 1218 : 1955 All W R 23 : 68 Mad L W 8 : 1955 All L J 38 : 1955 S C R 707 : A I R 1954 S C 728 (733, 734, 735) (Pt B) (Prs 9, 12, 13).

●——Art. 19 (6) — As amended by the Constitution (First) Amendment Act, 1951—Effect of amendment —State monopoly in trade.

The new clause in Art. 19 (6) has no doubt been introduced with a view to provide that a State can create monopoly in its own favour in respect of any trade or business ; but the amendment does not make the establishment of such monopoly a reasonable restriction within the meaning of the first of Art. 19 (6). The result of the amendment is that the State would not have to justify such action as reasonable at all in a Court of law and no objection could be taken to it on the ground that it is an infringement of the right guaranteed under Art. 19 (1) (g) of the Constitution. Saghir Ahmad v. State of U. P., 1954 S C J 819 : (1954) 2 M L J 622 : I L R (1955) 1 All 211 : 1954 S C A 1218 : 1955 All W R 23 : 68 Mad L W 8 : 1955 All L J 38 : 1955 S C R 207 : A I R 1954 S C 728 (739) (Pt G) (Pr 23).

——Art. 19 (6) (as amended in 1951) — Scope of amendment.

The scope of the amendment of Art. 19 is that the creation of a monopoly in favour of the State is a permissible restriction. Hence there is substance in the contention that the effect of the amendment was only to relieve the State of the necessity of establishing that a monopoly or a quasi-monopoly came within reasonable restriction but it did not relieve the State of the necessity of showing that the law enacted was in the interest of the general public. A I R 1954 S C 728, Rel. on. A I R 1957 All 320 (323) (Pt A) (Pr 7) (DB).

[Reversed on another point in AIR 1959 S C 648.]

——Arts. 19 (6) (ii) and 14 — There is no conflict between Art. 19 (6) (ii) and Art. 14. A I R 1954 All 257 (269, 270) (Pt E) (Pr 47) (DB).

[Reversed on another point in A I R 1954 S C 728.]

——Art. 19 (1) (g)—Sub-rule 5 of Cl. (iii) of R. 153-D introduced by G. O. Ms. No. 2455, Home (Transport I), dated 25-11-1960 — Provision is ultra vires Art. 19 (1) (g).

A citizen has a fundamental right to ply motor vehicles on public pathways under Art. 19 (1) (g) of the Constitution of India and any infringement of that right by the State can be justified only if it falls within the scope of Art. 19 (6) thereof. Any restrictions put on the citizens, which result in totally disqualifying them from applying for any permit would practically nullify the fundamental right which they enjoy under Art. 19 (1) (g). If any applicant fails to satisfy Cl. (iii) of R. 153-D he is screened and disqualified on that ground alone. It means that his application will not be considered under S. 47 of the Act. On possessing residential qualifications specific marks are allotted under Cl. (iv) of the rule and to that extent Cl. (iv) cannot be challenged. But when a provision prohibits any applicant to file his application simply because he has no main office or branch office on the route or that he resides beyond five miles from the route or that, in case any such application is filed, it shall be screened and the applicant declared disqualified it clearly prohibits him from carrying on the trade. Such provision is unreasonable. Sector or residential qualifications can be taken into consideration while granting or refusing to grant permits. But such qualifications cannot be so imposed as to debar all others even from applying for permits. Any discrimination based on the place of residence is not reasonable and valid. Sub-rule (5) of Cl. (iii) of R. 153-D must therefore be struck down. 1950 S C J 571 : A I R 1951 S C 118, Rel. on. The provision can however be separated from the rest of the rule. ILR (1964) Andh Pra 1076 : (1963) 1 Andh W R 77 : A I R 1963 Andh Pra 263 (267, 268) (Pt G) (Pr 11) (DB).

——Art. 19 (1) (g), (6)—Right to carry motor transport business.

The right of carrying on transport business, falls in the category of the fundamental rights mentioned in Art. 19 (1) (g). This fundamental right to carry on transport business, within the four corners of the provisions of the Motor Vehicles Act, 1939, cannot be infringed on the ground of nationalisation of transport in the State. A I R 1951 Him Pra 36 (47) (Pt N) (Pr 32).

——Art. 19 (1) (g) — Right to operate stage carriage on public pathway is fundamental right : A I R 1954 S C 728. Foll. AIR 1953 Mad 279, Rel. on. (1965) 2 Mys L J 187 (DB).

——Art. 19 (1) (g)—"Business"—Words and Phrases.

Plying of Motor Vehicles for hire on public roads is a 'business'. AIR 1952 Orissa 42 (42) (Pt F) (Pr 8) (DB).

——Arts. 19 (1) (g) and 31 — Running of parallel buses by State on routes for which private transport companies hold permits.

The running of parallel buses by the State on the very routes for which private transport companies hold permits does not violate Art. 19 (1) (g) or Art. 31. The private transport companies might have had a very lucrative business but they have no right fundamentally their own which can be said to have been impaired by the entry of the State in the arena of the business where for some time past the private transport companies were supreme. AIR 1956 Pepsu 3 (6) (Pt D) (Pr 10).

——Arts. 19, 38, 39, 289, 298 — Function of State—Motor Transport business—State, whether can carry on business or Trade like other individuals—Legislative sanction if and when necessary.

State which had in earlier times for its functions, defence, police, law and order, can now guarantee many other public services and the entry of the Pepsu Government, in pursuance of its economic policy in the business of motor transport does not suffer from any legal or other disqualification.

Function of a State like the Police States of old are not confined to mere collection of taxes or maintenance of laws and protection of the realm from external or internal enemies and a modern State is certainly expected to engage in all activities necessary for the promotion of the social and economic welfare of the community.

A reference to provisions of Arts. 19 (6), 38, 39, 289 and 298 of the Constitution would show that Government is free to make gains through trade or business or industry like any other individual.

No legislative sanction to start or run the business of plying motor vehicles for hire would be necessary when there has been no encroachment by the State on any private rights by its entering into the field as a competitor. No specific Act is thereof necessary to validate the running of motor buses by it. Particularly when legislative sanction in the form of the necessary Appropriation Act to incur expenditure on the venture and consequent implicit approval of the State Assembly has already been obtained, and this should be enough to serve the purpose of making a specific law. AIR 1955 S C 549, Rel. on. ILR (1956) Patiala 77.

——Arts. 19 (1) (g) and 31—Running of parallel buses by State on very routes for which petitioners held permits—Action of Government though injurious to petitioners' lucrative transport business there is no violation of any of the fundamental rights under Art. 19 or 31. ILR (1956) Patiala 77.

——Art. 19 (1) (g) — Refusal to renew permit for motor vehicle interferes with operator's fundamental right to carry on trade and business — Aggrieved operator can apply.

The refusal to renew the permits issued under the Motor Vehicles Act does interfere with the operator's right to carry on trade and business as guaranteed under the Constitution. Any such interference with the right can be upheld only on valid and reasonable grounds. Hence, the operators have a right in the renewal of permit as to obtain a writ from the High Court. 1961 Raj L W 435 : ILR (1961) 11 Raj 333.

74(a). Motor Vehicles Act (1939).

● **——Art. 19 — Publication of scheme and cancellation of permits of existing operators—Effect—Right of operators to ply buses is extinguished—There is no infringement of fundamental right even if State plies its buses without obtaining permits under S. 42. See Motor Vehicles Act (1939), S. 68-F (1). AIR 1963 S C 640.**

● **——Art. 19 (6) (ii)—Scope of—Monopolies—Motor Vehicles Act (1939) (as amended by Act C of 1956), S. 68-C—Nationalisation of road transport services.**

Article 19 (6) is only a saving provision and the law made empowering the State to carry on a business is secured from attack on the ground of infringement of the fundamental rights of a citizen to the extent it does not exceed the limits of the scope of the said provision. Sub-cl. (ii) of Art. 19 (6) is couched in very wide terms. The word 'service' is wide enough to take in not only the general motor service but also the species of motor service. There are, no limitations on the State's power to make laws conferring monopoly on it in respect of an area, and person or persons to be excluded. S. 68-C, Motor Vehicles Act, which enables the State to take over a particular class of a service, say, the bus service, and exclude all or some of the persons doing business in that class of service does not exceed the limits prescribed by Art. 19 (6) (ii) of the Constitution. J. Y. Kondala Rao v. Andhra Pradesh State Road Transport Corporation, (1963) 1 Mad L J (SC) 111 : (1963) 1 Andh W R (SC) 111 : 1963 Mad L J (Cri) 226 : (1963) 1 S C J 539 : (1961) 1 S C R 642 : AIR 1961 S C 82 (87) (Pt B) (Pr 10).

● **——Art. 19 (6)—Chapter IV-A of Motor Vehicles Act—Validity of. See Ibid, Art. 298. AIR 1960 S C 1073.**

● **——Arts. 19 (1) (g) and (6) and 226—Motor Vehicles Act (1939) — Ss. 43A and 47 (as amended by Motor Vehicles (Madras Amendment) Act 20 of 1948) —Orders and directions issued under S. 43A whether law—Regional Transport Authority granting permit to appellant applying order issued under S. 43A which** was then in force — On appeal Central Road Traffic Board setting aside order and granting permit to respondent following another order issued under same section—Validity of order—Issue of writ of certiorari —Order whether discloses error apparent on its face —(Civil P. C. (1908), Preamble and O. 41, R. 33). See Motor Vehicles Act (1939) (as amended by Motor Vehicles (Madras Amendment) Act 20 of 1948), S. 43A. AIR 1959 S C 694.

● **——Arts. 19 (6) (ii) and 19 (1) (g) and 31 (2) —** Motor Vehicles Act (1939) — Chap. IV-A (Ss. 68A to 68I) (as amended by Act 100 of 1956) — Nationalisation of bus transport—Scheme not providing for compensation to existing permit holders—Constitutional validity — Chapter IV A whether infringes Art. 31 of Constitution. See Motor Vehicles Act (1939)(as amended by Act 100 of 1956), Chap. IV-A. AIR 1959 S C 308.

● **——Art. 19 (1) (g)—Art. 19 (1) (g) does not guarantee monopoly—Discretion vested in Regional Transport Authority exercised bona fide — No violation of Art. 19 (1) (g)—[Motor Vehicles Act (1939), S. 42].**

Article 19 (1) (g) does not guarantee a monopoly to a particular individual or association to carry on any occupation and if other persons are also allowed the right to carry on the same occupation and an element of competition is introduced in the business, that does not, in the absence of any bad faith on the part of the authorities, amount to a violation of the fundamental right guaranteed under Art. 19 (1) (g) of the Constitution. Under the Motor Vehicles Act it is in the discretion of the Regional Transport Authority to issue permits at different rates of tariff to different classes of vehicles plying in the streets of a town and if that power is exercised in a bona fide manner by the Regional Transport Authority for the benefit of the citizens of the town, then the mere circumstance that by grant of licence at different tariff rates to holders of different taxis and different classes of vehicles some of the existing licence holders are affected cannot bring the case under Art. 19 (1) (g) of the Constitution. Harman Singh v. Regional Transport Authority, Calcutta, 1954 S C J 46 : (1954) 1 M L J 79 : 1954 S C A 47 : 1954 S C R 371 : AIR 1954 S C 190 (192) (Pt C) (Pr 8).

——Arts. 19 (1) (g) and 19 (6)—Acquisition—Mere deprivation of property—Effect—Colourable legislation, what is—Fraud on Constitution—Motor Vehicles Act (1939 as amended by Act 100 of 1956), Chap. IV-A, S. 68-G—If colourable legislation—Right to carry on occupation extinguished — Whether unconstitutional —Whether Parliament has circumvented limitations on its powers by indirect method. See Ibid, Art. 31 (as amended by Fourth Amendment). AIR 1959 Andh Pra 292 (DB).

——Arts. 19 (1) (g) and 19 (6) — Motor Vehicles Act (1939), S. 68B—Scope of — Chapter IV-A (Amending Act C of 1956)—If ultra vires the Constitution—Section 68 B — Government's functions — If acts judicially or quasi-judicially — Scheme of the Andhra Pradesh Government to operate transport services—Examination in writ of certiorari — Power of High Court—Constitution of India (1950), Art. 14—Zonal or Territorial division of District — If discrimination or denial of equal protection of laws. See Motor Vehicles Act (1939), S. 68B. AIR 1959 Andh Pra 292.

——Arts. 19 (1) (g), 14 and 226 — Nationalisation of motor transport — Transport Authority refusing to issue permits to private owners under direction of Executive — Legality — Law of nationalisation by Legislature—Validity—Grant of mandamus—(Motor Vehicles Act (1939), Ss. 42, 57).

Though the State may engage in trade and therefore in transport business even in competition with the citizens of the State, it does not thereby acquire

the power to interfere with or infringe the constitutional right of the citizens to practise any profession or to carry on any occupation, trade or business. It may engage in trade without violating any law or the rights of the citizen. As a matter of fact, its position is very much the same as that of an individual of the State in this respect.

While sub-s. (3) of S. 42, Motor Vehicles Act, recognises the power of the Central Government and the State Government to own vehicles and, by implication, to utilise them and to run them for profit or in the interest of the public it exempts the Governments from the obligation of obtaining a permit. Apart from the Government, all others who own transport vehicles, can use them only in accordance with the conditions of a permit as laid down in S. 42. AIR 1951 All 257 (FB), Relied on.

But no authority is conferred on the Government to take any route and to displace all vehicles belonging to citizens who have been plying on it under permits issued to them. The decision to appropriate and take over a route to the exclusion of permit-holders, cannot be arrived at under the Motor Vehicles Act or under any law for the matter of that by the executive Government of the State, nor have the Transport Authorities any power to create or to acquiesce in the creation of any such monopoly or exclusive use of the route.

The action of the Government in nationalising the route in this way by issuing orders to the Transport Authority, not to issue permits to private owners, which it obeyed by surrendering its powers under the Motor Vehicles Act, is in defiance of the provisions contained in the Motor Vehicles Act. It is, therefore, obviously illegal.

It is undoubted that the Transport Authorities, both Regional and State, are at least quasi-judicial bodies. Their obligations are to dispose of petitions or applications which are presented for permits under the Act uninfluenced by any considerations which do not find any place in S. 57 of the Act. The only considerations which should influence the decisions of the Transport Authorities under the Act are those specifically mentioned in the relevant provisions of the Act. Any decision about the nationalisation arrived at by the State Government is not a relevant consideration.

That the State Government intends to run its own buses is no ground for refusing permanent permits. Notice in advance of intention to issue only temporary permits is illegal. The practice of granting temporary permits for reasons other than those specified in S. 62 is clearly irregular. AIR 1951 All 257 (FB); A I R 1948 Mad 400, Rel. on. A I R 1953 Assam 74, Ref.

The executive Government in engaging in transport business, has to avoid encroaching upon or otherwise infringing the legal rights of any member of the public; where these rights are infringed the activity would be illegal. Art. 19 (1) (g) guarantees to the citizens the right to practise any profession or to carry on any occupation, trade, or business. Under Cl. (6) as amended, any trade, business or industry which excludes, completely or partially, the citizens of the State, can be started, though only by legislative sanction. Clause (g) of Art. 19 (1) does not stand in the way of the State making any laws relating to the carrying on by the State or by a corporation owned or controlled by the State, of any trade or business even to the exclusion, complete or partial, of the citizen. The executive Government has no power to carry on any trade, business or industry to the exclusion, complete or partial of the citizen. It can do so only under a law which satisfies the requirements of cl. (6). If it creates a monopoly or excludes citizens from a profession or trade without the authority of the law and in the exercise of its ordinary functions, it infringes the constitutional right of the citizen guaranteed to him by Art. 19 (1) (g). AIR 1948 Mad 400, Ref.

Appropriate legislation may authorise the Government to embark on any commercial or industrial undertaking under cl. (6) of Art. 19. In that case partial or entire exclusion of the citizens from trade or profession would be justified.

Where the owners of the vehicles had not applied for permanent permits and no application under S. 40, Motor Vehicles Act, was filed and thus there was no occasion for refusal to grant permanent permits, it cannot be said that the Transport Authority failed in the performance of any public duty and no writ of mandamus can be granted when the authority concerned cannot be called upon to perform a legal duty or obligation.

The obligation arises under S. 47 only when there is an application under S. 46. The past cannot be recalled. It cannot even be cured by a writ in the nature of mandamus. In regard to the future, the private owners may be entitled to relief only if the Transport Authorities fail in discharging their legal or statutory obligations in spite of applications made to them. **ILR (1955) 7 Assam 7 : A I R 1954 Assam 212 (215 to 219) (Pt B) (Prs 7, 8, 9, 10, 12, 13, 14) (DB).**

——Art. 19 (1) (g) and (6) — Motor Vehicles Act (1939), Ch. IV-A—Validity—Provisions are saved by Art. 19 (6).

The provisions of Chapter IV-A of the Motor Vehicles Act come within the purview of the exception laid down in sub-cl. (6) of Art. 19 and, therefore, are not ultra vires on the ground that they affect the fundamental rights of the petitioners under Art. 19 (1) (g). **I L R (1960) Bom 978 : 62 Bom L R 952 : AIR 1961 Bom 80 (81) (Pt A) (Pr 4) (DB).**

——Arts. 19 (1) (g), 19 (6) — Motor Vehicles Act (1939). S. 74 — Section does not touch fundamental rights—There is no excessive delegation — Satisfaction enjoined by section is not arbitrary. See Motor Vehicles Act (1939), S. 74. **('62) 66 Cal W N 1024.**

● **——Art. 19—Scope —** Route in regard to stage carriage permit is not condition of permit — Regional Transport Authority cannot vary route in exercise of powers of variation of condition of permit. See Motor Vehicles Act (1939), S. 48. **AIR 1964 Mad 136 (FB).**

——Art. 19 (1) — Orders under S. 43A, Motor Vehicles Act, 1939—Constitutional validity of—Constitution of India, Arts. 19 (1) and 19 (6). See Motor Vehicles Act (1939), S. 43-A. **(1964) 1 Mad L J 92.**

——Art. 19 (1) (g) — Validity — S. 68-G (2), Motor Vehicles Act, does not violate either Art. 14 or 19 (1) (g) of the Constitution — Cancellation of permits on account of scheme of nationalisation—Issue of alternative permits to displaced permit holders — Power of Government to issue directions — Nature of. See Motor Vehicles Act (1939), S. 68-G (2). **AIR 1963 Mad 265 (DB).**

——Art. 19 (1) (g) — Grant of permit under Motor Vehicles Act — Exclusion of applicant on ground of monopoly — No contravention of Art. 19 (1) (g). See Motor Vehicles Act (1939), S. 47 (1). **AIR 1959 Mad 492 (DB).**

——Art. 19 (1) (g)—Reasonable restriction—Refusal to renew permit under Motor Vehicles Act, to person who has been habitually deliberate in non-payment of taxes—(Motor Vehicles Act (1939), Ss. 47 (1) (a), 58 (2)).

It cannot be laid down that a refusal on the part of the Regional Transport Authority to renew a permit to ply buses under the Motor Vehicles Act to a person who has been deliberately and habitually defaulting in the payment of taxes, is not a reasonable restriction on the right of that person under Art. 19 (1) (g) in the interests of the public. (1955) 1 M L J 231 : 67 Mad L W 1217 : A I R 1955 Mad 205 (206) (Pt B) (Pr 7) (DB).

——Art. 19 (1) (g), (6)—If contravened by permit system for motor buses. See Motor Vehicles Act (4 of 1939), Ss. 42, 43-A, 47 and 64-A. **AIR 1953 Mad 279 (DB).**

——Art. 19 (6) — Motor Vehicles Act (1939), Ss. 47 and 48 — Power to take into account condition of road. See Motor Vehicles Act (1939), S. 47. **AIR 1953 Mad 279.**

——Art. 19 (6) — Motor Vehicles Act (1939), Ss. 47 and 48 — Consideration of nature of locality. See Motor Vehicles Act (1939), S. 47. **AIR 1953 Mad 279.**

——Art. 19 (6) — Motor Vehicles Act (1939), Ss. 47 and 48—Consideration of adequacy of existing services. See Motor Vehicles Act (1939), S. 47. **AIR 1953 Mad 279.**

——Art. 19 (6)—Motor Vehicles Act (1939), Ss. 47 and 48—Consideration of running of unremunerative services by existing operators. See Motor Vehicles Act (1939), S. 47. **AIR 1953 Mad 279.**

——Art. 19 (6)—Motor Vehicles Act (1939), Ss. 47 and 48 — Refusal to grant permit at all. See Motor Vehicles Act (1939), S. 47. **AIR 1953 Mad 279.**

——Art. 19—Motor Vehicles Act (1939), S. 47—Validity. See Motor Vehicles Act (1939), S. 47. **AIR 1953 Mad 279.**

—Art. 19 — Motor Vehicles Act (1939), Ss. 48 (a), (b) are valid. See Motor Vehicles Act (1939), S. 48. **AIR 1953 Mad 279.**

——Art. 19—Motor Vehicles Act (1939), S. 64-A is valid. See Motor Vehicles Act (1939), S. 64A. **AIR 1953 Mad 279.**

——Art. 19 (1) (g)—Section 47 (1) (c), Motor Vehicles Act (1939) is not ultra vires of Article. See Motor Vehicles Act (1939), S. 47 (1) (c). **(1965) 2 Mys L J 187.**

——Art. 19 (1) (g)— Right to prosecute application for stage carriage permit — Whether personal right— Death of applicant—Right survives— Legal representative can prosecute application. See Motor Vehicles Act (1939), S. 46. **AIR 1963 Mys 278 (DB).**

——Arts. 19 (1) (g) and 19 (6)—Article 19 (1) (g) is subject to Art. 19 (6) — "Reasonable restrictions" include total stoppage—(Motor Vehicles Act (1939), Ss. 43, 58 and 58-A).

Provision of Art. 19 (1) (g) is subject to clause (6) of Art. 19. The right of the public in a highway is merely to pass and repass and such a right can be restricted. The words "reasonable restrictions" in Art. 19 (6) are wide enough to include total stoppage of the use of the highway if it is found to be necessary in the public interest. The State has a right under Article 19 (6) to regulate or prohibit business of plying buses on public highways in public interest. Under S. 43 read with Ss. 58 and 58A of the Motor Vehicles Act it is open to the state Government to place restrictions on the plying of public buses, to confine the use of public highways for running public buses to only such persons as have been granted permits under the Motor Vehicles Act and to cancel or refuse to renew permits held by an operator or a class of operators. These provisions have been clearly saved by clause (6) of Art. 19 of the Constitution. AIR 1951 All 257 (FB), Rel. on. 1953 Nag L J 193: **ILR (1953) Nag 110 : AIR 1952 Nag 353 (354) (Pt B) (Pr 6) (DB).**

[Overruled on another point in AIR 1988 S C 158.]

——Art. 19 (1) (g) — Motor Vehicles Act (1939) S. 43-A (Bihar) — Not ultra vires though particular orders made by Government, under it may be challenged as unconstitutional — Order of Bihar Government, dated 5th August, 1980, issued under S. 43 A, giving preference to operators whose applications for renewal of permits have been refused under S. 68-F (2) (a) in granting stage carriage permits— **Held** intra vires. AIR 1959 S C 694, Expl. and Dist. **ILR 41 Pat 600 : AIR 1962 Pat 57 (59, 60) (Prs 4, 5, 7) (DB).**

——Art. 19 (1) (g) and (6)—Motor Vehicles Act (1939), S. 64-A—(As inserted by Bihar Amendment Act (27 of 1950)) — If unconstitutional or ultra vires —Nature of power conferred on State Government—(Natural Justice)—(Maxims—Audi alteram partem)—(Constitution of India, Art. 226).

Section 64-A of the Motor Vehicles Act as amended in Bihar, gives power to the State Government to call for the records of proceeding under Ch. IV and after examining such records to pass such orders as it thinks fit. The power given to the State Government under S. 64-A has to be exercised in a regulated manner and on the principles laid down in the other sections of the Act preceding to that. That being so, it cannot be said that S. 64-A creates an unreasonable restriction in enjoying the right of freedom of trade granted to the citizens under Art. 19 (1) (g) of the Constitution. Section 64-A, therefore as passed by the Bihar Legislature, is not constitutionally void or ultra vires from the substantive point of view. It is clearly of a quasi-judicial character and the extent of the power is sufficiently defined in the Act. Even from the procedural point of view S. 64-A of the Motor Vehicles Act is not constitutionally void or ultra vires. The power conferred by S. 64-A on the State Government being a quasi-judicial power has to be exercised in accordance with the rules of natural justice even though that section does not lay down in itself any provision for a notice or an opportunity of hearing to be given to the parties concerned in the matter. The principle of law embodied in the maxim audi alteram partem clearly shows that the notice and opportunity of hearing is to be given only in those cases where an order adverse to a person is to be passed. **1956 B L J R 498 : AIR 1957 Pat 340 (345, 346) (Pt A) (Pr 11) (DB).**

——Arts. 19 (1) (g) and 226—Right to carry on business of transport on public road — Extent of — State Government granting licence to ply buses on particular road to A in addition to that granted previously to B — Absence of notice to B—Order, if invalid and liable to be challenged by B by way of writ petition — Motor Vehicles Act (1939), S. 47 and S. 64-A (Bihar Amendment).

Every citizen has the fundamental right to carry on business in transport even on the public road and that is subject only to the limitations and restrictions imposed upon him under the Motor Vehicles Act. The moment those restrictions are removed, his right, which is for the time being in the absence of licence dormant, is revived and he like others holding the licence, can enjoy, that right. It, therefore, cannot be said that the mere issue of a licence in favour of one citizen creates a right in him to object to the issue of licence to any other citizen. That is repugnant to the very conception of the fundamental right given under Art. 19 (1) (g) of the Constitution. The procedure suggested under S. 47, Motor Vehicles Act does not create a substantive right in favour of any person or persons who are already provided with road transport facilities. Where the State Government on an

application by A under S. 64-A, Motor Vehicles Act grants him an additional licence to ply buses on a particular road, B who is already holding a licence for the same road has no right to be heard in the matter so long as the licence issued in his favour is not affected by the order granting licence to A. AIR 1950 Pat 387 (FB), AIR 1952 S C 12 and AIR 1951 S C 41, Rel. on. **1956 B L J R 498 : AIR 1957 Pat 340 (346, 347) (Pt B) (Prs 13, 15) (DB).**

——Art. 19 (6) — Motor Vehicles Act (1939), S. 1— Validity after the Constitution. See Motor Vehicles Act (1939), S. 1. **AIR 1956 Pat 73.**

——Art. 19 (1) (g) and (6) — Motor Vehicles Act (1939), Ss. 47, 57 and 58— Refusal of permit or its renewal on ground of State monopoly or on ground that on some future date State Government may run their own service — Validity — See Motor Vehicles Act (1939), S. 47. **AIR 1956 Pat 73.**

——Art. 19 (1) (g) and (6) — Motor Vehicles Act (1939), Ss. 47 and 48—Number of stage carriages to be plied on any route — Limitation of—Validity.

The right to ply buses is one of the fundamental rights guaranteed under Art. 19 (1) (g) of the Constitution. However, some sort of restriction, if it is made in the interest of the public, and is reasonable will be protected under Cl. (6) of that article. The power given to limit the number of stage carriage by Cl. (a) of S. 48, Motor Vehicles Act, is preceded by the clause that the Regional Transport Authority may do so after consideration of the matters set forth in sub-s. (1) of S 47. **ILR (1955) 5 Raj 545 : 1956 Raj L W 395 : AIR 1957 Raj 237 (240) (Pt D) (Pr 10) (DB).**

——Art. 19 (1) (g)— Motor Vehicles Act (1939), S. 47 (1) (c) —Condition that Regional Transport Authority shall have regard to the effect upon existing services of the service proposed is not ultra vires— See Motor Vehicles Act (1939), S. 47 (1) (c). **AIR 1956 Raj 142.**

——Arts. 19 (1) (g) and (b) and 14 — Orders passed under valid law —Articles should not be applied to test correctness of orders passed under the Act — Orders under Motor Vehicles Act cannot be challenged as being arbitrary and contrary to Art. 14—A I R 1933 Mad 279, Diss. from — (Motor Vehicles Act (1939), S. 48). See Constitution of India, Art. 14. **AIR 1955 Raj 19.**

——Art. 19 (6)— Applicability. See Motor Vehicles Act (1939), S. 47 (1) (e). **A I R 1954 Trav-Co 542 (DB).**

——Art. 19 (1) (g) and (6) and Art. 226 — Motor Vehicles Act (1939), Ss. 47, 48—Transport authority refusing permit for bus service on grounds other than those mentioned in S. 47—Validity of order.

Section 47, Motor Vehicles Act, lays down what matters the transport authority shall consider in granting or refusing to grant a stage carriage permit. No application can be disposed of by the Transport Authority without applying its mind to the matters enumerated in S. 47. It is not proper for the State Transport Authority to refuse a permit for running bus service on the ground that there is no need for extension of service. What has to be decided is whether the grant would be for the benefit of the general public and not, whether it is injurious to the interests of the existing operators. For the same reason the Transport Authority cannot take into consideration that the existing operators are running other services which are not remunerative and they cannot grant permits to them with a view to compensate for those unremunerative services. This will be clearly opposed to Art. 19 (6), Constitution of India.

Where the Transport Authority refused an application for renewal of a permit on the ground that the route in question is no longer a prescribed route, the order is bad as it is passed without taking into consideration the matter referred to in S. 47. S. 48 (a) authorises the Transport Authority to limit the number of the stage carriages on any specified route. But when a fresh application for a permit is received, the Authority is bound to apply its mind once again to matters referred to in S. 47 before disposing of the application. **AIR 1956 Vin Pra 25 (26) (Prs 4, 5, 6).**

74 (b). State Acts and Rules.

● ——Art. 19 (6) (as amended by the Constitution (First Amendment) Act (1951))— Orissa Motor Vehicles (Regulation of Stage Carriage and Public Carrier's Services) Act (36 of 1947)—Orissa Motor Vehicles (Amendment) Act (I of 1949) —Validity of these Acts cannot be challenged on ground that they create monopoly in favour of the State.

The Orissa Motor Vehicles (Regulation of Stage Carriage and Public Carrier's Services) Act (36 of 1947) and the Orissa Motor Vehicles (Amendment) (Act (I of 1949) cannot be said to be invalid on the ground that they were designed with a view to oust the private stage carriage services from business altogether and were intended to create a virtual monopoly in favour of the Joint-Stock Company or the State. Art. 19 (6) of the Constitution as amended by the Constitution (First Amendment) Act (1951) excludes all argument in regard to the alleged ousting of the private-owned stage carriage services and the creation of a virtual monopoly in favour of the Joint-Stock Company or the State. The Orissa Road Transport Co., Ltd., which is a Joint-Stock Company formed under the provisions of Orissa Act (36 of 1947) and the State Transport Services which are envisaged in Orissa Act (I of 1949) would, therefore, be able to carry on their business even if it resulted in the complete elimination of the private-owned stage carriage services without any violation of the fundamental rights guaranteed under Art. 19 (1) (g). Ramachandra v. State of Orissa, **1956 S C A 346 : 22 Cut L T 171 : 1956 S C C 184 : 1956 SCR 28 : 1956 S C J 293 : AIR 1956 S C 298 (304) (Pt C) (Pr 15).**

● ——Art. 19 (1) (g) — U. P. State Road Transport Act (2 of 1951) — Whether conflicts with the guarantee of freedom of inter-State and intra-State trade, commerce and intercourse provided under Art. 301— Relative scope of Art. 19 (1) (g) and Art. 301 indicated. See Ibid, Art. 301. **AIR 1954 S C 728.**

● ——Art. 19 (1) (g) — U. P. State Road Transport Act if infringes Art. 19 (1) (g) and is unconstitutional. A I R 1954 All 257, Reversed. See U. P. State Road Transport Act (2 of 1951). **AIR 1954 S C 728.**

● ——Art. 19 (1) (g) and (6)—Reasonable restriction— Restriction placed upon use of bus-stand is not repugnant—(Motor Vehicles Act (1939), S. 68 (2) (r)—Rules under — Madras Vehicles Rules (1940), R. 268). Ibrahim, T. B. v. Regional Transport Authority, Tanjore, **1953 S C J 31 : (1953) 1 M L J 205 : 1953 S C R 290 : 1953 S C A 277 : AIR 1953 S C 79 (80, 81, 82, 83) (Pt C) (Prs 3, 13).**

——Art. 19 (1) (g) and (6) — U. P. Road Transport Services (Development) Act (9 of 1955), S. 1— Validity of.

The amendment made to Art. 19 (6) in 1951 debars the petitioner from attacking the validity of the U. P. Road Transport Services (Development) Act, 1955, on the ground of the infringement of the fundamental right guaranteed under Art. 19 (1) (g) of the Constitution inasmuch as the impugned enactment is covered by the provisions of Art. 19 (6) as amended by the Constitution (First Amendment) Act, 1951. **AIR 1957 All 320 (323) (Pt B) (Pr 8) (DB).**

[Reversed in A I R 1959 S C 648 in so far as Allahabad High Court held that the validity has to be

tested on basis of provision of the Constitution as amended by Constitution 4th Amendment Act.]

——Arts. 19 (1) (g) and (6) and 31 (2) — U. P. Road Transport Services (Development) Act (9 of 1955), S 11 and Sch. I —Premature cancellation of permits of stage carriage permit holders—Right to compensation.

So far as the U. P. Road Transport Services (Development) Act, 1955 prematurely cancels the permits of the stage carriage permit holders and curtails the routes, compensation has been provided for under that Act. So far as it gives power to the Transport Authority not to renew the permits of the bus operators whose permits may expire the deprivation is by authority of law and consequently the permit holders are not entitled to any compensation for that. Apart from it as the renewal cannot be claimed as a matter of right it cannot be said that they are entitled to any compensation for that. A I R 1956 S C 298, Rel. on. AIR 1957 All 320 (328) (Pt D) (Pr 24) (DB).

[Reversed on another point in A I R 1959 S C 648.]

——Art. 19 (6) (before its amendment) U. P. Act (2 of 1951) cannot be challenged on ground that it infringed Art. 19 (6). See Uttar Pradesh State Road Transport Act, 1950 (2 of 1951), Preamble, S. 3. AIR 1954 All 257 (DB).

[Reversed in A I R 1954 S C 728.]

——Art. 19 (6)—Scope—Assam State Road Transport Act — Validity of. See Assam State Road Transport Act (30 of 1954), S. 1. AIR 1957 Assam 139.

——Art. 19 (1) (g)—Motor Vehicles Act (1939), S. 68 (2) (o)—Kerala Motor Vehicles Rules (1961), R. 324 (a) —Validity — Rule does not violate Art. 19 (1) (g) of the Constitution — Restrictions imposed are reasonable and do not impose total prohibition on right of car owners to convey travelling public for hire. See Motor Vehicles Act (1939), S. 68 (2) (o). ILR (1962) 2 Ker 540.

——Art. 19 (1) (g)—Scope—R. 49-A, C. P. and Berar Motor Vehicles Rules—If infringes Article. See Ibid, Art. 14. AIR 1958 Madh Pra 193 (DB).

——Art. 19 (1) (g)—Madras Motor Vehicles Taxation (Amendment) Act (9 of 1962), is not confiscatory in character and hence does not offend Art. 19 (1) (g) of the Constitution. AIR 1965 Mad 349 (351) (Pt A) (Pr 4).

——Arts. 19 (1) (g) and (6) and 14 — Right to carry on trade or business — Reasonable restriction. See Madras Motor Vehicles (Taxation on Passengers and Goods) Act (16 of 1952), Preamble. AIR 1954 Mad 569 (DB).

——Arts. 19 (1) (d), (5), 301, 304; Sch. 7, List 2, Entries 56, 57 — Mysore Motor Vehicles (Taxation on Passengers and Goods) Act (10 of 1961)—Validity —Imposition of tax on passengers and goods carried by person providing transport facilities constitutes restriction on carrying on of trade or commerce — Mysore Motor Vehicles Taxation Act (35 of 1957) does not impose tax on passengers and goods — Tax imposed by impugned Act is not tax imposed on motor vehicles — Restriction imposed by impugned Act is reasonable restriction on the trade activity and is in public interest—Act is valid—AIR 1961 S C 232, Rel. on. 1963 Mys L J (Sup) 31 : AIR 1963 Mys 49 (52, 53, 54, 55, 56, 57, 58) (Pt A) (Prs 8, 10, 11, 20, 21, 23, 27, 33, 35, 38, 39, 42, 46, 47, 50, 51, 56, 57, 58, 59) (DB).

——Art. 19 (1) (g)—Scope—Punjab Motor Vehicles Rules (1940), R. 420 (c)—Validity—Rule authorising R. T. A. to prescribe uniforms for drivers and conductors and attaching it as a condition of permit — Rule, if ultra vires on ground of delegation of legislative powers or violation of fundamental rights under Art. 19 (1) (g). See Motor Vehicles Act (1939), S. 62 (2) (f). AIR 1957 Punj 145.

● ——Art. 19 (1) — Rajasthan Motor Vehicles Act — Validity of. See Rajasthan Motor Vehicles Taxation Act (11 of 1951), S. 4. AIR 1958 Raj 114 (FB).

75. Taxation laws—General.
(a) Income Tax Acts.
(b) Sales Tax Acts.
(c) Miscellaneous.

75. Taxation laws—General.

● ——Arts. 19 (1) (f) and 265—Imposition of tax by statutory authority — Presumption that it has followed prescribed procedure can be raised — Presumption not weakened by long acquiescence in imposition — Imposition of tax not in accordance with law—Effect of—Evidence Act (1872), S. 114.

There is a presumption, when a statutory authority makes an order for imposition of tax, that it has followed the prescribed procedure. The said presumption is not in any way weakned by the long acquiescence in the imposition by the residents of the locality. Nonetheless no tax shall be levied or collected except in accordance with law. If it is not imposed in accordance with law, it would infringe the fundamental right guaranteed under Art 19 (1) (f) of the Constitution. While the long period of time that lapses between the imposition of the tax and the attack on it may permit raising of certain presumptions where the evidence is lost by efflux of time, it cannot exonerate the statutory authority if it imposes a tax in derogation of the statutory provisions. Gopal Narain v. State of U. P., 1964 All L J 479 : AIR 1964 S C 370 (376) (Pt C) (Pr 15).

● ——Art. 19—Assessment order under taxing statute —Statute intra vires—Order based upon misconstruction of provisions of statute and notification thereunder — Validity of such order cannot be questioned under Art. 32—Proper remedy is by way of appeal or under Art. 226. See Ibid, Arts. 226 and 32. AIR 1962 S C 1621.

● ——Arts. 19, 14, 31, 265 and Part 3 (General) — Taxing statute when can be challenged as violating Arts. 14, 19 and 31 — Taxing statute cannot be challenged merely because different rate of taxation are prescribed for different classes of persons or objects. Jagannath Baksh Singh v. State of U. P., (1962) 46 ITR 169: 1962 All L J 799: (1962) 2 S C R 679: 1962 All W R (HC) 649 : AIR 1962 S C 1563 (1570, 1571) (Pt C) (Prs 16, 17, 18).

● ——Arts. 19 (1) (g), 226 and 265 — Taxation law —Ground of challenge.

A challenge to tax law on the mere ground that the tariff imposed by the tax law is heavy cannot be entertained. Jagannath v. Union of India, (1962) 2 S C R 118 : AIR 1962 S C 148 (148) (Pt A) (Pr 1).

● ——Arts. 19 and 265 — Taxation power of State and fundamental rights — (Cochin Abkari Act (1 of 1077 M. E.), Ss. 18, 17 and 69).

An impost not authorised by law cannot possibly be regarded as a reasonable restriction and therefore always infringes the right to carry on business which is guaranteed by Art. 19 (1) (g). AIR 1952 S C 115 and AIR 1955 S C 661, Rel. on. Where in pursuance of an endorsement made by the Government on the reference made to it by the Board of Revenue the excise authorities demanded an additional payment of a commission of 20 per cent. on the sale of liquor from a licencee to whom the licences in question had already been granted under the Cochin Abkari

Act, and the rules framed thereunder in force on the date of the issue of those licences on his paying the annual fee prescribed by R. 7.

Held, that the imposition of a further duty under S. 17, read with S. 18 on the licences for sale obviously amounted to an amendment of the provisions of R. 7. Even if it was possible to regard the endorsement made by the Government on the reference made to it by the Board of Revenue as a rule or notification prescribing the levy of duty, could not be taken to be an order having the force of law. Hence the impost could not be said to be supported by law.

Held, further that if the endorsement in question was not a rule or notification but merely an order not governed by S. 69, an imposition of a fee on licence for sale under S. 18 (d), was illegal. State of Kerala v. Joseph, 1958 S C J 614: 1958 Ker L T 362 : 1958 Ker L J 543 : 1959 S C A 38 : A I R 1958 S C 296 (299, 300) (Pt B) (Pr 7).

● ——Art. 19 (1) (g) — Sales Tax—Imposition of tax without due authority—Infringement of fundamental right — It is open to citizen to approach Supreme Court under Art. 32. See Ibid, Arts. 226 and 32. AIR 1957 S C 790.

[Overruled in AIR 1962 S C 1621.]

● ——Arts. 19 (1) (g), (6) and 32—Illegal impost.

There is a difference between a tax like the income-tax and a license fee for carrying on a business. A license fee on a business not only takes away the property of the licensee but also operates as a restriction on his right to carry on his business, for without payment of such fee the business cannot be carried on at all. If the license fee cannot be justified on the basis of any valid law no question of its reasonableness can arise, for an illegal impost must at all times be an unreasonable restriction and will necessarily infringe the right of the citizen to carry on his occupation, trade or business under Art. 19 (1) (g) and such infringement can properly be made the subject-matter of a challenge under Art. 32. (1951) S C R 127, Disting. Mohammad Yasin v. Town Area Committee, Jalalabad, 1952 S C J 162 : 1952 All L J 313: 1952 Mad W N 492 : 1952 S C R 572 : (1952) S C A 237 : A I R 1952 S C 115 (116) (Pt B) (Pr 7).

——Arts. 19 (1) (g), 265—Heavy taxes—Validity.

If in the exercise of the general policy of taxation each of the units of the federation is empowered to tax on the several items assigned to it respectively, the heaviness of the burden upon an individual, unless it exceeds the constitutional limits, cannot be questioned, prima facie taxation cannot be said to be an abridgment of the fundamental rights. If however, the pith and substance of the legislation is such that the taxes imposed are prohibitive or have the effect of imposing restrictions which are unreasonable and cannot be justified under Cl. (6) of Art. 19, they can be successfully questioned as being unconstitutional. (1958) 2 Andh W R 100 : (1958) 9 S T C 723 : A I R 1958 Andh Pra 558 (563, 564) (Pt C) (Pr 5) (DB).

——Art. 19 (1) (g) — Taxation powers of State and fundamental rights—Arts. 265 and 286 (2).

Per Ram Labhaya, J. — The fundamental right guaranteed to a person under Art. 19 (1) (g) is not wholly free from the taxing power of the State. If the taxation creates no restrictions on trade which are unreasonable and no restriction is placed on a person's right to purchase or sell wherever he pleases and if the law by which a tax is levied is valid and not in excess of the authority vesting in the State or against any provision contained in the Constitution, the imposition or levy cannot be regarded as unconstitutional merely because it imposes a burden on the trade or business of the person. A I R 1952 Mad 395, Rel. on. ILR (1956) 8 Assam 384 : A I R 1956 Assam 177 (184) (Pt E) (Pr 29) (DB).

[Reversed on another point in A I R 1962 S C 107.]

——Arts. 19 (1) (g) and 265—Reasonable restrictions—Taxation—Oppressiveness—Reasonable safeguards.

A Legislature has the power of imposing taxation and it is no good saying that the taxation is oppressive. This is not a matter which concerns the Court. The power to levy a tax would include the power to impose reasonable safeguards in collecting it. (1957) 8 S T C 105 : A I R 1956 Cal 596 (599) (Pt D) (Pr 12).

——Arts. 19, 301, 304, 265 — Levy of fee—Distinction between fee and tax—Gujarat Denatured Spirituous Preparations Rules (1962), R. 37 — Validity — Rule 37 is invalid under Arts. 301, 304 and 19.

Two essentials are necessary to constitute a fee, (1) the existence of the element of quid pro quo and (2) the necessity of ear-marking and setting apart the collections of such an impost to meet the expenses of services for which it is levied and not merging them into the consolidated funds meant for utilization for all public purposes. Cases may arise where under the excuse of levying a fee the Legislature may attempt to impose a tax. In the case of such colourable exercise of legislative power, Courts would have to scrutinise the scheme of the levy very carefully and determine whether in fact there is a co-relation between the service and the levy, or whether the levy is either not co-related with service or is levied to such an excessive extent as to be a pretence of a fee and not a fee in reality. In other words, whether or not particular cess levied by a statute amounts to a fee or a tax would always be a question of facts to be determined from the circumstances of each case. The expression 'vend fee' in R. 37 is an inappropriate expression for there cannot be a vend fee in respect of goods imported by a trader into the State of Gujarat. The cess under R. 37 was neither set apart as a separate fund for the rendition of services to those applying for import passes, nor were its collections earmarked for such a purpose and they were in fact merged in the general consolidated fund which is utilised by means of proper appropriations for all general public purposes. Under these circumstances, it is impossible to say that the levy amounts to a fee. If this levy is held to be a tax and not fee, it was beyond the competence of the legislature and much more so of the State executive. Rule 37, in so far as it seeks to levy such a vend fee, would therefore, be invalid, even on the assumption that the Legislature authorised, under S. 53 of the Act, the State Government to levy such a cess. The fixing of seventy-five naya paise per gallon of imported French Polish and Varnish was arbitrary and without any co-relation between that amount and the costs of services to be rendered. A provision for imposition of such a levy as seventy-five naya paise per gallon of polish and varnish worked out in the case of the petitioners who asked for an import pass for 1500 gallons a month at Rs. 1125/- per month. Such an imposition was bound to unduly tilt the balance in business and trade in favour of local manufacturers as against those from outside the State. Such an impost must obviously be regarded as an impediment and an obstruction against the free flow of inter-State trade and commerce. Therefore such an imposition was a colourable exercise of the right to levy fee and amounted in fact to an imposition of tax. The imposition of such a levy as seventy-five naya paise per gallon on imported French Polish and Varnish without any proportion or co-relation with the expenses that may have to be incurred by the State while rendering services to the importers amounted also to an impediment or an obstruction in the way of freedom of trade and com-

merce guaranteed by Art. 301 and was not protected by the provisions of Art. 304 (b) as such an imposition fixed arbitrarily was unreasonable. Such an imposition was beyond the competence of the State Legislature and the State Government as it was an imposition as and by way of a tax and was in violation of Art. 301 and was unreasonable and excessive, both under Art. 304 and Art 19 (1) (f) and (g), and must, therfore, be declared to be invalid. A I R 1954 S C 282 ; AIR 1954 S C 388, AIR 1954 S C 400, AIR 1961 S C 459 and AIR 1962 S C 204, Rel. on. (1963) **4 Guj L R 1033 : ILR (1964) Guj 96 : AIR 1964 Guj 59 (78, 80) (Pt I) (Prs 36, 36a, 37, 38) (DB).**

——Art. 19—Applicability to taxing statute — Taxing statutes are also to be tested in the light of the fundamental rights guaranteed under Part III of the Constitution—Even a taxing statute must be struck down as unconstitutional, if it infringes the provisions of Art. 14. See Ibid, Art. 14. A I R 1963 Ker 31.

——Art. 19 (1) (f) and (g) — Taxation laws—Tax on motor vehicles — Differential treatment to motor vehicles plying in different areas on account of difference in density of traffic and road conditions — Discrimination not opposed to Art. 14 — No violation of Art. 19 (1) (f) and (g). See Ibid, Art. 14. A I R 1961 Ker 72 (DB).

——Arts. 19 (1) (g) and (6), 265 — Power of taxation and fundamental rights.

If a tax were a restriction which could be legally imposed on a business, the right to carry on which was guaranteed by the Constitution, the validity of the tax cannot be judged by standards applicable to regulations or restrictions imposed on the manner of carrying on the business restrictions which flow from the nature of the commodity or the repercussions of an unregulated trade on the health, morality or safety of the public. Taxation is the supreme function of the State, the exercise of a power which is necessary for the very existence and maintenance of the State. The restraints imposed by taxation are wholly beyond the scope of Art. 19 (6) and therefore not subject to the tests of a valid legislation under that provision. **70 Mad L W 770 : (1957) 8 S T C 690 : (1957) 2 Mad L J 469 : ILR (1958) Mad 35 : A I R 1958 Mad 158 (168, 169) (Pt D) (Pr 42) (DB).**

——Arts. 19 (1) (f), (5), 39 — Wealth Tax Act (1957) — Validity — Does not contravene Art. 19.

Though taxation laws may not be hit by Art. 31 (2) of the Constitution nevertheless they must satisfy the requirements of Arts. 14 and 19. But in considering whether the restrictions are reasonable or not, the Court must have due regard to the Directive Principles of State Policy. Hence once it is held that the levy of wealth tax is for a public purpose i.e., for preventing the concentration of wealth in a few hands, even periodical levy of the tax annually for that purpose with a view to implement the provisions of Art. 39 (c) of the Constitution must be held to be a reasonable restriction, subject to the limitation that the tax is not oppressively burdensome or confiscatory in nature. Then again, the refusal to recognise a transfer in favour of wives and minor children living with the assessees where such transfer is not for adequate consideration (though otherwise valid) must be held to be a reasonable restriction having regard to the main object of preventing large scale evasion of the tax. Doubtless, if such transfers have been ignored for all purposes the restriction may be held to be unreasonable. But S. 4 only refuses to recognise such transfers for the limited purposes of assessment of wealth tax. The transfers are valid for other purposes. By expressly excluding those transfers made for adequate consideration or made in favour of a wife who is living separate from the husband—assessee, the apparent unreasonableness of the restriction is removed. AIR 1962 S C 1006 AIR 1962 S C 1563 and AIR 1964 S C 587, Rel. on. **ILR (1964) Cut 1 : 30 Cut L T 299 : (1965) 56 I T R 298 : 1963 I T J (Sup) 146 : AIR 1964 Orissa 128 (133) (Pt E) (Pr 15) (DB).**

——Arts. 19 (6) and 265 — Tax and licence fee — Distinction.

A licence fee is an imposition or exaction on the right to use or dispose of property, to pursue a business, occupation or calling or to exercise a privilege. A licence fee is imposed primarily with the object of reimbursing the State for the services rendered by it, while a tax is exacted with the object of providing revenue for the State and enabling it to carry on the duties of Government.

It is necessary also to ascertain the power, whether regulatory or taxing, under which the amount is demanded and the purpose for which the demand is made. The amount of the imposition or exaction must be also taken into consideration.

The amount of licence fee need not be confirmed to the mere expenses of issuing the licence but may include any reasonably proper cost of supervision, inspection, examination and regulation of the business, in respect of which the licence is issued. It is not possible to lay down any hard and fast rules for the purpose of determining whether a particular fee is reasonable or otherwise. **58 Punj L R 480 : ILR (1957) Punj 184: AIR 1957 Punj 45 (47) (Pt A) (Prs 4, 5, 6, 7) (DB).**

——Arts. 19 (6) and 19 (1) (g), 265, 276 and Sch. 7, List 3, Entry 36 — Tax and Fees distinction pointed out — Effect of agreement between former Marwar State and applicant on power of Rajasthan State to levy renewal fees — Levy is not unreasonable and is not void under Art. 19 (1) (g) read with Cl. 6 — Fees are justified under Entry 36, List 3 of Sch. 7—Factories Act (1948), Ss. 6 and 112 — Rules under — Validity. AIR 1954 Raj 178 (179, 180, 181) (Prs 4, 7, 8, 9, 12, 13, 14) (DB).

——Art. 19 (1) (g) — Bus stand fee — Fee and tax — Distinction. See Ibid, Art. 226. AIR 1955 NUC (Trav-Co) 4127.

75 (a). Income-tax Acts.

● **——Art. 19 (1) (g) — Validity of Ss. 2 (6-A) (e) and 12 (1-B), Income-tax Act (1922) — Provisions do not contravene Art. 19 (1) (g). See Income-tax Act (1922), S. 2 (6-A) (e). AIR 1965 S C 1375.**

● **——Art. 19 (1) (f) — Validity of Ss. 2 (6-A) (e) and 12 (1-B) of Income-tax Act, 1922 — Provisions do not contravene the Article. See Income-tax Act (1922), S. 2 (6-A) (e). AIR 1965 S C 1375.**

● **——Art. 19 (5) — Income-tax Act (1922), S. 16 (3) (a) (i) and (ii) — Validity — Test of reasonableness of restriction — Section 16 (3) amounts to reasonable restriction on rights under Art. 19 (1) (f) and 19 (1) (g) See Income-tax Act (1922), S. 16 (3) (a) (i). AIR 1962 S C 123.**

● **——Art. 19 — Madras Revenue Recovery Act, S 48 — Validity — Arrest and imprisonment of defaulter — Nature of — Validity of S. 46 (2) and S. 48 of Madras Act. See Income-tax Act (1922), S. 46 (2). AIR 1957 S C 688.**

● **——Art. 19 (1) (g) — Income-tax (1922), Ss. 5 (7-A) and 64—Constitutionality of — Whether discriminatory — Whether unreasonable restriction on fundamental right to carry on trade — Abuse of power — Remedy of aggrieved party. See Ibid, Art. 14. AIR 1957 S C 397.**

——Art. 19 (1) (g) — Compulsory Deposit Scheme Act (1963) — Validity — Act does not contravene Art. 19 (1) (g).

It cannot be contended that the Compulsory Deposit Scheme Act, 1963 which was, so to speak, in lieu of Additional Surcharge was violative of the principles laid down in Art. 19 (1) (g) of the Constitution. The Compulsory Deposit Scheme now applies to those who are subject to additional surcharge and if an inducement is held out to them to make deposits regularly for which a corresponding rebate from additional surcharge is to be given, it cannot per se infringe any Article of the Constitution. It cannot be said that by such inducement in making the compulsory deposit, Government was discriminating between persons other than salaried employees from carrying on freely their profession, occupation or trade. The Compulsory Deposit Scheme applies to a well defined class and the Finance Act of 1963 cannot be said to place any restriction on the free exercise of any profession, trade or occupation. **(1965) 1 I T J 63: (1965) 57 I T R 749 : AIR 1965 All 37 (38) (Pt C) (Pr 8).**

——Art. 19 (1) (f) — U. P. Agricultural Income-tax Act (3 of 1949), S. 6 (1), Proviso 1 — Validity—Question of infringement of Art. 19 (1) (f) does not arise. See U. P. Agricultural Income-tax Act (3 of 1949), S. 6 (1), Proviso 1. **AIR 1953 All 25 (DB).**

——Arts. 19 (1) (f), 31 and 265 — Applicability — Validity of taxing statute — Test —Section 46 (5-A) of Income-tax Act — Validity.

Constitutionality of S. 46 (5-A), Income-tax Act cannot be challenged on the ground that it violates Art. 19 (1) (f) of the Constitution. The validity of the law which provides for a levy or collection of a tax cannot be tested with reference to Art. 19 of the Constitution.

The protection against imposition and collection of taxes arises directly from Art. 265 and is not secured by Cl. (1) of Art. 31. The power of taxation is regarded as distinct from the exercise of police power or eminent domain. The limitations imposed on the exercise of police powers under Art. 19 cannot be placed on the exercise of the taxing power of the State. The result of acting under S. 46 (5-A), Income-tax Act is to deprive the assessee of his property and not only to regulate the use of the property or to restrain the right to hold and possess the property. Such a law, if at all, is one dealing with the deprivation of property and will thus be outside the scope of Art. 19. AIR 1957 S C 688, Applied. It cannot be said that S. 46 (5-A) gives an unfettered discretion to the Income-tax Officer and is therefore violative of Art. 19 being an unreasonable restriction on the right of the assessee to hold or possess property. **(1961) 41 I T R 80 : AIR 1960 Assam 76 (84, 85, 86) (Pt E) (Prs 14, 15, 18, 19, 20, 21) (DB).**

● ——Art. 19 (1) (g)—Income-tax Act (1922), S. 37 (2) —Validity — Section does not violate Art. 19 (1) (f) and (g) of the Constitution. See Income-tax Act (1922), S. 37 (2). **A I R 1961 Cal 578 (SB).**

——Art. 19 (1) (f) — Bengal Agricultural Income-tax Act, S. 56—Validity. See Bengal Agricultural Income-tax Act (4 of 1944), S. 56. **A I R 1959 Cal 490 (DB).**

——Art. 19 (1) (f)—Income-tax Act (1922), S. 23-A—Constitutionality of — S. 23-A, Income-tax Act does not offend Arts. 14, 19 (1) (f) and 31 of the Constitution. **(1961) 41 I T R 21 (Mad).**

[Overruled on another point in A I R 1964 S C 1804,]

——Arts. 19, 14 — Income-tax Act (1922), S. 23-A (as enacted in 1939)—S. 23-A does not offend Art. 14 or any other fundamental right. See Ibid, Art. 14. **A I R 1957 Mad 133.**

——Art. 19 (1) (f) and (g) — Section 16 (3) (a) (1) of Income-tax Act, 1922—Does not offend against Art. 19 (1) (f) and (g). See Income-tax Act (1922), S. 16 (3) (a) (i). **(1965) 2 I T J 820 : A I R 1966 Pat 187.**

——Art. 19 (1) (g)—Income-tax Act (1922), Ss. 16 (3) (a) and 16 (3) (b) — Sections do not violate Art. 14 or Art. 19 (1) (f) and 19 (1) (g) of Constitution. See Income-tax Act (1922), S. 16 (3) (a). **A I R 1965 Pat 114 (DB).**

75 (b). Sales Tax Acts.

● ——Arts. 19 and 31—Civil P. C. (1908), S. 9—Sales Tax—Bombay Sales Tax Act (5 of 1946), S. 20 — Suit of civil nature — Such suit barred expressly or impliedly by statute — Sales tax recovered from dealer under mistake of fact and law—Suit to recover tax so recovered — Contention raised that S. 20 of Bombay Sales Tax Act, 1946 was not bar to such suit and if a bar was constitutionally invalid—Held S. 20 was bar to such suit—Section 20 was also held constitutionally valid. A I R 1947 P C 78, Rel. on ; A I R 1955 S C 661, Ref.; A I R 1964 S C 322, Foll. Kamala Mills Ltd. v. State of Bombay, **(1965) 16 S T C 613 : (1965) 2 S C A 233 : 1965 Kant L J 77 : (1965) 57 I T R 643 : (1965) 2 S C W R 485 : A I R 1965 S C 1942 (1946, 1947, 1949, 1950, 1951, 1952, 1953) (Pt C) (Prs 13, 22, 26, 30, 32, 36, 38).**

● ——Art. 19 (1) (g) — Orissa Sales Tax Validation Act (7 of 1961), S. 2—Not unconstitutional on ground that it imposes unreasonable restriction on fundamental right under Art. 19 (1) (g). See Sales Tax—Orissa Sales Tax Validation Act (7 of 1961), S. 2. **A I R 1964 S C 1581.**

● ——Arts. 19 (1) (f) and 19 (1) (g) — M. B. Sales of Motor Spirit Taxation Act (20 of 1953)—Act is not beyond the legislative competence of the State of Madhya Pradesh — Levy of tax not an infringement of fundamental rights under Art. 19. See Ibid, Art. 286. **1963 Mah L J 493 : (1964) 1 S C R 488.**

● ——Art. 19 (1) (g) — Vegetables— Meaning — Pan (betel leaves) not included — Conditional exemption of pan from sales tax on payment of annual fee not violative of Arts. 14 and 19 (1) (g) of Constitution—Rajasthan Notification, dated 1-4-1958—Validity. See Sales Tax—Rajasthan Sales Tax Act (29 of 1954), S. 4 (2). **A I R 1963 S C 351.**

● ——Art. 19 (1) (f) — Sales Tax — Assam Sales Tax Act (17 of 1947), S. 15 — Amendment introduced by S. 2 of Assam Act 13 of 1960 deleting sub-s. (b) of Item (i) of sub-cl. (b) of Cl. (1) is not illegal. See Sales Tax—Asssm Sales Tax Act (17 of 1947), S. 15. **1962 (Supp) 2 S C R 589.**

● ——Arts. 19 (6) (1) (g), 245 and 226—Sales Tax—Bengal Finance (Sales Tax) Act (1941) (as amended by Bengal Finance (Sales Tax) (Delhi Amendment) Act 17 of 1956), S. 8-A, as in force in Delhi—Powers conferred on Commissioner are not unlimited and unrestricted — Provision for demanding security is not arbitrary or unreasonable restriction — Amount of security — Power to demand is not constitutionally invalid. See Sales Tax — Bengal Finance (Sales Tax) Act (1941) (as amended by Bengal Finance (Sales Tax) (Delhi Amendment) Act 17 of 1956), S. 8-A. **(1962) 1 S C R 283.**

● ——Art. 19 (6) and (1) (g) — Madras Sales of Motor Spirit Taxation (Andhra Pradesh Extension and Amendment) Act (5 of 1958), Ss. 4 (1) and (6) and 26—Rule 14 framed under S. 26—Sub-sections (1) and (6) are constitutional and do not violate Art. 19 (1) (g) of the Constitution—Restrictions imposed are reasonable within Art. 19 (6). See Madras Sales of Motor Spirit Taxation (Andhra Pradesh Extension and Amendment) Act (5 of 1958), S. 4 (1). **A I R 1961 S C 1471.**

●——**Art. 19 (1) (f), Sch. 2, List II, Item 54 — Sales tax legislation — Orissa Sales Tax Act (1947) (as amended by Act 28 of 1958), S. 14-A—Validity.**

The Orissa Sales Tax (Amendment) Act (28 of 1958), which incorporates S. 14-A, depriving the assessees of the common law right to claim refund of amounts paid as tax under an error of law and providing that refund shall be claimable only by the person from whom the dealer has actually realised the amounts by way of sales-tax, is not beyond the competence of the State Legislature. Nor is it void on the ground that it imposes an unreasonable restriction upon the assessee's fundamental right guaranteed under Art. 19 (1) (f) of the Constitution.

Assuming that by enacting that refund of tax shall only be made to the purchasers from whom the tax has been collected by the dealers and not to the dealers who had paid the tax the fundamental right of the dealers under Art. 19 (1) (f) is restricted and the restriction imposed by S. 14-A of the Act is in the interest of the general public. Orient Paper Mills, Ltd. v. State of Orissa, (1961) 12 S T C 357 : (1961) 1 Ker L R 567 : 27 Cut L T 361 : 1961 S C D 655 : (1962) 1 S C A 289 : (1962) 1 S C R 549 : (1961) 2 S C J 610 : A I R 1961 S C 1438 (1439, 1440) (Prs 5, 6, 7).

——**Art. 19 (1) (g)**—U. P. Sales Tax Act (15 of 1948), S. 8-A (6) — Second Proviso — Restriction in proviso attached to filing of revision is not restriction against freedom to carry on business — Hence proviso is not ultra vires. (1964) 15 S T C 631 : A I R 1965 All 124 (125) (Pr 6) (DB).

——**Arts. 19 (1) (g) and (f) and 226**—Imposition of sales tax—Infringement of fundamental right—Validity of Sales Tax Law challenged—Relief through writ petition is a more proper remedy — Existence of alternative remedy, no bar to issue of writ. See Ibid, Art. 226. **A I R 1964 All 284.**

——**Arts. 19 and 265 — Applicability — Taxing measure — (Madras Sales of Motor Spirit Taxation Act (6 of 1939))—Validity.**

A taking measure cannot be tested on the touchstone of Art. 19. The only test to be satisfied in regard to taxing legislations is that laid down in Art. 265. So long as that is not violated, the taxing statute cannot be challenged. That apart, it is surely open to the legislature to impose certain restrictions on the rights guaranteed to a citizen under Art. 19. A trader cannot claim to carry on his trade without payment of taxes. Such a taxing provision is valid and enforceable as incidental to the power to levy and collect tax and it is not designed to unduly restrict the right of a citizen to carry on his business. A I R 1951 S C 97, Foll. **I L R 1960) 1 Andh Pra 232 : A I R 1960 Andh Pra 246 (253) (Pt C) (Prs 34, 35) (DB).**

——**Art. 19 (1) (g)**—Validity of Assam Sales Tax Act. See Sales Tax — Assam Sales Tax Act (17 of 1947), S. 1. **A I R 1955 Assam 113 (DB).**

——**Art. 19 (1) (a) — Bombay Sales Tax Act (24 of 1952), is ultra vires of the State Legislature. ('53) 55 Bom L R 246 (DB).**

[**Reversed** on another point in A I R 1953 S C 252.]

——**Art. 19 (1) (g)—Bengal Finance (Sales Tax) Act (6 of 1941), S. 5 (1) — Illegal tax on sales — Contravenes Art. 19 (1) (g).**

An ultra vires or illegal imposition on sales constitutes an infringement of the seller's fundamental right guaranteed by Art. 19 (1) (g). A I R 1954 S C 403 and A I R 1953 S C 252 and A I R 1961 S C 65, Rel. on. **A I R 1965 Cal 498 (506) (Pt I) (Pr 55).**

——**Art. 19 (1) (g)**—Cotton fabrics declared goods of special importance — Imposition of sales tax under S. 5 (1) of Bengal Act 6 of 1941, in excess of 2% laid down in S. 15 of Central Act, was ultra vires, till the time the former section was amended to conform with latter section. See Sales Tax — Bengal Finance Sales Tax Act (6 of 1941), S. 5 (1) (as it stood prior to its amendment by Act 13 of 1959). **A I R 1965 Cal 203.**

——**Arts. 19 (1) (f) and (g), 19 (5) — Bengal Finance (Sales Tax) Act (6 of 1941) (as amended by Bengal Act 19 of 1954), S. 17—Validity—Does not infringe Art. 19 (1) (f) or (g).**

Section 17 imposes reasonable restrictions in the interests of the general public on the exercise of the right of the transferee to carry on the business transferred to him and to hold it. The section on its true construction does not render the transferee punishable under S. 22 for the acts and omissions of the original dealer. The restrictions imposed by the section are not unreasonable. Section 17 is not therefore an infraction of the fundamental rights guaranteed by Art. 19 (1) (f) and (g) of the Constitution and the law is saved by Art. 19 (5) of the Constitution. **67 Cal W N 510 : (1964) 15 S T C 277 : A I R 1963 Cal 578 (580, 581) (Pt C) (Pr 12) (DB).**

——**Art. 19 (1) (g) — Bengal Sales Tax Rules, R. 27A —Whether infringes Art. 19 (1) (g) of Constitution.** See Sales Tax - Bengal Finance (Sales Tax) Act (6 of 1941), S. 5 (2) (a) (ii) Proviso. **(1962) 13 S T C 138 (Cal).**

——**Arts. 19 (1) (g) and 19 (6) — Exemption under S. 5 (2) (a) (ii), Bengal Finance (Sales Tax) Act — Precondition — Whether unreasonable restriction —** See Sales Tax — Bengal Finance (Sales Tax) Act (6 of 1941), S. 5 (2) (a) (ii). **(1959) 10 S T C 241 (Cal).**

——**Art. 19 (1) (g) — S. 7 (4), Bengal Finance Sales Tax Act — If repugnant to article.** See Sales Tax — Bengal Finance Sales Tax Act (6 of 1941), S. 7 (4). **(1957) 8 S T C 517 : ILR (1958) 2 Cal 285.**

——**Art. 19 (1) (g) — Reasonable restrictions — S. 7 (4-A), Bengal Finance (Sales Tax) Act (6 of 1941) — If ultra vires.**

As S. 7 (4-A) has been enacted, there are two limitations expressly mentioned therein. First of all, the Commissioner can only demand security "for good or sufficient reasons." The reason must be good or sufficient objectively and the matter is justiciable. The second limitation is that it must be "reasonable security." This again means that if there is a good or sufficient reason, then the security demanded must be compatible with a reason. If the security is arbitrary, or unconnected with the reason, which has impelled the Commissioner to demand security, or disproportionately large then it will be bad. Section 7 (4A) therefore does not confer unfettered and arbitrary power upon the Commissioner and the restriction imposed by it are reasonable restrictions and do not contravene the provisions of Art. 19 (1) (g) of the Constitution. It is not ultra vires. **(1957) 8 S T C 105: AIR 1956 Cal 596 (599) (Pt C) (Pr 12).**

——**Art. 19 (1) (g) — (Kerala) General Sales Tax (Amendment) Act (14 of 1959) — Validity.** See Sales Tax—(Kerala) General Sales Tax Act (11 of 1125 ME), S. 3 (1) (b). **AIR 1961 Ker 36 (DB).**

——**Art. 19 (1) (f) — Mysore Sales Tax Act (25 of 1957), S. 18 (3)—Legislation providing for forfeiture of amount collected as sales tax in contravention of statute — Validity — Provision in S. 18 (3) of the Act violates Art. 19 (1) (f) and is void.** AIR 1958 S C 328, Applied. **40 Mys L J 514 : (1962) 13 S T C 322 : AIR 1962 Mys 183 (185) (Pr 13) (DB).**

——**Arts. 19 (1) (f), 226, 245 and 254, Sch. 7, List 2 Entry 54—Bihar Sales Tax Act (19 of 1959), S. 20-A — Validity — Dealer has no right to challenge its**

validity on ground of violation of Art. 19 (1) (f) of the Constitution — S. 20-A is valid and intra vires the State Legislature.

Section 20-A of the Bihar Sales Tax Act, 1959 is intra vires the State Legislature under Sch. 7, List 2, Entry 54 of the Constitution and is a valid legislation. The provisions of S. 20-A of the Act and S. 14A, Orissa Sales Tax Act are in pari materia. There is no material distinction between them. Consequently, the Supreme Court decision in AIR 1961 S C 1438 would apply equally in determining the validity of S. 20-A relating to refund of unauthorised collection of sales tax. AIR 1964 S C 922, Dist.

Section 72, Contract Act and S. 20-A of the Bihar Act are not in conflict. Section 20-A cannot be challenged as a colourable piece of legislation. The provision in S. 20-A of the Bihar Act which enacts that the application for refund must be filed within the period of limitation allowed by law cannot be struck down as invalid. **1965 B L J R 431 : AIR 1966 Pat 54 (57, 58, 59, 60) (Prs 8, 9, 10, 12) (DB).**

75 (c). Miscellaneous.

● —Art. 19 (1) (f)—Central Provinces Local Self-Government Act (4 of 1920 as amended by C. P. Act (7 of 1933), Ss. 51, 79(1)(xv)—Rules under S. 79 framed by Local Government, Rr. 3, 7, 8, 9—Validity — Impost of tax under S. 51 — Art. 19 (1) (f) not violated. See Central Provinces Local Self-Government Act (4 of 1920 as amended by C. P. Act 7 of 1933), S. 51. **AIR 1964 S C 1013.**

● —Art. 19 (1) (g) — Assam Taxation (on Goods Carried by Road or on Inland Waterways) Act (10 of 1961), S. 34 — Validity—Does not prohibit remedy by way of appeal or revision — Section not discriminatory or otherwise invalid. See Assam Taxation (on Goods by Road or on Inland Waterways) Act (10 of 1961), S. 34. **AIR 1964 S C 925.**

● —Art. 19 — Assam Taxation (on Goods Carried by Road or on Inland Waterways) Act (10 of 1961), S. 3 — Validity — Determination of validity of tax laws — Powers of Court — Considerations involved — Tax under S. 3 of Assam Act imposed only on tea and jute—Tax not unconstitutional. See Assam Taxation (on Goods Carried by Road or Inland Waterways) Act (10 of 1961), S. 3. **AIR 1964 S C 925.**

● —**Arts. 19 (1) (f) (g), (5) and (6) and 304 (b) and Sch. 7, List 2, Entry 56—Bihar Taxation on Passengers and Goods (Carried by Public Service Motor Vehicles) Act (Bihar 17 of 1961), S. 3 — Validity of Bihar Act 17 of 1961—Retrospective effect of Act — Act competently enacted within Entry 56 of List 2 —It is reasonable and valid within ambit of Arts. 19 (5) and (6) and 304 (b).**

Where in its essential features a taxing statute is within the legislative competence of the Legislature which passed it by reference to the relevant entry in the List, its character is not necessarily changed merely by the retrospective operation so as to take the said retrospective operation outside the legislative competence of the said Legislature.

The Bihar Finance Act, 1950 (Bihar 17 of 1950) was declared by the Supreme Court as unconstitutional. Thereafter an Ordinance, namely, Bihar Ordinance No. 2 of 1961 was issued by the State of Bihar. By this Ordinance, the material provisions of the earlier Act of 1950 which had been struck down by the Supreme Court were validated and brought into force retrospectively. Subsequently, the provisions of the said Ordinance were incorporated in the Act, namely, the Bihar Taxation on Passengers and Goods (Carried by Public Service Motor Vehicles) Act, 1961 (Bihar 17 of 1961). As a result of the retrospective operation of this Act, its material provisions were deemed to have come into force on April 1, 1950, the date on which the earlier Act of 1950 had come into force. The appellants challenged the validity of this Act of 1961.

Held (i) that as the scheme of S. 3 for the levy and recovery of the tax was valid under Entry 56 of List 2 of Sch. 7 so far as future recoveries were concerned, it was not easy to see how it could be said that the character of the tax was radically changed in the present circumstances. The tax recovered retrospectively like the one which would be recovered prospectively still continued to be a tax on passengers and it adopted the same machinery for the recovery of the tax both as to the past as well as to the future; (ii) that the nature of the tax in the present case was the same both in regard to prospective and retrospective operations. The argument that the retrospective operation of the Act was beyond the legislative competence of the Bihar Legislature must, therefore, be rejected; having regard to all the relevant facts of this case, the restrictions imposed by the said retrospective operation must be held to be reasonable and in the public interest under Art. 19 (5) and (6) and also reasonable under Art. 304 (b); (iii) that Part 13 of the Constitution contained provisions which constitute a self-contained Code and the Court need not really travel outside the said provisions in determining the validity of the tax imposed by the Bihar Act. Rai Ramkrishna v. State of Bihar, **(1964) 1 S C A 413: ILR 42 Pat 796 : (1964) 1 SCR 897 : (1964) 2 S C J 749 : (1963) 50 ITR 171 : AIR 1963 S C 1667 (1673, 1674, 1675, 1676, 1677)(Pt F)(Prs 13, 15, 17, 20, 21).**

● —Art. 19 — Central Excises and Salt Act (1944), Sch. I, Item 17 — Levy of excise duty on footwears under Item 17 is not discriminatory — It is valid and cannot be attacked under Arts. 19 and 31 of Constitution. See Ibid, Art. 14. **AIR 1963 S C 104.**

● —**Art. 19 (1) (f)** — U. P. Large Land Holdings Tax Act (31 of 1957), S. 5 (1) and Schedule — Constitutional validity — Not void on ground of contravention of Arts. 14, 19 (1) (f) and 31 (2) of the Constitution — Constitution of India, Arts. 14, 19 (1) (f) and 31 (2). See U. P. Large Land Holdings Tax Act (31 of 1957), S. 5 (1) and Schedule. **A I R 1962 S C 1563.**

● —**Art. 19 (1) (f) and (g)** — Section 178-A, Sea Customs Act (1878)—Validity — S. 178-A is valid — A I R 1962 S C 316, Foll. Pukhraj v. D. R. Kohli, Collector of Central Excise, Madh. Pra., **65 Bom L R 281 : 1963 M P L J 460 : 1963 Mah L J 468 : (1964) 1 S C J 281 : 1964 Mad L J (Cri) 161 : (1962) Supp 3 S C R 866 : AIR 1962 S C 1559 (1560) (Pt A) (Pr 2).**

—**Art. 19 (1) (g)—Scope — Retrospective effect of U. P. Sugarcane Cess Act (22 of 1956)—It infringes Art. 19 (1) (g).**

The fact that, as a consequence of the cess being made retrospective the petitioner may now have to pay in one year a sum of money, representing accumulations of tax for past year does not infringe Art. 19(1)(g). The argument is tantamount to saying that a heavy tax is unconstitutional. It cannot be argued that the retrospective operation of the provisions of the impugned Act is oppressive and constitutes an unreasonable restriction on the petitioners' right to carry on their trade or business. **A I R 1957 All 159 (166) (Pt K) (Prs 37, 39) (DB).**

—**Art. 19 (6) and (1) (g)**—Municipalities — Calcutta Municipal Act (1951), S. 548 (2) — Imposition under, if violates fundamental right under Art. 19 (1) (g). See Municipalities — Calcutta Municipal Act (33 of 1951), S. 548 (2). **AIR 1959 Cal 45.**

—**Art. 19 (1) (f)**—Tax law — Tax on land — Classification of lands ultimately resulting in uniform levy per acre without any relation to income — Ab-

sence of quasi-judicial approach in matter of assessment, levy and collection of tax — Constitutional validity — Kerala Land Tax Act (13 of 1961), Ss. 5, 6, 7, 9, 10, 11, 17 and 19—Kerala Land Tax Rules (1961) — Entire Act and Rules framed thereunder declared unconstitutional—Interpretation of Statutes—Unconstitutionality of Legislation — Severability, question relating to — If Rules framed alone can be struck down. See Ibid, Art. 14. **AIR 1963 Ker 155.**

——**Art. 19 (1) (g)** — Scope — Travancore-Cochin Entertainment Tax (Validation of Levy and Collection) Act, 1955 — Validity. See Travancore-Cochin Entertainment Tax (Validation of Levy and Collection) Act (26 of 1955), S. 3. **AIR 1959 Ker 43 (DB).**

——**Arts. 19 (1) (g), 23 and 304** — Madhya Pradesh Motor Vehicles (Taxation of Passengers) Act, 1959 (M. P. Act 17 of 1959), S. 3 — Tax imposed by M. P. Act — It is imposed on passengers and not on operators of motor vehicles — The Act is valid—It does not offend Arts. 19, 23 and 304 **1962 M P C 31 : 1962 Jab L J 214 : 1962 M P L J 633 : I L R (1963) Madh Pra 45 : AIR 1962 Madh Pra 108 (110) (Pt A) (Pr 6) (DB).**

——**Art. 19**—Mysore Buildings Tax Act (1963), S. 4—Classification based on floorage of building, not rational — Classification has no just relationship with object of Act—Act violates fundamental rights under Arts. 14 and 19 of Constitution. See Ibid, Art. 14. **AIR 1965 Mys 170 (DB).**

——**Art. 19 (1) (f) and (g)** — Constitutional validity of Bihar and Orissa Municipal Act (7 of 1922), S. 82 (1) (ff) — Unrestricted power to subordinate body (Municipality) to impose professional tax at whatever rate it chooses—Not unreasonable and arbitrary. See Municipality — Bihar and Orissa Municipal Act (7 of 1922), S. 82 (1) (ff). **1965 B L J R 886.**

● ——**Art. 19** — Bihar Finance Act (17 of 1950) — Part III—Validity — Provisions of, do not contravene Arts. 14, 19, 23 or of Part XIII of the Constitution — (Constitution of India, Arts. 14, 19, 23, 246, Part XIII). See Bihar Finance Act (17 of 1950), Part III. **AIR 1952 Pat 359 (SB).**

——**Art. 19**—Section 6 (4) of Punjab Act (16 of 1952) not ultra vires on ground that it confers uncontrolled or unregulated power to reopen past assessment. See Punjab Passengers and Goods (Taxation) Act (16 of 1952), S. 6 (4). **AIR 1964 Punj 438 (DB).**

— Arts. 19 (6), 265 and 266—Tax or fees—Income from licence fees imposed under Punjab Act (12 of 1954) collected and received in treasury—Nature of —"Revenues" in Art. 266—Meaning—Licence fee if forms part of Consolidated Fund.

From the fact that the income derived from the licences issued under the Punjab Tobacco Vend Fees Act of 1954 is collected and received into the treasury of the State and is not earmarked for the administration of the Act, it cannot be said that the imposition ceases to be of the nature of the fees. It is not possible for any income from fees being kept out of the treasury and utilized for a particular purpose, for Art. 266 of the Constitution declares that all revenues received by the Government of a State shall form one consolidated fund to be entitled "the Consolidated Fund of the State". The expression "revenues" appearing in this article has not been defined but there can be no manner of doubt that it means 'the income of the nation derived from its taxes, duties or other sources for the payment of the nation's expenses'. If all the income of the State must, in view of the constitutional requirements, be credited to and form part of the Consolidated Fund of the State, it is obvious that the income derived by the State from the imposition of licence fees cannot be kept out of the general revenues or be earmarked for special purposes. **58 Pun L R 480 : I L R (1957) Punj 184 : A I R 1957 Punj 54 (48) (Pt C) (Pr 11) (DB).**

[**Overruled** in AIR 1962 Punj 267 (FB).]

——**Arts. 19 (1) (g), 245 and Sch. 7, List 2, Entry 56** — Punjab Passengers and Goods Taxation Act (15 of 1952) (as amended by Punjab Act (21 of 1952)), Ss. 3, 4, 8, 9 and 10—Act is not 'ultra vires'—Ss. 3, 4, 8 and 9 are valid—S. 10 is invalid. **A I R 1955 N U C (Punj) 1887.**

76. Right to strike.

● ——**Arts. 19 (1) (a), (b), 309**—Central Civil Services (Conduct) Rules (1955), R. 4-A—Validity—Is invalid in so far as to prohibit any form of demonstration but cannot be struck down in so far as it prohibits strikes.

Rule 4-A of the Central Civil Services (Conduct) Rules (1955) in the form in which it now stands prohibiting any form of demonstration is violative of the Government servants' rights under Art. 19(1)(a) and (b) and should, therefore, be struck down. But in so far as the said rule prohibits a strike it cannot be struck down for the reason that there is no fundamental right to resort to a strike. Where the charge against the Government servant is not that he participated in any strike but the charge is that he participated in the various demonstrations, that is, a charge based upon that part of the rule which prohibits demonstrations altogether, the fact that the demonstrations in which he is alleged to have participated actively were organised in connection with the strike does not mean either in fact or in law that he participated in the strike itself. Similarly, the charge that he took active part in the preparations made for the strike also does not mean in fact or in law that he participated in the strike and so the charge cannot be reasonably construed to mean that his conduct amounted to a contravention of the rule which prohibits strikes. A I R 1962 S C 1166, Foll.; Misc. Petn. No. 255 of 1960, dated 18-1-1961, decided by Bombay High Court, **Reversed.** O. K. Ghosh v. E. X. Joseph, (1963) Supp 1 S C R 789 : (1963) 1 S C W R 168 : 1964 Mah L J 509 : 1964 M P L J 599 : 66 Bom L R 93 : 1964 M P L J 599 : (1962) 5 Fac L R 511 : (1963) 2 S C A 117 : (1962) 2 Lab L J 615 : (1963-64) 24 F J R 115 : AIR 1963 S C 812 (814, 816) (Pt A) (Prs 8, 13).

● ——**Art. 19 (1) (a) and (b)**—Prohibition against resorting to strike is valid—In so far as it prohibits any form of demonstration, the rule violates Art. 19 (1) (a)—Provisions of rule not being separable entire rule is invalid. A I R 1959 Pat 187, **Reversed.** See Bihar Government Servants' Conduct Rules (1956), R. 4-A. **AIR 1962 S C 1166.**

——**Art. 19 (1) (g)**—Central Civil Services (Conduct) Rules (1955), R. 4 (A)—Constitutional validity—Prohibition against resorting to strike and participating in any demonstration — Whether violative of Art. 19 (1) (a), (b), (c) or (g) of the Constitution. See Central Civil Services (Conduct) Rules (1955), R. 4 (A). **A I R 1962 Bom 53 (DB).**

——**Art. 19 (1) (c), (4)—Right to strike not included in right to form associations or unions — Essential Services Maintenance Ordinance (1960), Ss. 3 (1) and 7—Restrictions imposed by Ordinance are within limits provided by Cl. (4).**

The right to go on strike is not included in the fundamental right conferred on the citizens under Art. 19 (1) (c) of the Constitution to form associations or unions. Observations to the contrary in AIR 1958 Pat 51, held obiter.

Having regard to the danger to be averted, the restrictions imposed by the Essential Services Maintenance Ordinance promulgated by the President are reasonable restrictions on the exercise of the right conferred by Art. 19(1) (c) imposed in the interests of public order, within the limits prescribed by Cl. (4) of Art. 19 of the Constitution.

The words 'public interest' used in sub-s. (1) of S. 3 have to be read in the context of other provisions of the Ordinance and when so read there is no doubt that the restrictions imposed are in the interests of public order. (1963) 2 Lab L J 264 : 63 Bom L R 774 : 1961 Nag L J 695 : (1961-62) 21 F J R 441 : AIR 1962 Bom 53 (65, 66, 67) (Pt D) (Prs 40, 49, 55) (DB).

——Art. 19 (1) (g)—Right to carry on occupation of Government service — Ordinance preventing them from going on strike — No contravention of their right not to carry on occupation—Essential Services Maintenance Ordinance (1960), S. 3—Constitutional validity.

It is true that the right to carry on occupation includes the right not to carry on occupation. But by going on strike the Government servants do not choose not to carry on their occupation of Government service; on the other hand, they want to remain into the occupation, viz., they want to remain in Government service, take their pay and yet not work and that is not choosing not to carry on the occupation. It is open to them to resign from Government service if they so desire. The Essential Services Maintenance Ordinance does not prohibit them from doing so. In that view the Ordinance in so far as it prevents them from going on strike, does not prevent them from exercising their right not to carry on their occupation of Government service and so does not contravene Art. 19 (1)(g). 63 Bom L R 774: 1961 Nag L J 695 : (1961-62) 21 F J R 441 : (1963) 2 Lab L J 264 : AIR 1962 Bom 53 (67) (Pt E) (Pr 57) (DB).

——Art. 19 (1) (g) —Strike—Nature of right—(Industrial Disputes Act (1949), S. 24).

Every strike is not illegal and the workers enjoy the fundamental right to resort to strike whenever they are so pleased in order to express their grievances or to make certain demands. This fundamental right cannot in any way, be limited by Standing Orders. Strikes are illegal under the Indian law only when penalties have been imposed for them for contravention of the provisions of Ss. 22, 23 and 24 of the Act. 1958 Cri L J 81 : A I R 1958 Pat 51 (56, 57) (Pt D) (Pr 14) (DB).

ARTICLE 20

SYNOPSIS

(Constitution of India, Art. 20)

1. Scope.
2. Ex post facto laws — Clause (1)—Scope.
   (a) Ex post facto laws and their validity.
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3. Double jeopardy for same offence—Rule against —Clause (2).
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   (c) "Prosecuted", meaning of.
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4. Accused not to be compelled to be witness against himself—Clause (3).
   (a) Failure to give evidence—Inference from.
   (b) "Person accused of any offence".
      (i) Examination under S. 45G, Banking Companies Act.
      See also Ibid, Note 6 (d).
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      (iii) Person giving evidence under S. 240, Companies Act (1956).
      (iv) Other Cases.
5. Statement of accused under Criminal P. C., S. 342.
6. Compulsion to be witness—What amounts to.
   (a) Enquiry under Public Servants (Inquiries) Act (1850).
   (b) Direction to accused to appear in identification parade or to exhibit his body or identifying marks on it.
   (c) Search and seizure of documents from the person or the custody of the accused.
   (d) Public examination of directors and office bearers under S. 45-G, Banking Companies Act.
   See also Ibid, Note 4 (b) (i).
   (e) Direction to produce documents or other incriminating evidence.
   (f) Taking of thumb impression, specimen writing or signature etc.
7. Evidence Act, S. 132—Validity of.
8. Unreasonable searches and seizure.
9. Confessions of accused obtained under pressure.

1. Scope.

■——Art. 20—Interpretation of — Art. 19 gives list of individual liberties, while Arts. 20 to 22 primarily deal with penal or other laws—See Ibid, Art. 19—AIR 1950 S C 27.

——Art. 20, Preamble — Interpretation of — Reference to English decisions — See Ibid, Preamble—AIR 1958 Andh Pra 756.

——Art. 20—Approver — Position of — Whether that of accused or witness — Approver can be kept in custody — Art. 20 has no application — See Criminal P. C. (1898), S. 337. AIR 1955 N U C (Madh B) 5650.

2. Ex post facto laws—Clause (1)—Scope.

■——Art. 20 — Restrospective operation of law— An ex post facto law — If falls within prohibition under Art. 20 of Constitution — See Interpretation of Statutes. 1965 (1) Cr L J 360 : AIR 1965 SC 444.

■——Art. 20 (1) —Scope and object.

Article 20 (1) in its broad import has been enacted to prohibit convictions and sentences under ex post facto laws. This article must be taken to prohibit all convictions or subjections to penalty after the Constitution in respect of ex post facto law whether the same was a post-Constitution law or a pre-Constitution law.

Difference between Art. 20 (1) and Ss. 9 (3) and 10 of Art. 1 of the American Constitution pointed out. Shiv Bahadur Singh v. State of V.P., 1953 S C J 563: 1953 Cr L J 1480 : 1953 S C R 1188 : 1953 S C A 803 : AIR 1953 S C 394 (398) (Pt D) (Pr 8).

——Art. 20 — Scope— Prevention of Corruption Act, S. 5 (2)—Constitutional validity—Section whether has made some act punishable which was not punishable at the time when it was committed — See Prevention of Corruption Act 1947, S. 5. 1958 All L J 424: 1958 Cr R 335.

●——Art. 20 (1) — Bihar Land Encroachment Act (31 of 1950), S. 9—Validity.

Section 9, Bihar Land Encroachment Act, 1950, in terms is not hit by Art. 29 (1) of the Constitution. But the meaning which is being given to the, expression "unauthorisedly occupies" violates the fundamental rights guaranteed by the Constitution and, as such this section is also unconstitutional and invalid. The possibility of the Act being applied in an unauthorised and arbitrary manner is sufficient to make it unconstitutional and S. 9 cannot be considered independently of the other provisions of the Act and especially of the provision where the expression "unauthorisedly occupies" has been explained.

But the words as used in this section do not indicate that there can be a punishment inflicted without a formal trial. The words "shall on conviction, be liable to a fine" carry with them the import that there should be a trial. Trial is contemplated by S. 9, and certainly it is the natural right of every accused to ask for a trial before he is convicted. Section 9 contemplates a regular punishment, and the words "on conviction" go to show that even this Act, badly framed as it is, did contemplate to some extent that before the punishment a sort of trial was to be held. AIR 1950 S C 27, Foll. Brij Bhukan v. S. D. O. Siwan, **33 Pat 690 : 1954 B L J R 513 : AIR 1955 Pat 1 (34) (Pt Za) (Pr 27) (SB).**

2 (a). Ex post facto laws and their validity.

——Art. 20 (1)—Order of externment under S. 57, Bombay Police Act — Order, if offends against Article—(Bombay Police Act (22 of 1951), Ss. 57 and 59).

The object of S. 57 of Bombay Police Act, 1951 is to protect the locality or area concerned from the probable commission of the offence by the externee. In that sense, the order is more preventive in intention and action than punitive. Previous convictions of the type and of the categories mentioned in the first part of S. 57 are, no doubt, a condition precedent. Assuming, therefore, that an order of externment can be regarded as a penalty within the meaning of Art. 20 (1), the penalty is imposed on the externee more directly and more substantially for the tendency which he exhibits on the date of notice under S. 59 of the Act. Since the penalty cannot reasonably be said to be the result of his previous convictions it cannot be held that the order of externment offends against the provisions of Art. 20 (1) and is therefore invalid. 57 Bom L R 560: ILR (1955) Bom 781 : 1955 Cr L J 1239 : AIR 1955 Bom 346 (347, 348) (Pr A) (Frs 4, 5) (DB).

●——Art. 20 —S. 19, Preventive Detention Act, does not contravene Art. 20—See Public Safety — Preventive Detention Act (1950), S. 19. AIR 1954 J and K 59 (FB).

——Arts. 20, 245, 246 and 248—Power of Parliament to pass retrospective legislation for Madhya Bharat—General Clauses Act (1897), S. 6.

There is no doubt that the Administration of Evacuee Property Act 1950, is meant to be retrospective. There is in our Constitution a limitation on the power of the Legislatures to make retrospective criminal legislation. These limitations are stated in Art. 20. But except for this Article, there is no other provision in the Constitution which points to any limitation of the plenary powers of the Parliament and the State Legislatures so long as they keep within the ambit of the subjects of the legislation specifically assigned to them. There is nothing in Arts. 245,246 and 248 to indicate an intention to withhold from the Parliament the same absolute discretion as the British Parliament has with regard to past events as well as present and future, provided of course Parliament confines itself to the specified subjects and legislates within the limitations prescribed by Art. 20. From the principle of the supremacy of the Parliament and the State Legislatures within their allotted spheres, it follows that in the absence of express provision to the contrary, the Parliament and any State Legislature can give to their laws otherwise valid, retrospective or prospective operation. The Constitution does not restrict or limit the legislative competence of Parliament so as to make it exercisable only with regard to that part of territory of India or only with regard to those subjects in regard to which the Dominion Legislature had before 26-1-1950 the power to legislate. The question therefore of the power of Parliament to legislate retrospectively or prospectively with respect to a subject, is in no way affected by the powers of the Dominion Legislature under the Government of India Act, 1935. It is to the provisions of the present Constitution that we must look for determining the powers of the Parliament. Section 6 of the General Clauses Act cannot be invoked in such cases for holding that the effect of the repeal of the Government of India Act 1935 is to confirm for ever the rights vested in the citizens just before the commencement of the Constitution and to deny to the Parliament and the State Legislatures the power of interfering with those rights by enacting retrospective legislation under the powers enforced on them by Arts. 245 and 246 of the Constitution. Section 6 of the General Clauses Act which merely lays down one of the general rules of construction of statutes, can have no applicability where the Government of India Act 1935 is not merely repealed but is substituted by a new Constitution under which the Parliament and the State Legislatures are not prohibited from legislating for the past and of interfering with vested rights. Section 6 of the General Clauses Act would have again no applicability where the Parliament and the State Legislatures with the legislative competence of retrospective legislation pass an enactment giving it in express terms retrospective effect. Further before 26-1-50, the Dominion Legislature functioning under the Government of India Act 1935, had the power to legislate for State of Madhya Bharat with respect to the custody, management and disposal of property declared by law to be evacuee property, by virtue of the instrument of Accession executed by the Raj-pramukh of Madhya Bharat accepting inter alia all the matters mentioned in the Concurrent List as matters with respect to which the Dominion Legislature may make laws for the State of Madhya Bharat. Thus the Parliament can make for Madhya Bharat State retrospective legislation with respect to the custody, management and disposal of property declared by law to be evacuee property. AIR 1950 S C 27, A I R 1952 M B 57, Foll. AIR 1951 Raj 94, Dist. and Dissent. AIR 1952 Madh-B 181 (186, 187, 188) (Pt D) (Pr 11) (DB).

——Art. 20—M. P. Minimum Wages Fixation Act (16 of 1962), Ss. 3, 4 —Validity — Do not impose unreasonable restrictions on fundamental rights under Art. 19 and they are not contrary to Art. 20 (1). See

M. P. Minimum Wages Fixation Act (1962), S. 3. AIR 1964 Madh-Pra 45.

——Art. 20 (1)—Section 297 (2) (g) of the Income-tax Act, 1962 is not violative of provisions of Art. 20 (1) of Constitution. See Income Tax Act (1962), S. 297 (2) (g). 1965 Ker L J 1177.

——Arts. 20 and 245 — Applicability and Scope—R. 33 of the Sirhind Canal Rules—Validity—Retrospective effect.

The general rule is that a statute can be made to operate retrospectively by express enactment to that effect or necessary implication. Article 20 places certain restrictions on the powers of the Legislature in this respect. Except as provided by this article, the State Legislature has plenary power of legislation on the subject within the jurisdiction and can make laws which are retrospective in effect.

Article 20 provides a safeguard for personal security of the subject. It is meant to protect the subject against punishment by ex post facto laws. But it has no application to his rights or liabilities with respect to property or contracts. Rule 33 of the Punjab Rules to which retrospective effect is given by the Validation Act (4 of 1954) specifies the charge leviable for canal water in an unauthorised manner or suffered to run waste. The rule simply creates a civil liability in addition to the criminal liability, if any, under Act (8 of 1873). It cannot be said that the impugned provision offends the inhibition laid down by Art. 20 (1) of the Constitution. **A I R 1956 Pepsu 40 (45, 46) (Pt D) (Prs 19, 21, 24) (DB).**

——Arts. 20, 13 and Pre — Part of law alleged to be void as amounting to an ex post facto legislation—Whether whole becomes void — Test of severability — (Punjab District Boards (Tax Validating) Act (27 of 1955), S. 2 — Validity). See Ibid, Art. 13. **AIR 1959 Punj 318.**

2 (b). "Law in force".

● ——Art. 20—'Law in force at the time'—Meaning of. See Ibid, Art. 31 (1), **AIR 1962 S C 1753.**

● ——Art. 20 (1)—Mines Act (1952), Ss. 73, 74 — Contravention of Regulations of 1926 — Regulations deemed to be in force under 1952 Act on date of offence amount to laws in force within Art. 20 (1) of Constitution—General Clauses Act (1897), S. 24. See Mines Act (1952), S. 73. **AIR 1961 S C 838.**

● ——Article 20 (1)—"Law in force", meaning of—(Words and Phrases—'Law in force').

The phrase 'law in force' as used in Article 20 (1) must be understood in its natural sense as being "the law in fact in existence and in operation at the time of the commission of the offence" as distinct from the law deemed to have become operative by virtue of the power of legislature to pass retrospective laws. Shiv Bahadur Singh v. State of V. P., **1953 S C J 563 : 1953 Cri L J 1480 : 1953 S C R 1188 : 1953 S C A 803 : AIR 1953 S C 394 (398) (Pt F) (Pr 10).**

——Art. 20—Law in force—Meaning — (Words and Phrases).

The expression 'law in force' in Art. 20 means 'law actually in force and not law deemed to be in force by retrospective operation of an amendment.' **1954 All W R (H C) 334 : 1954 Cri L J 1212 : A I R 1954 All 562 (567) (Pt E) (Pr 10) (DB).**

——Art. 20—'Law in force'—Rules and regulations made under repealed Mines Act of 1923, are not 'law in force' even though they are deemed to be in force by virtue of S. 24, General Clauses Act—(Mines Act (1952), Ss. 66 and 73).

The phrase 'law in force' in Art. 20 must be understood in its natural sense as being the law in fact in existence and in operation as distinct from the law 'deemed' to have become operative by virtue of the power of legislature to pass retrospective laws.

Article 20 prohibits conviction under a law which is only to be 'deemed to be' in force. The rules and regulations framed under the repealed Mines Act of 1923 cannot be described as 'law in force' within the meaning of Art. 20 and the accused cannot be convicted under Ss. 66 and 73 of the Mines Act of 1952, for violation of the rules framed under the repealed Act of 1923, even if these rules are kept alive by virtue of S. 24, General Clauses Act. **A I R 1953 S C 394, 1953 S C J 563 (S C), Rel. on. 1956 Cri L J 29 : I L R (1955) Andh Pra 497 : (1955) Andhra W R 807 : A I R 1956 Andhra 24 (25, 26) (Prs 3, 5) (DB).**

——Art. 20 (1)—"Law in force" — Contravention of rules framed under Mines Act, 1923 — Prosecution commenced after repeal of Act—Validity—(General Clauses Act (1897), S. 24.)

A prosecution under S. 73 of the Mines Act, 1952, for contravention of R. 3 of the Coal Mines Pithead Bath Rules, 1946 and R. 3 of the Mines Creche Rules, 1946 which were framed under the Mines Act, 1923, was launched after the repeal of the Mines Act, 1923, by the Mines Act, 1952.

Held, that the rules framed under the repealed Act of 1923 were deemed to be rules made under the new Act of 1952 so as to be perfectly valid and as the prosecution was launched long thereafter the rules framed under the repealed Act must be held to have been perfectly valid and part of the law in force within the meaning of the expression in Art. 20 of the Constitution. A I R 1953 S C 304, Disting. **61 Cal W N 660 : 1957 Cri L J 834 : A I R 1957 Cal 483 (491) (Pt D) (Pr 20) (DB).**

[Overruled on another point in A I R 1961 S C 1543.]

——Art. 20 (1)—'Laws in force'—Metalliferous Mines Regulations (1926) — Regulations are 'laws in force' within Art. 20, Constitution of India — Infringement of Regulations can be punished even after repeal of Mines Act, 1923. See Metalliferous Mines Regulations (1926). **1960 Cri L J 1227 : AIR 1960 Mys 245 (DB).**

——Art. 20 (1)—Law in force — Metalliferous Mines Regulation (1926), S. 3 (1) — Force and operation of. See Metalliferous Mines Regulation (1926), S. 3 (1). **1960 Cri L J 1355 : AIR 1960 Orissa 180.**

——Art. 20 (1)—Law in force — Regulations framed under Mines Act of 1923 — Validity — (General Clauses Act, 1897, S. 24)—(Mines Act (1923), S. 29) —(Metalliferous Mines Regulations (1926), Regs. 38, 41 and 91).

The Indian Metalliferous Mines Regulations of 1926 framed under S. 29 of the Indian Mines Act, 1923, which has since been repealed and replaced by the Indian Mines Act of 1952 and under which no rules and regulations have so far been framed, are kept alive by S. 24 of the General Clauses Act, and continue to be 'law in force' within the meaning of Art. 20 of the Constitution of India so as to enable the prescribed authority to launch criminal prosecution against a person or persons who are found to have contravened any of the aforesaid Regulations. A I R 1956 Andhra 24; A I R 1953 S C 394 and A I R 1954 Pat 371, Disting.; AIR 1957 Cal 483, Rel. on. **60 Punj L R 683 : 1959 Cri L J 232 : I L R (1959) Punj 19 : AIR 1959 Punj 69 (70) (Pr 8).**

——Art. 20 (1) — "Law in force"—Meaning of—Law deemed to be in force is law in force — Mines Creche Rules (1946), framed under Mines Act (1923) are Law in force. **AIR 1961 Raj 189.**

2(c). Pre-Constitution laws.

●——**Art. 20 (1)**—Article 20 (1) prohibits convictions and subjections to penalty in respect of ex post facto law whether it is a post-Constitution law or a pre-Constitution law. Shiv Bahadur Singh v. State of V. P., **AIR 1953 S C 394 (398) (Pt D) (Pr 8).**

——**Art. 20**—Possession of unauthorised news-sheets on 11th June, 1950 — Conviction under S. 18 of the Press Act, 1931, on 23rd February, 1951 — Validity. See Press (Emergency Powers) Act (1931), S. 15. **1954 Cri L J 1212 : AIR 1954 All 562 (DB).**

2(d). Continuing offences.

——**Art. 20 (2)—Applicability — Continuing offence — Previous acquittal whether operates as a bar for subsequent prosecution — (Criminal P. C. (1898), S. 403).**

Where the offences are continuing offences in the sense that the offences continue de die in diem so long as the duty cast upon the owner is left undischarged the previous acquittal cannot be a bar to the subsequent prosecutions because they are really for offences different from the offences of which the accused were acquitted on the previous occasion although the offences were of a similar nature. **61 Cal W N 660 : 1957 Cri LJ 834 : A I R 1957 Cal 483 (492) (Pt E) (Pr 21) (DB).**

——**Art. 20, Clause (1)**—Continuing offence — Law respecting — Validity — Art. 20 (1) does not hit law punishing continuing offences—Non-payment of provident fund contribution and establishment charges on due date is a continuing offence and becomes punishable as soon as the scheme comes into force. See Employees' Provident Funds Act (1952), S. 5. **1961 (1) Cri L J 266 : AIR 1961 Madh Pra 37.**

2(e). Retrospective effect of laws creating offences.

●——**Arts. 20 (1) and 19 (1) (g), (6)** — Effect of Ss. 3 and 4 of Madhya Pradesh Minimum Wages Fixation Act (16 of 1962) — No unreasonable restriction is imposed—Sections do not also contravene Art. 20 (1). See Ibid, Art. 19 (1) (g). **AIR 1964 S C 1667.**

●——**Art. 20 (1)**—Prevention of Corruption Act, S. 5 (3)—Does not create new offence — Sub-section is not retrospective — Conviction in respect of property acquired before Act—No breach of fundamental right under Art. 20 (1) of Constitution. See Prevention of Corruption Act (1947), S. 5 (3). **1964 (1) Cri L J 310 : AIR 1964 S C 464.**

●——**Art. 20 (1)** — Industrial Disputes Act (1947), S. 25 FFF—Validity—Section imposing civil liability to pay compensation for closure prior to the Act — Non-compliance not made an offence—Article 20 (1) not attracted. See Industrial Disputes Act (1947), S. 25 FFF. **AIR 1960 S C 923.**

●——**Art. 20 (1)**—Bombay Rents Hotel and Lodging House Rates Control Act (57 of 1947), S. 24—Enjoyment of essential supply by tenant—"Enjoyed" whether refers to a period before the coming into effect of the Act where landlord's action might not have been penal — Constitutional validity of provision if such construction is placed on it. See Houses and Rents—Bombay Rents Hotel and Lodging House Rates Control Act (57 of 1947), S. 24. **AIR 1958 S C 444.**

●——**Art. 20 (1)—Applicability—Indian Penal Code (Application to Vindhya Pradesh) Ordinance (48 of 1949), Ss. 2 and 3 (1).**

In determining the constitutionality of any conviction under Vindhya Pradesh Ordinance (48 of 1949) for an alleged offence committed during the period between 9-8-1948 (the date from which the Penal Code was deemed to have been in force in Vindhya Pradesh) and 11-9-1949 (the date of enactment of the said Ordinance), what is relevant for the application of Art. 20 (1) is not the result brought about by repeal and the retrospective operation thereof, but the factual state of law as it existed prior to the date (viz., 11-9-1949), when the repeal came into operation. The repeal itself posits the pre existence of the law, and it is that law which is relevant for that purpose. Shiv Bahadur Singh v. State of V. P. **1953 S C J 563 : 1953 Cri L J 1480 : 1953 S C R 1188 : 1953 S C A 803 : AIR 1953 SC 394 (399) (Pt G) (Pr 12).**

——**Art. 20 (1)** — Foreigners Act (1946), S. 2 (g) — Retrospective effect given to definition is not valid. See Foreigners Act (1946), S. 2 (g) (as amended by Foreign Laws (Amendment) Act of 1957). **1962 (2) Cri L J 414 (All).**

——**Art. 20 (2)** — Scope — Conviction under S. 165, Indian Penal Code for offence committed in 1948 — Conviction not valid—Appellate Court can alter finding — Accused may be convicted under S. 161, read with S. 109, Indian Penal Code. See Criminal P. C. (1898), S. 423 (1) (b). **AIR 1957 All 388.**

——**Art. 20** — Temporary permit to stay in India issued to applicant—Permit expiring on 25-9-1948 — Applicant overstaying — Overstaying not an offence then—Law promulgated subsequently making overstaying an offence — Retrospective operation whether can be given to it. See Influx from Pakistan (Control) Act (1949), S. 5. **AIR 1956 All 108.**

●——**Art. 20** — Influx from Pakistan (Control) Act, S. 5—Pakistani national overstaying after 20th July 1950 — Conviction under S. 5 and R. 19 — Validity. See Influx from Pakistan (Control) Act (1949), (as amended by Ord. No. (22 of 1950)), S. 5. **AIR 1955 Hyd 128 (FB).**

——**Art. 20 (1)** — Finding of Commission of Enquiry appointed under J. & K Government Servant's Prevention of Corruption (Commission) Act (1962)—Act though retrospective is procedural — Corruption defined in the Act was an offence even before the commencement of the Act — Hence Art. 20 (1) of Constitution cannot apply. See Jammu and Kashmir Government Servants' Prevention of Corruption (Commission) Act (11 of 1962) (As Amended by Act I of 1964), S. 3 (d). **AIR 1965 J & K 78 (DB).**

●——**Art. 20 (1)**—Retrospective effect of laws creating offences — Rule requiring State Government to notify date from which prohibition regarding sale etc. of certain articles of food to come into force—Notification making rule applicable from 1-7-61 published in Gazette of 7-7-61 — Notification held applicable in respect of acts committed after 7-7-61 —Notification as a whole not invalid — Prevention of Food Adulteration Rules (1955), R. 44-A. Govinda Pillai v. Padmanabha Pillai, **1964 Ker L T 1023 : 1965 Ker L J 18 : I L R (1965) 1 Ker 12 : 1965 Mad L J (Cri) 23 : (1965) 1 Ker L R 10 : 1965 (1) Cri L J 446 : AIR 1965 Ker 123 (128) (Pt C) (Pr 16) (FB).**

——**Art. 20 (1)**—Penalty — Arrest and detention of person to realise arrears of income-tax cannot amount to penalty—Income tax Act (1922), S. 46 (2) Proviso.

In order that Art. 20 may apply to a case where a notice is served upon a person to show cause why he should not be arrested for the failure to pay the arrears of income tax due from him, it has first to be established that the recovery of the arrears of income-tax by arrest would constitute a penalty; and arrest and detention of a person to realise the arrears of income tax cannot by any stretch of imagination be considered to be a penalty. It is only a method of recovering the tax. (1955) 28 I T R 891, Foll. **(1965) 1 I T J 825 : 1965 Ker L T 353.**

——Art. 20 — Offences committed before Criminal Law Amendment Act— Trial and punisbment under this Act — Validity — (Criminal Law Amendment Act (1952)).

Article 20 prohibits the creation of a new offence, the punishment of which may be prescribed with retrospective effect. The other limitation is that no one shall be subjected to a penalty greater than that which might .have been inflicted under the law in force at the time of the commission of the offence. If the presiding judge were to award a sentence under the Criminal Law Amendment Act, 1952, severer than that which was provided in the former law, (viz., the Indian Penal Code) then of course it would offend against Art. 20. But before the stage of sentence no question of any heavier penalty arises and till the accused are tried and convicted under the new law, namely, the Criminal Law Amendment Act which was not in force when the acts, constituting the offence were committed, there is no question of punishment. Till then the constitutionality of the trial under the Criminal Law Amendment Act, cannot be questioned. A I R 1953 S C 394 ; 1953 S C J 563, Foll. **Madh B L R 1954 Cr 140 : Madh B L J 1954 H C R 790 : A I R 1954 Madh B 206 (207) (Pt B) (Pr 10) (DB).**

—— Art. 20 - Offer of bribe — Offence committed in 1950—Conviction under S. 165-A, Penal Code, enacted in 1952—Legality of. See Penal Code (1860), S. 165-A. **AIR 1954 Madh B 83.**

—— Art. 20 (1) — M. P. Motor Vehicles (Taxation of Passengers) Amendment and Validation Act (XV of 1962), Ss. 2 and 4 — Provisions are valid. See M. P. Motor Vehicles (Taxation of Passengers) Amendment and Validation Act (15 of 1962), S. 2. **A I R 1963 Madh Pra 339 (DB).**

——Art. 20 (1) — Ex post facto legislation regarding crimes—Law creating offence — Giving retrospective effect to—Legality. See Public Safety - Madras Maintenance of Public Order Act (23 of 1949), S. 2. **AIR 1951 Mad 1015 (DB).**

——Art. 20 (1) — Ex post facto laws — Retrospective effect of laws creating offences — Person can be convicted of offence for violation of law in force at time of commission of act charged as offence—Prosecution for violating on 18-11-1953 provisions of R. 17 (b) of Octroi Rules — Effect of subsequent 1954 amendment for first time (legalising levy of Octroi within Municipality) though made retrospective, will be left out of consideration — (Municipality— Orissa Municipal Act (23 of 1950), S. 131 (1) (kk) (as amended by Act 3 of 1954)). **A I R 1955 N U C (Orissa) 2140 (DB).**

●——Art. 20—Bihar Land Encroachment Act (XXXI of 1950), S. 5—Validity.

If a person is found to be in unlawful possession of a property, he has no right to enjoy the produce of that property, and the person entitled to evict him is also entitled to the usufruct. Thus it follows that if the possession of a person over public property is found to be unauthorised and unjustified, an order of forfeiture will not be illegal, and the word being a word of wide import, it will not be correct to say that forfeiture is really a conviction as contemplated by Art. 20 of the Constitution. It is another thing that because of the peculiar meaning given to the words "public property" and "unauthorised occupation" the relevant provisions have to be declared unconstitutional and ultra vires.

The provision regarding the forfeiture of crop cannot also be deemed to be bad on the ground that it is to be treated as an 'ex post facto' legislation. Because it is only after the passing of the Act that certain acts would be deemed to be unauthorised and therefore there could be no question of punishing a man for something which he had done in the past. Exception cannot, therefore, be taken only to the order of forfeiture. Brij Bhukan v. S. D. O, Siwan. **33 Pat 690 : 1954 B L J R 513 : AIR 1955 Pat 1 (37) (Pt ZF) (Prs 36, 37) (SB).**

——Art. 20 (1) — Rajasthan Passengers and Goods Taxation Act (18 of 1959), Ss. 6, 8 — Rajasthan Passengers and Goods Taxation (Amendment and Validation) Act (22 of 1964): Ss. 3, 4 — Levy of penalty under Ss. 6 and 8 of Act of 1959 — Contravenes Art. 20 (1) of the Constitution and is illegal.

Though a retrospective legislation for the purpose of imposing a tax was permissible as for the penalties they could not be imposed retrospectively. The prohibition against ex post facto legislation which involves the imposition of a penalty was one of the fundamental rights guaranteed under Art. 20 (1) of the Constitution. It was therefore clear that even if the Rajasthan Act 22 of 1964 was upheld as a valid piece of legislation, the penalties imposed in the various cases for reason of non-payment of tax or non-submission of returns are illegal and must be struck down. I L R (1961) 11 Raj 443, Foll. **1965 Raj L W 118 : ILR (1965) 15 Raj 285.**

——Art. 20 (1)—Rajasthan Sales Tax Act, 1954 (29 of 1954), Ss. 16 and 26 (5) — Enforcement of Rajasthan Sales Tax Rules, 1955—Retrospective enforcement—But cannot be enforced retrospectively for purpose of S. 16—Sales tax — Rajasthan Sales Tax Act, 1954 (29 of 1954), Ss. 16 and 26 (5).

Section 26 (5) of the Rajasthan Sales Tax Act, 1954, as it originally stood, required that the date on which the Rajasthan Sales Tax Rules were to come into force must be notified. There was no such notification issued after the Act had come into force till the Rajasthan Sales Tax Rules Validating Act, which brought the Rules in force from the 1st day of April, 1955.

The retrospective legislation for the purpose of imposing a tax is permissible. AIR 1954 S C 158, Rel. on.

But the prohibition against post facto legislation which involves the imposition of a penalty is one of the fundamental rights guaranteed under the Constitution. Hence, for the purpose of S. 16 of the Rajasthan Sales Tax Act, the Rajasthan Sales Tax Rules, 1955, cannot be given retrospective effect. **1961 Raj L W 363 : ILR (1961) 11 Raj 443.**

——Arts. 20 (1) and 13—Rajasthan Municipal Boards Validating Act — Validity — Rajasthan Municipal Boards Validating Act (37 of 1956), S. 1 — (Municipalities—Rajasthan Municipal Boards Validating Act (37 of 1956), S. 1).

The protection of Art. 20 being available in case some one takes it into his head to use the Validating Act as a retrospective Act for the provision of offences under the Rajasthan Town Municipalities Act, there is no question of the Validating Act itself being hit by Art. 20 read with Art. 13, for the Validating Act nowhere provides directly for any such retrospective creation of offences. The Validating Act therefore is valid, and is not hit by Art. 20. **ILR (1957) 7 Raj 742 : 1957 Raj L W 609 : AIR 1957 Raj 293 (294) (Pt B) (Pr 7) (DB).**

● ——Art. 20 (1)—Person entering India under permit, overstaying period of permit — Overstay not penal at the time—Subsequent legislation making overstay penal and ground for removal of the person from India — Applying that to that person offends Art. 20 (1). See Influx from West Pakistan (Control) Ordinance (17 of 1948), S. 6. **AIR 1952 Sau 98 (SB).**

2 (f). Law enhancing punishment.

● ——Art. 20 (1) — Pepsu Act 4 of 1954, Ss. 3 and 4 —Unauthorised use of canal water is not an offence—

Enhanced charge under Rr. 32 and 33 of Pepsu Sirhind Canal Rules, is not penalty — Question of Ss. 3 and 4 infringing Constitution, Art. 20 (1) does not arise. See Pepsu Sirhind Canal and Western Jumna Rau Canal Enforcement and Validation Act (4 of 1954), S. 3. 1962 (2) Cr L J 303 : AIR 1962 S C 1246.

● ——Art. 20 — Applicability and scope — S. 420, Penal Code, providing for unlimited fine—S. 10 of Ordinance 29 of 1943 fixing minimum sentence of fine—Ordinance does not contravene Art. 20.

A law which provided for a minimum sentence of fine on conviction could not be read as one which imposed a greater penalty than that which might have been inflicted under the law at the time of the commission of the offence where for such an offence there was no limit as to the extent of fine which might be imposed. Under Art. 20 of the Constitution all that has to be considered is whether the ex post facto law imposes a penalty greater than that which might be inflicted under the law in force at the time of the commission of the offence. It could not be said that S. 10 of the Ordinance (29 of 1943) imposed any such penalty and therefore was in contravention of the provisions of Art. 20. Satwant Singh v. State of Punjab, 1960 Cr L J 410 : (1960) 2 S C R 89 : 1960 S C J 863 : 1960 Mad L J (Cr) 603 : 1960 All W R (HC) 505 : ILR (1960) Punj 504 : 1960 All Cr R 315 : AIR 1960 S C 266 (276, 277) (Pt E) (Pr 31).

——Art. 20 — Applicability and scope — If contravened by Preventive Detention Act, S. 11.

Section 11 of the Preventive Detention Act as amended by the Amending Act of 1951 cannot be held to be void as contravening Art. 20 of the Constitution. What Art. 20 (1) prevents is the infliction of a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the same offence. The article has reference to a penalty to be imposed in respect of an offence only and cannot apply to the case of preventive detention. ILR (1952) Bom 134 : 1952 Cr L J 81 : 53 Bom L R 717 : AIR 1952 Bom 1 (9) (Pt D) (Pr 15) (DB).

——Art. 20 — Prejudicial speech made on 26-6-1949 —Prosecution started under S 11 (3), W. B. Security Ordinance — Conviction under S. 11, W. B. Security Act—Conviction offended against Art. 20—Constitution of India. See Public Safety—W. B. Security Act (19 of 1950), S. 11. AIR 1955 N U C (Cal) 5590 (DB).

——Art. 20 (1)—Greater penalty.

Prosecution under Calcutta Municipal Act of 1923 —Greater penalty under new Calcutta Municipal Act is not justified. ILR (1954) 2 Cal 405 : 1953 Cr L J 1347 : 57 C W N 248 : AIR 1953 Cal 561 (562) (Pt C) (Pr 6).

——Art. 20 (1) — Offence committed before Criminal Law Amendment Act—Trial under Act—As question of inflicting heavier penalty under Act does not arise till the accused are tried and convicted no question of constitutionality of trial can be raised before that stage. AIR 1954 Madh Bha 206 (207, 208) (Pt B) (Pr 10) (DB).

——Art. 20 (1)—Law reducing punishment—If falls within the bar of the provision.

Even a statute which changes the punishment that may be imposed for a crime theretofore committed would be ex post facto only if it prescribes or permits the imposition of a greater sentence and not when it reduces the punishment. 1952 Mad W N 971: 1953 Cri L J 625 : (1953) 1 Mad L J 157 : 1952 Mad W N (Cri) 283 : AIR 1953 Mad 337 (339) (Prs 7, 9).

——Arts. 20 (1) and 31 (2) and (5) (b) (i) — Ex post acto laws — Bihar Sales Tax Act (19 of 1947), S. 14-A, Proviso — Amendment to made by Bihar Finance Act (4 of 1955) violates Art. 20 (1) and is unconstitutional — Sales tax—Bihar Sales tax Act (19 of 1947), S. 14-A, Proviso) — (Contract Act (1872), S. 72).

The proviso to S. 14-A, Bihar Sales Tax Act, as amended by Bihar Finance Act (4 of 1955) is unconstitutional to the extent that it makes the imposition of forfeiture retrospective in operation. The effect of the amendment is that an additional penalty of forfeiture is imposed on the petitioner for the same offence. The amendment made in S. 14 A by Bihar Act (4 of 1955) is an ex post facto law and violates, the important principle of criminal jurisprudence—namely the principle of nulla poena sine lege as embodied in Art. 20 (1) of the Constitution.

The forfeiture of sales tax illegally recovered by the petitioner from his customers outside the State is certainly a penalty within the meaning of Art. 20 (1) of the Constitution.

Even assuming that the proviso to S. 14 A does not impose a penalty, the legal position is that the legislation would be hit by Art. 31 (2) of the Constitution and it would still be unconstitutional and void. The reason is that the legislation in question would not be saved by Art. 31 (5) (b) of the Constitution. AIR 1954 S C 119, Applied. 1956 B L J R 562 : (1956) 7 S T C 609 : 1956 Pat L R 371 : ILR 35 Pat 757 : AIR 1957 Pat 1 (2, 3, 4) (Pr A) (Prs 5, 6, 7, 8, 10) (DB).

——Art. 20 (1) — S. 14-A of Bihar Sales Tax Act (as amended by Act 4 of 1955)—Validity—(Bihar Sales Tax Act (19 of 1947), S. 14A).

The effect of the amendment made in S. 14A of the Bihar Sales Tax Act by the Bihar Finance Act 4 of 1955 is that an additional penalty of forfeiture is imposed for the same offence. It is obvious that the amendment made in S. 14A by Act 4 of 1955 is ex post facto law, and is hit by Art. 20 (1) of the Constitution. 1956 B L J R 562, Foll. 1956 B L J R 702.

——Art. 20—Scope—R. 33 of the Sirhind Canal Rules —Nature of additional liability created by the rule — Whether the rule offends Art. 20 (1). See Ibid, Pre. AIR 1956 Pepsu 40

——Art. 20 (1) — Scope — Minimum rate of penalty under S. 271 of Income-tax Act of 1961 for default in furnishing returns higher than that under S. 28 (b) of the Act of 1922—S. 297 (2) (g) giving retrospective operation to penalty provisions under new Act — Validity—Art. 20 (1) of Constitution is not infringed. See Income tax Act (1961), S. 297 (2) (g). AIR 1965 Raj 104 (DB).

2 (g). Change in procedure.

● ——Art. 20 (1)—Scope.

What is prohibited under Article 20 is only conviction or sentence under an ex post facto law and not the trial thereof. Such trial under a procedure different from what obtained at the time of the commission of the offence or by a Court different from that which had competence at the time cannot ipso facto be held to be unconstitutional. A person accused of the commission of an offence has no fundamental right to trial by a particular Court or by a particular procedure, except in so far as any constitutional objection by way of discrimination or the violation of any other fundamental right may be involved. Shiv Bahadur Singh v. State of V. P. 1953 S C J 563 : 1953 Cr L J 1480 : 1953 S C R 1188 : 1953 S C A 803 : AIR 1953 S C 394 (398) (Pr E) (Pr 9).

——Art. 20 (1)—The accused has no vested right in any course of procedure. 1960 Mad W N 317 : I L R (1961) Mad 70 : (1962) 1 Mad L J 434 : 1962 Mad L J (Cri) 331.

——Arts. 20 and 265 — Conviction under S. 15 (b). Madras General Sales-Tax Act — Madras General Sales-Tax Act (9 of 1939), S. 15 (b).

The Sales-tax Act existed at the time of the commission of the offence and also at the time of the conviction for the offence in the year 1951.

Any change in the mode of execution is not bad for its being ex post facto; a statute merely regulating procedure and leaving untouched all the substantial protection with which existing law surrounds a person accused of crime is not within the constitutional inhibition of ex post facto laws; even a statute which changes the punishment that may be imposed for a crime theretofore committed would be ex post facto only if it prescribes or permits the imposition of a greater sentence and not when it reduces the punishment New provision in S 15 (b) of the Madras General Sales-tax Act amounts to nothing more than an alteration of procedure which does not make the act which was not an offence to be an offence or imposes a greater penalty than what was the case before. The recovery of the tax as if it were a fine does not impose a greater penalty than the two modes of recovery as an arrear of land revenue or by a suit as on a debt. Therefore Art. 20 does not apply and on this footing the application of Art. 265 does not arise. Case law discussed. (1953) 1 M L J 157 : 1953 Cr L J 625 : 1952 Mad W N 971: 1951 Mad W N (Cri) 283 : AIR 1953 Mad 337 (339) (Pt B) (Prs 7, 9).

3. Double jeopardy for same offence— Rule against—Clause (2).

(a) Bar to fresh trial under Criminal P. C., S. 403.

(b) Both prosecution and punishment necessary.

(c) "Prosecuted", meaning of.

(d) Judicial proceeding necessary.

(e) Civil action.

(f) Preventive detention.

(g) Security proceedings.

(h) Departmental or disciplinary proceedings.

(i) Same offence.

(j) Distinct offences.

3. Double jeopardy for same offence — Rule against—Clause (2).

● ——Art. 20—Principle of autre fois acquit is incorporated in the Article. See Criminal P. C. (1898), S. 403. AIR 1966 SC 69.

● ——Art. 20 (1) — Double jeopardy—Rule as to — Applies only when both complaints relate to same offence—Offence under S. 409, I. P. Code and that under S. 105, Insuranee Act, not same—Two trials not barred by Art. 20 (2) of the Constitution or by S. 26, General Clauses Act. ILR (1956) Bom 685 : 58 Bom L R 578, Reversed.

If the offences were distinct there is no question of the rule as to double jeopardy as embodied in Art. 20 (2) of the Constitution being applicable.

Though S 26. of the General Clauses Act, in its opening words refers to 'the act or omission constituting an offence under two or more enactments', the emphasis is not on the facts alleged in the two complaints but rather on the ingredients which constitute two offences with which a person is charged. This is made clear by the concluding portion of the section which refers to 'shall not be liable to be punished twice for the same offence'.

The above construction of Art. 20 (2) of the Constitution and S. 26 of the General Clauses Act is precisely in line with the terms of S. 403 (2) of the Criminal Procedure Code.

Where therefore the accused are sought to be punished for the offence under S. 105 Insurance Act, after their trial and conviction for the offence under S. 409, Penal Code, they are not being sought to be punished for 'the same offence' twice but for two distinct offences constituted or made up of different ingredients and therefore the bar of Art. 20 (3) of the Constitution or of S. 26 of the General Clauses Act, 1897, is not applicable: AIR 1957 SC 458 and AIR 1957 SC 592, Rel. on. I L R (1956) Bom 685 : 58 Bom L R 578, Reversed State of Bomhay v. S. L. Apte. 63 Bom L R 491 : (1961) 1 Ker L R 452 : (1961) 1 S C J 685 : (1961) 1 Mad L J (SC) 210 : (1961) Mad L J (Cr) 331 : (1961) 1 An W R (SC) 210 : (1961) 31 Com Cas (Ins) 39 : 1961 M P L J 1108 : 1961 Nag L J 524 : (1961) 2 S C A 446 : 1961 (1) Cr L J 725 : 1961 Mad W N 284 : (1961) 3 S C R 107 : AIR 1961 SC 578 (583) (Prs 15, 16, 17).

——Art. 20 (2)—Accused charged and convicted on identical facts both under S. 409, Penal Code, and S. 105, Insurance Act — Conviction under Insurance Act set aside in appeal on the ground that there was no proper complaint as required by that Act—Case filed again under that Act after, satisfying the requirements of the Act—Held that both S. 26, General Clauses Act and Art. 20 (2) Constituted a bar to the punishment of the accused under S. 105, Insurance Act. ILR (1956) Bom 685 : 58 Bom L R 578.

[Reversed in AIR 1961 SC 578].

3 (a). Bar to fresh trial under Criminal P. C., S. 403.

● ——Art. 20 (2)—Principle of.

The roots of the principle which Art. 20 (2) enacts are to be found in the well established rule of English law which finds expression in the maxim 'Nemo debet bis vexari'—a man must not be put twice in peril for the same offence. If a man is indicted again for the same offence in an English Court, he can plead, as a complete defence his former acquittal or conviction or as it is technically expressed, take the plea of autrefois acquit' or "autrefois convict". Venkataraman v. Union of India, 1954 S C A 466 . 1954 Cri L J 993 : 1954 S C J 461 : (1954) 1 Mad L J 702 : 1954 Mad W N 475 : 1954 All W R (Sup) 54 : 1954 S C R 1150 : 1954 Andh LT (Civ) 55: AIR 1954 SC 375 (377) (Pt A) (Pr 4).

● ——Art. 20 (2)—Limited scope of Article.

The ambit and contents of the guarantee of the fundamental right given in Art. 20 (2) are much narrower than those of the Common Law rule in England or the doctrine of 'Double jeopardy' in the American Constitution; Art. 20 (2) of the Constitution of India does not contain the principle of 'autrefois acquit'. In order to enable a citizen to invoke the protection of Cl. (2) of Art. 20 of the Constitution there must have been both prosecution and punishment in respect of the same offence. The words 'prosecuted and published' are to be taken not distributively so as to mean prosecuted or punished. Both the factors must co-exist in order that the operation of the clause may be attracted. AIR 1953 S C 325 Foll. Venkataraman v. Union of India, (1954) S C J 461 : (1954) 1 MLJ 702 : (1954) SCA 466: 1954 CrLJ 993: 1954 S C R 1150 : 1954 All W R (Supp) 54 : 1954 Mad W N 475 : AIR 1954 S C 375 (377) (Pt B) (Pr 5).

● ——Art. 20 (2)—Principle underlying Art. 20 (2) and its scope—(Criminal P. C. (1898), S. 403).

Article 20 (2) incorporates within its scope the plea of "autre fois convict" as known to British jurisprudence or the plea of double jeopardy as known to the American Constitution but circumscribes it by providing that there should be not only a prosecution but also a punishment in the first instance

in order to operate as a bar to a second prosecution and punishment for the same offence.

The words 'before a Court of law or judicial tribunal" are not to be found in Art. 20 (2). But in order to invoke the protection of Art. 20 (2), there must have been a prosecution and punishment in respect of the same offence before a Court of law or a tribunal, required by law to decide the matters in controversy judicially on evidence on oath which it must be authorised by law to administer and not before a tribunal which entertains a departmental or an administrative enquiry even though set up by a statute but not required to proceed on legal evidence given on oath. The Article contemplates proceedings of the nature of criminal proceedings before a Court of law or a judicial tribunal and the prosecution in this context means an initiation or starting of proceedings of a criminal nature before such a Court or tribunal in accordance with the procedure prescribed in the statute which creates the offence and regulates the procedure. Maqbool Hussain v. State of Bombay. (1953) SCJ 456:(1953) 2 MLJ 113: 1953 Cri LJ 1432: 1953 All W R (Sup) 84 : 1953 Mad W N 648 : 1953 S C R 730 : 56 Bom L R 13 . 1953 S C A 641 : A I R 1953 S C 325 (328) (Pt A) (Prs 11, 12).

——Art. 20 — Scope —Accused tried under S. 19 (f), Arms Act for possession of unlicensed gun—Acquittal — Evidence of possession— Use of, against him in subsequent charge for another offence— Legality — Cr. P. Code, S. 403 (1).

Where the accused was tried under S. 19 (f). Arms Act, for the offence of being in possession of an unlicensed gun and it was found by a competent Court that the charge laid against him had not been satisfactorily established, the accused is entitled to rely on that finding, and it is not open to any court subsequently to ignore the order of acquittal and to proceed to hold that the finding of acquittal in favour of the accused was not correct. This would be against the spirit of Art. 20 (2) of the Constitution. This is also the true meaning of S. 403 (1), Criminal P. C.

Therefore in his subsequent trial under S. 395, I. P. Code, evidence of the recovery of the unlicensed gun from him cannot be used against him. AIR 1956 S C 415, Rel. on. 1961 (1) Cr L J 454 : AIR 1961 All 196 (197, 198) (Pr 7).

——Art. 20—Scope—Prisons Act, S. 45 (1)—Prisoners refusing to take food—Warning given by Superintendent—Trial for same offence—If illegal. See Prisons Act (1894), S. 45 (1). 1960 Cr L J 203 : AIR 1960 All 124 (DB).

——Art. 20 (2)—Dismissal of complaint — Fresh complaint—Maintainability — Improper discharge — Remedy. See Criminal P. C. (1898), S. 403. AIR 1957 All 557.

——Art. 20 (2)—(Per Sapru J., Mukerji J. Dissenting) Art. 194 (3) not governed by Art. 20 (2). See Ibid, Art. 194 (3). AIR 1954 All 319.

——Art. 20 (2) — Resolution of House suspending member — Nature of—Applicability of Art. 20 (2) to. See Ibid, Art. 194 (3). AIR 1954 All 319 (DB).

——Art. 20 (2)—Principle and scope of—(Criminal P. C. (1898), S. 403).

Article 20 (2) is based upon the principle of the 'double jeopardy' clause and lays down that no person should be put in jeopardy of his life or liberty more than once. This principle is so well established in the system of law that is administered in India that it is not surprising that it should have been elevated to the level of a fundamental right. The intention of the founding fathers appears to have been not to disturb the existing law which is to be found in S. 403, Criminal P. C. relating to the extent of protection against 'double jeopardy' in the criminal law of this country.

Article 20 (2) does nothing more than reproduce in effect the provisions of S. 403, Criminal P. C. It is clear that under that Code a discharged person can be put for re-trial. Article 20 (2) clearly uses the word 'and' in a conjunctive sense and it is only where the accused has been both prosecuted and punished for the same offence that a second trial is barred. AIR 1952 Mad 725 and AIR 1952 Cal 26 Ref. 1954 Cr L J 691 : ILR (1955) 1 All 25 : AIR 1954 All 319 (334) (Pt O) (Pr 40) (DB).

——Arts. 20 (2), 194 (3) — 'Offence' in Art. 20 (2)—Meaning—Breach of Parliamentary privilege — Applicability of Art. 20 (2) — [General Clauses Act (1897), S. 3 (37)].

Taking Art. 20 as a whole the context indicates that the word 'offence' as used in the Article contemplates a criminal offence and not all types of offences.

In any case, for an 'offence' there has to be an act or omission made punishable by any law for the time being in force. Significance has, therefore, to be attached to the word 'made' which carries with it the implication that some authority empowered to do so has laid down the law. The law contemplated in the Article would appear to be an enacted law by a legislature or by a body of persons authorised by the legislature to make.

While the punishment for parliamentary offences has been prescribed by R. 63 of the Rules of Procedure of the Assembly framed under Art. 208 of the Constitution, the offences themselves have not been so defined by those rules. So long as this essential element of the word offence as used in Art. 20 (2) has not been made out a case of double punishment for a parliamentary offence cannot be held to be covered by Art. 20 (2) of the Constitution. ILR (1955) 1 All 25 : 1954 Cr L J 691 : AIR 1954 All 319 (334, 339) (Pt Q) (Prs 43, 67) (DB).

——Art. 20 (2)—Article merely recognises the principle of autre fois convict which is one of the principles recognised by S. 403, Criminal P. C. itself. A I R 1954 Assam 106 (DB).

——Art. 20 (2)—Applicability — Double punishment —Departmental enquiry — Punishment enhanced in revision—If second punishment.

The State has a right to reconsider the whole of the charge levelled against the officer in the departmental enquiry and to inflict punishment in revision as it deemed necessary. Enhancement of punishment made in exercise of revisional jurisdiction cannot amount to a second punishment and it cannot be said that in such a case the party is exposed to the risk of double punishment. Spl. C. A. No. 180 of 1954 (Bom), Rel. on. 61 Bom L R 1625 : (1960) 2 Lab L J 66 : AIR 1960 Bom 225 (230) (Pt D) (Pr 28).

——Art. 20—Person already punished by jail authority.

If a person has already been punished by the Superintendent of the Jail for an alleged offence under Ss. 224 and 224/114, Penal Code, the proceedings for the same offences against the person would be against the provisions of Art. 20 of the Constitution and would be illegal. 55 Cal W N 140 : AIR 1952 Cal 319 (320) (Pt A) (Pr 4) (DB).

——Art. 20 (2) — Whether West Bengal Foodgrains (Movement Control) Order, 1951 contains any provision which permits the prosecution and punishment of any person contravening its provisions more than once for the identical offence and is therefore void under Art. 20 (2). See West Bengal Foodgrains (Movement Control), Order 1951, Para 7. AIR 1952 Cal 61.

——Art. 20—Second prosecution on the same facts — Legality. See Criminal P. C. (1898), S. 403. A I R 1955 NUC (Madh.B) 3737.

——Arts. 20 (2) and 132 (1) — Accused tried under S. 6 (2), Prevention of Corruption Act and acquitted — High Court holding that he could not be subsequently tried on the same facts under S. 409, Penal Code—Application under Art. 132 (1) rejected. A I R 1955 NUC (Madh.B) 3037.

——Art. 20 (2) — Criminal P. C (1898), Ss. 233, 403 — Cases to be committed on Police complaint and on private complaint — Procedure — Separate trial— Propriety — Double jeopardy not involved. See Criminal P. C. (1898), S. 233. AIR 1959 Mad 521.

——Art. 20 (2) — Criminal P. C. (1898), S. 403—Non-payment of Sales tax—Prosecution of one of the partners under S. 15 (b), Madras General Sales-tax Act and acquittal — Subsequent prosecution of the firm for the same period whether permissible. See Criminal P. C. (1898), S. 403. **AIR 1955 Mad 161.**

——Art. 20 (2)—Double punishment — (Companies Act (1913), S. 282-A) — (Criminal P. C. (1898), S. 403).

Section 282-A of the Companies Act cannot be construed as providing for a double punishment. It is only an alternative punishment arising when default is committed—Section 282-A does not offend against Art. 20 (2) of the Constitution. (1953) 1 M L J 514 : (1953) 23 Com Cas 142 : 1953 Cri L J 1142 : A I R 1953 Mad 595 (598) (Pt C) (Pr 9) (DB).

——Art. 20 (2)—Discharge of accused under S. 251-A (2), Cr. P. Code — Order becoming final — Fresh case on same facts and for same offences — Maintainability though not barred by S. 403 it would cause harassment to accused and deserves to be dismissed. See Criminal P. C. (1898), S. 403 Expl. 1964 (2) Cri L J 561 : AIR 1964 Mys 245.

——Art. 20 (2) — Scope — Offence for which accused could have been convicted in the previous trial under S. 237, Criminal P. C. — Fresh prosecution on same facts—Bar of. See Criminal P. C. (1898), S. 403 (1). 1960 Cri L J 1649 : AIR 1960 Pat 552.

——Art. 20 — Application for starting proceedings for contempt rejected by Sub-Divisional Magistrate—Whether operates as an acquittal or discharge and bars starting proceedings for contempt by High Court — See Contempt of Courts Act (1952), S. 3. AIR 1956 Pat 321.

——Art. 20 — Scope—Jail Manual, paras. 571 to 575 — Provisions for separation of prisoners for jail management—Not unconstitutional. See Ibid, Art. 14. 1961 (2) Cri L J 687 (2) : AIR 1961 Punj 524.

——Arts. 20 (2) and 34 — Departmental enquiry — Police charged under S. 10 (m), Central Reserve Police Force Act, 1949, acquitted by Appellate Court not on merits of case but on ground that trial was vitiated—Acquittal is no bar for institution of departmental enquiry. See Central Reserve Police Rules (1955), Rule 27. AIR 1965 Raj 140 (DB).

——Art. 20 — Discharge of accused is no bar to fresh complaint against him — See Criminal P. C. (1898), S. 403 Expl. AIR 1957 Tripura 47.

3 (b). Both prosecution and punishment necessary.

● ——Art. 20 (1) — Criminal Law Amendment Ordinance (38 of 1944), S. 13 (3) — Forfeiture provided in—Not penalty within meaning of Art. 20 (1) — Penal Code (1860), S. 53.

Forfeiture provided in S. 13 (3), Criminal Law Amendment Ordinance (38 of 1944), in case of offences which involve the embezzlement, etc., of government money or property is really a speedier method of realising government money or property as compared to a suit which the Government could bring for realising the money or property and is not punishment or penalty within the meaning of Art. 20 (1).

The forfeiture by the District Judge under S. 13 (3) cannot be equated to forfeiture of property which is provided in S. 53 of the Penal Code.

Article 20 (1) is dealing with punishment for offences and provides two safeguards, namely, (i) that no one shall be punished for an act which was not an offence under the law in force when it was committed, and (ii) that no one shall be subjected to a greater penalty for an offence than what was provided under the law in force when the offence was committed. The provision for forfeiture under S. 13 (3) has nothing to do with the infliction of any penalty on any person for an offence.

A sentence of fine imposed under S 10 of the 1943 Ordinance as amended in 1945 has nothing to do with the amount to be forfeited under S. 13 (3) of the 1944 Ordinance and simply because that fine was imposed after taking into account the amount embezzled would make no difference so far as S. 13 (3) is concerned. That section clearly contemplates that the District Judge will first forfeit the attached properties upto the amount of money determined under S. 12 and thereafter if any further properties are left the fine imposed by the Criminal Court may be realised from those properties. The fact that the fine imposed by the criminal Court may have taken into account under S 10 of the 1943 Ordinance the amount of money procured by means of the offence makes no difference to the interpretation of S. 13 (3). Criminal Appeal No. 176 of 1958 (Cal), Reversed. State of West Bangal v. S. K. Ghosh, 1963 S C D 236 : (1963) 2 S C R 111 : 1963 (1) Cri L J 252 : (1965) 2 S C J 239 : 1965 Mad L J (Cri) 538 : A I R 1963 S C 255 (263, 264) (Pt B) (Prs 14, 15, 17).

● ——Art. 20 (2) — Applicability — To bar second trial first trial should be by Court of competent jurisdiction—Prosecution requiring sanction—Trial under Prevention of Corruption Act without sanction is null and void being by Court not competent—Subsequent trial with proper sanction is not barred. See Criminal P. C. (1898), S. 403. AIR 1957 S C 494.

● ——Art. 20 (2) — 'Prosecuted and punished' — Interpretation.

In order to enable a citizen to invoke the protection of Art. 20 (2) there must have been both prosecution and punishment in respect of the same offence. The words 'prosecuted and punished' are to be taken not distributively so as to mean prosecuted or punished. Both factors must co-exist in order that the operation of the clause may be attracted Venkataraman v. Union of India, 1954 S C A 466 : 1954 Cri L J 993 : 1954 S C J 461 : (1954) 1 Mad L J 702 : 1954 Mad W N 475 : 1954 All W R (Sup) 54 : 1954 S C R 1150 : 1954 Andh L T (Civ) 55 : A I R 1954 S C 375 (377) (Pt B) (Pr 5).

● ——Art. 20 (2) — "Prosecuted and punished" — Gold confiscated under Sea Customs Act (1878), S. 167 (8) — Prosecution under Foreign Exchange Regulation Act (1947), S. 23, not barred — (Criminal P. C. (1898), S. 403).

The Sea Customs Authorities are not a judicial tribunal and the adjudging of confiscation, increased rate of duty or penalty under the provisions of the Sea Customs Act do not constitute a judgment or order of a Court or judicial tribunal necessary for the purpose of supporting a plea of double jeopardy. AIR 1922 Bom 30, Ref.

Hence, when the Customs Authorities confiscate the gold brought in India in contravention of a notification of the Government of India neither the proceedings taken before the Sea Customs Authorities constitute a prosecution of the person from whom it is confiscated nor does the order of confiscation constitute a punishment inflicted by a Court or judicial tribunal on that person. Such person cannot be said by reason of these proceedings before the Sea Customs Authorities to have been "prosecuted and punished" for the same offence with which he is later on charged before the Magistrate, in the complaint which is filed against him under S. 23 of the Foreign Exchange Regulation Act, 1947. Maqbool Hussain v State of Bombay, (1953) S C J 456 : (1953) 2 M L J 113 : 1953 Cr L J 1432 : 1953 All W R (Sup) 84 : 1953 S C A 641 : 56 Bom L R 13 : 1953 S C R 730 : 1953 Mad W N 648 : AIR 1953 S C 325 (330) (Pt C) (Prs 17, 18).

● ——Art. 20 (2) —"Prosecuted" meaning of.

If there is no punishment for the offence as a result of the prosecution, the sub-cl. (2) of Art. 20 has no application; and secondly, an appeal against an acquittal wherever such is provided by the procedure is in substance a continuation of the prosecution. Kalawati v State of H. P., 1953 S C J 144 : 1953 Cr L J 668 : 1953 S C A 660 : 1953 All W R (Supp) 52 : 1953 S C R 546 : 1953 Mad W N 219 : AIR 1953 S C 131 (132) (Pt C) (Pr 9).

——Art. 20 (2) — Applicabiiity and scope — (Press (Objectionable Matter) Act (1951), Ss. 3 (v), 4, 7, 16).

Article in newspaper published on 3-6-1952—Soon after, editor detained under Preventive Detention Act and released — Another article published on 12-6-1952—Editor again detained and released — On 7-7-1952 District Magistrate preferring complaint under Ss. 3 (v), 4 and 7 read with S. 16 of the Press (Objectionable Matter) Act that editor should furnish security —Objection that it was punishment for same offence. **Held**, that there was neither prosecution nor punishment for the writing of Article when he was directed to be detained — Therefore, Art. 20 (2) was not contravened. AIR 1953 S C 323, Foll. 1954 Cri L J 549 : 1954 A M L J 74 : AIR 1954 Ajmer 19 (20) (Pt B) (Pr 5).

——Art. 20 (2) — Conviction set aside and retrial ordered—There is no double prosecution.

What Art. 20 (2) contemplates is a double prosecution and punishment. No person shall be prosecuted and punished for the same offence more than once. In order that this Article may be attracted there must be a second prosecution and punishment. Where a person has been convicted and punished for an offence and the conviction has been set aside and retrial ordered the retrial is a continuance of the same prosecution. The order setting aside the conviction washes out the effect of the previous conviction. A conviction on retrial is a conviction in the same prosecution. It is neither a second prosecution nor a second punishment. The fact that the accused unfortunately served a sentence in jail for two or three days on account of the first conviction which was later on set aside does not render the conviction and punishment imposed upon retrial as a second punishment upon a second retrial. AIR 1954 All 116, Rel. on. 1954 Cri L J 1450 : 1954 All L J 474 : AIR 1954 All 689 (690) (Pt B) (Pr 3).

——Art. 20 (2) — Prosecution and punishment — Meaning — (Words and Phrases — Prosecution and punishment).

The words 'prosecution and punishment' in Art. 20 (2) have reference to criminal offences and have the effect of limiting the scope of the article to criminal proceedings before a Court of law or judicial tribunal competent to deal with criminal cases. AIR 1953 Cal 316, Rel. on. 1954 Cr L J 691 : ILR (1955) 1 All 25 : AIR 1954 All 319 (334) (Pt P) (Pr 42) (DB).

——Art. 20 (2) — Fresh prosecution — Retrial after setting aside conviction in appeal — It is not fresh prosecution on same facts — (Criminal P. C. (1898), S. 403).

A retrial cannot be regarded as fresh prosecution within meaning of Art. 20 (2). Where a person has been prosecuted and convicted but the appellate Court finding the conviction illegal inasmuch as the charge had been improperly framed, sets aside the conviction and orders a retrial, the retrial is not a fresh trial but continuance of the same prosecution.

Moreover, the prohibition is against a person being prosecuted and sentenced for the same offence more than once. Where the sentence once passed has been set aside, Art. 20 (2) can be no bar to a retrial for the same offence. 1953 All L J 552 : 1953 All W R (H C) 579 : 1954 Cr L J 216 : AIR 1954 All 116 (116) (Pr 2).

——Art. 20 (2) — Filing of second complaint on dismissal of first for complainant's absence — Article not contravened.

There is nothing fundamentally wrong in not barring a second prosecution after a discharge or acquittal. A discharge or acquittal can in certain circumstances take place on account of technical reasons and it may be very desirable in the circumstances of particular cases that the person be prosecuted after removing those technical defects in procedure. A second complaint filed after the dismissal of the first complaint for complainant's absence is not therefore, in contravention of Art. 20 (2) of the Constitution. 1951 All L J 725 : 1951 All W R (H C) 620 : 1951 All Cr C 152 : ILR (1952) 1 All 244 : AIR 1952 All 642 (642) (Pt A) (Pr 4) (DB).

——Art. 20 (2) — Applicability — Madras General Sales Tax, S. 15—Legality—If contravenes Art. 20 (2) —(Sales Tax — Madras General Sales Tax Act (9 of 1939), S. 15 (b)) —(General Clauses Act (1897), S. 26) —(Criminal P. C. (1898), S. 403).

For an order to bring it within the prohibition under Art. 20 (2), it must be established that the person was prosecuted and punished. A prosecution without a punishment would not bring the case within the prohibition of Art. 20 (2). AIR 1953 S C 325, Rel. on.

Where the Magistrate, finding the accused guilty under S. 15 (b), Madras General Sales Tax Act, 1939, sentenced the accussd to pay fine and in default to suffer imprisonment and further directs the sales-tax due from the accused to be recovered as if it were a fine, the direction in the order of the Magistrate for the recovery of the amount of sales tax and the amount of the fine as if it were a fine is not hit by Art. 20 (2) of the Constitution. The liability of the dealer's property being attached and the amount of the sales tax being recovered as arrears of land revenue by the attachment and sale of his property cannot be regarded as amounting to a prosecution of the dealer or the assessee. The provision in the order, for imprisonment in default of fine cannot be regarded as amounting to double punishment. AIR 1953 Mad 595 : (1953) 1 Mad L J 514, Rel. on. 1958 Cr L J 1377 : AIR 1958 Andhra 707 (708, 709) (Pt A) (Prs 7, 10).

——Art. 20 (2) — 'Prosecuted and punished' —(Cr. P. Code (1898), S. 403).

The word 'and' has been definitely used in a conjuctive sense and could not possibly bear a disjunctive meaning. The effect of latter interpretation would be that although a person may be prosecuted but not punished and the trial has for some reason become abortive either because the Court or tribunal had no jurisdiction to try him or because of some inherent defect or illegality affecting the validity of the trial itself, yet once this erroneous prosecution had been adopted, the person can claim exemption under cover of the Article from any fresh trial before a competent Court and in a regular manner. That could never be the intention of the law. The article merely recognizes the principle of autrefois convict which is one of the principles recognized by S. 403 of the Cr. P. Code, itself. Where the trial of the accused is found to be abortive because the Special Judge appointed under the Assam Special Courts Act (19 of 1950) was held to be not a Court of competent jurisdiction to try them, Art. 20 (2) of the Constitution is no bar to the trial of the accused again. **AIR 1953 S C 325, Foll. 1954 Cr L J 851 : AIR 1954 Assam 106 (107) (Pt A) (Pr 3) (DB).**

——Art. 20 (2) — Bombay Sales Tax (Procedure) Rules (1954), R. 51 — Rule does not contravene the provisions of the Article — Sales Tax—Bombay Sales Tax Act (III of 1953), S. 16.

Rule 51 of the Bombay Sales Tax (Procedure) Rules 1954, which imposes a penalty for default in payment of tax within the prescribed period, does not contravene the provision of Art. 20 (2) of the Constitution on the ground that failure to pay tax within the prescribed time is also made liable for prosecution and punishment under S. 16 of the Act.

Article 20 (2) does not say that there shall not be two offences constituted by the same act. The same act may be punishable under two different provisions. The existence of two different provisions making an act punishable would not by itself attract the applicability of Art. 20 (2).

Further in order that the protection of Art. 20 (2) can be invoked by a citizen there must have been prosecution and punishment in respect of the same offence before a Court of law or a judicial tribunal and prosecution in this context means an initiation or starting of proceedings of a criminal nature before a Court of law or a judicial tribunal in accordance with the procedure prescribed in the statute which creates the offence and regulates the procedure. The proceeding which results in the punishment must therefore be a proceeding of a criminal nature. The proceeding resulting in the imposition of penalty under S. 16 of the Act could not possibly be said to be a proceeding of a criminal nature. A I R 1953 S C 325 and A I R 1960 Andh Pra 451, Rel. on. **(1964) 5 Guj L R 1076 : A I R 1964 Guj 239 (240) (Prs 2, 3) (DB).**

——Art. 20 (2)—Applicability—Appeal from acquittal—Interpretation of 'and' in "prosecuted and punished."

(Obiter)—The word 'and' in 'prosecuted and punished' should be interpreted disjunctively so as to mean "or", as otherwise the provision which should be applicable to cases of acquittal also, would become inapplicable to them. **A I R 1952 Him Pra 81 (86) (Pt A) (Pr 11).**

——Art. 20 (2) — Applicability and construction — "Prosecuted and punished" — Interpretation —First prosecution without proper sanction—Second charge-sheet on same facts — Maintainability — (Criminal P. C. (1898), S. 403).

It is essential for the operation of Art. 20 (2) that the person who wants to get the benefit of this provision should be prosecuted as well as punished. The words therein are 'prosecuted and punished' and they are conjunctive. An accused obtaining a reversal of the order of the trial Court on appeal is estopped from pleading previous conviction although the accused at the time of the reversal had served out a part of his sentence.

Similarly a plea of former jeopardy cannot be maintained where a former conviction of the accused for the same offence was based upon an indictment which has been found defective. Where therefore, the prosecution of the petitioner was without a proper sanction;

Held, that it was a nullity and therefore the former prosecution and conviction would not be a bar to a subsequent prosecution. **ILR (1956) Hyd 355 : 1956 Cri L J 998 : A I R 1956 Hyd 127 (128) (Pr 3) (DB).**

——Arts. 20 (2), 14 and 311 — Double jeopardy for same offence — Departmental proceedings against Government servant after acquittal in criminal proceedings — Charge of receiving illegal gratification— Finding by Criminal Court that bribe was taken but acquittal granted on technical grounds relating to processual law — Acquittal does not preclude departmental proceedings in respect of same subject-matter — Departmental enquiry might not possess all attributes of criminal trial but to argue therefrom that Art. 14 of Constitution stands infringed leads to patent absurdity—Right to exercise disciplinary jurisdiction always exists when charge of sufficient gravity is alleged against an employee. W. P. 120 of 1962, D/- 18-2-1964 (Mad) Affirmed., A I R 1956 Mad 460 and A I R 1963 Orissa 73, Rel. on.; A I R 1952 Mad 853, Expl. A I R 1961 Cal 1, Ref. **78 Mad L W 692 : (1966) 1 Mad L J 306 : ILR (1965) 2 Mad 373.**

——Art. 20 (2)—Applicability — Discharge of accused.

Where an accused has been discharged on account of a trial which was a nullity there is no punishment and Art. 20 (2) does not apply. A I R 1952 Mad 729, Rel. on. **1955 Cri L J 514 : AIR 1955 Mad 129 (135) (Pt F) (Pr 19).**

——Art. 20 (2) — Restrictive precautions taken under Madras Restriction of Habitual Offenders Act, 6 of 1948 — If amounts to prosecution and punishment — "Prosecuted and punished", meaning of. See Madras Restriction of Habitual Offenders Act (6 of 1948). **A I R 1953 Mad 664 (DB).**

——Art. 20 (2) — Prosecution without valid sanction —Discharge—Effect.

The principle underlying Art. 20 (2) is the same as underlies S. 403, Criminal P. C., namely, double jeopardy. The word "prosecuted" is said to have been introduced in order to make it clear that the power relates to punishment by a Court of law and not to other kinds of punishment besides a judicial penalty for example departmental action in the case of public servants or proceedings under the Legal Practitioners' Act in the case of lawyers. Clause (2) uses the conjunction "and" and not disjunction "or" between the words "prosecuted" and "punished" and this makes it clear that to bar a fresh prosecution for the same offence, the accused should have been both prosecuted and punished. So when an accused is discharged for want of sanction there is no punishment and when a man is punished departmentally, there is no prosecution. Therefore, Art. 20 (2) does not take away the right to institute a second prosecution when the first is found to be a nullity by reason of want of sanction a prerequisite for the maintaining of the prosecution. **(1952) 65 Mad L W 329 : 1952 Mad W N 362 : 1952 Mad W N Cr 74 : 1952-1 Mad L J 550 : 1952 Cri L J 1576 : A I R 1952 Mad 725 (726, 727) (Pt B) (Pr 8).**

——Art. 20 (2)—Applicability — Acquittal in previous case—Second prosecution—Bar of.

Article 20 (2) does not prohibit proceedings against a person for an offence when he has been prosecuted and acquitted previously for the said offence. The principle of autre fois convict or of double jeopardy alone is accepted by the Constitution and not the plea of autrefois acquit. Where the accused was first acquitted under S. 347, Criminal P. C., for the non-appearance of the complainant but later on, the Magistrate, having been satisfied that there was sufficient reason for the complainant to remain absent, ignored the acquittal and revived the case, the revival would not offend Art. 20 (2) of the Constitution. A I R 1953 S C 325 Rel. on. **1961 (2) Cri L J 507** (Manipur).

——Art. 20 (2)—Interpretation.

The word "and" in Art. 20 (2) of the Constitution cannot be read as "or". Although by construing the article literally the protection given by the Constitution will not be as extensive as that given by S. 403, Criminal P. C., to a person who has been tried for an offence, there is no reason why the literal meaning should be departed from. **ILR (1952) Nag 52 : 1952 Nag L J 221 : 1952 Cri L J 845 : AIR 1952 Nag 170 (171) (Pt A) (Pr 5) (DB).**

——Art. 20 (2) — Applicability — Award of damages by appropriate Government under Employees' Provident Funds Act — (Employees' Provident Funds Act (1952), S. 14-B).

Although the infliction of damages imposed under S. 14-B is penal in its character and is, therefore, tantamount to "punishment" within the meaning of Art. 20 (2) of the Constitution, the protection of Art. 20 (2) can be invoked by a person only if there is a prosecution and punishment in respect of the same offence before a Court of law or a judicial tribunal, and not before a tribunal which entertains a departmental or an administrative enquiry even though set up by statute. The appropriate Government which is empowered to inflict damages under S. 14-B of the Employees' Provident Funds Act is not a Judicial Tribunal required by law to decide matters in controversy judicially upon evidence on oath. Hence the employer when he is prosecuted and convicted under S. 14 (2) read with para. 78 of the scheme and also damages under S. 14-B are imposed upon him is not entitled to invoke the protection of Art. 20 (2) of the Constitution. A I R 1953 S C 325, Rel. on. **1957 Pat L R 386 : 1957 B L J R 811 : (1958) 1 Lab L J 598 : ILR 37 Pat 47.**

——Art. 20 (2) — Applicability to departmental enquiry.

Article 20 (2) only prohibits the prosecution and punishment of a person more than once for the same offence. It does not in fact prohibit a second prosecution and punishment for an offence for which he has been previously prosecuted and acquitted. Hence Art. 20 (2) has no application in the case of a civil servant who has been prosecuted and acquitted. **AIR 1959 Tripura 51** (54) (Pt C) (Pr 11).

3 (c). "Prosecuted", meaning of.

●——Art. 20—Applicability — Scope—**'Prosecuted' meaning of — (Sea Customs Act (1878), S. 167) — (Foreign Exchange Regulation Act (1947), Ss. 23 and 23-B)—(Penal Code (1860), S. 40) —(General Clauses Act (1897), S. 3 (37)).**

Per Majority. — The proceedings before the Sea Customs Authorities under S. 167 (8) of the Sea Customs Act are not 'prosecution' within the meaning of Art. 20 (2) of the Constitution.

Prosecution means a proceeding either by way of indictment or information in the criminal Courts in order to put an offender upon his trial. The Chief Customs Officer or any other officer lower in rank than him in Customs department is not a Court. When a criminal prosecution and punishment of a criminal, in the sense of the penal law, is intended. section 167 makes a specific reference to a trial by a Magistrate, a conviction by such Magis rate and on such conviction to imprisonment or fine or both.

One of the three essential conditions laid down in cl. (2) of Art. 20 of the Constitution is absent and therefore the prohibition against double jeopardy would not become operative.

Subba Rao, J. — (Dissenting).—The word 'prosecuted' is comprehensive enough to take in a prosecution before an authority other than a magisterial or a criminal Court.

Section 167 of the Sea Customs Act defines a criminal act and fixes the punishment for that act. Apart from the fact that the statute itself in clear terms describes the acts detailed in the first column of S. 167 as offences against particular laws the acts described therein clearly fall within the definition of 'offences' in the General Clauses Act and the Penal Code.

The entire scheme of the Act as disclosed in the Sea Customs Act leaves no doubt that so far as offences mentioned in S. 167 are concerned the Customs Authority has to function as a judicial tribunal.

When the accused along with others, attempted to take out of India, Indian currency in contravention of the law prohibiting such export it cannot be held that the offence for which he was prosecuted by the Magistrate was different from the ore for which he had already been prosecuted and punished by the Customs Authority. In that view the prosecution and punishment by the Magistrate directly infringes the fundamental right under Art. 20 (2). Thomas Dana v. State of Punjab. **1959 Mad L J (Cr) 474 : 1959 Cr L J 392 : 1959 S C J 699 : 1959 Cal L J 342 : (1959) 1 S C R (Supp) 74 ; AIR 1959 S C 375** (379, 383, 385, 386, 387, 388) (Prs 11, 18, 27, 28, 32, 33, 34, 35).

●——Art. 20 (2) — Nature of proceedings contemplated by Article — Connotation of 'prosecuted' and 'punished' — Enquiry under Public Servants (Inquiries) Act is neither prosecution nor punishment—**(Public Servants (Inquiries) Act (1850), S. 2).**

The language of Art. 20 and the words actually used in Art. 20 (2) afford a clear indication that the proceedings in connection with the prosecution and punishment of a person must be in the nature of a criminal proceeding, before a Court of law or judicial tribunal, and not before a tribunal, which entertains a departmental or an administrative enquiry even though set up by a statute, but which is not required by law to try a matter judicially and on legal evidence. AIR 1953 S C 325, Foll.

It is true that the Commissioner appointed to make an enquiry under the Public Servants (Inquiries) Act, 1850 is invested with some of the powers of a Court, particularly in the matter of summoning witnesses and compelling the production of documents and the report, which he has to make, has to be made on legal evidence adduced under sanction of oath and tested by cross examination. But from these facts alone, the conclusion does not necessarily follow that an enquiry made and concluded under that Act amounts to prosecution and punishment for an offence as contemplated by Art. 20 (2) of the Constitution.

The words 'prosecution' and 'punishment' have no fixed connotation and they are susceptible of both a wider and a narrow meaning; but in Art. 20 (2) both the words have been used with reference to an 'offence' and the word 'offence' has to be taken in the sense in which it is used in General Clauses Act as meaning 'an act or omission made punishable by

any law for the time being in force.' It follows that the prosecution must be in reference to the law which creates the offence and the punishment must also be in accordance with what that law prescribes.

In an enquiry under the Public Servants (Inquiries) Act of 1850 there is neither any question of investigating an offence in the sense of an act or omission punishable by any law for the time being in force, nor is there any question of imposing punishment prescribed by the law which makes that act or omission an offence. Venkataraman v. Union of India, **(1954) S C J 461 : (1954) I M L J 702 : (1954) S C A 466 : 1954 Cr L J 993 : (1954) S C R 1150 : 1954 All W R (Supp) 54 : 1954 Mad W N 475 : AIR 1954 S C 375 (377, 378, 379) (Pt C) (Prs 6, 9, 15, 17).**

● **—Art. 20 (2) — Double jeopardy — Action under S. 7—Influx from Pakistan (Control) Act whether amounts to a prosecution—See Influx from Pakistan (Control) Act (23 of 1949), S. 7. AIR 1954 S C 229.**

——Art. 20 (2)—Applicability—Levy of penalty for non-payment of sales-tax—If prosecution.

Levy of penalty under the Andhra Pradesh Sales Tax Act for default in payment of sales tax is not a prosecution within meaning of Art. 20 (2). Therefore the provision for the levy of the penalty under S. 16 (3) and the starting of the prosecution under S. 30 (1) and S. 30 (3), Andhra Pradesh General Sales Tax Act as the case may be, is not violative of the guarantee given under Art. 20 (2) of the Constitution. AIR 1954 S C 375, A I R 1953 S C 325, AIR 1958 S C 119, A I R 1959 S C 375, Rel. on. **(1960) 11 S T C 581 : A I R 1960 Andh Pra 451 (454, 455) (Pt D) (Prs 14, 16).**

——Art. 20 (2) — Recovery of sales tax by attachment and sale of assessee's property—Does not amount to prosecution of assessee. 1958 Cri L J 1377 : AIR 1958 Andh Pra 707 (708) (Pt A) (Pr 7).

——Art. 20 (2)—"Prosecution"—Meaning of.

The word "prosecution" in Art. 20 (2) means judicial proceedings before a Court or a legal tribunal. It cannot have reference to departmental or disciplinary proceedings taken for inflicting departmental penalty or punishment on an officer belonging to the department for any misconduct. **55 Cal W N 605 : ILR (1952) Cal 254 : AIR 1953 Cal 316 (319) (Pt C) (Pr 34).**

——Art. 20 (2) — Previous conviction and fine by Rent Controller — Prosecution in Criminal Court upon same facts—If barred — West Bengal Premises Rent Control Act (1950), Ss. 34 and 41.

If the prosecution in the Criminal Court under S. 41 of the West Bengal Premises Rent Control Act, 1950, is upon the same facts as the proceedings in the Rent Controller's Court under S. 34 of the Act, then a previous conviction and fine by the Rent Controller would bar any punishment being given by the Criminal Court by reason of the plain words of Art. 20 (2) of the Constitution of India. The words "prosecution" and "offence" as used in the Constitution are not defined and they must be given their ordinary meaning. Going to the Rent Controller and asking him to fine a man for an act is really a prosecution of that man and the act is an offence against the statute and is a criminal offence because it is punishable by a fine which is a punishment of a criminal nature. **1953 Cr L J 294 : 56 C W N 585 : AIR 1953 Cal 85 (87) (Prs 12, 13, 16) (DB).**

——Art. 20 (2)— Prosecution means proceeding of a criminal nature.

"Prosecution" in the context of Art. 20 (2) means the initiation or starting of proceedings of a criminal nature before a Court of law or a judicial tribunal in accordance with the procedure prescribed in the statute which creates the offence and regulates the procedure. The proceeding which results in the punishment must therefore be a proceeding of a criminal nature. The proceeding resulting in the imposition of penalty under S. 16 Bombay Sales Tax Act could not possibly be said to be a proceeding of a criminal nature. **(1964) 5 Guj L R 1076 : A I R 1964 Guj 239 (240) (Pr 3) (DB).**

——Art. 20 (2) — Prosecution without sanction is a nullity — Conviction therein would not bar a subsequent prosecution. I L R (1956) Hyd 355 : 1956 Cri L J 998 : AIR 1956 Hyd 127 (128) (Pr 3) (DB).

——Art. 20 (2) — "Prosecuted" refers to the power of punishment by Court of law and not to other kinds of punishment.

The word "prosecuted" has been used to make it clear that the power relates to punishment by Court of law and not to other kinds of punishment besides a judicial penalty for example departmental action in the case of public servants or proceedings under the Legal Practitioners Act in the case of lawyers. **(1952) 1 Mad L J 550 : 65 Mad L W 329 : 1952 Mad W N (Cri) 115 : 1952 Mad W N 362 : 1952 Cri L J 1576 : AIR 1952 Mad 725 (726) (Pt B) (Pr 8).**

——Art. 20 (2) — Conviction in previous trial set aside for want of proper sanction — Fresh trial after fresh sanction — If barred — Criminal P. C. (1898), S. 403.

Where a conviction and sentence passed on a person after a trial are set aside on the ground of want of proper sanction, it cannot be said that there was a proper trial at all and so the result of the decision cannot operate as a bar to a fresh trial after receipt of a fresh sanction. 30 C W N 382 and A I R 1939 F C 43, Ref to. **ILR (1952) Nag 52 : 1952 Nag L J 221 : 1952 Cri L J 845 : A I R 1952 Nag 170 (171) (Pt B) (Pr 6) (DB).**

——Art. 20 (2) — Prosecution under S. 182 Penal Code — Dismissal of, on ground of the complaint not having been presented by public servant concerned — Second prosecution on valid complaint, if barred. See Criminal P. C. (1898), S. 403. ILR (1965) 15 Raj 1018 : AIR 1966 Raj 40.

3 (d). Judicial proceeding necessary.

● **——Art 20 (2) — Criminal proceeding before Court of law or tribunal necessary.**

The language of Art. 20 and the words actually used in Art. 20 (2) afford a clear indication that the proceedings in connection with the prosecution and punishment of a person must be in the nature of a criminal proceeding before a Court of law or judicial tribunal and not before a tribunal which entertains a departmental or administrative enquiry even though set up by a statute but which is not required by law to try a matter judicially and on legal evidence. Venkataraman v. Union of India, **1954 S C A 468 : 1954 Cri L J 993 : 1954 S C J 461 : 1954 (1) Mad L J 702 : 1954 Mad W N 475 : 1954 All W R (Sup) 54 : 1954 S C R 1150 : 1954 Andh L T (Civil) 55 : AIR 1954 S C 375 (377) (Pt C) (Pr 6).**

● **——Art. 20 (2)—Proceedings of the nature of criminal proceeding before a Court of law or judicial tribunal necessary.**

In order to invoke the protection of Art. 20 (2) there must have been a prosecution and punishment in respect of the same offence before a Court of law or judicial tribunal, required by law to decide the matters in controversy, judicially on evidence on oath which it must be authorised by law to administer and not before a tribunal which entertains

a departmental or administrative enquiry even though set up by a statute but not required to proceed on legal evidence given on oath. The article contemplates proceedings of the nature of criminal proceedings before a Court of law or a judicial tribunal and the prosecution in this context means initiation of proceedings of a criminal nature before such a Court or tribunal in accordance with the procedure prescribed in the statute which creates the offence and regulates the procedure. Maqbool Hussain v. State of Bombay. 1953 S C A 641 : 1953 S C J 456 : (1953) 2 Mad L J 113 : 1953 Cri L J 1432 : 1953 All W R (Sup) 84 : 1953 Mad W N 648 : 1953 S C R 730 : 56 Bom L R 13 : A I R 1953 S C 325 (328, 329) (Pt A) (Pr. 12).

——Art. 20 (2) — Applicability — Departmental enquiry.

The proceedings in connection with the prosecution and punishment of a person must be in the nature of a criminal proceedings, before a Court of Law or Judicial Tribunal, and not before a Tribunal which entertains a departmental or an administrative inquiry even though set up by a statute, but which is not required by law to try the matter judicially and on legal evidence. AIR 1954 S C 375, Foll. 61 Bom L R 1625 : (1960) 2 Lab L J 66 : AIR 1960 Bom 225 (229, 230) (Pt C) (Pr 27).

——Art. 20 (2) — Employees' Provident Funds Act — Government which is empowered to inflict damages under S. 14 (B) not a judicial tribunal — Hence employer, even if he has been prosecuted and convicted under S. 14 (2) is not entitled to invoke protection of Art. 20 (2) against infliction of the damages although the damages being penal in its character would amount to "punishment" within the meaning of the article. ('58) ILR 37 Pat 47.

——Art. 20 (2) — Double jeopardy — Sea Customs Authorities confiscating goods and imposing penalty on accused — Accused it also liable to be convicted under S. 167 (81), Sea Customs Act.

The Sea Customs Authorities are not a judicial tribunal and the adjudging of confiscation or increased rate of duty or penalty under the provisions of the Sea Customs Act do not constitute a judgment or order of a Court of Judicial Tribunal necessary for the purpose of supporting a plea of double jeopardy and hence in such a case the accused can be convicted under S. 167 (81) of the Sea Customs Act. AIR 1953 S C 325 and A I R 1959 S C 375, Foll. ; A I R 1958 S C 845, Disting. 62 Punj L R 772 : 1961 (1) Cri L J 150 : AIR 1961 Punj 21 (24) (Pt D) (Pr 7).

3 (e). Civil action.

● ——Art. 20—Scope — Imposition of civil penalties — Does not amount to conviction and sentence under criminal law so as to attract doctrine of double jeopardy — Action under S. 186, Sea Customs Act does not preclude proceedings under S. 167 (81) of that Act. See Sea Customs Act (1878), S. 167 (81). AIR 1962 Mad 85 (FB).

3 (f). Preventive detention.

——Art. 20—Satisfaction under Preventive Detention Act is not a "prosecution"—Article 20 (2) does not apply to preventive detention. See Public Safety — Preventive Detention Act (1950) (as amended in 1951), S. 3. AIR 1952 Cal 26 (DB).

3 (g). Security proceedings.

——Art. 20—Criminal P. C. (1898), S. 107 — Proceedings under S. 107 — Nature of — Person proceeded against is not under any accusation of offence — His imprisonment for failure to give security does not bar his subsequent trial for the acts on which the security proceedings were based. See Criminal P. C. (1898), S. 107. AIR 1959 Mad 339.

——Art. 20 (2) — Proceedings under S. 107, Criminal P. C.—Petitioner imprisoned for failure to give security — Subsequent trial for same acts for which security proceedings were started—Trial, whether barred. See Criminal P. C. (1898), S. 403. A I R 1952 Trav-Co 556.

3 (h). Departmental or disciplinary proceedings.

● ——Art. 20(2)—Departmental enquiry—Proceedings quashed by civil Court on ground of irregularity in procedure— Fresh departmental enquiry can be held on same facts. See Ibid, Art. 226. (1962) 2 S C J 282: AIR 1962 S C 1334.

——Art. 20 (3)—Simultaneous departmental and criminal proceedings—There is no provision requiring stay of departmental proceedings pending criminal Proceedings—Art. 20 (3) has no application because the person is not 'tried' in departmental proceedings for any criminal offence. AIR 1958 Cal 682, Disting. 1962 All W R (H C) 343 : 1962 All Cr R 196 : (1962) 1 Cr L J 554 : AIR 1962 All 232 (232, 233) (Prs 2, 4).

——Art. 20—Violation of conditions of motor vehicle permit— Provisions of Motor Vehicles Act for prosecution under S. 123 and for taking departmental action under S. 60 — No complaint of double jeopardy or violation of Art. 20 can be made because action under S. 60 of the Motor Vehicles Act cannot be regarded as prosecution—If law provides both for criminal prosecution and a civil claim or departmental action in respect of a wrongful act there is nothing illegal or invalid about it. A I R 1955 Andhra 277, Rel. on. Motor Vehicles Act (1939), Ss. 60 and 123. 1962 All L J 116.

——Art. 20 (2) — Scope — Departmental enquiry — Whether superior officer holding enquiry can be said to have prosecuted and punished the officer charged within the meaning of Art. 20 (2). See Madras Civil Services (Disciplinary Proceedings Tribunal) Rules (1940). (1957) 2 Andh W R 425.

——Art. 20 (2) — Departmental or administrative enquiry—Though made by tribunal set up, statute does not attract application of article where it is not required by law to try the matter judicially and on legal evidence. AIR 1960 Bom 225.

——Art. 20 (2)—Departmental proceedings.

Article 20 (2) does not apply to departmental proceedings. A I R 1953 Cal 316 ; A I R 1952 Mad 725 and AIR 1953 S C 325, Rel. on. 58 C W N 18 : ILR (1955) 2 Cal 28 : AIR 1954 Cal 60 (65) (Pt K) (Pr 76) (DB).

——Art. 20 (2)—Scope and effect — Acquittal in criminal proceedings — Departmental proceedings in respect of identical charges—If barred.

Departmental proceedings against an officer in respect of the identical charges of which he was acquitted in the criminal proceedings by a Sessions Judge, are not barred under Art. 20 (2) of the Constitution. This article is merely a reproduction of the principles underlying or laid down in S. 403, Criminal P. C. (1898) and S. 26 of the General Clauses Act (10 of 1897). The word "prosecution" in Art. 20 (2) means judicial proceedings before a Court or a legal tribunal. It cannot have reference to departmental or disciplinary proceedings taken for inflicting departmental penalty or punishment on an officer belonging to the department for any misconduct. ILR (1952) Cal 254: 55 C W N 605 : A I R 1953 Cal 316 (319) (Pt C) (Pr 34).

——Art. 20 (2)—Applicability of principles of Autrefois acquit and Autrefois convict to departmental

enquiries. See Criminal P.C. (1898), S. 403. AIR 1965 J & K 91 (DB).

——Art. 20 – Scope—Government servant prosecuted on criminal charge and honourably acquitted – Fresh proceedings in respect of same matter – Validity — Art. 311 (2). See Ibid, Art. 311 (2). A I R 1959 Madh Pra 46.

——Art. 20 (2) — Departmental proceeding against Government servant after his acquittal in criminal proceeding on technical grounds relating to processual law not barred. 78 Mad L W 692 : (1966) 1 Mad L J 306 : ILR (1965) 2 Mad 373.

——Art. 20 (2) — Fresh departmental proceedings against, Government servant in respect of same matter —Dismissal order set aside by Court not on merits, but on ground that principles of natural justice were not observed — Fresh enquiry in respect of same allegations not illegal – Central Civil Service Rules, (1957), R. 12 (4) — Second enquiry is covered by R. 12 (4)—No question of double jeopardy — Retrospective suspension—Validity. See Ibid, Art. 226. AIR 1963 Manipur 28.

——Art. 20 (2) — Fresh enquiry for same offence— Order of removal without giving opportunity to defend — Order withdrawn reserving right to direct enquiry — Fresh enquiry on same grounds not hit by principle of double jeopardy. See Ibid, Art. 311 (2). ('64) 66 Punj L R 1227.

——Art. 20 (2) —Departmental enquiry and punishment against Government servant — Power of Government to hold fresh enquiry — Principle of double jeopardy not applicable. See Punjab Civil Services (Punishment and Appeal) Rules (1952), Rule 14. A I R 1956 Punj 81.

3 (i). Same offence.

● ——Art. 20 (2)—'Same offence.'

The previous case in which the accused was convicted was in regard to a conspiracy to commit criminal breach of trust in respect of the funds of the Jupiter Company. Therein it was found that the accused was a party to the conspiracy and also a party to the fraudulent transactions entered into by the Jupiter Company in his favour. The subsequent case related to a different conspiracy altogether. The conspiracy in question was to lift the funds of the Empire Company, though its object was to cover up the fraud committed in respect of the Jupiter Company :

Held, that it might be that the defalcations made in Jupiter Company afforded a motive for the new conspiracy, but the two offences were distinct ones. Some accused might be common to both of them, some of the facts proved to establish the Jupiter Company conspiracy might also have to be proved to support the motive for the second conspiracy. But that in itself would not be sufficient to make the two conspiracies the one and the same offence. It could could not even be said that some of the ingredients of both the conspiracies were the same. The facts constituting the Jupiter Company conspiracy were not the ingredients of the offence of the Empire Company conspiracy, but only afforded a motive for the latter offence. Motive was not an ingredient of an offence. The proof of motive helped a Court in coming to a correct conclusion when there was no direct evidence. Where there was direct evidence for implicating an accused in an offence the absence of proof of motive was not material. The ingredients of both the offences were totally different and they did not form the same offence within the meaning of Art. 20 (2) of the Constitution Bhagwan Swarup Lal Bishan Lal v. State of Maharashtra, (1964) 2 S C R 378 : (1964) 2 S C J 771 : 1965 (1) Cri L J 608 : AIR 1965 S C 682 (688, 689) (Pt D) (Prs 11, 12).

● ——Art. 20 (2)—General Clauses Act (1897), S. 26—Principle—Second trial must be for same offence.

Both in the case of Art. 20 (2) of the Constitution as well as S. 26 of the General Clauses Act to operate as a bar the second prosecution and the consequential punishment thereunder must be for 'the same offence' i. e., an offence whose ingredients are the same. The 5th amendment of the American Constitution which provides that no person shall be subject for the same offence to be twice put in jeopardy of life or limb, proceeds on the same principle. A I R 1961 S C 578, Rel. on, Manipur Administration, Manipur v. Thokchom Bira Singh, 1964 Mad W N 557 : (1964) 7 S C R 123 : 1965 S C D 8 : (1965) 1 Andh L T 96 : (1965) 1 S C J 451 : 1965 Mad L J (Cri) 233 : (1965) All W R (H C) 358 : 1965 All Cri R 250 : 1965 (1) Cr L J 120 : AIR 1965 S C 87 (90) (Pt C) (Pr 6).

● ——Art. 20 (2)—Applicability—Applies only when both complaints relate to same offence — Offence under S. 409, I. P. Code and that under S. 105, Insurance Act, not same—Two trials not barred by Art. 20 (2) of the Constitution or by S. 26, General Clauses Act. ILR (1956) Bom 685 : 58 Bom L R 578, Reversed. State of Bombay v. S. L. Apte, 1961 (1) Cri L J 725 : 63 Bom L R 491 : (1961) 1 Ker L R 452 : (1961) 2 S C A 446 : (1961) 1 Andh W R (S C) 210 : (1961) 1 Mad L J (S C) 210 : (1961) 31 Com Cas 39 : (1961) 1 S C J 685 : 1961 Mad L J (Cri) 331 : 1961 M P L J 1108 : 1961 Nag L J 524 : A I R 1961 S C 578 (583) (Prs 15, 16, 17).

——Art. 20 (2)—Accused prosecuted under Ss. 120-B/420, 420, 467/-471, Penal Code—After examination of several prosecution witnesses, State filing second case separately against same accused persons under same sections for the same offences committed in pursuance of same conspiracy — Accused cannot be tried twice over in two cases for same offence of conspiracy punishable under S. 120 B, Penal Code. 1965 (2) Cr L J 351 : AIR 1965 Cal 457 (458, 459) (Pt B) (Prs 4, 6).

——Art. 20 (2)—Criminal P. C. (1898), S. 403 — Applicability—Under R. 19 under Madras General Sales Tax Act, partner is jointly and severally responsible for payment of tax—But it is firm that has to be prosecuted—One of partners prosecuted under S. 15 (b) of Madras General Sales Tax Act and acquitted — No subsequent prosecution of firm or other partner is maintainable—(Sales Tax—Madras General Sales Tax Act (9 of 1939), S. 15 (b), R. 19). See Criminal P. C. (1898), S. 403. AIR 1955 Mad 161.

——Arts. 20 (2), 311 (2), Proviso (a) — Misconduct by Government servant — Conviction by criminal Court under S. 353, Penal Code—Government first imposing punishment of suspension for the misconduct which has led to his conviction and again of dismissal — Latter order amounts to second punishment for same misconduct and is illegal – Order held not covered by Proviso (a) to Art. 311 (2) or Standing Order (n) in Chap. 12 (2) Mysore Government Road Transport Department Standing Orders, Ch. 12 (2), Order (n). (1963) 2 Mys L J 28 : (1963) 2 Lab L J 723 : 1964 (1) Cr L J 112 (113, 114) (Prs 6, 8, 10) (DB).

3(j). Distinct offences.

● ——Art. 20 (2) – Offence under S. 409, Penal Code, and that under S. 105, Insurance Act are not same. State of Bombay v. S. L. Apte, 1961 (1) Cri L J 725 : 1961 Mad W N 284 : 63 Bom L R 491 : (1961) 3 S C R 107 : (1961) 1 Ker L R 452 : (1961) 1 S C J 685 : (1961) 1 Mad L J (SC) 210 : 1961 Mad L J (Cri) 331 : (1961) 1 Andh W R (SC) 210 : (1961) 31 Com Cas (Ins) 39 : 1961 M P L J 1108 : 1961 Nag L J 524 : (1961) 2 S C A 446 : AIR 1961 S C 578 (583) (Pr 16).

● ——Art. 20 (2) — Applicability — Conviction for offence under S. 167 (8), Sea Customs Act –Subse-

quent trial for conspiracy – If barred – Collector of Customs acts judicially under S. 167 (8) – (Sea Customs Act (1878), S. 167 (8) (81) – (Penal Code (1860), S. 120-B) – Criminal P. C. (1898), S. 403).

In imposing confiscation and penalties under S. 167 (8), Sea Customs Act, the Collector of Customs acts judicially. But the fact that the Collector of Customs acted judicially is not decisive and does not necessarily attract the protection guaranteed by Art. 20 (2). That article protects a person from being 'prosecuted and punished' for the same offence more than once'. Under S. 186, Sea Customs Act, the award of any confiscation, penalty or increased rate of duty under that Act by an officer of Customs does not prevent the infliction of any punishment to which the person affected thereby is liable under any other law.

Criminal conspiracy under S. 120-B, Indian Penal Code, is not punishable under the Sea Customs Act. Where the offence of criminal conspiracy was not the subject-matter of the proceedings under S. 167 (8), Sea Customs Act before the Collector of Customs it cannot be said that the accused have already been prosecuted and punished for the 'same offence' as conspiracy under S. 120-B, Penal Code read with S. 167 (81), Sea Customs Act. Their subsequent trial, therefore, under S. 120-B read with S. 167 (81) is not barred. Leo Roy Frey v. Superintendent, District Jail, Amritsar, 1958 S C J 301 : 1958 Mad L J (Cr) 289 : 1958 S C A 40 : 1958 Cr L J 260 : 1958 S C R 822 : AIR 1958 S C 119 (121) (Pr 4).

● ——Art. 20 (2) – Applicability – One trial for several offences – Acquittal of some and conviction of others – Legality. See Criminal P. C. (1898), S. 403. AIR 1957 S C 592

● ——Art. 20 – Prior proceeding under S. 488, Calcutta Municipal Act read with R. 62 of Sch. 17 does not bar proceeding under S. 363 – See Municipalities – Calcutta Municipal Act (3 of 1923), S. 363. AIR 1956 S C 110.

——Art. 20 (2) – Saharanpur Municipal Bye-laws, Bye-law No. 2 – Offence under – Continuing offence – Previous prosecution does not operate as bar for subsequent prosecution. See Municipalities – U. P. Municipalities Act (2 of 1916), S. 299. 1965 (1) Cri L J 412 : AIR 1965 All 160.

——Art. 20 (2) – Applicability – Every act of refusal to take food constitutes fresh offence – Accused continuing hunger strike after repeated warnings and jail punishments – Subsequent prosecution and conviction under S. 52, Prisons Act – Art. 20 (2) not infringed. 1958 All L J 849 : 1959 Cr L J 283 : ILR (1959) 2 All 1 : AIR 1959 All 164 (166) (Pt D) (Pr 7) (DB).

——Art. 20 – Accused tried for misappropriation for items covering period 1951-52 – Sanction obtained – Conviction – Second trial for items covering period 1949-50 – These items not subject-matter of previous trial – Evidence not same – Principle of Art. 20 and S. 403, Cr. P. C., applicability – (Criminal P. C. (1898), S. 403) – (Prevention of Corruption Act (1947), S. 6).

The accused along with another was prosecuted for misappropriating items of money covering the period between 1951-52. Prosecution was under S. 5 (2), Prevention of Corruption Act and Ss. 465 and 471 read with S. 120B, I. P. C. Sanction was obtained on 10-8-1953. The accused was convicted for offence under Ss. 465 and 471, I. P. C. and S. 5 (2), Prevention of Corruption Act and was acquitted of other charges. Subsequently the accused was being tried for items covering a period of 1949 to 1950. These items were not the subject-matter of the previous trial. Sanction for the prosecution for this second trial was granted on 14-12-1953 more than four months after the sanction for the first trial was obtained. Some of the charges in the second trial were not the charges in the previous trial, viz. Ss. 409, 468 and 420 of I. P. C. When the charge-sheet in the first trial was presented there was no sanction for prosecution in respect of the second trial.

Held, that items in the second trial being different relating to different entries, it could not be said that the evidence in the two cases would be identical or that the second trial would be a repetition of what had taken place in the earlier trial.

(2) that neither cl. (2) of Art. 20 of the Constitution nor S. 403 of the Code of Criminal Procedure in terms applied. (Point conceded).

(3) that in the second trial the items in dispute were of an entirely different period and were in any case beyond 12 months from any of the items in respect of which the first trial was held. They could not, therefore, be made subject matter of a charge in that case. Besides there was no evidence that the prosecution was aware when the former case was started about the items (subject matter of second trial) misappropriated by the accused. In the first trial the accused too were different. The sections under which they were charged were also different. For all these reasons the principle underlying the doctrine of autrefois convict could not be extended to the present case. 1958 A W R (HC) 195 : 1958 All L J 111 : 1958 A Cr R 179.

——Art. 20 – Continuing offence – Offence of default in payment of successive instalments towards licence fee. See Criminal P. C. (1898), S. 403. AIR 1956 All 141.

——Art. 20 – Criminal P. C. (1898), Ss. 403 and 234 – Applicability and scope – Distinct offences committed in different transactions – Separate trials – Acquittal in one – Competency of the other – Principle of autrefois acquit. See Criminal P. C. (1898), S. 403. AIR 1959 Andh Pra 517.

——Art. 20 (2) – Criminal P. C. (1898), S. 403 – "Any distinct offence" – Accused found in possession of stolen articles forming subject-matter of distinct thefts – Trial of accused under S. 411, Penal Code more than once – (Penal Code (1860), S. 411) – (Evidence Act (1872), Ss. 101-104). See Criminal P. C. (1898), S. 403. A I R 1959 Andh Pra 137.

——Art. 20 (2) – Applicability – Prosecution for different offences relating to different periods – Bar of.

Where in the previous case the contravention was of provision imposing a different obligation and in period different from that to which the complaint in the subsequent case relates, there can be no bar of autrefois acquit to the maintainability of the subsequent complaint. 61 Bom L R 1291 : 1960 Cri L J 1321 : I L R (1960) Bom 762 : A I R 1960 Bom 453 (455) (Pt A) (Pr 6) (DB).

——Art. 20 (2) – Double jeopardy for same offence – Rule against – Applicability – Offences involved in second prosecution distinct and different from those in first prosecution though allegations of fact substantially similar – Rule does not apply

If the offences in respect of which prosecutions started are distinct and different, there is no question of the Rule as to double jeopardy as embodied in Art. 20 (2) of the Constitution being applicable. To operate as a bar, the second prosecution and the consequential punishment thereunder must be for the 'same offence'. The crucial requirement, therefore, for attracting the article is that the offences are the same, that is, they should be identical. If, however, the two offences are distinct, then notwithstanding that the allegations of facts in the two complaints might be substantially similar, the benefit of

the ban cannot be invoked. A I R 1961 S C 578, Rel. on.

Held, on facts, that the contravention of the sections under the Drugs Act for which the second prosecution was started was a continuing offence and an offence distinct and different from that which was the subject-matter of the first prosecution and consequently the principle of double jeopardy was not attracted to the facts and circumstances of this case. 1965 (2) Cri L J 206 : A I R 1965 Cal 434 (436) (Prs 7, 8) (DB).

——**Art. 20 — Double jeopardy for same offence— Illegal exportation of Indian Currency out of India —Prosecution of person under Clauses (3), (8) and (37) of S. 167 of Sea Customs Act is legal — Person can at the same time also be prosecuted under Ss. 23 (1) and 23-B of Foreign Exchange Regulation Act.**

Where a person is prosecuted for trying to illegally export Indian Currency out of India, his prosecution under Cls. (3), (8) and (37) of S. 167, Sea Customs Act is valid. It cannot be said that he is being prosecuted for the same offence, three times over. The ingredients of the three offences set forth under S. 167 (3), (8) and (37) are different although all the offences might be committed by the same person in planning to export currency notes out of India. The illegal exportation of currency consists of an integrated series of acts just as much as the legal exportation would be. Some facts are bound to be common in the commission of the different offences but that does not affect the jurisdiction to impose the several penalties. A further criminal complaint against him under Ss. 23 (1-A) and 23-B of Foreign Exchange Regulation Act is also valid for a person may be guilty of certain acts which expose him to a criminal prosecution for a criminal offence to a penalty under the law intended to collect the maximum revenue under the taxing law, and/or at the same time, make him liable to damages in torts. A I R 1959 S C 375, Rel. on. 1964 (2) Cri L J 151 : A I R 1964 Cal 347 (354) (Pt D) (Prs 26, 27) (DB).

——**Art. 20 (2) — Double jeopardy — West Bengal Premises Tenancy Act (12 of 1956), S. 31 — Proceeding under, against landlord for cutting electric connection — Subsequent conviction under S. 426, Penal Code for same act — Legality — (Penal Code (1860), S. 425).**

A landlord cut off the electric connection of his tenant with a pair of scissors in the presence of his wife as the tenant had refused to pay the enhanced electric charges demanded by him. They were tried under S. 426, Indian Penal Code, and convicted on the same. A prosecution under S. 31, West Bengal Premises Tenancy Act had also been launched against the landlord's wife only and had not come for hearing as yet.

Held, that (i) the cutting off of the electric connection, was with the intention of causing wrongful loss to the opposite parties so as to clearly come within the definition of S. 425 of the Indian Penal Code.

(ii) that although there is proper and adequate remedy available to the tenant under S. 31 of the West Bengal Premises Rent Control Act, it could not be said that the landlord's wife should not have been prosecuted under the general law before the Presidency Magistrate. It will be for the wife if so advised to point out before the Rent Controller, Calcutta, if she is punished that there had been a punishment awarded to her on a conviction under S. 426 of the Indian Penal Code on the same facts and it will be for the Magistrate to deal with the matter according to law. **1959 Cri L J 446 : I L R (1959) 2 Cal 658 : A I R 1959 Cal 260 (261, 262) (Prs 8, 15).**

——**Art. 20 (2)—Offence under S. 30 (1) (b), Madhya Bharat Excise Act compounded — Prosecution for offence under S. 33 (b) is competent. See Madhya Bharat Excise Act (1952), S. 53 (2). A I R 1955 N U C (Madh B) 1818.**

——**Art. 20 (2)—Applicability — Second prosecution based on different acts on different occasions at different places — Bar of — (Criminal P. C. (1898), Ss. 235 (1) and 303)—(Penal Code (1860), S. 485).**

It may be that a person may be in possession of different sets of counterfeit labels of trade-mark on different occasions at different places If such a person be found in possssion he will be deemed to have committed a distinct and separate offence under S. 485, Penal Code in respect of each set of counterfeit labels found with him, at different places. It cannot be said that a second prosecution in respect of another set of counterfeit labels found with a person would amount to a prosecution for the same offence twice, violating S. 403, Criminal P. C. or Art. 20 (2) of the Constitution of India. A I R 1955 S C 280, Rel. on. **1960 M P L J 443 : 1960 M P C 233 : 1960 Cri L J 609 : I L R (1959) Madh Pra 620 : 1960 Jab L J 501 : A I R 1960 Madh Pra 149 (149, 150) (Pt A) (Pr 5).**

——**Art. 20 (2) — Different cases started against accused under S. 411, Penal Code, in respect of different articles seized on same occasion — Acquittal in one case will not bar retrial in other cases. See Criminal P. C. (1898), S. 403. 1961 (1) Cri L J 398 : A I R 1961 Mys 69.**

——**Art. 20—Applicability and scope — Punishment for same offence more than once — Liability to be punished under S. 161, Penal Code, and also under S. 5 of Prevention of Corruption Act. See General Clauses Act (1897), S. 26. 1960 Cri L J 493 : A I R 1960 Mys 111 (DB).**

——**Art. 20—More than one trial—Legality—Test— (Criminal P. C. (1898), S. 403)—(Penal Code (1860), Ss. 160, 323).**

The test for determining the legality of the trial of a person more than once is whether the offences for which he is tried are distinct from those for which he was previously tried. The facts necessary to make out an offence of hurt being altogether different from those for affray, the previous trial and conviction under S. 160, Penal Code, are therefore no impediment to a subsequent case under S. 323, Penal Code, filed by one of the parties to that affray. 35 Mys H C R (C C R) 10 ; A I R 1936 Mad 353 (F B) ; A I R 1928 Cal 240 and A I R 1930 Cal 60 (1), Disting. ; 7 Mys C C R 131 ; 31 Mys C C R 335 ; A I R 1940 Mad 224 and A I R 1925 All 299, Rel. on. **1955 Cri L J 1611 : I L R (1955) Mys 470 : A I R 1955 Mys 138 (139) (Prs 4, 5) (DB).**

——**Art. 20 (2)—Applicability—Distinct offence.**

Possession of firearm without license is an offence independent of the offence of dacoity and as it is a case of a distinct offence Cl. (2) of Art. 20 of the Constitution of India does not bar the second trial. A I R 1952 Cal 730, Ref.; 54 Cal W N 695 (PC), Expl. **1955 B L J R 219 : 34 Pat 164 : 1955 Cri L J 1277 : A I R 1955 Pat 396 (400) (Pt C) (Pr 9) (DB).**

——**Art. 20 (2) — Same offence — Criminal P. C. (1898), S. 403—General Clauses Act (1897), S. 26— Sales tax—Bihar Sales Tax Act (1947), S. 26.**

The accused obstructed a Commercial Tax Inspector on a particular day while the latter was examining his accounts in regard to agricultral income-tax. During this inspection it was discovered that the accused had also committed an offence under S. 26 (1) (a) by failing to register himself under the Bihar Sales Tax

Act. On a complaint filed by the Inspector the accused was tried on a charge under S. 353, Penal Code, by a Magistrate with second class powers and was acquitted. He was again prosecuted on the same facts by a first class Magistrate for offences under Clauses (a) and (h) of S. 26 (1), Bihar Sales Tax Act after obtaining the necessary sanction as required by S. 26 (2) of that Act.

Held, that (i) so far as the offence under S. 26 (1) (a), Bihar Sales Tax Act was concerned, the trial was not barred because that offence was not constituted by any of the acts done by the accused on the particular date. The mere fact that it was discovered on that day could not make it an offence committed on the day of occurrence.

(ii) So far as the offence under S. 26 (1) (h) was concerned, the fresh trial was not barred either under Art. 20 (2) of the Constitution or under S. 26, General Clauses Act and as such it was neither illegal nor unconstitutional. The prohibition envisaged in these provisions is with regard to 'same offence'. The offences under S. 353, Penal Code and S. 26 (1) (h), Bihar Sales Tax Act, though constituted by the same act were 'different offences'.

(iii) The trial was also not barred on the principle of autrefois acquit but was expressly permissible under S. 403 (4) Criminal P. C. (1898), as the Magistrate in the previous trial was not competent to try the offences in the subsequent trial in view of S. 26 (2), Bihar Sales Tax Act. A I R 1948 Pat 32, Rel. on; A I R 1947 Pat 290, Disting. 1954 B L J R 155 : 1954 Cri L J 653 : A I R 1954 Pat 247 (248, 249) (Prs 5, 6, 8) (DB).

Accused not to be compelled to be witness against himself—Clause (3).

(a) Failure to give evidence—Inference from.

(b) "Person accused of any offence".

(i) Examination under S. 45-G, Banking Companies Act.

See also Ibid, Note 6 (d).

(ii) Persons examined under S. 171A, Sea Customs Act.

(iii) Person giving evidence under S. 240, Companies Act (1956).

(iv) Other cases.

4. Accused not to be compelled to be witness against himself—Clause (3).

● ——Art. 20 — Applicability — Madhya Pradesh Agricultural Cattle Preservation Act (18 of 1959), S. 12 — Validity — Burden of proof on accused—No infringement of fundamental right. See Madhya Pradesh Agricultural Cattle Preservation Act (18 of 1959), S. 12. 1961 (1) Cri L J 573 : A I R 1961 S C 448.

● ——Art. 20 (3)—Principle underlying — Scope and extent of fundamental right indicated.

Article 20 (3) embodies the principle of protection against compulsion of self-incrimination which is one of the fundamental canons of the British system of criminal jurisprudence and which has been adopted by the American system and incorporated as an article of its Constitution. It has also, to a substantial extent, been recognised in the Anglo-Indian administration of criminal justice in this country by incorporation into various statutory provisions.

So far as the Indian law is concerned, it may be taken that the protection against self-incrimination continues more or less as in the English common law, so far as the accused and production of documents are concerned, but that it has been modified as regards oral testimony of witnesses, by introducing compulsion and providing immunity from prosecution on the basis of such compelled evidence.

Analysing the terms in which this fundamental right has been declared in our Constitution, it may be said to consist of the following components. (1) It is a right pertaining to a person "accused of an offence"; (2) It is a protection against "compulsion to be a witness"; and (3) It is a protection against such compulsion resulting in his giving evidence "against himself".

Broadly stated the guarantee in Art. 20 (3) is against "testimonial compulsion". But there is no reason to confine it to the oral evidence of a person standing his trial for an offence when called to the witness-stand. The protection afforded to an accused in so far as it is related to the phrase "to be a witness" is not merely in respect of testimonial compulsion in the Court room but may well extend to compelled testimony previously obtained from him.

Considered in this light, the guarantee under Art. 20 (3) would be available to persons against whom a First Information Report has been recorded as accused therein. It would extend to any compulsory process for production of evidentiary documents which are reasonably likely to support a prosecution against them. Sharma v. Satish Chandra, 1954 S C J 428 : (1954) 1 M L J 680 : 1954 Cri L J 865 : 1954 S C A 449 : (1954) S C R 1077 : 56 Punj L R 366 : 1954 Andh L J (W) 54 : 1954 Andh L T (SC) 1 : 1954 Mad W N 566 : A I R 1954 S C 300 (302, 303, 304) (Pt B) (Prs 4, 7, 9, 10, 11).

——Arts. 20, 13, 245, Preamble — Construction of constitution—Rules as to — Repugnancy between law and constitution—Effect—Law Trangressing fundamental right given by Art. 20 (3) must be held to be void. See Ibid, Art. 13. A I R 1958 All 293.

——Art. 20 (3)—Scope—Doctrine of immunity from self-incrimination—Foundation for—(Criminal P. C. (1898), Ss. 342, 342-A).

The doctrine of immunity from self-incrimination is founded on the presumption of innocence which characterises the English system of criminal justice, and a fundamental principle of that system of justice (which differs from the inquisitorial procedure obtained in France and some other Continental countries) is that it is for the prosecution to prove the guilt of the accused and that the latter need not make any statement if he does not want to. 1957 All L J 263 : 1957 Cri L J 698 : 1957 All W R (HC) 381 : A I R 1957 All 396 (397) (Pt A) (Pr 3).

——Arts. 20 (3) and 21 — Bombay Prohibition Act (25 of 1949), S. 129-A — Validity — Deprivation of personal liberty on account of being compelled to go before the medical officer whether in accordance with procedure established by law — Determination of reasonableness of procedure not justiciable. See Prohibition — Bombay Prohibition Act (25 of 1949), S. 129-A. 1964 (2) Cr L J 523 : AIR 1964 Bom 253 (DB).

——Art. 20 (3)—Company—Right to benefit.

The protection against self-incrimination given to the accused by Art. 20 (3) is available not only to natural individuals but also to companies. ILR (1961) Bom 508 : 1961 Nag L J 96 : (1961) 31 Com Cas 324 : 63 Bom L R 559 : 1961 (2) Cr L J 200 : AIR 1961 Bom 242 (243, 244) (Pt A) (Pr 5) (DB).

——Art. 20 (3)—'Person'—If includes Company.

Reading Art. 367 of the Constitution with S. 3 (42) of the General Clauses Act, 1897, the word 'person' occurring in Art. 20 (3) of the Constitution is deemed to include companies, and unincorporated bodies. ILR (1961) Bom 508 : 1961 Nag L J 96 : (1961) 31 Com

Cas 324 : 63 Bom L R 559 : 1961 (2) Cr L J 200 : AIR 1961 Bom 242 (243) (Pt C) (Pr 5) (DB).

——Art. 20 (3) — Nature of — Compelled testimony obtained in violation of Art. 20 (3) held inadmissible.

The rule that an accused person shall not be compelled 'to be a witness against himself' is primarily a rule of evidence both in form and in content and it must follow that a breach of the rule renders the evidence incompetent. The protection against compulsory self-incrimination would be largely illusory, it it was to be held that although compulsion is banned by the Constitution, compelled testimony may nevertheless be used against the accused. It follows, therefore, that evidence obtained by the exercise of testimonial compulsion contrary to Art. 20 (3) of the Constitution is incompetent and inadmissible. AIR 1954 S C 300, Foll. 1961 Nag L J 83 : 63 Bom L R 87 : ILR (1961) Bom 360.

——Art. 20 (3) — Principle of protection against testimonial compulsion — Scope of — Rule of construction — Interpretation of Statutes—Constitutional provision.

The principle of protection against testimonial compulsion embodied in Art 20 (3) is a principle of somewhat limited utility. It is a recognised doctrine that when appropriate, a constitutional provision has to be liberally construed, so as to advance the intendment thereof and to prevent its circumvention. The principle should not be extended to cover a wider field than what it has come to occupy. AIR 1954 S C 300, Foll. 1961 Nag L J 83 : 63 Bom L R 87 : ILR (1961) Bom 360.

——Art. 20 (3) — Scope — If debars person from furnishing evidence which may be used against him.

The expression 'to be a witness' means to furnish evidence, and the constitutional guarantee is not restricted in its ambit to proceedings in the Court room : the protection afforded to an accused person in so far as it is related to the phrase 'to be a witness' is not merely in respect of testimonial compulsion in the Court room, but may well extend to compelled testimony previously obtained from him. The guarantee only protects a person accused from being compelled to furnish evidence against himself. The Constitution does not prohibit a person accused of an offence from furnishing evidence which may be used against him; it only affords a protection against compulsion in furnishing evidence. 61 Bom L R 345: 1959 Cr L J 1057 : ILR (1959) Bom 865 : AIR 1959 Bom 408 (412) (Pt B) (Prs 12, 14) (DB).

——Art. 20 (3) —Scope.

Article 20 (3) should be read in the context of the two clauses which precede it and this Article should not be read in the light of the American Constitution or the American decisions but more in the light of our own legislative provisions, our own legislative history, the background of English law, and the Constitution looked upon as an organic whole. (1960) 30 Comp Cas 72 : 61 Bom L R 220 : ILR (1959) Bom 952 : AIR 1959 Bom 320 (326) (Pt B) (Pr 12) (DB).

——Art. 20 (3) —Scope—Sea Customs Act, S. 171-A—Validity —Does not violate Art. 20 (3) for the reason that there is a possibility of an unconstitutional summons being issued under its provision. See Sea Customs Act (1878), S. 171-A. 1961 (1) Cr L J 237 : AIR 1961 Cal 86.

——Art. 20 (3)—Scope—Immunity under—Claim to —Procedure.

The immunity under Art. 20 (3) of the Constitution depends on a fact that no person accused of an offence shall be compelled to be a witness against himself. The petitioner has therefore to state that he is being compelled to be a witness against himself by doing certain things and what these things are which will make him a witness against himself. Without that assertion and statement of fact in the petition, no claim for constitutional immunity against testimonial compulsion in favour of an accused from being a witness against himself can be entertained in the air. ILR (1961) 1 Cal 919 : (1961) 1 Cr L J 237 : AIR 1961 Cal 86 (89) (Pt D) (Pr 8).

——Art. 20 (3) — Scope and principle of — General rule—(Evidence Act (1872), Ss. 1 and 118.)

Testimonial compulsion is the very foundation of the law of evidence, for without such compulsion every refusal to give evidecce will render administration of justice impossible. The constitutional prohibition of self-incriminating evidence is an exception designed to defend justice and insure the accused against self-created criminal traps. Legal protection against self-incrimination, therefore, is one of the pillars of liberality of criminal justice in a civilised society. But such liberality should be confined within the limits of its doctrine and not expanded into the sentimentality that testimonial compulsion is always a kind of unproclaimed tyranny to be shunned in law. 61 Cal W N 709 : (1958) 28 Com Cas 305 : AIR 1957 Cal 520 (523) (Pt D) (Pr 9).

——Art. 20 — Whether Art. 134 is in conflict with this Article and therefore the right of appeal against acquittal given by that article gives way — Validity of S. 417, Criminal P. C. providing for appeal against acquittal. See Ibid, Art. 134. 1952 Cri L J 1720 : AIR 1952 Him Pra 81.

——Art. 20 (3) — Scope — Order of Court directing public examination of directors and office-bearers of banking company on petition by Liquidator — Legality — Kerala High Court Act (5 of 1959), S. 5 — Scope — Liquidation of a banking company — Order of a Single Judge directing public examination under S. 478 of the Companies Act (1 of 1956) and S. 45 G of the Banking Companies Act (10 of 1949) —Appeal to Division Bench — Maintainability —Banking Compantes Act (10 of 1949), S. 45-H.

The rights conferred by Art. 20 (3) of the Constitution consists of the following components :—

(1) It is a right pertaining to a person accused of an offence; (2) It is a protection against compulsion to be a witness and (3) It is a protection against such compulsion resulting in his giving evidence against himself. The public examination sought for by the Official Liquidator is to bring out from the directors and office-bearers of the company facts necessary to sustain a conviction of these persons. Under cl. (6) of S. 45-G of the Banking Companies Act (10 of 1949) these persons are bound to answer all the questions put to them in a public examination. The answers thus recorded from them in such a public examination can be used against them in any civil or criminal proceeding. Such user is expressly sanctioned by clause (3) of S. 45 G. Thus all the elements necessary to bring the matter within the mischief of clause (3) of Art 20 are present in this case and therefore the impugned order is hit by it.

Under S. 5 of the Kerala High Court Act, an appeal shall lie to a Bench of two Judges from a judgment or order of a Single Judge sitting on the original side. The appeals contemplated by S. 45-H of the Banking Companies Act (10 of 1949) are appeals against the final orders of the High Court

under the Banking Companies Act. The present appeals are appeals against the order of a Single Judge. The right to prefer such appeals has been expressly conferred by S. 5 of the Act. Hence, the appeal is competent. (1960) M L J (Cr) 713 : 1961 (1) Cri L J 75 : 1960 Ker L J 641 : (1960) 1 Ker L R 670 : 1960 Ker L T 581 : (1960) 30 Com Cas 501 : AIR 1961 Ker 14 (17, 18) (Pt C) (Pr 5).

——Art. 20 (3)—Construction.

Per Ramaswami J. — In construing Art. 20 (3), the first and obvious rule is to read the article as a whole and not divorce clause (3) of the article from the rest of it. The fact that constitution makers in India had knowledge not only of the American Constitution but also the principles of English Common Law and also the exceptions engrafted on these principles, should not be overlooked. Finally, the Courts must give to this Article an interpretation which is for the greatest good of the people. Any interpretation which advances the good of the people must be preferred to an interpretation which would retard the interest of the people of the country.

Therefore, Art. 20 (3) should be read in the context of the second clause which precedes it and should not be read in the light of American Constitution or American decisions but more in the light of our own legislative provisions, our legislative history, the background of English law. The Constitution must be looked upon as an organic whole. 1960 Mad W N 342 : I L R 1960 Mad 586 : (1960) 2 Mad L J 458 : 1960 Mad L J (Cri) 771 : 1961 (1) Cri L J 273 : AIR 1961 Mad 47 (55) (Pt F) (Prs 24, 25) (DB).

——Art. 20 (3) — Scope—Police Standing Order No. 157 issued by Madras Government—Enquiry made according to—Validity of—Officer concerned warned of his right and also not giving evidence—Enquiry does not offend article. See Criminal P. C (1898), S. 176. 1959 Cri L J 856 : AIR 1959 Mad 294 (DB).

——Art. 20 (3)—Examination of accused under—Object and extent of — Searching cross-examination of accused not allowed—Such examination may offend Art. 20 (3) of Constitution. See Criminal P. C. (1898), S. 253. 1962 (1) Cri L J 47 : AIR 1962 Manipur 2.

——Art. 20 (3) —Investigation into affairs of company —Appellant stopping answering questions put by inspector—Plea that answer might be used as evidence pending criminal case—Objection not as to specific questions but vague —Protection of Art. 20 (3) of Constitution not available. See Companies Act (1956), (as amended by Act 53 of 1963), S. 240 (5). ILR (1965) 2 Punj 339 : AIR 1967 Punj 45 (DB).

——Art. 20 (3)—Scope—S. 6, Commissions of Inquiry Act—Immunity under, whether co-extensive with one under Art. 20 (3) —Distinction between the two provisions—Invoking article before commission—If can be done. See Commissions of Inquiry Act (1952), S. 6. AIR 1960 Punj 86 (DB).

——Art. 20 (3) — Scope — Privilege against self-incrimination — What is — Necessity of assertion—Privilege not invoked will be deemed to have been waived.

The privilege given to the accused under Art. 20 (3) of the Constitution embodies a principle of criminal jurisprudence. Under this privilege no witness or party is compellable to answer any question or to produce any document the tendency of which is to expose such a person to a criminal charge of penalty. The privilege is restricted not to any and every compulsion but to testimonial compulsion. The prohibition is against compulsion. But this privilege has to be claimed or otherwise a person will not be considered to be compelled. Unless invoked, the benefit is deemed to have been waived. As a condition of statutory immunity from prosecution assertion of privilege against self-incrimination is necessary. 1958 Cri L J 1084 : ILR (1953) Punj 1747 : AIR 1958 Punj 294 (297) (Pt A) (Prs 13, 15, 18).

4 (a). Failure to give evidence—Inference from.

——Art. 20 (3)—Evidence Act (1872), Ss. 114, 115—Accused asked to produce self-incriminating document—Possession denied by accused—Adverse inference not justified.

The denial of the possession of the self-incriminating document by the accused, when called upon to produce the same, neither amounts to a waiver of the right conferred upon him under Art. 20 (3) of the Constitution nor does it justify any adverse inference against him under S. 114 of the Evidence Act because the order requiring him to produce the document was contrary to Art. 20 (3). 1961 (2) Cri L J 55 (57, 58) (Pt B) (Prs 13, 14) (All).

——Art. 20 (3)—Refusal by accused to give thumb impression as ordered by Court—Court may draw presumption against him. 1959 All L J 812 : 1959 All W R (HC) 629 : 1960 All Cri R 8 : 1960 Cri L J 297 : AIR 1960 All 157 (160) (Pt B) (Pr 14).

—Art. 20 (3)—Order by Court directing accused to furnish his specimen writing—Refusal by accused—Court can legally draw a presumption against him. 1958 Cri L J 134 : A I R 1958 All 119 (126) (Pt E) (Prs 48, 50) (DB).

——Art. 20 (3)—Scope—Duty of Court.

If a person accused of an offence refuses to answer a question on the ground that by answering it he will incriminate himself or to produce a document on the ground that it will incriminate him, he will in a way be admitting his guilt and yet if effect is to be given to Art. 20 (3) of the Constitution, he will, in effect, be protected from being compelled to furnish evidence of his admitted guilt and protected even by the issue of, if necessary, a writ.

The Courts are to take the Constitution as it is and although the growing resourcefulness of criminals or other offenders and the expansion of the ramificatious of crime may at times force reflections on the justness of the immunity, yet the only concern of the Courts is to give effect to the policy enshrined in the Constitution. So far as the Constitution assures any immunity to a person accused of crime, the Courts must secure it for him. 1958 Cri L J 1469 : ILR (1959) 2 Cal 442 : A I R 1958 Cal 682 (690) (Pt F) (Prs 19, 20).

[Overruled on another point in AIR 1962 S C 759].

——Arts. 20 and 21 — Petition for dissolution of marriage on ground that respondent is incurable of unsound mind—It is for petitioner to establish such unsoundness of mind — There is no provision in law compelling respondent to undergo medical examination — Adverse inference can, however be drawn against respondent for refusing to submit to medical examination. See Hindu Marriage Act (1955), S. 13 (1) (iv). AIR 1963 Guj 250.

—Art. 20 (3) — No presumption can be drawn for voluntary non-production of documents for comparing and writing — Search-warrant can be issued for seizure of documents. See Evidence Act (1872), S. 114. 1960 M P L J (Notes) 67.

4. (b). "Person accused of any offence".

——Art. 20 (3)—Applicability—For application of Art. 20 (3) statement in question must have been made by a person at a time when he was accused of an offence. AIR 1961 S C 1808, Rel. on. R. K. Dalmia v. Delhi Administration, (1963) 1 S C R 253 : (1962) 32 Com Cas 699 : 1962 (2) Cri L J 805 : A I R 1962 S C 1821 (1870) (Pt Q) (Pr 290).

● ——Art. 20 (3) — Scope—Statement by accused in police custody without anything more does not amount to compulsion — Mere production of documents or giving information by accused is not 'to be a witness'—Giving of thumb-impressions etc , is not 'to be a witness' — For application of Art. 20 (3) person must have stood in character of accused at time of statement AIR 1960 Cal 32, Reversed; AIR 1960 Ker 392 (FB), Overruled.

An accused person cannot be said to have been compelled to be a witness against himself simply because he made a statement while in police custody, without anything more. The mere questioning of an accused person by a police officer, resulting in a voluntary statement, which may ultimately turn out to be incriminatory, is not compulsion.

(Per Majority, S. K. Das, A. K. Sarkar and K. C. Das Gupta, JJ., contra).—To be a witness is not equivalent to 'furnishing evidence' in its widest significance so as to include also production of documents or giving materials which may be relevant at a trial to determine the guilt or innocence of the accused The observation of the Supreme Court in AIR 1954 SC 300 that S. 139 of the Evidence Act has no bearing on the connotation of the word 'witness' is not entirely well founded in law.

Per Majority — Giving thumb impressions or impressions of foot or palm or fingers or specimen writings or showing parts of the body by way of identification are not included in the expression 'to be a witness'.

Per S. K. Das, A. K. Sarkar and K. C. Das Gupta, JJ.—An accused person when he is giving specimen handwriting, or impressions of his fingers or palms or foot does not furnish evidence against himself in so doing within the meaning of Art. 20 (3). AIR 1960 Cal 32, Reversed. AIR 1960 Ker 392 (FB), Overruled.

(Per Majority, S K. Das, A. K Sarkar and K. C. Das Gupta, JJ., contra). 'To be a witness' means imparting knowledge in respect of relevant facts by an oral statement or a statement in writing, made or given in Court or otherwise.

(Per :Majority, S K. Das, A. K. Sarkar and K. C. Das Gupta, JJ. expressing no opinion)—To bring the statement in question within the prohibition of Art. 20 (3), the person accused must have stood in the character of an accused person at the time he made the statement. It is not enough that he should become an accused, any time after the statement has been made. AIR 1960 SC 756, Rel. on; AIR 1954 SC 300, Dist. State of Bombay v. Kathi Kalu Oghad, 1961 B L J R 840 : 1961 All L J 936 : 1961 All W R (HC) 736 : 1961 All Cr R 416 : (1962) 1 S C A 429 : 64 Bom L R 240 : 1961 (2) Cr L J 856 : (1961) 2 Ker L R 378 : 1961 L T (S C) 74 : (1962) 3 S C R 10 : (1963) 1 S C J 195 : 1963 Mad L J (Cri) 97 : A I R 1961 S C 1808 (1816, 1817, 1820) (Pt A) (Prs 16, 32)

●——Art. 20 (3)—Applicability—Conditions.

Before Art. 20 (3) comes into play two facts have to be established (1) that the individual concerned was a person accused of an offence and (2) that he was compelled to be a witness against himself.

Held, that (in the instant case) at the time notes were produced by the appellant there was no formal accusation against him relating to the commission of an offence. In the circumstances, the provisions of Art. 20 (3) were not attracted. Mohammed Dastagir v. State of Madras, (1960) 1 Ker L R 592: 1950 S C J 726 : 1960 Cr L J 1159 : (1960) 2 Mad L J (SC) 39 : (1960) 2 An W R (SC) 39 : 1960 M L J (Cr) 466 : 1960 All Cr R 240 : 1960 All W R (HC) 357 : 1960 3 S C R 116 : AIR 1960 SC 756 (760, 761) (Pt B) (Pr 9).

● ——Art. 20 (3)—Applicability to person accused in first Information report.

The guarantee under Art. 20 (3) would be available to persons against whom a first Information Report has been recorded as accused therein. It would extend to any compulsory process for the production of evidentiary documents which are reasonably likely to support a prosecution against them. M. P. Sharma v. Satish Chandra, 1954 Cri L J 865 : 1954 Andh L T (SC) 1 : 1954 S C A 459 : 1954 S C J 428 : (1954) 1 Mad L J 680 : 1954 Mad W N 566 : 56 Pun L R 366 : 1954 Andh L J (W) 54 : 1954 SC R 1077 : AIR 1954 S C 300 (302, 303, 304) (Pt B) (Prs 4, 7, 9, 10, 11).

——Art. 20 (3)—Scope—"Accused of an offence" — Meaning of—(Evidence Act (1872), Ss. 27, 24

Where evidence, whether oral or circumstantial, points to the guilt of a person and he is taken in custody and interrogated on that basis he becomes a person accused of an offence. The mere fact that his name was not mentioned as an accused in the first information report will not take him out of that category. The moment suspicion attaches to a person, he for all purposes becomes an accused person and any self-incriminatory statement made by him subsequently is inadmissible in evidence against him, if it is induced by any promise, threat or violence. 1958 Cr L J 462 : ILR (1957) 2 All 110 : AIR 1958 All 293 (302) (Pt G) (Pr 44) (DB).

——Art. 20 (3)—Accused of any offence—Interpretation of.

The protection of Art. 20 (3) becomes available to a person as soon as he is named as an accused either in a first information report made under S. 154, Criminal P. C. or in a complaint instituted against him in Court. 1957 All L J 263 : 1957 All W R (HC) 381; 1957 Cri L J 698 : AIR 1957 All 396 (398) (Pt C) (Prs 9, 10).

——Arts. 20 (3), 367 (1) — Offence — Meaning of—Breach of Customs Laws — (General Clauses Act (1897), S. 3 (38).)

The term 'Offence' has not been defined in the Constitution but the definition contained in S. 3 (38) of the General Clauses Act, under which 'offence means any Act or omission made punishable by law for the time being in force', will apply, and even breaches of the Customs laws entailing a monetary penalty or forfeiture of the goods concerned would be offences as contemplated by Art. 20 (3). AIR 1953 SC 325, Disting. 1958 Cri L J 1469 ; ILR (1959) 2 Cal 442 : AIR 1958 Cal 682 (685) (Pt A) (Pr 7) (DB).

[Overruled on another point in A I R 1962 S C 759].

——Art. 20 (3)—Applicability—Right to protection—Person not formally accused.

If the principle underlying Art. 20 (3) be that any forcible and compulsory extortion of a man's own testimony or his private papers, to be used as evidence to convict him of crime, must be forbidden, there is no reason for holding that the protection of the Article will be available only to a person who has been formally accused or charged. Even if a man has been named as a person who has committed an offence particularly by officials who are competent to launch a prosecution against him, he has been accused of an offence within the meaning of Art. 20 (3) and a situation has arisen in which he can claim protection against being compelled by a coercive process to furnish evidence against himself 1958 Cri L J 1469 : I L R (1959) 2 Cal 442 : AIR 1958 Cal 682 (687) (Pt C) (Pr 9) (DB).

[Overruled on another point in AIR 1962 S C 759].

——Art. 20 (3)—Scope—Compulsion to produce evidence at investigation stage.

The language of Art. 20 (3) is 'to be witnesses' and 'not to appear as witnesses' and therefore the extortion of any evidentiary material even at the stage of investigation which may aid the building up of a case against them must be within the condemnation of the Article. This meaning of the constitutional guarantee against self-incrimination appears to be self-evident, because if officers, competent to prosecute a man, can, after telling him that according to their information he has committed an offence, extort oral or documentary testimony from him which may be used directly or indirectly to bring the charge home to him, the guarantee must be a very hollow guarantee indeed ILR (1959) 2 Cal 442 : 1958 Cri L J 1469 : AIR 1958 Cal 682 (687) (Pt D) (Pr 10) (DB).

[Overruled on another point in AIR 1982 SC 759].

——Art. 20 (3)—Self-incrimination—Conditions.

Before Art. 20 (3) can come into play, there must be a very clear and formal accusation against the person concerned as to make him a person accused of any offence. AIR 1960 SC 756, Rel. on.

Where a woman was vaginally examined by a lady doctor, with the reluctant consent of the woman, and upon examination it was found that she had very recently given birth to a child and subsequently, the woman admitted to the doctor that she did so give birth to a child and that she threw the new born child through the ventilator, the evidence of the doctor who examined the woman, as to the result of her examination is admissible against the woman in her trial under S. 302, I. P. Code, and is not hit by Art. 20 (3), since the woman, at the time of the examination was not accused of any offence. 1961 (1) Cri L J 258 : AIR 1961 J & K 11 (13, 14) (Pt A) (Prs 9, 10) (DB).

——Art. 20 (3) — Protection under—When open—A making admission on date of search — Show cause notice for action under Rr. 9 and 52A issued after fortnight—Held there was no violation of Art. 20 (3) —Central Excise Rules (1944), Rr. 9 and 52A.

For invoking the Constitutional right against testimonial compulsion guaranteed under Art 20 (3), it must appear that a formal accusation has been made against the party pleading the guarantee and that it relates to the commission of an offence, which in the normal course, may result in prosecution. AIR 1961 S C 29, Rel. on.

Where on the date of search the oil businessman, A, made statement admitting the fact that the tins of oils were illicitly removed by him from his oil mills without payment of excise duty and without gate pass and after about fortnight a show cause notice was issued to him for action under Rr. 9 and 52-A of Central Excise Rules;

Held, that there had been no accusation, much less a formal accusation, as against A. If at all, the accusation must be considered to have been made on the date of issue of show cause notice. Hence the said statement on date of search was not inadmissible. There was, therefore; no question of violation of Art. 20 (3) of Constitution. 1962 Ker L J 1212.

——Art. 20 (3)—Applicability—Person making statement must stand in character of accused at time of statement.

To bring a statement within the prohibition of Art. 20 (3), the person accused must have stood in the character of an accused person at the time he made the statement and it is not enough that he should have become an accused at any time after the statement has been made. AIR 1961 S C 1808, Foll. 1962 Ker L T 415 : I L R (1962) 2 Ker 105 : 1962 Ker L J 1007.

——Art. 20 (3) — Scope — Two accused tried separately - In trial of one accused other accused called as witness — No violation of Art. 20 (3) - (Evidence Act (1872), S. 132).

The immunity from testimonial compulsion under Art. 20 (3), Constitution of India, is confined to a person accused of an offence. But it does not extend to the case of a witness summoned to give evidence in a case against a third party whose position is sufficiently safeguarded by the provisions of S. 132, Evidence Act. 1959 M P L J (Notes) 213.

——Art. 20 (3) — Directives under S. 19, Foreign Exchange Regulation Act — Person answering them is not in the position of accused.

Even assuming that Art. 20 (3) would be applicable not merely to judicial proceedings of any character but to a multiplicity of situations in which judicial proceedings might be in prospect it is still impossible to hold that when certain facts are ascertained, it may be under an obligation to furnish an answer, in order to explore and determine if a person had committed an offence, this exploration itself already places him in the situation of a virtually accused person, and thus renders the explanations inadmissible in evidence. The directives of the Reserve Bank under S. 19 and the replies thereto are not inadmissible in evidence under Art. 20 (3) of the Constitution, as incriminating answers furnished by a party in the virtual position of an accused under testimonial compulsion. The statements which a party makes under fear of penalties prescribed by the Act are not hit by Art. 20 (3) and cannot be excluded from being used in evidence against him after he has become an accused and when he is on trial. The person is not in the position of an accused when he furnishes replies to the directives under S. 19. The protection or immunity under Art. 20 (3) is available only to a person against whom a formal accusation relating to the commission of an offence has been levelled. 1960 Mad W N 332 : I L R (1960) Mad 586 : (1960) 2 Mad L J 458 : 1960 Mad L J (Cri) 771 : 1961 (1) Cri L J 273 : AIR 1961 Mad 47 (53, 54, 56, 57) (Pt D) (Prs 18, 19, 29, 34) (DB).

——Art 20 (3) — Scope — Person not accused of any offence — Safeguard against self-incriminating evidence not available - Departmental enquiry into allegations against railway servant—Allegations constituting offence—Art. 20 (3) not attracted.

The safeguard against self-incriminating evidence contained in Art. 20 (3) is not available to a person who has not been accused of any offence, or, when there is no accusation before any competent authority, that he had committed any offence.

The mere fact that the allegations against certain Railway employees, which were being enquired into by an enquiry Committee appointed under the Railway Establishment Code, constitute an offence under the Penal Code or the Railways Act is not sufficient to entitle them to the immunity guaranteed by Art. 20 (3) of the Constitution. Before the Railway servants can avail themselves of the guarantee provided under Art. 20 (3), they must show that some accusation had been made by any person for their prosecution be it before a Court, or before the police, or before any competent authority. AIR 1954 S C 300 and AIR 1955 Mad 718 and AIR 1938 Cal 682, Disting. AIR 1963 Pat 38 (46) (Pt C) (Pr 15) (DB)

——Art. 20 (3) — 'Accused of an offence' — Formal charge or accusation necessary — What constitutes accusation.

Held, on facts that before the protection under Art. 20 (3) could be invoked at least two essential requirements were to be fulfilled; firstly the person concerned must be accused of an offence, and secondly, he should not be compelled to give evidence

against himself. The accusation must be in the shape of a formal charge and could not relate merely to a stage of investigation when no charge had been formally preferred against the person as an accused. AIR 1960 S C 756, Rel. on.

Held further, that the information sought by the customs officers from the petitioner, which was with a view to test the genuineness of entries in the account books, could not be regarded as testimony of compulsion within the meaning of Art. 20 (3) of the Constitution. **1961 Raj L W 376 : I L R (1961) 11 Raj 646 : 1962 (1) Cr L J 666 (669) (Pt C) (Prs 8, 9) (DB).**

4 (b) (i). Examination under S. 45G, Banking Companies Act.

See also Ibid, Note 6 (d).

● **——Art. 20 (3) — Order for public examination under S. 45 G, Banking Companies Act (1949) — Validity — Allegations justifying order for public examination are not accusations within Art. 20 (3) of the Constitution—Applications for order under S. 545 on allegations under Ss. 538, 539 and 541 of Companies Act also are not accusations—Art. 20 (3) of the Constitution is not violated. See Banking Companies Act (1949), S. 45-G. AIR 1965 S C 654.**

● **——Art. 20 (3) — S 45-G, Banking Companies Act (1949) —Validity—S. 45-G does not contravene Art. 20 (3) of the Constitution.**

A person examined publicly under S. 45 G, Banking Companies Act (1949) may, in some cases, be compelled to be a witness against himself. Thus, one element of Art. 20 (3) is satisfied. It is only when a person can be said to have been accused of any offence that the prohibition prescribed by Art. 20 (3) comes into operation. If a person who is not accused of any offence is compelled to give evidence, and evidence taken from him under compulsion ultimately leads to an accusation against him, that would not be a case which would attract the provisions of Art. 20 (3). The main object of Art. 20 (3) is to give protection to an accused person not to be compelled to incriminate himself and that is in consonance with the basic principle of criminal law accepted in our country that an accused person is entitled to rely on the presumption of innocence in his favour and cannot be compelled to swear against himself. Therefore unless it is shown that a person ordered to be publicly examined under S. 45-G of the Banking Companies Act is, before, or at the time when the order for examining him publicly is passed, Art. 20 (3) will not apply. After the examination is over and the material adduced before the Court has been examined by the Court an occasion may or may not arise to take any action. In such a case, what may conceivably follow cannot be said to be existing before the order is passed under S. 45-G; an accusation may follow the enquiry, but an accusation was not in existence at the time when the public examination was ordered, and so, the directors cannot contend that they were accused of any offence at the time when the order for their public examination was passed by the High Court. The accusation of any offence which is an essential condition for the application of Art. 20 (3) is a condition precedent for the application of the principle prescribed by the said Article, and since this essential condition is lacking in all cases covered by S 45-G of the Banking Companies Act it is difficult to sustain the argument that the said section contravenes Art. 20 (3). Therefore, it cannot be contended that it is invalid on the ground that it contravenes Art. 20 (3) of the Constitution. Civil Appeal No. 286 of 1959 dated 26th October, 1961 (S C.) and AIR 1961 S C 29, Rel. on. K Joseph Augusthi v. M. A. Narayanan, **1964 Ker L T 267 : 1964 Ker L J 442 : (1964) 1 S C J 676 : (1964) 1 Com L J 294 : (1964) 34 Com Cas 546 : (1964) 7 S C R 137 : AIR 1964 S C 1552 (1555, 1556) (Pt A) (Prs 7, 8, 9).**

——Art. 20 (3)—Scope—Privilege confined to accused—Not extended to witness—(Evidence Act (1872), S. 132) - (General Clauses Act (1897), S. 3 (38)).

The rule laid down by Art. 20 (3) is narrower than the Anglo American rule, since the privilege has been kept confined to persons "accused of any offence", "offence" being defined by S. 3 (38) of the General Clauses Act. Witnesses in India have been left untouched by the Constitution and continue to be governed by S. 132 and other provisions of the Evidence Act. **1957 All L J 263 : 1957 Cri L J 698 : 1957 All W R (HC) 381 : A I R 1957 All 396 (397) (Pt B) (Pr 4).**

——Art. 20 (3) - Scope of -'Proceedings'—Civil proceedings which might at a future date expose person to criminal prosecution — If included — Banking Companies Act (10 of 1949), S. 45G — Validity — Public examination of director — Companies Act (7 of 1913), Ss. 2 (11) and 196 — Scope of—Public examinatton of officers of a banking company.

The fact that the answers given by a person examined under S. 45 G of the Banking Companies Act might tend to subject him to a criminal prosecution at a future date will not attract the prohibition envisaged by Art. 20 (3) of the Constitution. To interpret Art. 20 (3) as applying to all proceedings, civil or criminal which might at a subsequent period expose the person concerned to prosecution on the basis of answers given by him, is to enlarge the scope of this article and to defeat justice. This is not the purpose underlying Art. 20. A I R 1953 S C 325; A I R 1954 S C 375 and A I R 1957 Cal 520, Rel. on. A I R 1956 Cal 253 and 69 L. Edns (S C R) 158, Diss. from. Article 20 (3) of the Constitution would not come into play when the Directors are sought to be examined under S. 45-G and there is no inconsistency or repugnancy between S. 45-G of the Banking Companies Act and Art. 20 (3) of the Constitution. Section 45-G is intra vires of the Constitution and was validly enacted by the Legislature and it is not unconstitutional. **I L R (1958) Andh Pra 651 : (1958) 2 Andh W R 331 : 1958 Andh L T 1063 : (1959) 29 Com Cas 114 : A I R 1958 Andh Pra 756 (759) (Pt B) (Prs 6, 7) (DB).**

——Art. 20 (3) — Examination under S. 45G, Banking Companies Act — Whether hit by Art. 20 (3) — Order for such examination whether amounts to accusation of any offence.

Though under S. 45G, Banking Companies Act, the notes of the examination may be used later in evidence against the person in any proceeding, civil or criminal, such examination is not bad under Art. 20 (3). The article applies only where a person is accused of any offence and an order for examination under S. 45G of the Banking Companies Act is not an accusation for an offence It is a past evidence likely to be used for a future accusation of an offence and as such it does not infringe the constitutional right given by Art. 20 (3). The language of the article means that the evidence must come after and not before the accusation of an offence in order to come within the constitutional prohibition. **61 Cal W N 709 : (1958) 28 Com Cas 305 : A I R 1957 Cal 520 (522, 523) (Pt C) (Prs 4, 6, 7).**

——Art. 20 (3) — Applicability—"Offence"—Meaning — If criminal offence — Proceedings under S. 45-G, Banking Companies Act—Nature of—Banking Companies Act (1949), S. 45-G—General Clauses Act (1897), S. 3 (38).

The context of Art. 20 leaves no room for doubt that the offence contemplated in that article of the Constitution is a criminal offence although it does not use the word "criminal". Hence that article has no application to the public examination of a director under S. 45-G, Banking Companies Act. The words of the proviso in sub-s. (7) of S. 45-G, Banking Companies Act, by using the expression "exculpated from any charges made or suggested" do not convert proceedings under S. 45-G of the Act into a criminal prosecution or a criminal charge or a criminal trial and are only used for the purpose of awarding costs to the director and do not alter or modify the substantial or essential nature of the proceedings described in the substantive provisions of S. 45-G of the statute. 61 Cal W N 709 : A I R 1957 Cal 520 (523) (Pt E) (Pr 10).

● ——Art. 20 (3) — Banking Companies Act (1949), S. 45-G — Not violative of Art. 20 (3) — Persons specified in report under S. 45-G (1) — Persons not 'accused of any offence'.

Section 45-G of the Banking Companies Act, 1949, is not violative of Art. 20 (3) of the Constitution.

The object of a report under sub-s. (1) of S. 45-G is not the accusation of a crime; but the affirmation of a loss, and even if such a report embodies accusations, it can only be in the popular sense of the word that will not alter the essential character of the report or make the persons specified therein 'persons accused within the meaning of Art 20 (3) of the Constitution. 1962 Ker L T 37, Affirmed; A I R 1957 Cal 520 and AIR 1958 Andh-Pra 756, Foll K. Joseph Augusti v M. A. Narayanan, 1962 Ker L T 512 : (1962) 2 Ker L R 150 : ILR (1962) 2 Ker 265 : 1962 Ker L J 1138 : (1963) 33 Com Cas 126 : (1963) 1 Comp L J 43 : AIR 1963 Ker 81 (83, 84) (Pt A) (Prs 14, 22) (FB).

4 (b) (ii). Persons examined under S. 171A, Sea Customs Act.

——Art. 20 (3) — Conditions for applicability — Accused person — Meaning of — Person examined under S. 171-A, Sea Customs Act, is not an accused — His statement does not come within Art. 20 (3).

To bring into operation the provisions of clause (3) of Article 20, two conditions have to be fulfilled : (1) that a person must be one who has been accused of an offence, and (2) he must be compelled to be a witness against himself. It is the protection given to a person accused of an offence, and the protection is against be being compelled to be a witness against himself. The test to determine whether a person making a statement is an accused within Art. 20 (3) is whether there was a formal accusation on that date against him. An accusation becomes a formal accusation when there is an accuser who makes an accusation against the accused which should in normal course lead to prosecution in a criminal Court. AIR 1954 S C 300 and A I R 1960 S C 756 and A I R 1961 S C 29, Rel. on.

A person examined under section 171-A, Sea Customs Act, does not stand in the character of an accused person inasmuch as there is no formal accusation made against him by any person at that time. The fact that subsequent to the making of the statement he becomes an accused person is not sufficient to bring the statement within the mischief of Art. 20 (3) of the Constitution. Persons recording statements are not persons who are empowered to lodge a complaint against an accused under section 187-A of the Act. There is no provision in the Act making it obligatory on Customs officers to forward persons to a Magistrate to stand their trial, even if the Customs Officers on investigation find that they have committed an offence under the Act. Section 187-A prohibits a Criminal Court from taking cognizance of an offence under the Sea Customs Act under section 167 (81) of the Act save and except when a complaint has been lodged by persons authorised to lodge a complaint under the section. Thus, having regard to these provisions, the formal accusation which in the normal course would result in a trial of a person in a Criminal Court, would be a complaint lodged by a competent officer under section 187-A when the accusation falls under item (81) of the schedule to section 167. AIR 1963 Mad 434, Diss. from. 67 Bom L R 317 : ILR (1965) Bom 648 : 1965 (2) Cri L J 616 : 1965 Mah L J 705 : A I R 1965 Bom 195 (213, 214, 215, 216) (Pt H) (Prs 44, 46) (DB).

——Art. 20 (3) — Applicability and scope — Notice under 171-A of Sea Customs Act (1878) to appear and produce documents.

The protection afforded by Art. 20 (3) is available to a person accused of an offence not merely with respect to the evidence to be given in the Court room in the course of a trial, but is also available to him at previous stages, if a formal accusation had been made of the commission of an offence which might in the normal course result in prosecution. AIR 1954 S C 300, Rel. on.

Where in the case of notices issued under S. 171 A of the Sea Customs Act to certain persons to appear before certain customs officials and to produce certain documents, it appeared from the accusations made in the search warrants at the instance of the Customs authorities and those made in one of the notices by the Customs authorities themselves, that the accusations of criminal offences could not be excluded.

Held, that the requirements of Art. 20 (3) were satisfied and the protection under the Article was available to the persons concerned. ILR (1959) 2 Cal 442 : 1958 Cri L J 1469 : A I R 1958 Cal 682 (685) (Pt B) (Pr 7) (DB).

[Overruled on another point in AIR 1962 S C 759.]

——Art. 20 (3) — "Accused of any offence" — Sea Customs Act (1878), S. 171-A — Validity — (General Clauses Act (1897), S. 3 (37) — Offence) — (Penal Code (1860), S. 40).

The word "offence" is to be construed by the General Clauses Act, which defines it as meaning "any act or omission made punishable by any law for the time being in force". Article 20 (3) is not merely applicable to a criminal trial in Court. It applies to proceedings which may lead to such a trial. In proceedings under S. 171 A of the Sea Customs Act the party is compelled to give evidence and to depose truthfully. He is also compelled to produce any document. In either case, he might incriminate himself. The provision of S. 171 A in so far as it enables the authorities to compel a person accused of an offence to give evidence against himself and/or to produce documents for that purpose, offends against Art. 20 (3) of the Consiitution and is bad. 60 Cal W N 67 : AIR 1956 Cal 253 (257, 258) (Pt A) (Prs 21, 22, 26).

——Art. 20 (3) — Sea Customs Act (1878), S. 171 A — Validity — Nature of guarantee given by Art. 20 (3) of the Constitution — Article applies only to a person accused of an offence and not to mere witnesses and persons from whom information is sought to be obtained — Section does not contravene Art 20 (3). See Sea Customs Act (1878), S. 171-A. 1963 (2) Cri L J 636 : AIR 1963 Mad 434 (DB).

——Art. 20 (3) — Applicability and scope — Person summoned to appear under Sea Customs Act — If a

person accused—Protection under Art. 20 (3)—Right to—Evidence Act (1 of 1872), S. 132 — Applicability —Sea Customs Act (VII of 1878), S. 171-A — Duty of person summoned to appear — Nature of proceedings under.

A person summoned to appear before the Sea Customs Authorities under S. 171 A of the Sea Customs Act, 1878, is not in the position of a person accused and he is bound to appear before such authorities and answer all questions put to him.

The position in such proceedings in relation to Art. 20 (3) of the Constitution and the Sea Customs Act will be as follows : (1) The Departmental Officers are not acting as Courts of law and the proceedings before them are not judicial proceedings except for the limited purposes of Ss. 193 and 228, Indian Penal Code; (2) To the persons examined in such proceedings S. 132 of the Evidence Act would not apply of its own force; (3) But as they are empowered to prosecute persons for contravention of the Sea Customs Act the position of Customs Officers will in certain respects be analogous to that of Police Officers acting on information relating to a cognizable offence; (4) A person who has been examined by the Customs Officers will not be in the position of an accused. (5) Though the question when a person becomes an accused person would depend on the decision that the Departmental Officers may take, they cannot, circumvent the provisions of Art. 20 (3); (6) Whether a witness or a suspect has become an accused person in any particular instance is substantially a question of fact.

Per Curiam. — 'It is very desirable that the Departmental Officers, should make it plain to the person concerned whether it is intended to proceed against him in a criminal Court or not. If it is made plain that there is no intention to proceed against him in a criminal Court then question of invoking Art. 20 (3) could not possibly arise. But, if it is intended to prosecute the person concerned in a criminal Court he cannot be compelled to answer any question the answer to which is likely to incriminate him. (1960) 1 M L J 367 : 1960 Mad L J (Cr) 290 : 73 Mad L W 24 : 1960 Mad W N 65 : ILR (1960) Mad 267 : 1960 Cri L J 625 : A I R 1960 Mad 225 (230) (Prs 27, 28).

4 (b) (iii). Person giving evidence under S. 240, Companies Act (1956)

● ——Art. 20 (3) — Companies Act (1956), S. 240—Validity.

When a person is called upon under S. 240 of the Companies Act to give evidence and to produce documents, he cannot be said to be a person who is accused of any offence as required by Art. 20 (3), and therefore the provisions of S. 240 do not offend against the fundamental rights guaranteed by Art. 20 (3). Case law reviewed.

A general enquiry and investigation into the affairs of the company contemplated cannot be regarded as an investigation which starts with an accusation contemplated in Art. 20 (3) of the Constitution. AIR 1959 Bom 320, Affirmed. Raja Narayanlal Bansilal v. Maneek Phiroz Mistry, **63 Bom L R 251 : (1961) 1 Andh W R (S C) 73 : (1961) 1 M L J (SC) 73 : (1961) M L J (Cr) 208 : (1961) 1 S C J 353 : (1961) 1 S C A 531 : (1961) 1 S C R 417 : (1960) 30 Com Cas 644 : AIR 1961 S C 29 (35, 39, 40) (Pt B) (Prs 17, 24, 27)**

——**Art. 20 (3)—Applicability and scope—Companies Act (1956), S. 240—Validity.**

Protection under Art. 20 (3) is available when there is a formal accusation against a person, and the second test is that that formal accusation must in the normal course result in prosecution. What the scope and nature of the inquiry under the Companies Act is, is made clear by the words used by the Legislature in S. 235 and those words are 'to investigate the affairs of any Company and to report thereon.' The scope and nature of the inquiry is not investigation into an offence, but is investigation into the affairs of the company. The function of the Inspector is to express an opinion on the way the affairs of the company are conducted in order that appropriate action may be taken which action may take different forms like application under Ss. 243, 244, 397 or 398 of the Companies Act or a prosecution under S. 242 of the Companies Act. There is no formal accusation in such a case and the compulsion introduced by the provision in S. 240 of the Companies Act is not a compulsion which can be struck down by Art. 20 (3) of the Constitution. AIR 1956 Cal 253. Diss. from. **61 Bom L R 220 : ILR (1959) Bom 952 : (1960) 30 Comp Cas 72 : A I R 1959 Bom 320 (328, 329, 330, 332) (Pt D) (Prs 17, 21, 22, 28) (DB).**

4 (b) (iv). Other cases.

● ——Art. 20 (3)—Contempt of Court is not 'offence' — Contemner is not 'accused' — Cross-examination of contemner, on affidavit filed by him See Criminal P. C. (1898), S. 5 (2) **AIR 1954 All 523 (FB).**

——**Art. 20 (3) — Applicability and scope—Notice to produce documents under S. 13-A, Bombay Money-lenders Act — Claim to protection—Sustainability—Validity of S. 13-A.**

In order that the protection of Art. 20 (3) of the Constitution should be available to a person he must be accused of an offence. Merely because the evidence might disclose some crime and it might form the subject-matter of future prosecution, would not enable the person who is asked to furnish evidence to claim protection of Art. 20, sub-cl. (3), in any proceedings other than where he is accused of any offence. A I R 1956 Cal 253, Diss. from. AIR 1958 Andh Pra 756, Rel. on.

A proceeding under the Bombay Money lender's Act calling upon a person under S. 13-A to produce documents is not concerned with any accusation against such person of any offence and, therefore, the protection under Art. 20 (3) is not available to such person.

Section 13-A of the Money-lenders' Act is not bad and does not offend against the provisions of Art. 20 (3). **62 Bom L R 316 : 1960 Nag L J 325 : 1960 Cr L J 1317 : I L R (1960) Bom 685 : A I R 1960 Bom 443 (446) (Pt B) (Prs 9, 11) (DB).**

——**Art. 20 (3) — Testimonial compulsion—Inquiry into affairs of a society under S. 43 (1), Bombay Co-operative Societies Act — Statement made in course of — Not hit by Art. 20 (3)—Person must be an accused at time of making statement.**

To bring a statement within the prohibition of Art. 20 (3) of the Constitution, the person accused must have stood in the character of an accused person at the time he made the statement. It is not enough that he should become an accused, any time after the statement has been made. AIR 1961 S C 1808 Rel. on.

Where the Assistant Registrar of Co-operative Societies directed an inquiry as contemplated by S. 43 (1) of the Bombay Co-operative Societies Act, 1925. into the affairs of a co-operative society and in the course of that inquiry, the accused who was a contractor of the society made certain statements before the inquiry officer ;

Held, that the statements made by the contractor who was subsequently prosecuted for certain offences would not be hit by the provisions of Art. 20 (3),

Constitution of India as S. 43 of the Bombay Act does not contemplate any accused or any accused person. A I R 1961 S C 29, Applied, A I R 1958 Cal 682, Not Foll. 1963 (2) Cr L J 611 : (1963) 4 Guj L R 1088 : ILR (1963) Guj 1007 : AIR 1963 Guj 312 (313, 314) (Pt A) (Prs 11, 14) (DB).

——Art. 20 (3) – Protection under — When open—A making admission on date of search — Show cause notice for action under Rr. 9 and 52 A of Central Excise Rules issued after fortnight — Held there was no violation of Art. 20 (3). 1962 Ker L J 1212 : 1963 (2) Cr L J 279 : AIR 1963 Ker 241 (246) (Pt B) (Prs 57, 59).

—Art. 20 (3) — 'Person accused of any offence'—Meaning of—Purchase of milk by Sanitary Inspector for testing whether it was adulterated — Milkman not 'accused' — Prevention of Food Adulteration Act (1954), S 16.

Held on facts that there was no compulsion or accusation of any offence under S. 16 of Prevention of Food Adulteration Act when the milk was purchased Therefore, Art. 20 (3) did not apply. A I R 1958 Cal 682, Disting and Expl. 1961 Jab L J 768 : 1961 M P L J 876 : 1962 (1) Cr L J 41 : ILR (1959) Madh Pra 1031 : AIR 1962 Madh Pra 17 (18) (Pt A) (Pr 4).

——Art. 20 (3) — Applicability and scope—Proceedings of a criminal nature before a Court of law or judicial tribunal—'Accused of any offence'—Meaning of — Foreign Exchange Regulation Act (VII of 1947) S. 19 (2)—Constitutional validity.

The words 'accused of any offence' in Art. 20 (3) of the Constitution indicate an accusation made in a criminal prosecution before the Court of law or a judicial tribunal where a person is charged with having committed an act which is punishable under the Indian Penal Code or any special or local law. In construing Art. 20 of the Constitution the article has to be read as a whole and not to divorce cl. (3) of the article from the rest of it.

The Reserve Bank of India had merely some information about dollars acquired by a person in the United States in addition to the foreign exchange specifically granted to him. In order to ascertain this, under S. 19 (2) of Act (7 of 1947) the Bank issued a number of directions to the person, at several stages, the questions themselves being dependent upon the explanations furnished by the person and fashioned in order to test the truth of those explanations. No accusation that he had committed any offence was levelled against the person. Assuming that Art. 20 (3) applied to all kinds of proceedings, such person could not be held to be a person accused of any offence within the scope of Art. 20 (3) in order to render his testimony inadmissible in evidence. ILR (1960) Mad 586 : (1960) 2 M L J 458 : 1960 M L J (Cr) 771 : 1961 (1) Cri L J 273 : AIR 1961 Mad 47 (53, 54, 56, 57) (Pt D) (Prs 18, 19, 29, 34) (DB).

——Arts. 20 (3), 311 (2), proviso (a)—Public Servants (Inquiries) Act (1850), Ss. 11, 15, 16 and 19—Inquiry under Act against public servant accused of offence but no sanction for prosecution had yet been granted —No power in the Enquiry Commissioner to compel the public servant to make any statement or produce document as in a criminal Court—No violation of Art. 20 (3). (1961) 63 Punj L R 780.

5. Statement of accused under Criminal P. C., S. 342.

——Art. 20 (3)—Section 342, Criminal P. C., is not ultra vires of the Constitution as infringing the guarantee of Art. 20 (3). See Criminal P. C. (1898), S. 342. AIR 1956 All 385.

——Art. 20 (3)—Scope—Criminal P. C. (1898), S. 342—Constitutionality — Whether infringes guarantee under.

Section 342, Criminal P. C., does not convert the accused into a witness and certainly does compel him to be a witness against himself in infringement of the constitutional guarantee under Art. 20(3) of the Constitution and as such no provision of S. 342 is unconstitutional.

Since the accused is at liberty to make a false statement, he is free to make a statement in favour of himself and, therefore, it cannot be said that he is compelled to be a witness against himself. If he falsely makes a statement in favour of himself and the falsehood is expressed to the Court, the Court may draw an adverse inference, but the inference cannot place him in a worse position than he would find himself in, if he had made the correct statement. The accused's statement is only a matter which can be taken into consideration and is not evidence. The guarantee provided by Art. 20 (3) is against the accused being compelled to give evidence and is not against his furnishing a matter which may be taken into consideration by the Court. 1956 Cri L J 664 : A I R 1956 All 341 (344) (Pt A) (Pr 3) (DB).

——Art. 20 (3)—Validity of S. 342, Criminal P. C.

As it is entirely a matter of option with the accused to answer or not when he is questioned under S. 342, Criminal P. C., and as oath cannot be administered to him as to a witness and his evidence cannot be put in evidence in that trial or enquiry there is no chance of the accused being compelled to be a witness under S. 342. That he is not a witness when he answers the questions put to him under S. 342 also follows from the definition of the word 'evidence' in S. 3, Evidence Act. Therefore S. 342, Criminal P. C., is not ultra vires of Art. 20 (3) of the Constitution. 1952 Cri L J 1720 : AIR 1952 Him Pra 81 (86) (Pr C) (Pr 12).

——Art. 20 (3) — Criminal Procedure Code (1898), S. 342—Repugnancy to Art. 20 (3) — Answers given by accused if offend Art. 20 (3) — (Criminal P. C. (1898), S. 342).

The answers given by the accused under S. 342 (2), Criminal P. C. would not offend Art 20 (3) of the Constitution. The object of S. 342 is not to build up a case against the accused from his answers or non-answers but to test by the explanation furnished by the accused in another additional manner the truth of the prosecution version. When the answers given satisfactorily explain the prosecution evidence there can be no conviction; if they do not rebut the prosecution evidence the Court will convict; but in any case the Court cannot supplement the prosecution evidence by selecting passages which might corroborate the evidence rejecting the passages exonerating the accused; the entire statement should be considered though it need not be accepted and acted upon because it is the duty of the Court to separate the grain from the chaff and accept only those portions which are found to be true and reject those portions which are found to be false by evidence aliunde. 1955 Cri L J 452 : A I R 1955 Mad 100 (118) (Pt E) (Pr 60).

——Art. 20 (3)—S. 342, Criminal P. C.—Validity of.

The provisions of S. 342 of the Code of Criminal Procedure are not ultra vires of the Constitution of India and do not in any way infringe the guarantee of Art. 20 (3) of the Constitution of India. AIR 1956 All 385, Rel. on. (1958) Mad L J (Cri) 341 : I L R (1957) Mys 177 : 36 Mys L J 278 : 1958 Cri L J 1489 : AIR 1958 Mys 150 (170) (Pt H) (Pr 22) (DB).

6. Compulsion to be witness—What amounts to.

(a) Enquiry under Public Servants (Inquiries) Act (1850).

(b) Direction to accused to appear in identification parade or to exhibit his body or identifying marks on it.

(c) Search and seizure of documents from the person or the custody of the accused.

(d) Public examination of directors and office-bearers under S. 45-G, Banking Companies Act.

See also Ibid, Note 4 (b) (i).

(e) Direction to produce documents or other incriminating evidence.

(f) Taking of thumb impression, specimen writing or signature, etc.

6. Compulsion to be witness—What amounts to.

■ **——Art. 20 (3)—Compulsion —Means duress—Held,** various circumstances preceding making of statement by accused fell far short of proving that his mind had been so conditioned by some extraneous process as to render the making of the statement involuntary and therefore extorted. AIR 1961 S C 1808. Rel. on. R. K. Dalmia v. Delhi Administration, (1963) 1 S C R 253 : (1962) 32 Com Cas 699 : 1962 (2) Cri L J 805 : AIR 1962 S C 1821 (1870) (Pt R) (Pr 290).

——Art. 20 (3)—Scope—Expressions 'accused of any offence' and 'witness against himself' — Interpretation of - (Criminal P. C. (1898), Ss 340 (2), 342 and 342-A)—(Evidence Act (1872), S. 118).

Article 20 (3) consists of three components: (1) it is a right pertaining to a person "accused of an offence"; (2) it is a protection against compulsion to be a witness'; and (3) it is a protection against such compulsion resulting in his giving evidence "against himself". The word 'witness' must be understood in its natural sense, i. e., as referring to a person who furnishes evidence. Indeed every positive volitional act which furnishes evidence is testimonial. Compulsion connotes coercion which procures the positive volitional evidentiary acts of the person, as opposed to the negative attitude of silence or submission on his part. The protection of Art. 20 (3) becomes available to a person as soon as he is named as an accused either in a first information report made under S. 154, Criminal P. C., or in a complaint instituted against him, in Court. A I R 1954 P C 300, Foll. 1957 All L J 263 : 1957 Cri L J 698: 1957 All W R (HC) 381: AIR 1957 All 396 (397) (Pt C) (Prs 6, 7).

——Art. 20 (3)—Scope—Privilege under—Waiver of—Effect of S. 342-A, Criminal P. C.

Article 20 (3) confers merely a privilege, and it is well settled that a privilege can always be waived. It may be waived by voluntarily answering question, or by voluntarily taking stand in the witness box, or by failure to claim the privilege.

Where persons against whom a criminal complaint was instituted, on being summoned as witnesses in the preliminary inquiry under S. 202, Criminal P. C., appeared and gave evidence they should be deemed to have waived the privilege under Art. 20 (3). But since there was no written request by them to do so, no charge had been made against them, and under S. 342-A, Criminal P. C., they could appear only as witnesses for the defence and never for the prosecution, whatever statements had been obtained from them could not be used. 1957 Cri L J 698 : 1957 All W R (HC) 381 : 1957 All L J 263 : AIR 1957 All 396 (398) (Pt D) (Pr 13).

——Arts. 20 (3), 19—Bombay Prohibition Act (25 of 1949), S. 129 A (as amended by Act (12 of 1959)—Validity — Consumption of prohibited intoxicant — Medical examination — Section 129 A applicable to persons 'accused of an offence'. AIR 1954 S C 300, Foll. — Accused merely required to submit to evidence being collected from him — Compulsion only in case of active resistance and not to passive non-co-operation — Section held not violating protection against testimonial compulsion or compulsory self-incrimination guaranteed by Art. 20 (3).

No constitutional invalidity, therefore, attaches to any part of S. 129-A. AIR 1941 F C 72; AIR 1957 S C 699 and AIR 1957 S C 628, Ref. 1961 Nag L J 83 : 63 Bom L R 87 : I L R (1961) Bom 360 (DB).

——Art. 20 (3) — Scope — Bombay Police Act (22 of 1951), S. 124—Validity of.

Article 20 (3) prohibits the compulsion of an accused person to incriminate himself. Far from an accused person incriminating himself, he is, according to S. 124, Bombay Police Act called upon to explain his possession, because the prosecution says that the accused was found in possession of certain property and that there was reason to believe that the property was stolen property. Therefore, S. 124 does not contravene Art. 20 (3) of the Constitution. AIR 1954 S C 300 Foll. 60 Bom L R 403 : I L R (1958) Bom 883 : 1960 Cri L J 1186 : A I R 1960 Bom 377 (379) (Pt A) (Pr 6) (DB).

——Art. 20 (3)—"Compelled to be a witness against himself"—What amounts to.

A cursory study of Art. 20 (3) of the Constitution would show that before claiming protection of this Article, the person accused of any offence shall have been compelled to furnish evidence against himself. If an accused person out of his own free will or without any compulsion furnishes evidence, even against himself, that would not seem to be hit by Art. 20 (3). 1957 Cri L J 1124 : AIR 1957 J & K 44 (44) (Pt A) (Pr 1).

——Art. 20 (3) — Requiring the accused to produce a thing in his possession is no testimonial compulsion.

F, filed a complaint against other non-applicants alleging that non-applicant had been entrusted by her with money to purchase cycles but he purchased cycles in his own name. On application of the complainant the Magistrate issued a warrant under S. 98, Cr. P. Code, for seizure and production of cycles with the accused. The accused did not produce them and opposed that application on the ground that Art. 20 (3) of the Constitution was a bar to such direction by the Court.

Held, that requiring an accused to produce a thing in his possession would not amount to testimonial compulsion, unless the thing to be produced by itself, would be enough to establish his guilt. A I R 1961 S C 1808, Rel. on. (Objection overruled) 1962 M P L J (Notes) 204.

——Art. 20 (3)—Scope — Blood test of defendant for ascertaining paternity of applican' child — Violation of Art. 20 (3). See Criminal P. C. (1898), S. 488. AIR 1959 Mad 396.

——Art. 20 (3) — "Compulsion" to be witness — What amounts to.

The principle of protection against self-incrimination is not confined to the oral evidence of a person standing his trial for an offence; it refers to all kinds of evidence which the accused might be compelled to produce as a positive volitional evidentiary act. Any attempt to compel the accused to produce evidence of any kind which is likely to support a prosecution against him would be struck down by Art. 20 (3) of the Constitution.

Under a search warrant or other kindred process of law, documents or articles or any other incriminating evidence can be seized from the custody or the person of the accused by force and against his will, such as stolen articles, blood-stained clothes, etc., but he cannot be compelled to produce them himself. There can be no objection to an accused person being taken to a doctor for the examination of injuries on his body. He can also be taken to an identification parade. The taking of thumb impression or the signature of the accused does not stand on a different footing from the seizure of documents or articles or other facts of evidence from the person of the accused.

An accused who was found in a state of intoxication was arrested by the Police and taken to a doctor for medical examination.

The police, with the help of the doctor, gathered evidence which was available on the person of the accused, and the accused himself was not compelled to make such evidence available for the prosecution.

Held, that the symptoms observed by the doctor could not be regarded as evidence obtained from the accused by compulsion and was not therefore, hit by Art 20 (3) of the Constitution of India. ILR (1957) Mad 66 : (1956) 2 Mad L J 273 : 1957 Cri L J 976 : 1956 Mad W N 657 : A I R 1957 Mad 546 (548 to 551) (Pt B) (Prs 6 to 10) (DB).

——Art. 20 (3) — Witness against himself — What amounts to.

A day before the occurrence the accused appeared before the Sub Magistrate and surrendered before him. He stated that he was wanted by the police in connection with his wife's murder and so he surrendered. The Magistrate, on finding his dhoti and upper cloth blood stained, directed his clerk and peon to seize them. In his presence they were seized.

Held, that the securing of the blood-stained clothes on a person like the accused who wanted to report and surrender before the Magistrate would be very material and relevant, and the Magistrate, situated as he was, was bound to take possession of them (as of a blood-stained weapon) from the accused. Such being the case, it could not be said that there had been any compulsion exercised upon the accused to produce the article and be a witness against himself in the murder case against him. A I R 1954 S C 300, Disting (1955) 2 M L J 199 : 1955 Cri L J 1197 : 1955 Mad W N 301 : I L R (1956) Mad 351 : AIR 1955 Mad 495 (497) (Pt B) (Pr 7) (DB).

——Art. 20 (3)—Construction and scope of — "Shall be compelled to be a witness" — Meaning of — (Cr. P. Code (1898), Ss. 342, 342-A).

Article 20 (3) undoubtedly embodies the principle of protection against compulsory self incrimination which is one of the fundamental canons of the British System of criminal jurisprudence. The expression 'to be a witness' means all cases where the accused is compelled to furnish any material which may be used against him for the purpose of convicting him. If he himself submits to give his thumb-impression or if he has raised no objection whatsoever at any stage to give his thumb impression, he cannot seek the aid of the guarantee. A I R 1954 S C 302, Foll ; A I R 1956 Mad 165 and A I R 1956 Mad 632, Rel. on. 23 Cut L T 234 : 1957 Cri L J 902 : I L R (1957) Cut 200 : A I R 1957 Orissa 172 (176) (Pt C) (Pr 8) (DB).

——Art. 20 (3)—Scope.

It is well settled that unless a statement is obtained or is to be used under compulsion the provisions of Art. 20 (3) of the Constitution will not come into play. AIR 1961 S C 1808, Rel. on. A I R 1963 Punj 198 (200) (Pt A) (Pr 6).

——Art. 20 (3)—Applicability and scope — Criminal Law Amendment Ordinance (1944), S. 4 — Offence in relation to property — Notice under S. 4 to show cause why ad interim order of attachment in respect of that property should not be made absolute amounts to compelling the person to be a witness against himself and violates Art. 20 (3). See Criminal Law Amendment Ordinance (38 of 1944), S. 4. 1960 Cri L J 984 : AIR 1960 Punj 351 (DB).

6 (a). Enquiry under Public Servants (Inquiries) Act (1850).

● ——Art. 20 (3)—Public Servants (Inquiries) Act (1850), S. 15—S. 15 does not contravene Art. 20 (3).

The provision made in S. 15 of the Public Servants (Inquiries) Act, 1850, that an accused shall be required to make his defence does not amount to compelling the accused to be a witness against himself. Under this section the accused is not even compelled to make his defence. The section merely compels the inquiring authority to require the accused to make a defence. If the accused chooses not to make any defence S. 15 cannot compel him to do so. R. P. Kapur v. Pratap Singh Kairon, 1963 Cur L J (SC) 105 : 1964 S C D 1 : (1964) 1 S C A 313 : 1964 (1) Cri L J 224 (231) (Pt F) (Pr 22) (SC).

——Art. 20 (3) — Enquiry under Public Servants (Inquiries) Act (1850), Ss. 11, 15, 16 and 19 — Enquiry Commissioner has no power to compel public servant to make any statement or produce document as in a criminal trial — No violation of Art. 20 (3). ('61) 63 Punj L R 780.

6 (b). Direction to accused to appear in identification parade or to exhibit his body or identifying marks on it.

——Art. 20 — Applicability — Test identification parade — Concealment of distinctive marks — Bearded criminal getting himself shaved to avoid recognition — Magistrate in delaying identification until his beard grew again does not violate Art. 20 (3). See Evidence Act (1872) S. 9. 1961 (1) Cri L J 340 : AIR 1961 All 153 (DB).

——Art. 20 (3) — Test identification — Order for — Legality.

A Magistrate's order directing the accused to appear in a test identification parade does not violate his fundamental right under Art. 20 (3) and is not ultra vires the Constitution. It is the procuring by compulsion of the positive volitional evidentiary acts of an accused that is prohibited by Art. 20 (3) of the Constitution. His mere attendance or the exhibition of his body at a test identification parade, even though compelled, does not result in any evidentiary act until he is identified by some other agency. The identification of him by a witness is not his act, even though his body is exhibited for the purpose; certainly it is not his evidentiary act. AIR 1954 S C 300, Applied ; AIR 1957 Orissa 172 and A I R 1957 Madh Pra 108 and A I R 1959 Madh Pra 411 and A I R 1955 Cal 247 and A I R 1958 All 119, Diss. from 1961 (2) Cri L J 462 : ILR (1961) 1 Cal 707 : A I R 1961 Cal 531 (532, 534) (Prs 3, 5, 16, 19) (DB).

——Art. 20 (3)—Scope — Compulsion for exhibition of body or identifying marks on it — Procurement of fingerprints by force for establishing identity — Not objectionable — (Identification of Prisoners Act (33 of 1920), S. 5 — Constitutional validity) — (Evidence Act (1872), S. 73).

Taking of thumb, finger and palm impression of the accused in the Court of the Magistrate under his directions was not in contravention of Art. 20 (3) of the Constitution. True scope of the constitutional inhibition against self-incrimination contained in Art. 20 (3) is to prohibit compulsion in the matter of testifying either by word of mouth or in writing. What is forbidden is the use of force in the process of disclosure by oral statements or by written words of testimonial character. In principle resort to compulsion requiring the accused to exhibit his body for purposes of establishing identity is not objectionable, because by doing so he is not being forced to give false testimony.

The provisions of S. 5 of the Identification of Prisoners Act. 1920, cannot be held to be unconstitutional as violative of the constitutional guarantee against testimonial compulsion. **1958 Cri L J 1084: I L R (1958) Punj 1747 : A I R 1958 Punj 294 (297, 299, 301) (Pt B) (Prs 21, 32, 50).**

6 (c). Search and seizure of documents from the person or the custody of the accused.

●——Art. 20 (3)—Search and seizure of documents from accused, if amounts to infringement of fundamental right under Art. 20 (3)—[Cr. P. Code (1898), Ss. 94 and 96].

Sections 94 and 96 (1) of the Criminal P. C. cannot be read as importing any statutory recognition of a theory that search and seizure of documents is compelled production thereof. Section 96 (1) has three alternatives and the requirement of previous notice or summons and the non-compliance with it or the likelihood of such non-compliance is prescribed only for the first alternative and not for the second or the third. A "general search" and a "search for a document or a thing not known to be in possession of any particular person" are not conditioned by any such requirement. Indeed in cases covered by the second alternative such a requirement cannot even be contemplated as possible. It would therefore, follow, that some at least of the searches within the scope of the second and third alternatives in S 96 (1) would fall outside the constitutional protection of Art. 20 (3) — an anomalous distinction for which no justification can be found on principle.

There is no basis in the Indian law for the assumption that a search or seizure of a thing or document is in itself to be treated as compelled production of the same. A notice to produce is addressed to the party concerned and his production in compliance therewith constitutes a testimonial act by him within the meaning of Art. 20 (3). But a search-warrant is addressed to an officer of the Government generally a police officer. Neither the search nor the seizure are acts of the occupier of the searched premises. They are acts of another to which he is obliged to submit and are, therefore not, his testimonial acts in any sense.

A power of search and seizure is in any system of jurisprudence an overriding power of the State for the protection of social security and that power is necessarily regulated by law. When the Constitution makers have thought fit not to subject such regulation to constitutional limitations by recognition of a fundamental right to privacy, analogous to the American Fourth Amendment, there is no justification to import it, into a totally different fundamental right, by some process of strained construction. Nor is it legitimate to assume that the constitutional protection under Art 20 (3) would be defeated by the statutory provisions for searches. 116 U S 616, Discussed.

Held, in the circumstances of the case that searches made in pursuance of warrant issued under S. 96, Cr. P. Code, could not be challenged as illegal on the ground of violation of fundamental right under Art. 20 (3) of the Constitution. **Sharma v. Satish Chandra, 1954 S C J 428 : (1954) 1 M L J 680 : 1954 Cr L J 865 : 1954 S C A 449 : 1954 SCR 1077 : 56 Punj L R 366 : 1954 Andh L T (SC) 1 : 1954 Mad W N 566 : 1954 Andhra L J (W) 54 : AIR 1954 S C 300 (305, 306, 307) (Pt C) (Prs 17, 18, 19).**

—— Art 20 (3) — Warrant in respect of documents —Order for return of books and papers on execution of bond—Effect of. See Sea Customs Act (1878), S. 172. AIR 1956 Cal 609.

——Art. 20 (3) Scope — Search-warrant for production of documents in possession of accused— If invasion of fundamental right guaranteed under Art. 20 (3) — Cr. P. Code, Ss. 94 and 96.

The constitutional protection under Art. 20 (3) is not defeated by the statutory provisions for searches contained in Ss. 94 and 96, Cr. P. Code. Searches are under the authority of a Magistrate (excepting in the limited class of cases falling under S. 165 of the Cr. P. Code). Therefore, issue of a search-warrant is normally the judicial function of the Magistrate, and is no invasion of any fundamental right guaranteed under Art. 20 (3). AIR 1954 S C 300 ; AIR 1955 Mad 685, Rel. on. **Madh B L R 1956 Cri 341 : 1956 Madh B L J 1487 : 1957 Cri L J 195 : AIR 1957 Madh B 68 (70) (Pt B) (Pr 18) (DB).**

——Art 20 (3)—Scope — Power to issue search warrant under S. 94—(Criminal P. C. (1898), S 94)—Legality.

The power of the Court to issue a search warrant under S. 94 of the Cr. P. Code is not taken away by Art. 20 (3) of the Constitution of India. AIR 1957 Madh B 68, Foll. **1959 M P L J (Notes) 215.**

——Art. 20 (3) — Under search warrant documents or articles or incriminating evidence can be seized from custody or person of accused by force and against his will. 1956 Mad W N 657 : (1956) 2 Mad L J 273 : ILR (1957) Mad 66 : 1957 Cri L J 976 : AIR 1957 Mad 546 (549, 550) (Pt B) (Prs 6, 7, 8, 9) (DB).

——Art. 20 (3)—Production of documents — Notice issued to accused to show cause why his premises should not be searched for certain incriminating documents amounts to testimonial compulsion and as such offend article. (1955) 2 Mad L J 268 : 1955 Mad W N 669 : 68 Mad L W 737 (2) : 1955 All W R (Sup) 99 : 1955 Cri L J 1602 (2): AIR 1955 Mad 716 (717) (Prs 1, 2).

——Art. 20 (3)—Power of police to search accused or his premises for certain documents believed to be in his possession or of the magistrate to issue search warrant not taken away. 1955 Mad W N 567 : (1955) 2 Mad L J 269 : 1955 All W R (Sup) 100 : 1955 Cri L J 1602 (1) : AIR 1955 Mad 685 (685) (Pr 3).

6 (d). Public examination of directors and office-bearers under S. 45-G, Banking Companies Act.

See also Ibid, Note 4 (b) (i).

——Art. 20 (3)—Applicability—Public examination of director under S. 45-G, Banking Companies Act, 1949 If hit by Art. 20 (3) of the Constitution—(Banking Companies Act (1949), S. 45 G).

Because under S. 45-G (8) of the Banking Companies Act the notes of the examination of the evidence may be used later in evidence against the person in any proceeding, civil or criminal, a public examination of the director cannot be held to be bad under the provisions of Art. 20 (3) of the Constitution. The reasons are (1) A public examination of a director under S. 45-G Banking Companies Act, does not necessarily mean that the director shall be compelled to be a witness against himself and to give evidence against himself ; (2) the constitutional provision only applies

where a person is 'accused of any offence'. An order for public examination under S 45-G, Banking Companies Act, on the report of the Official Liquidator is not an accusation for an offence; (3) taking into consideration the guarantees under which the director is examined under S. 45-G, it cannot be said that he is "compelled to be a witness against himself" within the language and meaning of Art. 20 (3) of the Constitution; and (4) a past evidence likely to be used for a future accusation of an offence does not infringe the constitutional right given by Art. 20 (3). The language of Art. 20 (3) of the Constitution means that the evidence must come after and not before the accusation of an offence in order to come within the constitutional prohibition. 61 Cal W N 709 : A I R 1957 Cal 520 (522) (Pt C) (Prs 4, 6, 7).

——Art. 20 (3)—Petition under Ss 45-G, 45-H and 45 J, Banking Companies Act, against Directors and other office bearers—Latter also accused of offences under Companies Act — Order directing public examination of Directors and others under S. 478, Companies Act and S 45 G, Banking Companies Act, 1949—Legality—Order is hit by Art. 20 (3).

Held on facts that the effect of the order was that the counter-petitioners were compelled to be witnesses against themselves and to give evidence in support of the accusations against them and the protection granted by Art. 20 (3) of the Constitution being against such compulsion, the order was illegal AIR 1958 Andh Pra 756 and AIR 1959 Bom 320, Disting. 1960 Ker L J 641 : (1960) 1 Ker L R 670 : 1960 Ker L T 581 : (1960) 30 Com Cas 501 : 1960 Mad L J (Cr) 713 : 1961 (1) Cr L J 75 : AIR 1961 Ker 14 (17, 18) (Pt C) (Pr 5) (DB).

[Overruled on another point in AIR 1963 Ker 72 (FB)]

——Art. 20 (3) Order directing public examination of directors under S. 45-G, Banking Companies Act.

The public examination of the directors and office bearers under S. 45-G, Banking Companies Act is sought by the official liquidator to bring out from them facts necessary to sustain a conviction of those persons. Under cl. (6) of S 45-G of that Act these persons are bound to answer all the questions put to them in a public examination. The answers recorded from them can be used against them in any civil or criminal proceeding. Such use is expressly sanctioned by cl. (3) of that section. Thus all the elements necessary to bring the matter within the mischief of Art. 20 (3) are present and therefore the order for their examination is hit by it. AIR 1961 Ker 14 (17) (Pt C) (Pr 5) (DB).

6 (e). Direction to produce documents or other incriminating evidence.

● —Art. 20 (3)—Testimonial compulsion, rule of—Applicability of S. 94 (1), Criminal P. C., to accused. AIR 1951 Cal 101 (FB) Overruled. See Criminal P. C. (1898), S. 94 (1). 1965 (2) Cr L J 356 : AIR 1965 S C 1251.

● ——Art. 20 (3) — Accused giving information or producing documents - Whether becomes witness.

Per Majority; S. K. Das, A. K. Sarkar and K. D. Das Gupta JJ., contra.:—To be a witness is not equivalent to 'furnishing evidence' in its widest significance to include also production of documents or giving materials which may be relevant at a trial to determine the guilt or innocence of the accused. The observation of the Supreme Court in A I R 1954 S C 300 that S. 139 of the Evidence Act has no bearing on the connotation of the word 'witness' is not entirely well founded in law.

"To be a witness" means imparting knowledge in respect of relevant facts by an oral statement or a statement in writing made or given in Court or otherwise. State of Bombay v. Kathi Kalu, 1963 Mad L J (Cri) 97: 1961 (2) Cr L J 856: (1961) 2 Ker L R 378 : 1961 Ker L T (S C) 74 : 1961 B L J R 840 : 1961 All L J 936 : (1962) 3 S C R 10 : 1961 All W R (H C) 736 : (1962) 1 S C A 429 : 1961 All Cri R 416 : 64 Bom L R 240 : (1963) 1 S C J 195 : A I R 1961 S C 1808 (1816, 1817, 1819, 1820) (Pt A) (Prs 16, 32).

——Art 20 (3) — Criminal P. C. (1898), Ss. 94, 96 — Order requiring accused to produce self incriminating document—Legality.

The guarantee in Art. 20 (3) against testimonial compulsion is not only confined to the oral evidence of a person standing his trial for an offence when called to the witness stand but that protection extends also to the compulsory process for the production of evidentiary documents which are reasonably likely to support the prosecution against him. Requiring the accused charged for forgery, to produce the alleged forged document under Ss. 94 and 96, Criminal P. C. is violation of Art. 20 (3). AIR 1954 S C 300, Foll. 1961 (2) Cr L J 55 (57) (Pt A) (Pr 12) (All).

——Art. 20 (3)— Scope — 'To be a witness' — Order under S 94, Criminal P. C.

The expression 'to be a witness' used in Art. 20 (3) of the Constitution has to be read in a wide sense. That expression includes furnishing evidence. An order under S. 94, Criminal P. C., is directed to a person to produce documents before the Court. Such an order is clearly an order to furnish evidence. Such an order therefore attracts the prohibition contained in clause (3) of Art. 20 of the Constitution. 1958 All W R (H C) 855 : 1958 All Cr R 569 : 1959 All L J 29 : 1959 Cr L J 410 : I L R (1959) 2 All 132 : A I R 1959 All 219 (220) (Prs 5, 6) (DB).

——Art. 20 (3) — Production of documents — Summons under S. 94, Criminal P. C., against company's employees—Legality.

Article 20 (3) of the Constitution prohibits a summons to be issued under S. 94 of the Criminal P. C., against an accused person, requiring him to produce documents in support of the prosecution case. For to produce a document in a criminal case in support of a prosecution is a testimonial act. 1954 S C J 428 : (1954) 1 M L J 680 : AIR 1954 S C 300 and AIR 1959 All 219, Rel. on. Thus, a company against whom a prosecution is started cannot be required by virtue of Art. 20 (3) of the Constitution to produce incriminating documents. And as the company can, under S. 131 of the Evidence Act, object to its own employees producing its documents in Court without its consent, no summons can, under S. 94, Criminal P. C., to produce the documents, be issued against the company's employees. 1961 Nag L J 96 : (1961) 31 Com Cas 324 : 63 Bom L R 559 : 1961 (2) Cr L J 200 : I L R (1961) Bom 508 : A I R 1961 Bom 242 (243) (Pt B) (Prs 3, 4) (DB).

——Art. 20 (3)—Scope—Accused ordered to produce document in his possession — Order illegal. See Factories Act (1948), Section 79 (ii). 1960 Nag L J (Notes) 17.

——Art. 20 (3)—Scope—Notice to appear or produce documents —If contravenes Art. 20 (3). See Sea Customs Act (1878), S. 171-A. 1958 Cr L J 1469 : AIR 1958 Cal 682 (DB).

[Overruled on another point in AIR 1962 S C 759.]

● ——Art. 20 (3) — Whether if S. 94, Criminal P. C. is construed as applicable to accused persons also that would render it ultra vires of Art. 20 (3)—Scope of Art. 20 (3)—Calling accused to produce document whether amounts to testimonial compulsion. See Criminal P. C (1898), S. 94. AIR 1951 Cal 101 (FB).

[Overruled in AIR 1965 S C 1251.]

——Art 20 (3) —Witness, who is —Accused producing document.

If an accused produces a document in his possession that would not offend Art. 20 Cl. (3) unless the document contains statements based on the personal knowledge of the accused because he does not become a witness by the mere fact that he has produced it. AIR 1961 S C 1808 and A I R 1960 S C 756, Rel. on. **(1963) 4 Guj LR 638 : 1963 (2) Cr L J 135: AIR 1963 Guj 178 (181) (Pt A) (Pr 8).**

——Art. 20 (3) —Testimonial compulsion — Criminal trial — Order for production of books of account by accused — Effect.

The constitutional guarantee under Art. 20 (3) is not confined to oral testimony but also extends to any compulsory process for production of evidentiary documents which are reasonably likely to support the prosecution against the accused. A I R 1954 S C 300, Foll. An order under S. 94, Criminal P. C. requiring an accused to produce documents which are reasonably likely to support the prosecution against him offends against the provisions of Art. 20 (3). A I R 1956 Mad 165 and A I R 1959 All 219 and A I R 1960 J and K 55, Rel. on. **(1961) 2 Guj L R 415 : (1961) 2 Guj H C R 197 : 1961 (2) Cri L J 338 : A I R 1961 Guj 137 (139, 140) (Pt A) (Prs 6, 8) (DB).**

——Art. 20 (3) — Succession Act (1925), S. 317—Administrator — Books of account maintained by — Order for production of— Effect.

Under S. 317 of the Succession Act the only obligation on the Administrator is to exhibit an inventory and an account of the estate. No obligation is imposed on the administrator by the section to maintain any books of account. Therefore the books of account maintained by an administrator or joint administrators in connection with the administration of the estate of a deceased person cannot be said to be public documents. If they are not public documents, they would be necessarily private documents. Therefore assuming that protection against self-incrimination under Art. 20 (3) extends to private documents and not to public ones the protection would extend to such books of account. **1961 (2) Cr L J 338 : (1961) 2 Guj L R 415 : (1961) 2 Guj H C R 197 : A I R 1961 Guj 137 (140) (Pt C) (Pr 9) (DB).**

—— Art. 20 (3)— Order directing accused to produce books of account on next date—Application to cancel that order on ground of testimonial compulsion violating Art. 20 (3). See Criminal P.C. (1898), S. 439. 1961 (2) Cr L J 338: AIR 1961 Guj 137 (DB).

——Art. 20 (3) —Order directing accused to produce documents under S. 94, Criminal P. C .— Order violates article.

An order passed by a Magistrate under S. 94, Criminal P. C., calling upon the accused to produce the documents which are incriminating against them is absolutely without jurisdiction as it violates the protection given to the accused under Art. 20 (3) of the Constitution. There is clear distinction between an order of the Court by which the accused himself is directed to produce the documents and an order of the Court by which the police is directed to search or seize the documents in possession of the accused. The former case amounts to testimonial compulsion which comes within the ambit of Art. 20 (3) whereas in the latter case Art. 20 (3) has no appliction. AIR 1954 S C 300, Foll ; A I R 1951 Cal 101 (FB), held no longer good law. **1960 Cri L J 470 : AIR 1960 J & K 55 (56, 57) (Pt C) (Pr 4).**

——Art 20 (3) — Order to produce documents — Accused making statement in protest — If can be said to have agreed to production — (Criminal P. C. (1898), S. 94).

Where an application of the complainant for production of documents is strongly resisted by the accused, if they make any statement in protest to comply with the orders of the Court in case their objection was overruled, this surely cannot be taken to mean that they agreed to the production of the documents and that the Magistrate did not compel the accused to produce the documents. **1960 Cri L J 470 : AIR 1960 J and K 55 (57) (Pt D) (Pr 4).**

——Art. 20 (3) — Testimonial compulsion — Production of document impugned as forged — Order for — Legality.

A Magistrate commits a grave violation of the right guaranteed by Art. 20 (3) of the Constitution in issuing notice to the accused to produce in Court the document impugned as forgery. AIR 1954 S C 300 and AIR 1957 Mad 716 and AIR 1956 Mad 165 and AIR 1957 Madh B 68, Rel. on. **1957 Ker L T 293 : ILR (1957) Ker 277 : 1957 Ker L J 329 : (1957) Mad L J (Cr) 227 : 1957 Cr LJ 755 : AIR 1957 Ker 78 (79) (Pt B) (Pr 6) (DB).**

——Art. 20 (3) — Guarantee under — Extent—(Criminal P. C. (1898), S. 94—Production of documents).

The guarantee under Art. 20 (3) would extend to any compulsory process for production of evidentiary documents which are reasonably likely to support a prosecution against the accused. AIR 1954 S C 300, Foll.; AIR 1951 Cal 101, Not foll. **(1955) 2 M L J 267 : 68 M L W 737 (1) : 1955 Mad W N 660 : 1955 All W R (Sup) 96 : 1956 Cri L J 248 (1) : AIR 1956 Mad 165 (165) (Pr 2) (DB).**

——Art. 20 (3) — Scope—Notice to accused to show cause why his premises should not be searched for seizing documents — Validity — (Criminal P. C. (1898), S. 96).

The guarantee under Art. 20 (3) would extend to any compulsory process for production of evidentiary documents which are reasonably likely to support a prosecution against the accused.

A notice to the accused to show cause why his premises should not be searched for the purpose of seizing certain incriminating documents practically amounts to stating that either he produces the documents or else the premises will be searched. To avoid the search the accused is likely to come forward with the production of the documents himself. Instead of directly compelling him to produce by means of a summons, the notice to show cause will practically have the same effect in an indirect manner. The notice, therefore, will amount to a testimonial compulsion and will stand on the same footing as the summons to produce the same documents. Such a notice offends Art. 20 (3) and should be quashed. **(1955) 2 M L J 268 : 68 M L W 737 (2) : 1955 Mad W N 669 : 1955 All W R (Sup) 99 : 1955 Cr L J 1602 (2) : AIR 1955 Mad 716 (717) (Prs 1, 2).**

——Art. 20 (3) — Scope — Search by police and issue of search-warrant by Magistrate, if prohibited — (Criminal P. C. (1898), Ss. 96 (1) and 165).

Though by reason of Art. 20 (3) of the Constitution a Court is precluded from issuing summons to an accused person to produce any document or thing in his custody, there is nothing in Art. 20 of the Constitution or in any of its other articles to prohibit the police from searching either the person of the accused or the premises in the manner laid down by the Criminal Procedure Code. Nor have the powers of the Magistrate to issue a search-warrant in the circumstances set out in the Code been abrogated by the Constitution. **(1955) 2 M L J 269 : 1955 Mad W N 567 : 1955 All W R (Sup) 100 : 1955 Cri L J 1602 (1) : AIR 1955 Mad 685 (685) (Pr 3).**

——Art. 20 (3) — Scope—Criminal P. C., S. 94—Validity — If in conflict with Art. 20 (3). See Criminal P. C. (1898), S. 94. (1957) Nag L J 302.

——Art. 20 (3) — Scope and applicability—Production of public documents in custody of accused — Foodgrains Procurement Stock Register — Order for its production by Magistrate — Legality — (Orissa Foodgrains Control Order (1951) — (Evidence Act (1872), S. 74 (1) (iii)) —(Criminal P. C. (1898), S. 94).

The protection against compulsory testimony under Cl. (3) of Art. 20, Constitution of India, is not only available so far as the giving of oral evidence by an accused is concerned but is also available against the production of documents in his possession which may be reasonably used against him. But this principle does not apply to 'public documents' in the possession of the accused.

Apart from the statutory duty of maintaining the Foodgrains Procurement Stock Register cast on the accused by the Orissa Foodgrains Control Order, 1951 and the licence issued thereunder, the accused by acting as the agent of the Government had undertaken to maintain this register in accordance with the directions that may be issued from time to time by a public officer. The accused had agreed to the register being inspected from time to time by public officials and also to produce it for inspection whenever required. In a prosecution of the accused for an offence under S. 409, Penal Code, the Magistrate made an order calling upon the accused to produce the said register.

Held, that the register was a public record and a public document and that the accused must comply with the order of the Magistrate issued under S. 94, Criminal P. C., and produce the register called for on pain of incurring the penalty prescribed by law for non-compliance with his order. AIR 1954 S C 300 and (1948) 335 U S 1 and (1911) 221 U S 382, Rel. on ; AIR 1956 Mad 185 and AIR 1956 Cal 253, Disting. ILR (1957) Cut 564 : 1958 Cr L J 59 : AIR 1958 Orissa 1 (4) (Prs 14, 19).

——Art. 20 (3) — Scope — Testimonial compulsion—Prohibition against — Scope and extent of — 'To be a witness' — Interpretation — Fundamental right of protection against testimonial compulsion — If confined to oral evidence in Court — Order under S. 94, Criminal P. C. directing accused persons to produce registers and other documents kept by or under their direction — If violative of Art. 20 (3) — Employees' Provident Funds Act (XIX of 1952), S. 14 — Employees' Provident Fund Scheme (1952), S. 76.

The guarantee under Art. 20 (3) of the Constitution is against testimonial compulsion. It is not confined to the oral evidence of a person standing his trial for an offence when called upon to the witness stand but would extend to any compulsory process for production of evidentiary documents which are reasonably likely to support a prosecution against him. 'To be a witness' in its ordinary grammatical sense would mean giving oral evidence in Court, but the expression cannot be given such a strict literal interpretation. It has a wider meaning, namely bearing testimony in Court or out of Court by a person accused of on offence orally or in writing.

The respondents, the chairman and manager of a private limited Transport Company were charged with several charges under S. 14 of the Employees' Provident Funds Act, 1952 read with S. 76 of the Employees' Provident Fund Scheme, 1952, for failure to pay the contribution of the employees and the Employers' share and submit the necessary return as required by the Employees' Provident Fund Scheme. The complainant (State) applied to the Court under S. 94, Criminal P. C., for production of the records of the Transport Company kept by the respondents, i.e., the registers, etc., kept by them or under their direction relating to the affairs of the Combany of which they were the chairman and the Manager.

Held, the documents in question would obviously contain information based upon personal knowledge of the respondents which was to be used as incriminating evidence against them, and consequently an order compelling the production of such documents by the respondents would be violative of the constitutional guarantee contained in Art. 20 (3) of the Constitution and the accused could resist the application. AIR 1959 All 219 ; AIR 1961 Bom 242, Foll., (1954) Cr L J 865 : AIR 1954 S C 300; AIR 1961 S C 1808, Disting. (1964) 1 Comp L J 112 : 1964 Cur L J 306 : 1964 (2) Cr L J 199 : (1964-65) 26 F J R 127 : AIR 1964 Punj 325 (327) (Prs 11, 12, 13) (DB).

6(f). Taking of thumb impression, specimen writing or signature, etc.

● ——Art 20 (3)—Accused giving thumb impressions etc.—Whether becomes a witness.

Per Majority. — Giving thumb impressions or impressions of foot or palm or fingers or specimen writings or showing parts of the body by way of identification are not included in the expression 'to be a witness.'

Per S. K. Das, A. K. Sarkar and K. C. Das Gupta JJ. —Accused when he is giving specimen handwriting or impressions of his fingers or palms or foot does not furnish evidence against himself in so doing within the meaning of Art. 20 (3). AIR 1960 Cal 32, **Reversed**; AIR 1960 Ker 392 (DB), **Overruled**. State of Bombay v. Kathi Kalu, 1963 Mad L J (Cri) 97 : 1961 (2) Cri L J 856 : (1961) 2 Ker L R 378 : 1961 Ker L T (SC) 74 : 1961 B L J R 840 : 1961 All L J 936 : (1962) 3 S C R 10 : 1961 All W R (HC) 736 : (1962) 1 S C A 429 : 1961 All Cri R 416 : 64 Bom L R 240 : (1963) 1 S C J 195 : AIR 1961 S C 1808 (1819, 1820) (Pt A) (Pr 32)

——Art. 20 (3)—Mere furnishing specimen signature and handwriting does not make person witness against himself.

Only because an accused gives his specimen initials, signatures and writing he does not become a witness against himself. The mere giving of these, has no testimonial effect. It is only when a handwriting expert compares the specimen writing or signature of an accused person with the disputed ones and states in Court that the two tally and that the disputed handwriting or signature is that of the accused that the stage of evidence comes in. In that view of the matter, it cannot be said that the mere act of furnishing specimen signature or writing by an accused person can amount to his being a witness against himself. (Held on facts that accused was not compelled to give his specimen initials, signature and handwriting to the investigating officer). AIR 1960 S C 756, Relied on. ILR (1962) 1 All 451.

● ——Art. 20 (3)—Testimonial compulsion — Order under S. 73, Evidence Act, directing accused to furnish fingerprints or specimen of handwriting — Accused giving writing voluntarily without objection—Effect—Evidence Act (1872) S. 73.

Per Full Bench : An order directing an accused person to furnish his fingerprints or specimen of his handwriting does not amount to 'testimonial compulsion' and does not contravene the provisions of Art. 20 (3) of the Constitution. AIR 1958 All 119, Approved. Where the Sessions Judge directs the accused to furnish a specimen of his handwriting under S. 73, Evidence Act, for comparison with the writings in the questioned documents and the accused furnishes the same voluntarily without raising any objection or

protest, Art. 20 (3) is not infringed, as the giving of his writing by the accused could not be held to be compelled testimony. The mere absence of a warning that he was free to refuse will not bring about compulsion. AIR 1960 Ker 392 (FB). Diss. from. Ranjit Ram v. State, 1961 All L J 303 : 1961 (2) Cr L J 306 : 1961 All W R (HC) 320 : 1961 All Cr R 171 : ILR (1961) 1 All 128 : AIR 1961 All 456 (458, 463, 476, 477) (Prs 2, 3, 20, 84, 90) (FB).

— **Art. 20 (3) — Scope — Taking of finger prints under Identification of Prisoners Act—No contravention of Art. 20 (3) — (Identification of Prisoners Act (1920), Ss. 5, 6).**

Thumb marks of persons are taken under Ss. 5 and 6 not to use them in evidence, but to have a record of criminals undergoing trial or who had been convicted of a criminal offence. It cannot, therefore, be said that by taking the thumb-impressions the persons concerned are being compelled to be witnesses against themselves. 1959 All L J 812 : 1950 All W R (HC) 629 : 1960 All Cr R 8 : 1960 Cr L J 297 : AIR 1960 All 157 (158) (Pt A) (Pr 7).

——**Art. 20 (3)—Scope—Taking of thumb impression of accused in spite of his protests—They cannot be made use of—Court may, however draw presumption against him—(Evidence Act (1872), Ss. 73 and 114).**

If the accused refuses to give the impressions of his thumb and toes in compliance with the order of the Court, he cannot be compelled to do so and the only remedy available to the prosecution is to later on urge before the Court that a presumption in accordance with the law be drawn against him (accused). Where the impressions of his thumb and toes were taken by the prosecution in spite of his verbal protests, the only inference which can be drawn is that he had refused to comply with the order and his impressions were taken under compulsion. This would be in contravention of Art. 20 (3) of the Constitution, and for this reason the impressions already taken cannot be used in evidence nor can the prosecution act upon such impressions. AIR 1958 All 119, Foll. 1959 All L J 812 : 1959 All W R (HC) 629 : 1960 All Cr R 8 ; 1960 Cr L J 297 : AIR 1960 All 157 (160) (Pt B) (Pr 14).

——**Art. 20 (3) — Scope — Privilege given by—Accused if can waive — Exercise of power under S. 73, Evidence Act—(Evidence Act (1872), S. 73).**

Per James, J.—(in Order of Reference) Since Art. 20 (3) gives only a privilege to an accused person he can always waive it. Where the Sessions Judge passed an order that the specimen writing of the accused previously taken by the Committing Magistrate be sent for expert examination.

Held, that by submitting to Magistrate's order to give his specimen writing the accused waived his constitutional privilege and consequently the Sessions Judge must be held to have rightly exercised his statutory power under S. 73 of the Evidence Act in directing expert examination of that specimen. AIR 1954 S C 300; 1954 S C J 428 : (1954) 1 Mad L J 680, Applied. 1958 Cr L J 134 : AIR 1958 All 119 (120) (Pt A) (Pr 7) (DB).

——**Art. 20 (3)—Order directing accused to furnish his specimen writing — If hit by Article—Presumption—(Evidence Act (1872), Ss. 73 and 114).**

An order directing an accused to furnish his specimen writing under S. 73, Evidence Act, is not hit by the provisions of Art. 20, Cl. (3) of the Constitution. The accused cannot, therefore, refuse to give the specimen writing when ordered by the Court to give it. If he does refuse, the Court can legally draw a presumption against him under any other provision of law. It will not amount to compelling the accused to be a witness against himself. (S) AIR 1957 Madh Pra 73 Diss. from. 1958 Cr L J 134 : AIR 1958 All 119 (126) (Pt E) (Prs 48, 50) (DB).

——**Art. 20 (3)—Protection against testimonial compulsion—Taking of specimen writing or signature in Court with consent of accused—Taking of finger impressions of accused by investigating officer against his will—Protection under Art. 20 (3) not violated.**

Where an accused on being asked by the Court voluntarily gives his specimen writing and signature without raising any objection, the protection under Art. 20 (3) is not contravened.

The taking of finger impressions of the accused person by the investigating officer even against his will would not contravene the protection afforded by Art. 20 (3) : AIR 1959 Mad 396, Rel. on. 1962 (1) Cr L J 19 : AIR 1962 Cal 36 (38, 39, 40) (Pt A) (Prs 8, 9) (DB).

——**Art. 20 (3)—'Testimonial compulsion' — Taking of thumb-impressions or foot-prints of accused—Effect.**

The giving of evidence as referred to in Art. 20 (3) of the Constitution, refers to doing a positive volitional act on the part of the accused to reveal something or to produce something which may be used against him; but it does not relate to the accused being compelled to show his face to the witnesses for identification or to show any part of his body or to give his thumb-impression or foot print for the purpose of identification. Hence an order of the Magistrate compelling the accused to give his thumb-impressions or finger-impressions for the purpose of investigation would not violate the safeguard of Art. 20 (3) of the Constitution. AIR 1957 Madh Pra 106 and AIR 1957 Mad 47 and Cr. Revn. No. 538 of 1960, dated 11-5-1960 (Cal) and AIR 1959 Mad 396, Foll.; AIR 1926 Mad 632, Not foll. Where the counsel for the accused stated that he had no objection to the taking of foot-prints of the accused, it cannot be said that the accused is compelled to do something against his will. 1961 (1) Cr L J 249 : 65 Cal W N 433 : AIR 1961 Cal 123 (124, 125) (Prs 5, 6, 7) (DB).

——**Art. 20 (3) — Testimonial compulsion — Taking specimen handwriting from accused—Effect.**

The taking of specimen handwriting from the accused after his arrest so as to furnish evidence against him amounts to a violation of the guarantee against testimonial compulsion as envisaged by Art. 20 (3) of the Constitution. AIR 1954 S C 300 and AIR 1960 Cal 32, Rel. on. 1960 Cr L J 579 : AIR 1960 Cal 318 (319) (Pt A) (Pr 6) (DB).

——**Art. 20 (3)—Scope — Taking of specimen writings and signatures of accused—Effect—'To be a witness against himself'—Meaning—Section 73, Evidence Act—(Evidence Act (1872), S. 73) — (Cr. P. Code (1898), S. 342).**

An order of a Magistrate allowing the investigating Officer to take the specimen writings and signature of the accused person is violative of the fundamental right mentioned in Art. 20 (3) of the Constitution. The phrase 'to be a witness against himself' is not confined to the oral evidence of the accused but it means to furnish evidence against himself. It may be as much by word of mouth as by hand. Further, it may be in and out of Court. Section 73, Evidence Act, will afford no justification for such an order. AIR 1955 Cal 247, Diss. from ; AIR 1954 S C 300, Rel. on. 63 Cal W N 901 : 1959 All W R (Sup) 87 : 1959 All Cri R 353 : ILR (1960) 2 Cal 60 : 1960 Cr L J 56 : AIR 1960 Cal 32 (32, 33, 34) (Prs 3, 4, 11) (DB).

[Reversed in AIR 1961 S C 1808].

——Art. 20 (3) — Procedure under S. 73, Evidence Act—Validity — See Evidence Act (1872), S. 73. AIR 1958 Cal 123.

——Art. 20 (3)—Direction under S. 73, Evidence Act —Nature of — Does not offend Art. 20 (3) — See Evidence Act (1872), S. 73. AIR 1955 Cal 247 (DB).

——Art. 20 (3)—Scope — Taking finger impressions in Court for comparison—If amounts to testimonial compulsion — (Evidence Act (1872), S. 73).

Taking of finger impressions of an accused person in Court under its directions for the purpose of comparing them with disputed finger impressions under S. 73, Evidence Act, or otherwise would not amount to compelling the accused person to be a witness against himself, as contemplated by Art. 20 (3) of the Constitution. **1959 Cr L J 1165 : AIR 1959 Him Pra 29 (31) (Pt A) (Pr 6).**

——Art. 20 (3) — Testimonial compulsion — Asking accused to give thumb-impression during police investigation — Effect of.

A direction by a police officer asking the accused to furnish his thumb impression or a specimen writing would not amount to testimonial compulsion so as to bring it within the mischief of Art. 20 (3). But if the accused person has been compelled to give thumb-impression or specimen writing, it would certainly be hit by Art. 20 (3). But this fact of compulsion has to be proved like any other fact by evidence and not to be presumed. AIR 1956 Mad 632, Diss. from; AIR 1957 Mad 47 and AIR 1955 All 367, Rel on. **1957 Cr L J 1124 : AIR 1957 J & K 44 (45) (Pt B) (Prs 3, 4).**

——Art. 20 (3) — Order directing accused to give specimen handwriting and signature—Does not infringe Art. 20 (3).

The direction by a Magistrate to an accused person to give specimen handwriting and signature will not amount to compelling the accused person to be witness against himself and hence does not infringe the fundamental right enshrined in Art. 20 (3) of the Constitution. **1965 M L J (Cr) 212 : 1963 Ker L J 1005 : 1963 Ker L T 1132.**

● **——Art. 20 (3)—Testimonial compulsion — Specimen hand-writing got by non-voluntary positive act of accused—Admissibility.**

The guarantee against testimonial compulsion envisaged by Art. 20 (3) of the Constitution is available only where there is formal accusation or where proceeding would in the normal course result in such accusation. The guarantee can be waived and does not cover the accused furnishing evidence willingly. The guarantee covers every volitional positive evidentiary act of the accused. Where a person formally accused is compelled, through positive volitional act to furnish materials which are tendered as evidence against him, the guarantee against testimonial compulsion in Article 20 (3) is infringed.

The privilege against self-incrimination contained in Art. 20 (3), which rests upon the abhorrence of compelling a man to expose his own guilt, must not be limited to what is evidence oral or documentary, according to the Evidence Act, but should cover all positive acts of the accused, which furnish material for reaching conclusions of facts in criminal cases. The specimen of the handwriting got by non-voluntary positive act of the accused, cannot but be treated as amounting to self-incrimination by compulsion. Hence, the specimen of handwriting compelled from the accused is not admissible. The words 'to be a witness' in Art. 20 (3) are not confined to compelled oral evidence alone, but cover documentary evidence as well and consistently with such liberal interpretation compelled writing by the accused cannot be admitted as being covered by the inhibition. AIR 1958 All 119, Diss. from. State of Kerala v. K. K. Sankaran Nair, **1960 Ker L J 805 : 1960 Ker L T 684 : ILR (1960) Ker 760 : 1960 Mad L J (Cr) 660 : 1960 Cr L J 1603: AIR 1960 Ker 392 (396, 398, 399, 400) (Prs 9, 20, 23) (FB).**

[Overruled in AIR 1961 S C 1808.]

——Art. 20 (3) — Scope — Making use of finger print evidence offends article.

Where in finding the accused guilty of forgery and false personation the lower Court made use of the finger prints obtained from her by the police during the course of the investigation and the report and the evidence of a finger print expert.

Held, that to make use of that evidence amounted to testimonial compulsion and offended Art 20 (3). **1960 Cri L J 75 : 1959 Ker L J 651 : ILR (1959 Ker 749 : 1959 Ker L T 829: AIR 1960 Ker 29 (30) (Pt D) (Pr 8) (DB).**

——Art. 20 (3) — Scope — Taking thumb impression of accused—Legality.

It is implicit in the provisions contained in Art. 20 (3) that unless and until there is an element of compulsion there cannot be the infringement of that fundamental right.

Taking finger prints of an accused while he remains merely passive, is beyond the pale of the constitutional protection. But where the accused is made to give his finger prints under some form of duress, that would be hit by Art. 20 (3). AIR 1954 S C 300 Rel. on; AIR 1957 Madh Pra 106 and AIR 1957 Madh Pra 73, Disting. **1959 M P L J 1182: 1959 Jab L J 711 : 1960 M P C 203 : AIR 1959 Madh Pra 411 (412) (Prs 3, 4) (DB).**

——Arts. 20 (3) and 13 — Testimonial compulsion — Direction to take thumb impression and specimen signature of accused — Legality — Section 2 (a) of M. B. Identification of Prisoners Act, if void—(Evidence Act (1872), S. 73).

Article 20 (3) is not confined to the oral evidence of an accused person at his trial in the Court room. It extends to any compulsory process by which the accused is asked to furnish evidence against him, through the lips or by production of a thing or of a document or in other modes. A direction by the Court asking the accused to give his thumb impression or specimen writing or signature amounts to asking him to furnish evidence, which is prohibited under Art. 20 (3) of the Constitution.

Section 5 of the Madhya Bharat Identification of Prisoners Act, to the extent it empowers a Magistrate to direct an accused person to give his thumb impression, specimen writing and signature for comparison with other documents, to be used against the accused at the trial, is repugnant to Art. 20 (3) of the Constitution and void, and the direction made by the Magistrate to take thumb impression and specimen hand writing of the accused is illegal. AIR 1954 S C 300, Explained and Foll ; AIR 1956 Mad 632, Rel. on; AIR 1955 Cal 247, Diss. from; AIR 1956 Mad 165, AIR 1957 Mad 47, Disting. **1957 M P C 274 : 1957 M P L J 347 : 1957 Jab L J 631 : 1957 Cr L J 855 : ILR (1957) Madh Pra 236 : AIR 1957 Madh Pra 106 (107, 109) (Pt C) (Prs 4, 6) (DB).**

——Art. 20 (3) — Scope — Compelled written testimony obtained prior to trial—(Telegraph Act (1885), S. 29).

The protection afforded to an accused by Art. 20(3) in so far as it is related to the phrase "to be a witness" is not merely in respect of testimonial compulsion in the Court room but may extend to compelled testimony previously obtained from him. In the

course of the investigation of an offence alleged to have been committed by the accused under S. 29, Telegraph Act, the police took out an application alleged to have been written by the accused from the file of one of the cases pending before the Municipal Magistrate, and taking the accused to a Second Class Magistrate, made the accused copy out that application in the presence of the Magistrate. This writing was compared with the writing on the telegraph form by a handwriting expert. The expert, was of opinion that the telegram was in the handwriting of the accused.

Held, that what was sought by the prosecution was that the accused should furnish evidence to the Court; and the evidence which the accused was made to furnish must be overlooked and cannot be received in the case. AIR 1954 S C 300, Foll.; AIR 1956 Mad 632, Rel. on; AIR 1955 Cal 247; AIR 1957 Mad 47, Not. foll. **1957 M P C 329 : 1957 M P L J 465 : 1957 Jab L J 595 : AIR 1957 M P 73 (75) (Pr 15) (DB).**

——Art. 20 (3) — Testimonial compulsion — What amounts to.

The thumb impression of the accused taken by the police on a slip of paper which was later on produced in Court cannot amount to testimonial compulsion and therefore is not hit by Art. 20 (3) of the Constitution. **1957 Cr L J 73 (2) : (1956) 2 Mad L J 427 : 1956 Mad W N 883 : AIR 1957 Mad 47 (48) (Pt A) (Pr 4).**

——Art. 20 (3)—Evidence Act (1872), S. 73 — Accused cannot be compelled to give his thumb impression —(Cr. P. Code, (1898), S. 342).

A direction by the Court asking the accused to give his thumb-impression amounts to asking him to furnish evidence which is prohibited under Art. 20 (3). The accused, therefore, cannot be compelled to give his thumb-impression as directed by the Magistrate. **A I R 1954 S C 300, Foll. 68 M L W 738 : (1955) 2 M L J 468 : 1955 Mad W N 824 : 1955 All WR (Sup) 126 (1) : 1956 Cri L J 1333 : A I R 1956 Mad 632 (633) (Pr 2).**

——Art. 20 (3)—Taking thumb impressions of accused — Legality.

The thumb impressions taken by the police during the course of the investigation can be produced in Court as evidence against the accused and the same does not amount to testimonial compulsion. Even if it is assumed that the Sub-Inspector of Police and the Daffedar compelled the accused to give their thumb impressions or forcibly took their impressions on the sheets of paper during the course of the investigation, it is not hit by Art. 20 (3) of the Constitution of India since it does not amount to testimonial compulsion. **ILR (1957) Mys 177 : 1958 Mad L J (Cr) 341 : 36 Mys LJ 278 : 1958 Cr L J 1489 : AIR 1958 Mys 150 (181) (Pt M) (Pr 35) (DB).**

● **——Art. 20 (3) —Compelling accused to be witness against himself—Direction by Magistrate to accused to give signature, specimen writing, thumb-impressions, etc., for comparison during course of investigation—Does not violate Art. 20 (3)— Direction given before taking cognizance—Direction is justified under S. 73, Evidence Act — Criminal Revn. 240 of 1960, dated 9th August, 1960 (Pat), Overruled : A I R 1961 S C 1808, Foll. Gulzarkhan v. State, 1962 (2) Cr L J 84 : 1962 B L J R 604 : AIR 1962 Pat 255 (257, 258) (Prs 7, 8) (FB).**

——Art. 20 (3) —Scope—Direction to give specimen handwriting — Legality — Obtaining of specimen hand-writing and obtaining of thumb impression—Difference.

What Art. 20 (3) of the Constitution prohibits is the use of compulsion in order to obtain evidence against the accused by the act of the accused himself. It does not prohibit the securing of evidence by agencies other than the accused himself and by methods in which the co-operation of the accused is not necessary.

In obtaining specimen handwriting or signature, the co-operation of the accused is necessary. But it is not always for the purpose of finding evidence against the accused that such specimen may be used. A mere direction to the accused to give specimen handwriting or signature, does not by itself contravene the provision of Art. 20 (3) of the Constitution. Even where the accused has objected, the direction will not contravene the provisions of Art. 20 (3) of the Constitution but no action will be taken to compel him to furnish such specimen. In respect of thumb-impressions different considerations arise. **A I R 1955 Cal 247, Rel. on ; A I R 1957 Madh Pra 106, Disting. 1958 Raj L W 376 : ILR (1958) 8 Raj 856 : 1960 Cr L J 1000 : AIK 1960 Raj 184 (184, 185) (Prs 4, 6) (DB).**

7. Evidence Act, S. 132 — Validity of.

——Art. 20 (3)—Witness called to witness box, sworn and questioned about relevant facts — Whether his obligation to state truth as a witness on oath can be equated with compulsion. See Evidence Act (1872), S. 132. 1963 (2) Cr L J 475 (Orissa).

——Art. 20 (3) —Scope—Evidence Act (1872), S. 132 —Companies Act (1913), S. 185—Proceedings under, against managing director —Criminal proceedings in respect of same subject matter also pending against managing director — Recording of evidence of managing director in proceedings under S. 185 — Adjournment of proceedings till after decision of criminal case in view of Art. 20 (3), if can be claimed by managing director —Managing director if 'compelled to be a witness against himself'.

Held, on facts that the respondent could not claim the privilege under Art. 20 (3) of the Constitution in proceedings under S. 185 of the Companies Act, 1913. Those proceedings did not partake of the character of criminal prosecution and he was not an accused person. He was not being subjected to a compulsion to make any statement and it was within his option to offer or not. As a witness, he could not claim protection beyond what was contained in the proviso to S. 132 of the Evidence Act. The appropriate time when the privilege could be claimed was after the question was put and not in advance of the examination. The privilege of silence was restricted to real dangers and not to remote possibilities. The protection against self-incrimination confines itself to a person accused of an offence and does not include the cases of witnesses. The privilege under Art. 20 (3) can also be waived by a person accused of an offence.

A witness has no privilege beyond the immunity conferred by S. 132 of the Evidence Act, but even if he has any, that privilege cannot be claimed and allowed before he takes his stand, and before the question, whether incriminatory or otherwise, is considered by the Court in the light of the surrounding circumstances. It has to be remembered that the privilege is in the nature of a prohibition against involuntary subjection to questions. The emphasis is on a compulsory disclosure of a guilt by an accused in a criminal matter and the right does not extend to a proceeding which does not involve punishment for the commission of a crime. **64 Punj L R 296 : ILR (1962) 1 Punj 468 : (1962) 32 Com Cas 125 : 1962 (1) Cr L J 451 : ILR (1962) 1 Punj 468 : AIR 1962 Punj 101 (107, 110) (Pt A) (Prs 17, 18, 34, 35, 36).**

8. Unreasonable searches and seizure.

——Art. 20 (3) -Scope -Notice of reassessment under S. 11-A, C. P. and Berar Sales Tax Act and also notice of prosecution —Seizure and detention of assessee's account books — Legality. See Sales Tax — C. P. and Berar Sales Tax Act (21 of 1947), S. 24. ILR (1958) Bom 961.

9. Confessions of accused obtained under pressure.

● ——Art. 20 (3) —S. 27 of the Evidence Act (1872)— Validity — Self-incriminatory information given by accused without compulsion — S. 27, Evidence Act, does not infringe Art. 20 (3) in such case. State of Bombay v. Kathi Kalu Oghad, 1961 B L J R 840 : 1961 All L J 936 : 1961 All W R (H C) 736 : 1961 All Cr R 416 : (1962) 1 S C A 429 : 64 Bom L R 240 : 1961 (2) Cr L J 856 : (1931) 2 Ker L R 378 : 1961 Ker L T (S C) 74 : (1962) 3 S C R 10 : (1963) 1 S C J 195 : 1963 Madh L J (Cri) 97 : AIR 1961 S C 1808 (1815, 1816, 1820) (Pt B) (Prs 13, 36).

● ——Art. 20 (3) —Accused making statement while in police custody voluntarily.

An accused person cannot be said to have been compelled to be a witness against himself simply because he made a statement while in police custody, without anything more. The mere questioning of an accused person by a police officer, resulting in a voluntary statement, which may ultimately, turn out to be incriminatory, is not compulsion. State of Bombay v. Kathi Kalu, 1963 Mad L J (Cri) 97 : 1961 (2) Cri L J 856 : (1963) 2 Ker L R 378 : 1961 Ker L T (S C) 74 : 1961 B L J R 840 : 1961 All L J 936 : (1962) 3 S C R 10 : 1961 All W R (H C) 736 : (1962) 1 S C A 429 : 1961 All Cri R 416 : 64 Bom L R 240 : (1963) 1 S C J 195 ; AIR 1961 S C 1808 (1819, 1820) (Pt A) (Pr 32).

● ——Art. 20 (3) — Applicability — (Criminal P. C., S. 164).

Sub-clause (3) of Art. 20 does not apply at all to a case where the confession is made without any inducement, threat or promise. It is true that a retracted confession has only little value as the basis for a conviction, and that the confession of one accused is not evidence against co-accused tried jointly for the same offence, but can only be taken into consideration against him; but this deals with its probative value and has nothing to do with any repugnancy to the Constitution. Kalawati v. State of H. P., 1953 S C J 144: 1953 Cri L J 668 : 1953 S C R 546 : 1953 Mad W N 219 : 1953 S C A 660 : 1953 All W R (Sup) 52 : A I R 1953 S C 131 (132) (Pt B) (Pr 8).

——Art. 20 (3) — Scope — Voluntary confession or admission — If prohibited.

Clause (3) of Art. 20 imposes a ban against compelling a person accused of any offence to be a witness against himself. This ban is against compulsion; it does not forbid voluntary confession or admissions. If a person accused of an offence makes a confession or admission of guilt of his own accord and without any compulsion or coercion, his statement is admissible against him as proof of his guilt. A I R 1960 All 323 (329) (Pt B) (Pr 29).

● ——Art. 20 (3) -Scope — Ss. 161 and 162, Criminal P. C., do not conflict with Art. 20 (3) —S. 162 applies to and bars use of statements leading to discovery of facts -As under the section no witness can be compelled to give answers which may expose him to charges or to a penalty or forfeiture no investigating officer can compel an accused to be a witness against himself. See Criminal P. C. (1898), S. 161. 1960 Cri L J 1 : A I R 1960 All 1 (FB).

——Art. 20 (3) — Evidence Act (1872) S. 27 — Discoveries, result of compulsion —Admissibility—Effect of Art. 20 (3) — Meaning of 'to be a witness'. See Evidence Act (1872), S. 27. A I R 1958 All 293.

——Art 20 (3) —Applicability—Conditions.

The conditions requisite for the application of the provisions of Art. 20 (3) are : (1) that the person was accused of an offence, (2) that he was compelled to be a witness, and (3) that he was compelled to be a witness against himself.

Where on information conveyed to him by the village Mukhia the Sub Inspector of Police had already come and arrested the accused, and the facts of the case disclosed that the accused was compulsorily subjected to treatment which furnished evidence of discovery of the dead body at his instance.

Held, that the evidence of discovery of the dead body at the instance of the accused was hit by the provisions of Art. 20 (3) of the Constitution. 1957 Cri L J 431 : 1958 All L J 330 : 1957 All W R (HC) 114 : AIR 1957 All 197 (203) (Pt B) (Pr 27) (DB).

——Art. 20 (3) —Testimonial compulsion —Protection against—Extent of.

The protection against testimonial compulsion, so long as the fact discovered is the outcome of compulsion exercised on the accused extends to compelled testimony previously obtained outside Court and to its being deposed to in Court by any person other than the accused himself. A I R 1954 S C 300, Rel. on. 1957 Cri L J 431 : 1957 All L J 330 : 1957 All W R (HC) 114 : A I R 1957 All 197 (203) (Pt D) (Pr 26) (DB)

——Art. 20 (3) —Accused not to be compelled to produce incriminating evidence — Evidence of compulsion — No presumption — (Evidence Act (1872), S. 114)

The contention that the recovery of blood-stained articles from the box of the accused and the handing over of the karauli by the accused would amount to a compelled production of incriminating evidence and as such it amounts to an infringement of the fundamental right under Art. 20 (3) cannot be accepted, when there was not only no evidence that the accused was compelled to produce the incriminating articles, but there was not even a suggestion to that effect anywhere in the evidence or in the cross-examination of witnesses. No presumption of compulsion can be raised in every case where the admission of evidence has not been expressly excluded by statute such as Ss. 25 and 26 Evidence Act, which expressly exclude from evidence a confession made by the accused before the police. To assume compulsion in all cases where recovery of incriminating articles is made during the course of any investigation would be to brush aside a very strong circumstantial evidence, and this could not have been the intention of the framers of the Constitution in framing Art. 20 (3). A I R 1954 S C 300. Considered. 1955 Cri L J 898 : A I R 1955 All 367 (369) (Pr 11) (DB).

——Art. 20 (3) — Scope and effect of — Evidence admissible under S. 27, Evidence Act — When it is not barred under Art. 20 (3). See Evidence Act (1872), S. 27. 1957 Cri L J 1071 : A I R 1957 Andh Pra 611 (DB).

——Art. 20 (3) — Scope — Statement leading to discovery, made involuntarily after interrogation by police, and admitted under S. 27 is hit by Art. 20 (3). 1960 All W R (Sup) 41 : 1960 All Cr R 264 : 1960 Cri L J 1429 : 1960 Nag L J 390 : ILR (1960) Bom 664 : A I R 1960 Bom 488 (489, 490) (Pt A) (Pr 4).

——Art. 20 (3)—Testimonial compulsion—Evidence Act (1872), S. 27 — Statement by accused in police custody admitted in evidence under S. 27 — Fact of prolonged interrogation by police not enough to attract Art. 20 (3).

So far as statements admitted under S. 27, Evidence Act, are concerned, there must have been 'compulsion' of the accused concerned, to make Art. 20 (3) applicable. Mere repeated and prolonged questioning of the accused by the police, resulting in a voluntary statement which has ultimately turned out to be incriminatory, is not 'compulsion', so as to attract Art. 20 (3) to the statement. A I R 1961 S C 1808, Rel. on ; A I R 1960 Bom 488, held impliedly overruled by S C decision. (1963) 4 Guj L R 543 : 1963 (2) Cri L J 16 : A I R 1963 Guj 159 (160) (Pr 22) (DB).

——Art. 20 (3)—S. 27, Evidence Act—Validity.

The information furnished by an accused person after his arrest to the Investigating Officer which leads to the discovery of articles under S. 27 of the Evidence Act is admissible in evidence and does not in any way offend Art. 20 (3) of the Constitution of India. Section 27 of the Evidence Act is not repugnant to Art. 20 (3) of the Constitution of India and does not stand abrogated by Art. 13 of the Constitution of India. 1958 Mad L J (Cri) 341 : I L R (1957) Mys 177 : 36 Mys L J 278 : 1958 Cri L J 1489 : A I R 1958 Mys 150 (170) (Pt I) (Pr 22) (DB).

——Art. 20 (3) — Scope—Testimonial compulsion — Statement by accused — No evidence to show that he was compelled by police to throw stone - Effect. See Evidence Act (1872), S. 27. 1959 Cri L J 353 : A I R 1959 Orissa 33 (DB).

——Art. 20 (3) — Scope — Evidence leading to discovery—No compulsion by police—Evidence not hit by Art. 20 (3). See Evidence Act (1872), S. 27. 1960 Cri L J 847 : A I R 1960 Punj 294.

——Art. 20 — Evidence Act (1872), S. 27 — Scope — Section not repugnant to Art. 20 (3) — Information leading to discovery—Presumption. See Evidence Act (1872), S. 27. A I R 1955 Raj 147.

ARTICLE 21

SYNOPSIS

(Constitution of India, Art. 21).

1. Scope of the Article.
   (a). Power of Court under the article.
2. "Life".
3. "Deprivation" of personal liberty.
4. This Article and Art. 19.
   (a). Laws affecting personal liberty — Court's power to question their validity under Art. 19.
   (b) "Personal liberty".
5. This Article and Art. 22.
6. "Procedure established by law."
   (a) Illustrative cases.
7. Preventive detention.

1. Scope of the Article.

(a). Power of Court under the article.

1. Scope of the Article.

● ——Art. 21 — Privileges of Legislature—Power of Legislature to commit citizen for contempt on general warrant — Whether such power is subject to Art. 21. See Ibid, Art. 194 (3). AIR 1965 S C 745.

● ——Art. 21—Validity of Defence of India Act and Rules cannot be questioned on ground of violation of fundamental rights under Arts. 14, 21, 22, during operation of Presidential order under Art. 359—See Ibid, Art. 359. 1964 (1) Cri L J 269 : AIR 1964 S C 381.

● ——Art. 21 — Presidential Order suspending enforcement of rights under Arts. 14, 21 and 22 during period of emergency — By indirectly validating laws in infringement of Arts. 14, 21 and 22, the Order does not become a fraud on powers under Art. 359. See Ibid, Art. 359 (1). AIR 1964 S C 381.

● ——Art. 21 — Validity of Drugs and Magic Remedies (Objectionable Advertisements) Act (1954), S. 8 —Contravenes Arts. 21 and 31 of the Constitution—Held invalid. See Drugs and Magic Remedies (Objectionable Advertisements) Act (1954), S. 8. 1960 Cri L J 735 : AIR 1960 S C 554.

● ——Arts 21 and 32 — Right to personal liberty—Violation of by private individual — Remedy under Art. 32, if available.

Violation of the right to personal liberty by a private individual is not within the purview of Art. 21. Therefore a person whose right to personal liberty is infringed by a private individual must seek his remedy under the ordinary law and not under Art. 32. Smt. Vidya Verma v. Dr. Shiv Narain Verma, 1956 Cri L J 283 : 1956 All W R (H C) 168 : 1956 Nag L J 200 : 1956 All L J 156 : 1956 S C A 357 : 1956 B L J R 133 : (1955) 2 S C R 983 : (1956) S C J 121 : AIR 1956 S C 108 (109) (Pt A) (Pr 7).

● ——Art. 21 — Provision made in, by constitution —Protection against infringements by executive or individuals.

Per Patanjali Sastri J. — It is a misconception to think that constitutional safeguards are directed against individuals. They are as a rule directed against the State and its organs. Protection against violation of the rights by individuals must be sought in the ordinary law. Article 21 is not designed to afford protection against infringements by the executive or individuals. The insertion of a declaration of Fundamental Rights in the forefront of the Constitution, coupled with an express prohibition against legislative interference with these rights (Art. 13) and the provision of a constitutional sanction for the enforcement of such non-interference by means of a judicial review (Art. 32), is a clear and emphatic indication that these rights are to be paramount to ordinary State-made laws. A. K. Gopalan v. State of Madras, (1950) 2 Mad L J 42 : 63 Mad L W 638 : 1950 S C J 174 : 51 Cri L J 1383 : 1950 S C R 88 : 1951 Mad W N (Cri) 127 : AIR 1950 S C 27 (74) (Pt U) (Pr 115).

——Art. 21—Drugs Act (1940), S. 25—Constitutional validity—Procedure prescribed by S. 25 preserved the basic right of accused to defend himself and hence does not contravene Art. 21 of the Constitution — But strict adherence to that procedure is necessary. See Drugs Act (1940), S. 25. 1958 Cr L J 1453 : AIR 1958 All 865.

——Art. 21 — Scope — Cr. P. Code (1898), S. 537 — If void as contravening Art. 21—(Cr. P. Code (1898), S. 537).

Article 21 is not intended to be a constitutional limitation upon the powers of the Legislature otherwise conferred by the Constitution. Its object is simply to serve as a restraint upon the executive so that it may not proceed against the life or personal liberty of an individual, save under the authority of some law and in conformity with the procedure laid thereunder. There is nothing in the Constitution which provides that the Legislature has got no

power to make provision if some irregularity is committed in the procedure laid down for the trial. In absence of any such limitation it was open to the Legislature to enact S. 537, Cr. P. Code, and provide therein that in case of certain irregularities the trial should not be vitiated if there is no prejudice to the accused. What the Constitution has guaranteed under Art. 21 is that no person shall be deprived of his life and personal liberty except in accordance with the provisions of law. S. 537, Cr. P. Code does not in any way contravene Art. 21 of the Constitution and is perfectly valid. 1956 All L J 748 : AIR 1956 All 462 (463) (Pt B) (Pr 7).

——Arts. 21 and 22—Contravention of—(Influx from Pakistan (Control) Act (1949), S. 7).

Where a person is arrested in enforcement of the direction in an order under S. 7 of the Act (23 of 1949) for the purpose of removal from India and he is informed of the order of the Government at the time of the arrest, Arts. 21 and 22 of the Constitution are not violated as Art. 21 does not apply to the case and as there is a substantial compliance with the provisions of Art. 22. Cr. Appln. No. 706 of 1951 (Bom) and AIR 1951 All 257, Rel. on. 1954 Cr L J 602 : AIR 1954 Bhopal 9 (16) (Pt J) (Prs 44, 45).

——Arts. 21 and 31 (1) — The principle had been enshrined as the "fundamental rights" of a person, in two articles, namely Art. 21, relating to life and personal liberty and Art. 31 (1), relating to property. No logic was, required to assert that confiscation of goods seized from possession of a person was deprivation of his property within the meaning of Art. 31 (1) AIR 1956 SC 17 and AIR 1954 SC 415, Rel. on. 68 Cal WN 383 : 1965 (2) Cri L J 477 : AIR 1965 Cal 507 (515) (Pr 38) (DB).

● ——Arts. 21 and 22—Arts. 21 and 22 do not exempt members of either House of Legislature and apply to all. See Ibid, Art. 105. AIR 1952 Cal 632 (SB).

● ——Art. 21—Mysore Special Criminal Courts Act (24 of 1942) whether offends the provisions of this Article and is therefore void. See Mysore Special Criminal Courts Act (24 of 1942). AIR 1951 Mys 72 (FB).

——Art. 21—Validity of Abducted Persons (Recovery and Restoration) Act, 1949 — Act whether consistent with provisions of Art. 21. See Abducted Persons (Recovery and Restoration) Act (1949), S. 1. AIR 1954 Punj 145 (DB).

1 (a). Power of Court under the article.

● ——Art. 21 — Ordinance prescribing special procedure for trial of offence — Constitutional validity of, whether can be questioned by Courts otherwise than under this article. See Ibid, Art. 14. AIR 1952 S C 123.

● ——Arts. 21, 22—Scope—Duty of Court in interpreting the Articles.

Per Bose J.—Arts. 21 and 22 confer a fundamental right and give a fundamental guarantee. It is therefore the duty of the Court to see that the right is kept fundamental and that the fullest scope is given to the guarantee. It is the duty of the Court to ensure that the right and the guarantee are not rendered illusory and meaningless. Therefore, wherever there is a scope for difference of opinion on a matter of interpretation in this behalf, the interpretation which favours the subject must always be used because the right has been conferred upon him and it is the right which has been made fundamental, not the fetters and limitations with which it may be circumscribed by legislative action. Krishnan v. State of Madras, 1951-2 Mad L J 105 : 1951 S C J 453 : 52 Cri L J 1103 : 64 Mad L W 945 : 1951 S C R 621 : AIR 1951 S C 301 (309) (Pt H) (Pr 43).

——Art. 21—Criminal P. C. (1898), S. 151—Discretion of police — High Court can go into the matter. See Criminal P. C. (1898), S. 151. 1965 (1) Cri L J 413 : A I R 1965 All 161.

——Art. 21 — Personal liberty — Deprivation of — Duty of High Court — (Displaced Persons (Compensation and Rehabilitation) Act (1954), S. 30).

Unless some provision of a valid substantive law empowers the authority concerned, no citizen can be deprived of his personal liberty, and the High Court has been entrusted by the Constitution with the responsible task of jeolously checking breaches of the said rule.

The warrant of arrest issued against a displaced person, before the amendment of 1959 of the Displaced Persons (Compensation and Rehabilitation) Act was for the amount due on account of land revenue and purported to have been issued under S. 69, Punjab Land Revenue Act. The record showed that this amount consisted of various items including taccavi loans for which no warrant of arrest could be issued under S. 30 of the Displaced Persons (Compensation and Rehabilitation) Act.

Held, that the warrant of arrest was liable to be quashed. A I R 1960 Punj 155 (156, 157) (Pr 3).

2. "Life".

● ——Art. 21—'Life' and 'personal liberty'.

Per Majority.—The word 'life' in Art 21 means not merely the right to the continuance of a person's animal existence, but a right to the possession of each of his organs—his arms and legs, etc.

Per Subba Rao and Shah, JJ.—The right of personal liberty in Art. 21 may be defined as a right of an individual to be free from restrictions or encroachments on his person, whether those restrictions or encroachments are directly imposed or indirectly brought about by calculated measures. Kharak Singh v. State of U. P., 1963 All L J 711 : 1963 (2) Cri L J 329 : (1964) 2 S C J 107 : (1964) 1 S C R 332 : A I R 1963 S C 1295 (1302, 1306) (Pt I) (Prs 17, 31).

● ——Art. 21 — Supreme Court Rules (1950), O. 4-A, R. 24 — Rule 24 is not discriminatory so far as the precincts of Supreme Court are concerned and does not infringe Art. 14 of Constitution — So also it does not infringe Arts. 19 and 21 — It is in interest of general public to exclude touts from precincts of Supreme Court—Word 'life' in Art. 21 does not include livelihood. See Supreme Court Rules, O. 4-A, R. 24. AIR 1960 S C 932.

● ——Art. 21—Right to live.

The right to live, though the most fundamental of all, is also one of the most difficult to define and its protection generally takes the form of a declaration that no person shall be deprived of it save by due process of law or by authority of law. A. K. Gopalan v. State of Madras, 1950-2 Mad L J 42 : 63 Mad L W 638 : 1950 S C J 174 : 51 Cri L J 1383 : 1950 Mad W N 495 : 1950 S C R 88 : 1950 Mad W N (Cri) 127 : A I R 1950 S C 27 (71) (Pt Z) (Pr 106).

3. "Deprivation" of personal liberty.

● ——Art. 21—U. P. Police Regulations, Regn. 236, Cl. (a)—Secret picketing of house of suspect — Personal liberty of suspect how far affected or prejudiced.

Per Majority —In respect of the provision contained in Cl. (a) of Regn. 236 of the U. P. Police Regulations, namely, secret picketing of the houses of suspects, there is no substance in the submission, that if the suspect does come to know that his house is being subjected to picketing, that might affect his inclina-

tion to move about or that in any event it would prejudice his 'personal liberty'. In dealing with a fundamental right such as the right to free movement or personal liberty, that only can constitute an infringement which is both direct as well as tangible.

Per Subba Rao and Shah, JJ. — The scientific methods used to condition a man's mind are in a real sense physical restraints, for they engender physical fear channelling one's actions through anticipated and expected grooves. So also the creation of conditions which necessarily engender inhibitions and fear complexes can be described as physical restraints. Further, the right to personal liberty takes in not only a right to be free from restrictions placed on his movements, but also free from encroachments on his private life. Kharak Singh v. State of U. P., **1963 All L J 711 : 1963 (2) Cri L J 329 : (1964) 2 S C J 107 : (1964) 1 S C R 332 : A I R 1963 S C 1295 (1300, 1305, 1306) (Pt C) (Prs 11, 31).**

● ——**Art. 21** — "Deprivation" of personal liberty whether includes restriction on movement. See Ibid, Art. 19 (1) (d). **A I R 1950 S C 27.**

——**Art. 21** — Hindu Marriage Act (1955), Ss. 13 (1) (iv), 21 — Court has no power under Civil P. C. or Evidence Act or under Hindu Marriage Act to compel party to undergo medical examination — Medical examination even by mere questioning would be interference with personal liberty as much as the drawing of blood or personal examination of the body would be. See Hindu Marriage Act (1955), S. 13 (1) (iv). **A I R 1963 Guj 250.**

——**Art. 21 — Criminal P. C. (1898), S. 497 — Bail given on Saturday — Release of prisoner on Monday —Detention continued on Sunday is illegal.**

When a bail order releasing a prisoner is passed, the order must be given immediate effect. Where the arrested person has furnished the required sureties or is prepared to sign the bail bond there is no reason for detaining him longer than absolutely necesssry and the detention on Sunday and his release on Monday is quite against the order of a Court granting bail on Saturday and is illegal. **(1956) 1 Mad L J 469 : 1956 Mad W N 197 : A I R 1956 Mad 639 (639) (Pr 3).**

4. This Article and Art. 19.

(a). **Laws affecting personal liberty — Court's power to question their validity under Art. 19.**

(b). **"Personal liberty".**

4. This Article and Art. 19.

● ——**Arts. 21 and 19**—Law which authorises deprivation of personal liberty does not fall within purview of Art. 19 — Its validity depends on its compliance with requirements of Art. 21 and Art. 22. See Ibid, Art. 19. **A I R 1951 S C 270 (SC).**

● ——**Art. 21 — Right to life and personal liberty whether absolute — Limits on fundamental rights provided for in Arts. 19, 21 and 22.**

Per Das, J.—Article 21 gives protection to life and personal liberty to the extent therein mentioned. It does not recognise the right to life and personal liberty as an absolute right but delimits the ambit and scope of the right itself. The absolute right is by the definition in that article cut down by the risk of its being taken away in accordance with procedure established by law. It is this circumscribed right which is substantively protected by Art. 21 as against the executive as well as the Legislature, for the Constitution has conditioned its deprivation by the necessity for a procedure established by law made by itself. While sub-cls. (2) to (6) of Art. 19 have put a limit on the fundamental rights of a citizen, articles 21 and 22 have put a limit on the power of the State given under Art. 246 read with the legislative lists. Under the Constitution the life and personal liberty are balanced by restrictions on the rights of the citizens as laid down in Art. 19 and by the checks put upon the State by Arts. 21 and 22. A. K. Gopalan v. State of Madras, **1950 Mad W N (Cri) 127 : (1950) 2 Mad L J 42 : 63 Mad L W 638 : 1950 S C J 174 : 51 Cri L J 1383 : 1950 S C R 88 : A I R 1950 S C 27 (120) (Pt V) (Pr 242).**

● ——**Arts. 21 and 19**—Constitution, recognition by, of personal liberties. See Ibid, Art. 19. **A I R 1950 S C 27.**

● ——**Art. 21** — Interpretation of — Article 19 gives list of individual liberties while Arts. 20-22 primarily deal with penal or other laws. See Ibid, Art. 19. **A I R 1950 S C 27.**

● ——**Art. 21 — Article 19 is a separate complete article.**

It is improper to read Art. 19 as dealing with the same subject as Art. 21. The protection given by Art. 21 is very general. It is of "law". The legislative restrictions on the law-making powers of the Legislature are not prescribed in detail as in the case of rights specified in Art. 19. Therefore Art. 19 should be read as a separate complete article. A. K. Gopalan v. State of Madras, **1950 Mad W N (Cri) 127 : (1950) 2 Mad L J 42 : 63 Mad L W 638 : 1950 S C J 174 : 51 Cri L J 1383 : 1950 S C R 88 : A I R 1950 S C 27 (37) (Pt N) (Pr 12).**

● ——**Arts. 21 and 19** — Articles 21 and 19 are not complementary to each other. See Ibid, Art. 19. **A I R 1950 S C 27.**

——**Arts. 21 and 19**—Article 19 (1) (d) whether controlled by this article. See Prevention of Food Adulteration Act (1954), S. 13 (5), Proviso. **A I R 1962 Guj 44 (DB).**

——**Arts. 21 and 19**—Scope of this article and Art. 19 —Effect of this article — "Procedure established by law," meaning of—Deprivation of personal liberty involved in detention under Preventive Detention Act—Arts. 21 and 22 and not Art. 19 deals with the matter —Detention Act not in contravention of these Articles is not void under Art. 13 (2)—Person undergoing trial for substantive offence or convicted—Order for his detention is not illegal. See Preventive Detention Act. **ILR 29 Pat 502**

● ——**Arts. 21 and 19** — Provisions of Art. 19 are subject to provisions of Art. 21. See Ibid, Art. 19. **A I R 1952 Punj 309 (FB).**

[Reversed on another point in AIR 1953 S C 10.]

4 (a). Laws affecting personal liberty— Court's power to question their validity under Art. 19.

● ——**Arts. 21 and 19**—Abducted Persons (Recovery and Restoration) Act (1949), Preamble—Act is not inconsistent with Art. 19 (1) (d) and (e) and Art. 21 See Abducted Persons (Recovery and Restoration) Act (65 of 1949), Preamble. **1952 S C J 664 : AIR 1953 S C 10.**

——**Arts. 21 and 19**—Deprivation of personal liberty under Statute by preventive or punitive detention—Constitutionality of Statute if can be challenged on ground of infringement of Art. 19. See Ibid, Art. 226. **A I R 1955 All 193 (DB).**

——**Arts. 21 and 19**—Externment under S. 17, Assam Opium Prohibition Act falling within scope of Art. 21 —It would be open to citizen to contend that impugned legislation should be examined in light of tests laid down by Art. 19 (5) — See Ibid, Art. 19. **A I R 1951 Assam 106 (DB).**

4 (b). "Personal liberty."

● —Arts. 21 and 19 (1) (d) — U. P. Police Regulations, Reg. 236. cl. (b) – Domiciliary visits – Meaning of — Such visits do not affect fundamental right under Art. 19 (1) (d) but they affect personal liberty contemplated by Art. 21. See Ibid, Art. 19 (1) (d). AIR 1963 S C 1295.

● —Arts. 21 and 19 (1) (d) — Freedom of movement and personal liberty—Scope of these provisions —Their relation inter se — "Personal liberty," meaning of. See Ibid, Art. 19 (1) (d). A I R 1963 S C 1295.

● —Arts. 21 and 19 (1) (d) — U. P. Police Regulations, Reg. 236, cls. (c), (d) and (e) — Keeping watch on movements — No invasion of the freedom guaranteed by Art. 19 (1) (d)— Art. 21 does not also apply to the case. See Ibid, Art. 19 (1) (d). AIR 1963 S C 1295.

● —Art. 21— Per Subba Rao and Shah JJ. (in their concurring judgment)—The right of personal liberty in Art. 21 may be defined as the right of an individual to be free from restrictions or encroachments on his person whether those restrictions or encroachments are directly imposed or indirectly brought about by calculated measures. Kharak Singh v. State of U. P., 1963 (2) Cri L J 329 : 1963 All L J 711 : (1964) 2 S C J 107 : (1964) 1 S C R 332 : AIR 1963 S C 1295 (1305, 1306) (Pt I) (Pr 31).

● —Art. 21 — "Personal liberty" connotation. See Ibid, Art. 19. AIR 1950 S C 27.

● —Art. 21—"Personal liberty," meaning of.

Per Fazl Ali, J.—The expressions 'personal liberty' and 'personal freedom' have a wider meaning and also a narrower meaning. In the wider sense, they include not only immunity from arrest and detention but also freedom of speech, freedom of association, etc. In the narrow sense, they mean immunity from arrest and detention. The juristic conception of 'personal liberty,' when these words are used in the sense of immunity from arrest, is that it consists in freedom of movement and locomotion.

Per Patanjali Sastri J. — Whatever may be the generally accepted connotation of the expression "personal liberty", it is used in Art. 21 in a sense which excludes the freedoms dealt with in Art. 19. Thus personal liberty in the context of Part III of the Constitution is something distinct from the freedom to move freely throughout the territory of India.

Per B K. Mukherjea, J. — In ordinary language 'personal liberty' means liberty relating to or concerning the person or body of the individual and 'personal liberty' in this sense is the antithesis of physical restraint or coercion. 'Personal liberty' means a personal right not to be subjected to imprisonment arrest or other physical coercion in any manner that does not admit of legal justification. This negative right of not being subjected to any form of physical restraint or coercion constitutes the essence of personal liberty and not mere freedom to move to any part of the Indian territory. In the Indian Constitution the expression 'personal liberty' has been deliberately used to restrict it to freedom from physical restraint of a person by incarceration or otherwise. A. K. Gopalan v. State of Madras, 1950 Mad W N (Cri) 127 : (1950) 2 Mad L J 42 : 63 Mad L W 638 : 1950 S C J 174 : 51 Cri L J 1383 : 1950 S C R 88 : AIR 1950 S C 27 (53, 70, 96, 97) (Pt W) (Prs 59, 105, 177, 178).

—Art. 21—Passport Act (1920), S. 3 — Expression 'personal liberty' in Art. 21—Includes freedom of Indian citizen to go abroad—Restriction on re-entry without passport—Implies right to obtain passport—Union cannot refuse to issue it in absence of any law to the contrary.

The compendious expression 'personal liberty' used in Art. 21 includes in its ambit the right to go abroad; and a person cannot be deprived of this right except according to procedure established by law as laid down in Art. 21. A I R 1950 S C 27 and AIR 1963 S C 1295 and (1958) 357 U S 116, Rel. on. Thus Art. 21 recognises and protects the right of every citizen to personal liberty, of which he cannot be deprived 'except according to procedure established by law' In the absence of any law to the contrary, an Indian citizen has a right to obtain a passport which is necessary for the exercise of his right to go abroad, which right is clearly a part of the personal liberty. 67 Bom L R 544 : 1965 Mah L J 834 : AIR 1966 Bom 54 (60, 64) (It D) (Prs 19, 32).

5. This Article and Art. 22

● —Art. 21 — Article whether supplemental or exclusive.

Art. 21 has to be read as supplemented by Art. 22. The proper mode of construction will be that to the extent the procedure is prescribed by Art. 22 the same is to be observed; otherwise Art. 21 will apply. A. K. Gopalan v. State of Madras, 1950 Mad W N (Cri) 127 : (1950) 2 Mad L J 42 : 63 Mad L W 638 : 1950 S C J 174 : 51 Cri L J 1383 : 1950 S C R 88 AIR 1950 S C 27 (40, 41) (Pt ZC) (Pr 22.)

6. "Procedure established by law."

(a) Illustrative cases.

6. "Procedure established by law."

● —Art. 21—'Law'—Meaning—Principles of natural justice not covered—Prevention of Corruption Act (1947), S. 4—Not unconstitutional as S. 4 lays down 'procedure established by law' within Art. 21.

The word 'law' in Art. 21 refers to law made by the State and not to positive law or law in the abstract sense. 'Procedure established by law' means procedure established by law made by the State, that is to say, by the Union Parliament or the Legislatures of the States. S. 4 of the Prevention of Corruption Act, 1947, has been enacted by Parliament and, therefore, it must be held that what it lays down is a procedure established by law. The constitutionality of S. 4, therefore, cannot be questioned on the ground that it went against the provisions of Art. 21 of the Constitution. A I R 1950 S C 27, Rel. on. Ram Chandra Prasad v. State of Bihar. 1961 (2) Cr L J 811 : 1961 All W R (H C) 721 : 1961 All Cr R 409 : 1961 S C D 928 : (1962) 1 S C A 661 : (1962) 2 S C J 13 : 1962 Mad L J (Cri) 392 : (1962) 2 S C R 50 : AIR 1961 S C 1629 (1630, 1631) (Pt A) (Pr 5).

● —Art. 21—'Law' — Meaning of. See Ibid, Art. 19. AIR 1960 S C 1080.

● —Arts. 21 and 22 — "Procedure established by law"—Meaning of — Madras Revenue Recovery Act, S. 48 — Income-tax Act, S. 46 (2) — Arrest and imprisonment of defaulter—If contravention of Arts. 21 and 22 — Validity of S. 46 (2) and S. 48 of Madras Act. See Income-tax Act (1922), S. 46 (2). AIR 1957 S C 688.

● —Arts. 21 and 20 (2)—Action of Jail Superintendent—Procedure established by law— (Punjab Communist Detenus Rules (1950), R. 41).

The scheme of Rule 41 is to constitute the Jail Superintendent only an administrative authority to maintain jail discipline and inflict summary punishment on the detenus for breach of that discipline by committing a jail offence. It is only when the jail Superintendent considers that the offence is not de-

quately punishable by him that he can send the case to the Magistrate. If he actually himself punishes he cannot under this rule refer the case again to the Magistrate. A reference by him after punishment will be wholly unauthorised and without jurisdiction and the prosecution before the Magistrate would be illegal and not in accordance with procedure established by law. Maqbool Hussain v. State of Bombay. **(1953) S C J 456 : (1953) 2 M L J 113 : 1955 Cr L J 1432 : 1953 All W R (Sup) 84 : 1953 S C R 730 : 56 Bom L R 13 : 1953 S C A 641 : 1953 Mad W N 648 : AIR 1953 S C 325 (331, 332) (Pt D) (Prs 22, 24).**

● **——Art. 21 — "Procedure established by law"— Meaning — Prqcedure under S. 12 of Preventive Detention (Amendment) Act, (1951), S. 12 – Validity.**

The expression 'Procedure established by Law' means procedure prescribed by law. It is open to Parliament to change the procedure prescribed by S. 12 of Act 4 of 1950 by enacting a law & that procedure becomes the procedure established by law within the meaning of that expiession in Art. 21 of the Constitution. Thus, where the detention of the petitioners is by virtue of S. 12 of the amended Act, a new detention under the amended Act, the procedure prescribed by the amended Act is the procedure established by law within the meaning of Art. 21. Krishnan v. State of Madras. **1951-2 Mad L J 105 : 1951 S C J 453 : 52 Cri L J 1103 : 64 Mad L W 945 : 1951 S C R 621 : A I R 1951 S C 301 (308) (Pt G) (Pr 27).**

● **——Art. 21—"Procedure established by law."**

Per Kania C. J.; Patanjali Sastri ; B. K. Mukherjea and Das JJ. -"Procedure established by law" means procedure prescribed by the law of the State. These words are to be taken to refer to a procedure which has a statutory origin, for no procedure is known or can be said to have been established by such vague and uncertain concepts as "the immutable and universal principles of natural justice." A. K. Gopalan v. State of Madras, **1950 Mad W N (Cri) 127 : (1950) 2 Mad L J 42 : 63 Mad L W 638 : 1950 S C J 174 : 51 Cri L J 1383 : 1950 S C R 88 : AIR 1950 S C 27 (39, 60, 72, 103, 114) (Pt Y) (Prs 18, 77, 109, 196, 228).**

● **——Art. 21—"Procedure" meaning of.**

Per Patanjali Sastri J. — Article 21 presents an example of the fusion of procedural and substantive rights in the same provision. The right to live though the most fundamental of all, is also one of the most difficult to define and its protection generally takes the form of a declaration that no person shall be deprived of it save by due process of law or by authority of law. "Process" or "procedure" in this context connotes both the act and the manner of proceeding to take away a man's life or personal liberty.

Per B. K. Mukherjea J. — On a plain reading of Art. 21, the meaning seems to be that you cannot deprive a man of his personal liberty unless you follow and act according to the law which provides for deprivation of such liberty. The expression 'procedure' means the manner and form of enforcing the law.

Per Das J.— The word 'procedure' in Art. 21 must be taken to signify some step or method or manner of proceeding leading up to the deprivation of life or personal liberty. A. K. Gopalan v. State of Madras, **1950 Mad W N (Cri) 127 : (1950) 2 Mad L J 42 : 63 Mad L W 638 : 1950 S C J 174 : 51 Cri L J 1383 : 1950 S C R 88 : A I R 1950 S C 27 (71, 97, 98, 114) (Pt Z) (Prs 106, 180, 228).**

● **——Art. 21—"Established," meaning of.**

Per Kania C. J. — The word 'established' itself suggests an agency which fixes the limits. This agency can be either the Legislature or an agreement between the parties.

Per B. K. Mukherjea J. — The word 'established' ordinarily means 'fixed or laid down' and if 'law' means not any particular piece of law but the indefinite and indefinable principles of natural justice which underlie positive systems of law, it would not at all be appropriate to use the expression 'established' for natural law or natural justice cannot establish anything like a definite procedure A. K. Gopalan v. State of Madras, **1950 Mad W N (Cri) 127 : (1950) 2 Mad L J 42 : 63 Mad L W 638 : 1950 S C J 174 : 51 Cr L J 1383 : 1950 S C R 88 : A I R 1950 S C 27 (39, 102) (Pt Za) (Prs 189, 192).**

● **——Art. 21—"Law" meaning of.**

Per Kania C. J.; Patanjali Sastri; B. K. Mukherjea and Das JJ. — The word "law" in Art. 21 has not been used in the sense of "general law" connoting what has been described as the principles of natural justice outside the realm of positive law. "Law" in that article is equivalent to State-made law. A K. Gopalan v. State of Madras. **1950 Mad W N (Cri) 127 : (1950) 2 Mad L J 42 : 63 Mad L W 638 : 1950 S C J 174 : 51 Cri L J 1383 : 1950 S C R 88 : A I R 1950 S C 27 (39, 60, 72, 102) (Pt Zb) (Prs 18, 77, 109, 193).**

——Art. 21—Deprivation of personal liberty — Procedure established by law must be followed.

There is no arbitrary power in the executive or Police authority either to detain or punish a person except for violation of law. Once a person is arrested and detained, the executive has to justify its action in the sense that the detention is either for violation of some law or for preventive purpose, as prescribed by law. In both the cases, the justification for detention has to be only under the authority of law. It is an established principle that before a person is deprived of his liberty the procedure established by law must be strictly followed and must not be departed from to the disadvantage of the person affected. **AIR 1931 P C 248** and **(1947) 1 All E R 567** and **A I R 1963 All 4** Rel. on. **1963 All W R (HC) 760 : 1963 All Cri R 460 : 1965 (1) Cr L J 413 : A I R 1965 All 161 (165, 166) (Pt E) (Pr 15).**

——Art. 21—"Established by law."

It is not for the Court to question the wisdom and policy of the Constitution ; and by adopting the phrase "established by law" in preference to "due process of law" the Constitution gave the Legislature the final right to determine a law when acting within the jurisdiction assigned to it. **A I R 1954 All 161 (162) (Pt B) (Pr 7) (DB).**

——Art. 21 — Validity of S. 7, Police Act (1861)— Result of it being saved by Art. 19 (5) — Meaning of the phrase "Procedure established by law." See Ibid, Art. 19 (1) (j). **AIR 1954 Cal 60.**

——Art. 21— Bengal Suppression of Immoral Traffic Act (6 of 1933), S. 13—Words "procedure established by law" in Art. 21 refer to any enactment which is not repugnant to Constitution — Hence Bengal Suppression of Immoral Traffic Act is attracted by Art. 21 — There is, however, nothing in Act which infringes Art. 21. 57 Cal W N 507 : 1953 Cri L J 1187 : AIR 1953 Cal 522 (524) (Pt C) (Pr 7) (DB).

—Art. 21—(Hyderabad) Special Tribunals Regulation (5 of 1358 Fasli)—Expression "procedure established by law" in Art. 21 must mean procedure prescribed by law of State — Hence trial by Special Tribunal under Hyderabad Special Tribunals Regulation does not infiringe Art. 21. I L R 1951 Hyd 895 : AIR 1953 Hyd 145 (149) (Pt A) (Pr 14a).

——Arts. 21, 14 and Sch. 7, List 2, Items 54, 64 — Madras General Sales Tax Act (1939), S. 16-A — Validity — Section is intra vires State Legislature — Does not contravene Art. 14 or 21 of Constitution, or Criminal P. C. — Defences allowed in trial under S. 16-A — (Criminal P. C. (1898), S. 5 (2)) — 1937-1 Mad L J 274; AIR 1937 Mad 291 : 38 Cri L J 464 and 1946-2 Mad L J 461; A I R 1947 Mad 321 ; 48 Cri L J 401 and 1947-1 Mad L J 317; A I R 1947 Mad 397 : 60 Mad L W 298 and ILR (1955) Mad 184: A I R 1954 Mad 833 : 1954 Cri L J 1267, Overruled. See Sales Tax — Madras General Sales Tax Act (9 of 1939), S. 16-A. AIR 1958 Mad 544.

——Arts. 21, 22—Scope.

The general principle that personal liberty shall not be deprived except according to the procedure established by law had been clarified and crystallized by Art. 21. Whereas the deprivation of life or personal liberty in future can be done only in accordance with the procedure established by law, that is, by legislative enactments passed either by the Parliament or by the State Legislatures in accordance with the division of functions elaborated in the seventh schedule, in so far as preventive detention is concerned, Art. 22 prescribes what ought to be the procedure established by law. 1952 Cri L J 170 : A I R 1951 Mad 1015 (1022) (Pt G) (Pr 10) (DB).

——Art. 21—"Procedure established by Law."

Per Govinda Menon, J.—The expression "according to procedure established by law" means a procedure fixed in accordance with legislative enactment passed by the Parliament or the State Legislature which does not offend or is not revolting to notions and ideas of dignity of the human being and is neither indecent, unconscionable or repugnant to civilized beliefs. 1952 Cri L J 170: AIR 1951 Mad 1015 (1025) (Pt H) (Pr 19) (DB).

——Arts. 21 and 22 — Letter of Ministry of State, New Delhi to Chief Commissioner, Manipur, inconsistent with Criminal Law (Amendment) Act (1952) —Validity — (Penal Code (1860), S. 165(A)) — (Criminal Law Amendment Act (1952), Ss 6 and 7).

Any law or provision of law which affects the personal liberty and is inconsistent with Arts. 21 and 22 of the Constitution of India, is void to that extent.

In view of the provisions of Arts. 21 and 22, the demi-official letter dated 21st September 1954 from the Ministry of States, New Delhi, to the Chief Commissioner, Manipur, which is inconsistent with the provisions of the Criminal Law Amendment Act (1952) cannot be legally operative and binding and it cannot confer jurisdiction on the Extra Assistant Commissioner to try the case under S. 165-A, Penal Code. 1956 Cri L J 249 : A I R 1956 Manipur 9 (11) (Pt D) (Pr 14).

●——Art. 21 — Procedure established by law — Meaning.

In Art. 21 in the expression 'procedure established by law' the word 'procedure' is not used in its technical sense indicating a particular law as contained in the Civil or Criminal Procedure Codes but is employed in a general sense to mean the steps to be taken in an orderly trial. There is neither vested right to any particular form of trial or procedure, nor to a right of appeal; they being the creation of the Statute should be governed by the Statute with which a particular offender is tried. The expression "procedure established by law" means the law of the land having statutory origin. Abdul Khader v. State, 52 Cri LJ 992: I L R (1951) Mys 284: AIR 1951 Mys 72 (85) (Pt H) (Pr 38) (FB).

——Art. 21—Procedure established by law — Meaning of.

"Law" in the expression "procedure established by law" in Art. 21 of the Constitution means State-made or enacted law and not the general principles of natural justice. "Procedure established by law" thus means procedure prescribed by the legislature. I L R (1952) Nag 14; 1952 Nag L J 300; 1952 Cri L J 646: A I R 1952 Nag 118 (122) (Pt A) (Prs 19, 21, 22) (DB).

●—— Art. 21—Procedure established by law—Meaning of.

The expression 'procedure established by law' in Art. 21 contemplates a procedure which was followed by the various High Courts prior to the passing of the Indian Constitution and includes summary procedure based on fairness and justice without the trammels of technicality and there is nothing invalid in the practice and procedure followed in matters of contempt on account of Art. 21 of the Constitution. AIR 1959 Bom 182, Foll. Basanta Chandra Ghosh, In the matter of, 1960 Cri L J 125 : I L R 39 Pat 415 : 1960 B L J R 622 : A I R 1960 Pat 430 (440) (Pt F) (Pr 10) (FB).

●——Arts. 21 and 22 — "Procedure established by law" — Meaning of — Abducted Persons (Recovery and Restoration) Act (1949)—Validity.

(Per Khosla J.): The 'procedure' means procedure laid down by law or the procedure prescribed by Art. 22. There is nothing inconsistent in the Abducted Persons (Recovery and Restoration) Act which is contrary to the provisions of Art. 21. The procedure governing the recovery and restoration of abducted women is set out in an Act of Parliament and as long as this procedure is consistent with Art. 22 it must be held to be valid and lawful. A I R 1950 S C 27, Foll. Ajaib Singh v State of Punjab, 54 Pun L R 260; I L R (1952) Punj 381 : 1952 Cri L J 1313; AIR 1952 Punj 309 (334) (Pt G) (Pr 151) (FB).

[Reversed on another point in AIR 1953 S C 10.],

●——Arts. 21 and 22—Abducted Persons (Recovery and Restoration) Act (1949)—Validity.

(Per Khosla, J): The entire procedure under the Abducted Persons (Recovery and Restoration) Act is not unjust or improper. The case is examined by a tribunal consisting of a Superintendent of Police of India and a Superintendent of Police from Pakistan who may be expected to deal with the question of the abducted persons' status justly and impartially. There is nothing fundamentally wrong or improper in entrusting the decision of this question to a tribunal of this nature, and the prohibition in regard to interference by Law Courts is not by itself contrary to the principles of natural justice. Apart from the conflict with Art. 22 there is nothing unreasonable in the procedure laid down under the Act for the recovery and restoration of abducted women. AIR 1952 S C 198, Ref. Ajaib Singh v. State of Punjab, 54 Pun L R 260 : 1952 Cri L J 1313 : ILR (1952) Punj 381 : AIR 1952 Punj 309 (334-335) (Pt H) (Pr 153) (FB).

[Reversed on another point in AIR 1953 S C 10.]

——Art. 21—Necessity to follow procedure strictly.

It cannot be too often emphasised that before a person is deprived of his personal liberty the procedure established by law must be strictly followed and must not be departed from to the disadvantage of the person affected. 1955 Cri L J 95 : 1955 Raj L W

75: ILR (1954) 4 Raj 51: AIR 1955 Raj 6 (10) (Pt G) (Pr 19) (DB).

——Art. 21 — "Law" — Extradition treaty between Dholpur State and British Government — Validity of detention under that treaty. See Ibid, Art. 372. A I R 1951 Raj 127 (DB).

6 (a). Illustrative cases.

● —— Arts. 21, 19 — United State of Gwalior, Indore and Malwa (Madhya Bharat) Gambling Act Samvat 2006 (51 of 1949) (Samvat 2006), Ss. 6 and 8 — Sections are constitutionally valid — Hence the curtailment of liberty under that Act would not be except according to law and thus there is no breach of Art. 21. See Ibid, Art. 19. **AIR 1965 S C 307.**

● —— Arts. 21 and 19 (1) (d) — U. P. Police Regulations, Regn. 236, Cl. (b) — Regn. 236, Cl. (b) is not justifiable on the basis of any law—Hence it is violative of Art. 21 and invalid. See Ibid, Art. 19 (1) (d). **AIR 1963 S C 1295.**

● ——Art. 21—Deprivation of personal liberty—Rules framed by Bihar Legislative Assembly under Art. 208 for enforcing its powers, privileges and immunities—Deprivation of personal liberty as a result of proceedings held in accordance therewith before committee of privileges is one in accordance with procedure established by law. See Ibid, Art. 194. **AIR 1959 S C 395.**

● — Art. 21—Arrest and detention for recovery of arrears of tax—Validity—Does not contravene Art. 21 as S. 46 (2) of the Income tax Act and S. 13 of the Bombay City Land Revenue Act which are not challenged constitute a procedure established by law. See Income-tax Act (1922), S. 46 (2). **AIR 1956 S C 20.**

● ——Art. 21 — Procedure established by law — Jail Superintendent inflicting punishment on detenu under R. 41, Punjab Communist Detenus Rules of 1950—Reference by him of case to Magistrate thereafter is without jurisdiction — Prosecution before Magistrate would be illegal and not in accordance with procedure established by law. See Ibid, Art. 20 (2). **A I R 1953 S C 325.**

——Arts. 21, 194 (3) and 226 — Member of U. P. Legislative Assembly convicted by the Assembly for its contempt — Petition for writ of habeas corpus under Art. 226—Conviction cannot be challenged on ground of violation of Art. 21 or of principles of natural justice.

The petitioner, a member of the U. P. Legislative Assembly was convicted and sentenced to imprisonment by the Assembly for its contempt. The petitioner applied for a writ of habeas corpus under Art. 226 of the Constitution.

Held, (1) that as the Legislative Assembly has the power to commit the petitioner for its contempt and since the Legislative Assembly has framed rules for the procedure and conduct of its business under Art. 208 (1), the commitment and deprivation of the personal liberty of the petitioner cannot but be held to be according to the procedure laid down by law within the meaning of Art. 21 of the Constitution. AIR 1959 S C 395, Rel. on; (2) that the petitioner is not entitled to challenge the commitment either on the ground of violation of the principles of natural justice or on the ground that the facts found by the Legislative Assembly do not amount to its contempt. The High Court cannot, in a petition under Art. 226 of the Constitution, sit in appeal over the decision of the Legislative Assembly committing the petitioner for its contempt. The Legislative Assembly is the master of its own procedure and is the sole judge of the question whether its contempt has been committed or not. **1965 All W R (H C) 286: (1965) 2 Cri L J 170: I L R (1965) 2 All 281: 1965 All Cr R 213: AIR 1965 All 349 (355) (Pt E) (Prs 16, 17) (DB).**

——Arts. 21 and 22 — Procedure established by law —Preventive detention — Non-compliance with procedure prescribed by Preventive Detention Act—Effect.

In the case of Preventive detention 'the procedure established by law' within the meaning of Art. 21 of the Constitution would be the procedure prescribed by the Preventive Detention Act, 1950.

The right to the strict observance of this procedure, therefore, itself constitutes a constitutional guarantee made in the Constitution itself. Any breach, therefore, of the procedure prescribed under the Act would, therefore, tantamount to a breach of the fundamental rights of the citizen. the guarantee of which is given in Art. 21 of the Constitution. **I L R (1961) 1 All 427.**

——Art. 21 — Scope — Co-operative Societies Act (1912), S. 42 (4-A) (as inserted by U. P. Act (3 of 1919))—Validity of.

The power under sub-s. (4-A) of S. 42 does not extend to every kind of dues payable to the Society. It is limited to the recovery of two classes of dues, namely, (1) any amount as contribution to the assets of the Society or (2) as costs of liquidation. Where the amount to be recovered under S. 42 (4-A) cannot be classed either as contribution to the assets of the Society or as costs of liquidation the foundation of the power to recover this amount as arrears of land revenue disappears and the entire proceedings including his arrest taken against the member must be condemned as illegal and in violation of the constitutional guarantee under Art. 21 of the Constitution. **AIR 1959 All 733 (735, 736) (Pt A) (Prs 6, 10).**

——Art. 21 — Criminal P. C., S. 537—Constitutional validity of—Section itself is a part of procedure established by law. See Criminal P. C. (1898), S. 537. **1959 Cr L J 268: AIR 1959 All 149.**

——Art. 21—Procedure established by law—Affidavits—Contempt proceedings — Use as mode of proof — Art. 21 how far infringed — See Evidence Act (1872), S. 1. **AIR 1955 All 638.**

——Arst. 21 and 19 and 20—Bombay Prohibition Act (1949), S. 129-A — Validity—Provision for extraction of blood from accused — Deprivation of personal liberty of accused by the collection of blood whether in accordance with procedure established by law — Determination of reasonableness of procedure not justiciable — Bombay Prohibition (Medical Examination and Blood Test) Rules (1959), R. 4. See Prohibition—Bombay Prohibition Act (25 of 1949), S. 129-A. **AIR 1964 Bom 253.**

——Art. 21 — Procedure established by law — Contempt of Judges of High Court — Contempt of a criminal nature — Imprisonment — Power of High Court to impose in exercise of its inherent power as Court of Record.

So far as contempt of Court is concerned, statutory recognition is given by the Contempt of Courts Act of 1952 to the practice and procedure followed by the High Court prior to the coming into force of the Act. The procedure the High Court followed in dealing with contempt of itself is a procedure established by law within the meaning of Art. 21.

Apart from the provisions of the Contempt of Courts Act there are also the provisions contained in Cl. 38 of the Letters Patent. The High Court has jurisdiction within the meaning of that clause when the proceedings by way of contempt are criminal in

nature and the case connected therewith is a criminal case. The procedure which is being followed by the High Court since prior to coming into force of the Letters Patent in dealing with matters of criminal contempt in the exercise of its inherent powers as a Court of Record is a procedure enacted by law and the High Court is therefore entitled to deprive a person of his liberty in matters relating to contempt when that procedure has been followed, even if the expression 'procedure established by law' in Art. 21 of the Constitution meant procedure enacted by law. **1959 Cr L J 567 : 60 Bom L R 873 : AIR 1959 Bom 182 (190) (Pt C) (Pr 27) (DB).**

——Art. 21 — Regulation 881 of Police Regulations of 1943.

Regulation 881 of the Police Regulations of 1943, which provides for compulsory residence in the lines unless specially exempted and presence in the line from Retreat to Reveille and attendance at all parades and roll calls during 24 hours, is not void of Art. 21 of the Constitution. 3 Cr L J 110 (Cal), Dist. **I L R (1955) 2 Cal 28 : 58 C W N 18 : AIR 1954 Cal 60 (63) (Pt G) (Pr 47) (DB).**

——Art. 21 — Procedure established by law—Rule of evidence in procedure enacted by statute. See Prevention of Food Adulteration Act (1954), S. 13 (5), Proviso. **AIR 1962 Guj 44 (DB).**

——Art. 21—Revenue Recovery Act (1890), Ss. 3 (2), 5—Constitutional validity—Power of Revenue Authorities to determine arrears due and issue certificate—Whether absolute and uncontrolled—Statutory provisions for issue of warrant of arrest for recovery of arrears of revenue — Not unconstitutional—No violation of Arts. 14, 19 and 21—See Constitution of India, Art. 14. **(1962) 3 Guj L R 666.**

——Art. 21—Compliance with.

When the Nizam had delegated full power to the Military Governor and the validating Regulation passed on 6-10-49 cured the defect in the proceedings, there can be no question of Art. 21 of the Constitution being infringed as the validating Regulation was as much the law as the Regulation appointing the Tribunal. **52 Cri L J 1123 : AIR 1951 Hyd 97 (107) (Pt C) (Pr 33) (DB).**

——Art. 21 — Scope — Public Safety and Public Interest Regulation, S. 5 (2) — If void, on account of its failure to lay down procedure for depriving personal liberty. See Ibid, Art. 13. **AIR 1951 Hyd 64 (DB).**

——Art. 21—Proceedings under S. 3, Hyderabad Regulation (5 of 1358-F)—Validity of—Effect of validating Regulation passed on 6-10-1949 is to cure defect in trial — Hence it cannot be said that the trial was not in accordance with the procedure established by law and that there was a contravention of Art. 21. See (Hyderabad) Special Tribunals Regulation (5 of 1358-F), S. 3. **AIR 1955 N U C (Hyd) 5624 (DB).**

——Art. 21—Cognizable offence — Cognizance of, by Magistrate on complaint by public official instructed by State Government instead of on police report under S. 173—Not against law—Trial not vitiated by violation of Art. 14 or Art. 21 of the Constitution. See Criminal P. C. (1898), S. 190. **(1960) 2 Ker L R 265.**

——Art. 21 — Validity of S. 16-A Madras General Sales Tax Act (9 of 1939) — Section whether offends Constitution by depriving accused of right to resort to any good and tenable defence or is repugnant to the provisions of Criminal P. C. See Sales Tax—Madras General Sales Tax Act (9 of 1939), S. 15 (b). **1959 Cr L J 381 : AIR 1958 Ker 55 (DB).**

——Arts. 21, 14 and 20 (3) — Criminal P. C. (1898), S. 176— Police Standing Order No. 157 issued by Madras Government — Enquiry made according to — Validity of — Standing Order neither repugnant to other provisions of Code nor violative of Constitution. See Criminal P. C. (1898), S. 176. **AIR 1959 Mad 294.**

——Art. 21—Madras Revenue Recovery Act (2 of 1864), S. 48—Validity—(Madras Revenue Recovery Act (2 of 1864), S. 48).

Arrest and imprisonment of the defaulter under S. 48 challenged as offending Art. 21 of the Constitution.

Held, that there was no necessity for canvassing this Article at length as there was a law on the Statute Book under which a Collector acted. If the law was ultra vires there would be no procedure established by law and the imprisonment becomes unlawful—On the other hand if it was intra vires the defaulter had been lawfully deprived of his personal liberty. **(1954) 2 M L J 683 : (1954) 26 I T R 509 : 1954 Cr L J 1775 : ILR (1955) Mad 999 : AIR 1964 Mad 1091 (1095) (Pt B) (Pt 9) (DB).**

——Art. 21—Section 4 (2), Madras Prohibition Act, is not inconsistent with procedure laid down in Criminal P. C. Even if it prescribes a procedure slightly different from the procedure laid down in that Code such procedure could not be, on that account, invalid. **1954 Mad W N 575 : (1954) 2 Mad L J 475 : 1954 Cri L J 1521 : AIR 1954 Mad 993 (998) (Pt C) (Pr 18) (DB).**

——Art. 21 — Public Safety — Orissa Maintenance of Public Order Act (10 of 1950), Ss. 2 (1) (b) and 3 Provisions, if void under Arts. 13 (2) and 21 of Constitution—Constitution of India, Arts. 13 (2), 19 (1) (d) (e) and (5) and 21.— (Per Ray, C. J.) Provisions are inconsistent with Art. 21 as they do not provide for essentials of a legal procedure. See Ibid, Art. 13 (2). **AIR 1951 Orissa 86 (DB).**

——Art. 21—Scope of—Production of kidnapped girl in pursuance of search warrant— Magistrate remanding girl to jail custody on ground of apprehension of breach of peace —Order, whether justified by Ss. 100, 107 or 552, Criminal P. C.—Legality of detention. See Criminal P. C. (1898), S. 100. **1957 Cr L J 1445 : AIR 1957 Pat 689 (DB).**

——Art. 21—On facts held that procedure adopted by District Magistrate was clear violation of statute and was breach of Art. 21. See Criminal P. C. (1898), S. 561-A. **AIR 1953 Punj 149.**

——Art. 21—Scope— Procedure established by law—Presumption under S. 114, Illus. (a), Evidence Act, is not ultra vires or unconstitutional. See Evidence Act (1872), S. 114, Illus. (a). **AIR 1956 Raj 224.**

● ——Arts. 21, 14 and 254 — Sales-tax—Travancore-Cochin General Sales Tax Act (1125), Ss. 19 and 21—S. 21 is not ultra vires Art. 14 or 21 of Constitution, Criminal P. C., or Evidence Act—Gist of offence under S. 19 (b) is not validity of assessment, but is non-payment of tax within time—Thus there is no violation of Art. 14 or Criminal P. C., or Evidence Act—Criminal P. C., and Evidence Act apply to trial of offence under S. 19 — Ambit of offence is not thereby enlarged—AIR 1954 Mad 833, Dissented from. See Ibid, Art. 14. **AIR 1955 T C 220 (FB).**

7. Preventive detention.

● ——Arts. 21 and 22—Detention under Preventive Detention Act not open to challenge by virtue of Presidential Order under Art. 359 (1) of the Constitution—The fact that emergency may last for a long period and as a consequence citizens may be precluded from enforcing fundamental rights under Arts. 14, 21 and 22 during the period of the order has no bearing on the validity of detention — How long the Proclamation of Emergency should continue and

what restrictions should be imposed on the fundamental rights of citizens during the pendency of the emergency, are matters which must inevitably be left to the executive because the executive knows the requirements of the situation and the effect, of compulsive factors which operate during periods of grave crisis—Similarly the argument that during the operation of the Presidential Order, the executive may abuse its powers and the citizens would have no remedy is essentially political and its impact on the constitutional questions is at best indirect — In a democratic State the effective safeguard against abuse of executive powers whether in peace or in emergency is ultimately to be found in the existence of enlightened, vigilant and vocal public opinion. Makhan Singh v. State of Punjab, **(1964) 2 S C A 663 : 1964 1 Cr L J 269 : AIR 1964 S C 381 (403, 404) (Pt G) (Pr 46).**

● **——Art. 21** — Jammu and Kashmir Preventive Detention Act (4 of 2011), S. 8 (1) Proviso—Validity—Constitutionality questioned on the ground of its inconsistency with Arts. 21 and 22 of the Constitution — See Public Safety — Jammu and Kashmir Preventive Detention Act (4 of 2011), S. 8 (1) Proviso. **AIR 1956 S C 197.**

——Art. 21—Procedure established by law— Preventive detention—Failure to comply with requirements of Art. 22 (5) —Detention not in accordance with procedure established by law. See Ibid, Art. 22 (5). **AIR 1953 S C 318.**

● **——Art. 21**—Grounds furnished not containing particulars of each of the grounds mentioned—Effect on validity of detention. See Ibid, Art. 22 (5). **AIR 1953 S C 318.**

● **——Art. 21—Application of.**

Per Patanjali Sastri J.—Article 21 is applicable to preventive detention. A. K. Gopalan v. State of Madras, **1950 Mad W N (Cri) 127 : (1950) 2 Mad L J 42 : 63 Mad L W 638 : 1950 S C J 174 : 51 Cri L J 1383: 1950 S C R 88: A I R 1950 S C 27 (75) (Pt X) (Pr 118).**

——Art. 21—Person likely to commit breach of public peace and tranquillity — His arrest without warrant is not justified. See Criminal P. C. (1898), S. 151. **1965 (1) Cri L J 413 : AIR 1965 All 161.**

——Arts. 21 and 22 (5) — Vagueness of grounds for detention — Effect. See Public Safety — Preventive Detention Act (1950), S. 3 (1) (a) (ii). **1965 All W R (H C) 266.**

——Art. 21 — Preventive Detention Act — Breach of procedure prescribed by Act amounts tp breach of fundamental rights guaranteed by Art. 21. **ILR (1961) 1 All 427.**

——Art. 21 — Applicability and scope—Preventive Detention Act (1950), S. 3—Validity. See Constitution of India, Art. 19 (1) (a). **AIR 1956 All 589.**

——Art. 21—Article 21 empowers legislature to provide for preventive detention and Preventive Detention Act is a product of that power— Allegation as to non-existence of grounds — Reagitation of matter before High Court—Absence of provision for—Remedy —(Public Safety — Preventive Detention Act (1950), Ss. 7 and 10) — (Natural justice). See Ibid, Art. 226. **AIR 1956 All 589.**

——Arts. 21, 22 (5) (6)—Good grounds mixed up with bad grounds — (Public Safety—Preventive Detention Act (1950), S. 7).

Where good grounds for detention have been mixed up with vague, indefinite and bad grounds, the petitioner's detention cannot be held to be in accordance with the procedure established by law within the meaning of Article 21 as the constitutional requirement with respect to each of the ground communicated to the person detained, subject to a claim of a privilege under Cl. (6) of Art. 22, is not satisfied. AIR 1953 S C 318, Foll. **1954 All L J 6 : 1954 All W R (H C) 34 : 1954 Cr L J 685 : ILR (1954) 2 All 230 : AIR 1955 All 315 (316, 317) (Pt D) (Prs 6a, 15) (DB).**

——Art. 21 — Detention of person under S. 123-A Criminal P. C. — Illegal as being in contravention of Arts. 21 and 22. See Criminal P. C. (1898), S. 123-A (U. P.) **52 Crj L J 1282 : AIR 1950 All 562 (DB).**

——Art. 21 — Validity of Ss. 107, 117 and 123, Criminal P. C. — Nature of detention under—Section not discriminatory or repugnant with Art. 22 — See Criminal P. C. (1898), S. 107. **AIR 1957 Andh Pra 90.**

● **——Art. 21—Public Safety** — Preventive Detention Act (1950) (as amended in 1951), S. 8 — Detenu's case considered by two out of three members only of Advisory Board — There is infringement of fundamental right guaranteed by Art 21. See Public Safety -Preventive Detention Act (1950) (as amended in 1951), S. 8. **AIR 1951 Assam 169 (SB).**

● **——Art. 21 (5)**—Scope—Non furnishing of grounds within reasonable time to detenu detained lawfully —Effect If renders detention unlawful. See Preventive Detention Act, S. 7. **AIR 1951 Bom 30 (FB).**

——Art. 21— Principle enshrined in article as fundamental right — Criminal proceedings — Burden of proof on prosecution. See Sea Customs Act (1878), S. 167 (8). **68 Cal W N 383 : A I R 1965 Cal 507 (DB).**

——Art. 21—Public safety—Hyderabad Public Safety and Public Interest Regulation (12 of 1358 F.), S. 5—Section is void being inconsistent with Art. 21 of the Constitution of India. See Public Safety — Hyderabad Public Safety and Public Interest Regulation (12 of 1358 F.), S. 5. **AIR 1951 Hyd 69 (2) (DB).**

● **——Arts. 21, 22—Grounds of detention — Vagueness — (Public Safety — Preventive Detention Act (1950), S. 7).**

It is the right of the petitioner under Art. 22 (5) to be furnished with particulars of the grounds of his detention sufficient to enable him to make a representation which on being considered may give relief to him. The constitutional requirements must be satisfied with respect to each of the grounds communicated to the person detained, subject of course to a claim of privilege under Cl. (6) of Art. 22.

Where it has not been done in regard to one of the grounds mentioned in the statement of grounds, the petitioner's detention cannot be held to be in accordance with the procedure established by law within the meaning of Art. 21 and he is, therefore, entitled to be released. A I R 1954 S C 179, Foll. Abdul Ghani v. State. **1955 Cri L J 1598 : AIR 1955 J & K 38 (40) (Pr 9) (FB).**

● **——Art. 21 — Preventive Detention Act (1950) S. 8 — Vague and indefinite grounds supplied — Effect.**

Where the grounds supplied to the person detained are vague and indefinite his detention cannot be held to be in accordance with the procedure established by law within the meaning of Art. 21 of the Constitution and the person detained, is, therefore, entitled to be released. A I R 1953 S C 318, Foll. Ghulam Qadir Hawabaz v. State, **1955 Cri L J 1597 : AIR 1955 J & K 35 (36) (Pt A) (Pr 6) (FB).**

——Art. 21 — Public Safety—Madras Maintenance of Public Order Act (23 of 1949), S. 2 — Provisions of Madras Maintenance of Public Order Act (23 of 1949) relating to preventive detention are ultra vires as being inconsistent with Arts. 21 and 22. See

Public Safety— Madras Maintenance of Public Order Act (23 of 1949), S. 2. **AIR 1951 Mad 1015 (DB).**

——**Arts. 21 and 226** — Public Safety — Bihar Maintenance of Public Order Act (3 of 1950), S. 2 (1) (a) — Validity of detention under after Act had become void on the Constitution coming into force. See Public Safety — Bihar Maintenance of Public Order Act (3 of 1950), S. 2 (1) (a). **51 Cri L J 1081 : A I R 1950 Pat 265.**

——**Arts. 21 and 22 — Detention beyond three months.**

The person concerned cannot be detained for a day longer than three months unless upon the report of the Advisory Board, which means unless upon action taken on such a report and that action must necessarily be taken before the expiration of the three months' period allowed under Art. 22 (4) or else the detention of the person beyond the period of three months will be illegal. **A I R 1953 Sau 51 (52) (Pt A) (Pr 4) (DB).**

——Art. 21—Public Safety—Preventive Detention Act (1950), S. 10 (1) — Failure to report within ten weeks —Constitution of India, Art. 21. See Public Safety—Preventive Detention Act (1950), S. 10 (1). **AIR 1953 Sau 51.**

ARTICLE 22

SYNOPSIS

(Constitution of India, Art. 22)

1. Scope.
   (a) This Article and Art. 19.
   (b) Laws inconsistent with article.
2. Retrospective effect.
3. Procedure to be followed on arrest—Clauses (1) and (2).
4. "Arrest", meaning of.
5. Information of order of arrest.
6. Information of grounds of arrest.
7. Right to be defended by pleader.
   (a) Right to be provided with a lawyer by the State.
8. Clause (2).
9. Right of foreign nationals.
10. Validity of Preventive Detention Act (1950).
11. J. and K. Preventive Detention Act—Validity of.
12. Preventive detention—General.
   (a) Meaning and object of preventive detention.
   (b) Law of preventive detention—Essentials of validity.
   (c) Legislative competency.
   (d) Conformity to law.
   (e) Criminal prosecution, if a bar to preventive detention.
13. Satisfaction of detaining authority.
14. Bona fides of the order of detention.
15. Advisory board.
16. Procedure before advisory board.
17. Advisory board—Qualification of members.
18. Clauses (7) (a) and (b)—"Any law".
19. Maximum period of detention.
20. Detention beyond three months without obtaining opinion of advisory board.
21. President's powers.
22. Clause (5)—General.
23. "Grounds on which the order has been made".
24. Vagueness of grounds.
   (a) Effect of, on validity of detention.
25. Grounds of detention—Consideration by Court.
26. Supplementary grounds.
27. Grounds on which detention can be ordered.
28. "As soon as may be".
29. Right to make representation against order of detention.
30. Clause (6).
31. Fresh order of detention.

1. Scope.

(a) This Article and Art. 19.

(b) Laws inconsistent with article.

1. Scope.

● ——Art. 22—Duty of Court in interpreting Arts. 21 and 22. See Ibid, Art. 21. **AIR 1951 S C 301.**

——Art. 22 — Applicability to punitive detention. See Suppression of Immoral Traffic in Women and Girls Act (1956), S. 10. **AIR 1959 All 57.**

——Art. 22 — Provisions of clauses (1) and (2) of Art. 22 not applicable to a detention or arrest made under a law for Preventive Detention. **1961 Nag L J (Notes) 34.**

——Art. 22—Article 22 is not applicable to arrest and detention under S. 46 (2), Income-tax Act. See Income-tax Act (1922), S. 46 (2). **57 Bom L R 1062 : ILR (1956) Bom 136.**

——Art. 22 — Applicability — Assessee arrested for failure to pay income-tax—Article does not apply.

Article 22 applies to a case of a person who is arrested for having committed an offence or having taken part in an activity prejudicial to the interest of the State or of the public. The article does not apply and cannot apply where arrest, is neither for having committed an offence nor for having acted prejudicially to the interest of the public or of the State.

Where the arrest of the assessee was as a result of coercive machinery applied against him for failure to pay his income-tax dues, there was no question of any investigation taking place nor was there any question of the trial of the assessee, and therefore Art. 22 was not intended that it should apply to all persons arrested and detained in custody. Hence Art. 22 did not apply. A I R 1953 S C 10, Dist. **57 Bom L R 1062 : ILR (1956) Bom 136.**

——Art. 22—Scope of—Warrant of legislature being judicial warrant—Protection under Art. 22 not available.

Article 22 (1) contemplates an arrest without warrant of Court and there is indication in the language of Art. 22 (1) and (2) that it was designed to give protection against the act of the executive or other non-judicial authority. The categories indicated are two and it is within the category of judicial warrant that warrant of legislatures in contempt matters necessarily falls and therefore cannot draw the protection afforded by Art. 22 of the Constitution. A I R 1953 S C 10, Rel. on. **I L R (1957) Bom 218 : 60 Bom L R 279.**

——Art. 22—Article applies to case of persons arrested for having committed an offence or having taken part in activity prejudicial to the interest of State — Article does not apply where arrest is as a result of coercive machinery applied against an assessee for failure to pay his income tax dues — S. 13 of Bombay City Land Revenue Act (2 of 1876) as amended by Act 47 of 1954 does not contravene Art. 22 (1953) S C R 254, Rel. on. **57 Bom L R 1062 : I L R (1956) Bom 136.**

——Art. 22—Nature of right conferred by article.

Article 22 which deals with preventive detention and confers on the subject certain rights and privileges which are fundamental in their character and the observance of which is obligatory upon the legislatures of the country. **52 Bom L R 794 : ILR (1951) Bom 92 : 52 Cri L J 437 : A I R 1951 Bom 252 (253, 254, 255) (Prs 3, 4, 5) (DB).**

● ——Art. 22 — Applicability — Whether applies to members of legislature. See Ibid, Art. 105. **AIR 1952 Cal 632 (SB).**

● ——Art. 22—Bengal Criminal Law Amendment Act (6 of 1930)—Act if provides for preventive detention. See Public Safety—Bengal Criminal Law Amendment Act (6 of 1930), Preamble and S. 2. **51 Cri L J 1110 : A I R 1950 Cal 274 (SB).**

——Art. 22—Scope — Art. 22 is to be read as proviso to Art. 21.

Per Govinda Menon, J.: — One of the modes of depriving the personal liberty is indicated in Art. 22 which should be read as a proviso to Art. 21. The curtailment of personal liberty should be in accordance with what is prescribed by Art. 22. If the article is followed both in letter and spirit, the Court cannot question an Act dealing with preventive detention. As Art. 22 prescribes the procedure established by law for making preventive detention valid, it is essential that its terms should be complied with and observed, if preventive detention has to be legally recognised and given effect to. Otherwise the detention will be unlawful. It is, therefore, abundantly clear that the Indian Constituent Assembly intended to define and explain what is meant by "procedure established by law" in Art. 21 by enacting Art. 22 as a proviso to it. So with regard to preventive detention Art. 22 clearly lays down the procedure to be adopted. **52 Cri L J 170 : A I R 1951 Mad 1015 (1025) (Pt I) (Pr 18) (DB).**

——Art. 22—U. P. Goondas Act (1 of 1932) (as modified and extended to State of Delhi) is not a law providing for preventive detention. **54 Pun L R 312 : ILR (1952) Punj 362 : 1953 Cri L J 421 : A I R 1953 Punj 52 (54, 55) (Pt A) (Pr 5) (DB).**

1 (a). This Article and Art. 19.

● ——Art. 22 — Law authorising deprivation of personal liberty—Validity of, not to be judged by criteria laid down by Art. 19 — That depends on compliance with Arts. 21 and 22. See Ibid, Art. 19. **A I R 1951 S C 270.**

● ——Art. 22 — Recognition by Constitution of personal liberties — Function of Articles 21 and 22. See Ibid, Art. 19. **A I R 1950 S C 27.**

● ——Art. 22 — Interpretation of — Article 19 gives list of individual liberties, while Arts. 20 to 22 primarily deal with Penal or other laws. See Ibid, Art. 19. **A I R 1950 S C 27.**

● ——Art. 22 — Articles 19, 21 and 22 whether supplemental or exclusive. See Ibid, Art. 19. **A I R 1950 S C 27.**

——Art. 22 — Deprivation of personal liberty under Statute by preventive or punitive detention — Constitutionality of Statute if can be challenged on ground of infringement of Art. 19. See Ibid, Art. 226. **A I R 1955 All 193 (DB).**

——Art. 22 — Scope — Legislation dealing with preventive detention — Arts. 21 and 22 and not Art. 19 apply. See Ibid, Art. 19. **A I R 1955 N U C (Cal) 4507 (DB).**

1 (b). Laws inconsistent with article.

● ——Art. 22 — Arrears of Income-tax — Recovery under S. 48 of Madras Act 2 of 1864 — Arrest and imprisonment of defaulter — Nature of — Whether amounts to arrest or detention within the meaning of Art. 22 of the Constitution—Validity of S. 46 (2) and S. 48 of the Madras Act—See Income-tax Act (1922), S. 46 (2). **A I R 1957 S C 698.**

——Art. 22—Provisions for arrest of defaulter are not inconsistent with Art. 14 of Constitution. See Ibid, Art. 14. **A I R 1956 All 428.**

——Art. 22—Orders under Ss. 110, 118, 123, Criminal P. C. — Art. 22 does not apply and the sections have not been rendered void. **A I R 1953 All 753 (DB).**

——Art. 22 — Section 123A (U P), Criminal P. C. — Section offends Art. 22 and became void on 25-1-1950 —Effect of Preventive Detention (Extension of Duration) Order made by President on 26-1-1950. See Criminal P. C. (1898), S. 123A (U P). **52 Cri L J 1282 : A I R 1950 All 562.**

——Art. 22 — Validity — Nature of detention under Ss. 107, 117 and 123, Criminal P. C. — Sections not discriminatory or repugnant with Art. 22. See Criminal P. C. (1898), S. 107. **A I R 1957 Andh Pra 90.**

● ——Art. 22 (4) — West Bengal Security Ordinance (1949)—Offends Art. 22 (4) because of absence of provision for constitution of advisory Board contemplated under that provision. See Public Safety — West Bengal Security Ordinance (1949), S. 22. **A I R 1950 Cal 274 (SB).**

● ——Art. 22 (4)—Bengal Criminal Law Amendment Act (6 of 1930 as amended by Criminal Law Amendment (Amending) Ordinance, 1949) — Act is in direct conflict with clause (4) of Art. 22. See Public Safety —Bengal Criminal Law Amendment Act (6 of 1930 as amended by Criminal Law Amendment (Amending) Ordinance 1949), Pre. **A I R 1950 Cal 274 (SB).**

——Art. 22 (4) — Madhya Bharat Police Act (67 of 1950), S. 49 (2)—Section does not infringe Art. 22 (4). **A I R 1955 N U C (Madh B) 5943 (DB).**

——Art. 22 — Income-tax Act, S. 46 (2) — Section is ultra vires as it empowers Collector to proceed under S. 48. Madras Revenue Recovery Act which offends Art. 22 (1) and (2). **26 I T R 509 : (1954) 2 Mad L J 683 : ILR 1955 Mad 999 : 1954 Cri L J 1775 : A I R 1954 Mad 1091 (1094, 1095) (Pt A) (Prs 6, 8) (DB).**

——Art. 22—Law affecting personal liberty — Inconsistency with Arts. 21 and 22 — Letter of Ministry of State, New Delhi to Chief Commissioner, Manipur inconsistent with Criminal Law Amendment Act (1952) — Validity. See Ibid, Art. 21. **A I R 1956 Manipur 9.**

——Art. 22 (7) — C. P. and Berar Public Safety Act (62 of 1948), S. 2 (1) (a) — Section whether void for the reason that it provides for preventive detention. See Public Safety—C. P. and Berar Public Safety Act (62 of 1948), S. 2 (1) (a). **51 Cri L J 1372 : AIR 1950 Nag 203 (DB).**

● ——Art. 22 — Orissa Maintenance of Public Order Act (4 of 1948 as amended in 1949), Ss. 3 and 4— Inconsistency between sections and Art. 22—Effect on validity of the provisions. See Ibid, Art. 13. **AIR 1950 Orissa 157 (FB).**

——Art. 22—Bihar Maintenance of Public Order Act (3 of 1950)—Inconsistency between detentive provisions and cls. (4) and (5) of Art. 22 — Effect on validity on constitution coming into force. See Public Safety—Bihar Maintenance of Public Order Act (3 of 1950). **AIR 1950 Pat 265.**

——Art. 22—Public Safety—Preventive Detention Act (1950)—Scope—If void as in conflict with Art. 22 (5) of the Constitution—Section 14 of Act 4 of 1950—If void and renders whole Act illegal — Person undergoing trial for substantive offence or convicted therefor—Order of detention in respect of—If illegal.

See Public Safety—Preventive Detention Act (1950). ILR 29 Pat 502.

——Art. 22—Validity of Abducted Persons (Recovery and Restoration) Act, 1949—Act whether infringes cls. (1) and (2) of this article—See Abducted Persons (Recovery and Restoration) Act (1949), S. 1. AIR 1954 Punj 145 (DB).

——Art. 22 (1) & (3)—Public Safety—U. P. Goondas Act (10 of 1932) (as modified and extended to the State of Delhi)—Validity of S. 5 (2) of Act—Whether provision offends Cl. (1) of Article and if so whether it is saved by cl. (3). See Public Safety—U. P. Goondas Act (10 of 1932) as modified and extended to the State of Delhi. AIR 1953 Punj 52.

2. Retrospective effect.

——Art. 22 (1) — Retrospective operation — Interpretation of Statutes—Constitution Statute.

The Article has no retrospective effect and does not apply to a person who was arrested before January 26, 1950. The words used are "who is arrested" and not "who has been arrested". The word "shall be detained" and "shall be denied", suggest futurity. Constitution is always prospective and never retrospective. 52 Cri L J 1251 : ILR (1951) 2 All 745 : AIR 1951 All 718 (732) (Pt E) (Pr 30) (D 3).

3. Procedure to be followed on arrest—Clauses (1) and (2).

● ——Art. 22, Cls. (1) and (2) — Arrest of person — Procedure to be followed on.

Per Das J. — Clauses (1) and (2) of Art. 22 lay down the procedure that has to be followed when a man is arrested. They ensure four things; (a) right to be informed regarding grounds of arrest, (b) right to consult, and to be defended by, a legal practitioner of his choice, (c) right to be produced before a Magistrate within 24 hours and (d) freedom from detention beyond the said period except by order of the Magistrate. A. K. Gopalan v. State of Madras, 1950 Mad W N (Cri) 127 : (1950) 2 Mad L J 42 : 63 Mad L W 638 : 1950 S C J 174 : 51 Cri L J 1383 : 1950 S C R 88 : A I R 1950 S C 27 (121) (Pt Zd) (Pr 243).

4. "Arrest", meaning of.

● ——Art. 22 — Recovery of arrears of income-tax — Arrest and detention of defaulter—Nature of. See Income-tax Act (1922), S. 46 (2). AIR 1956 S C 20.

● ——Art. 22 (1) — Restraint on abducted person is not 'arrest" within the meaning of the article. See Abducted Persons (Recovery and Restoration) Act (65 of 1949), S. 4. AIR 1953 S C 10.

——Art. 22 (1)—Applicability to civil proceedings — R. 18 framed under S. 43, Co-operative Societies Act —Validity — (Co-operative Societies Act (1912), S. 43) Ajmer Rules, R. 18.

Article 22 (1) applies only, when a person is arrested or detained and has no application in civil proceedings. R. 18 is, therefore, intra vires of the powers of of the Chief Commissioner under S. 43, Co-operative Societies Act, and does not, in any manner, offend against the fundamental rights guaranteed by the Constitution. AIR 1956 Ajmer 63 (65) (Pt B) (Pr 6).

[Reversed on another point in AIR 1961 S C 1743].

——Art. 22—Scope — Punitive imprisonment after conviction by Court—If falls within Article.

Article 22, Cls. (1) and (2), of the Constitution, do not deal with punitive detention following a conviction by a Court. The safeguards provided in Art. 22 (1) and (2) were to a large extent, covered by the existing provisions of the Criminal P. C., but their incorporation in Art. 22 of the Constitution has the effect of making them inviolable by ordinary legislation. 1956 Andh W R 485 : 1956 A L T 745 : 1957 Cri L J 624 : AIR 1957 A P 90 (91) (Pt B) (Pr 3).

——Art. 22 — "Arrest" does not include removal — (Bengal Suppression of Immoral Traffic Act (6 of 1933), S. 13).

The word "arrest' in Art. 22 has a much restricted meaning and does not include the removal of a minor girl from a brothel or from premises which are used as a brothel under S. 13 of the Bengal Suppression of Immoral Traffic Act, 1933. AIR 1953 S C 10, Rel. on. ILR (1955) 1 Cal 76 : 57 C W N 507 : 1953 Cri L J 1187 : AIR 1953 Cal 522 (523) (Pt B) (Pr 6) (DB).

——Art. 22—Madras Revenue Recovery Act, S. 48 — Validity.

Article 22 cannot be confined to cases of arrest of persons who are suspected to have committed an act of criminal or quasi-criminal nature or to some activity prejudicial to the public or the State interest. The article applies to an arrest for non-payment of public dues. There is undoubtedly indication in the language of Art. 22 (1) and (2) that it was designed to give protection against the act of the executive or other non-judicial authority. Where the arrest is in pursuance of a warrant by an executive authority, it directly attracts the application of Art. 22 (1) and (2). There is obvious inconsistency between S. 48 of the Revenue Recovery Act and the provisions of Art. 22 (1) and (2) of the Constitution, and S. 48 to the extent it is inconsistent with the provisions of Art. 22 of Part III of the Constitution must be considered void. 1954 Cri L J 1775 : I L R (1955) Mad 999 : (1954) 2 M L J 683 : (1954) 26 I T R 509 : AIR 1954 Mad 1091 (1100) (Pt G) (Pr 30) (DB).

● ——Arts. 22 & 13 — Abducted Persons (Recovery and Restoration) Act (1949), Ss. 4 & 7 — Validity — (Abducted Persons (Recovery and Restoration) Act (1949) Ss. 4 & 7) — (Words and Phrases) — "Arrest and" and "Apprehension.")

The expression "arrest" appearing in Art. 22 is a comprehensive term which is designed to cover all cases in which a person is apprehended by legal authority and is not confined to cases in which a person is apprehended by or under the orders of a Civil or Criminal Court. It covers not only cases of punitive and preventive detention but also cases of what may for convenience, be called "protective detention." When a person is apprehended by legal authority he must be deemed to be arrested within the meaning of Art. 22 even though the word "arrest" or "apprehension" has not been used in the statute or statutory rule under the authority of which he has been taken into custody. An abducted person who is apprehended under the provisions of S. 4, Abducted Persons (Recovery and Restoration) Act (1949) for purposes of being delivered to the custody of an officer in charge of a camp must also be deemed to be arrested. The fact that the word "arrest" does not appear in the Act of 1949 and the fact that the police officer is merely empowered to take an abducted person into custody, do not alter the fact that the person who is so apprehended and taken into custody has in fact been arrested. An abducted person is entitled to the protection of Art. 22 even though she has committed no offence and is not alleged to have commited one. It cannot also be said that the procedural protection guaranteed by Art. 22 is available only to a person who is being detained to answer a criminal charge.

An Act is said to be inconsistent with another when the two cannot stand together i. e., when to obey one enactment is to disobey the other. It is impossible to obey the directions contained in sections 4 and 7 of the Act of 1949 without disobeying the directions

contained in Clauses (1) and (2) of Art. 22. The provisions of Ss. 4 and 7 of the Act 1949 are inconsistent with the provisions of Art. 13. Case law discussed. Ajaib Singh v. State of Punjab, **54 Pun L R 260: ILR (1952) Punj 381 : 1952 Cri L J 1313 : AIR 1952 Punj 309 (320, 321) (Pt C) (Prs 44, 46, 47) (FB).**

[Reversed in AIR 1953 S C 10].

5. Information of order of arrest.

——**Art. 22**—Contravention of, by order under S. 7 of Influx from Pakistan (Control) Act, 1949—Accused informed of order of arrest at time of arrest — Whether Art. 22 is violated. See Ibid, Art. 21. **AIR 1954 Bhopal 9.**

6. Information of grounds of arrest.

——**Art. 22 (1)**—Petition for writ of habeas corpus—Legality of detention — Detention unlawful on the ground of information of arrest not being given to accused at material time namely, date of return—Subsequent information—Effect. See Ibid, Art. 226. **AIR 1956 All 56.**

——**Art. 22 (1)—Grounds of arrest—Object of information.**

The object underlying the provision in Art. 22 (1) that the ground for arrest should be communicated to the person arrested appears to be this. On learning about the ground for arrest, the man will be in a position to make an application to the appropriate Court, for bail, or move the High Court for a writ of habeas corpus. Further the information will enable him to prepare his defence in time for purposes of his trial. **1956 Cr L J 13 : ILR (1956) 2 All 527 : AIR 1956 All 56 (59) (Pt C) (Pr 20) (DB).**

——**Art. 22 (1) — Grounds of arrest—Sufficiency of information.**

For purposes of Cl. (1) of Art. 22, it is not necessary for the authorities to furnish full details of the offence. But the information should be sufficient to enable the arrested person to understand why he has been arrested.

Per Desai, J.—The words "grounds for such arrest" occurring in Art. 22 (1) should be interpreted in the light of the reasons for the provisions. If a person is arrested on a warrant the grounds or reasons for the arrest are the warrant. If he is arrested without a warrant, he must be told why he has been arrested.

If he is arrested for committing an offence, he must be told that he has committed a certain offence for which he would be placed on trial. Informing him merely of the law applicable to that act would not be enough. **1956 Cr L J 13 : ILR (1956) 2 All 527 : AIR 1956 All 56 (59, 61) (Pt D) (Prs 21, 30) (DB).**

——**Art. 22 (1)—Grounds for arrest—Sufficiency.**

The mention in the warrant about the accused being wanted in a case for certain offences is sufficient compliance with the requirements of sub-s. (1) of Art. 22. The ground for arrest is simply an order of the Court which is passed in a case relating to certain accusation against the person arrested. **1955 Cri L J 1146 : AIR 1955 All 462 (464) (Pt A) (Pr 15).**

[Overruled on another point in AIR 1955 All 521 (DB)].

——**Art. 22**—Armed Forces (Assam and Manipur) Special Powers Act (1958), S. 4 (c) — Arrest under—Remand of accused—Procedure for remand of accused—S. 167 and not S. 109, Criminal P. C. will apply—Duty of Magistrate to see that person is informed of grounds of his arrest. See Armed Forces (Assam and Manipur) Special Powers Act (1958), S. 4 (c). **1963 (1) Cr L J 451 : AIR 1963 Manipur 12.**

——**Art. 22 (1)—Information as to grounds of arrest —Arrest by merely telling sections of penal provisions—Legality.**

The arrest of a person by merely enumerating section of any penal provision is not proper compliance with the constitutional requirements as envisaged by Art. 22 (1) of the Constitution. Merely by telling that the person was being arrested under S. 7, Criminal Law (Amendment) Act and S. 143 read with S. 117, Penal Code, cannot provide him with information as to which of them any unlawful acts he has committed. The arrest on such a statement is, therefore, wholly repugnant to the constitutional guarantee contemplated by Art. 22 (1). 1947 A C 573 and AIR 1956 All 56, Rel. on. **61 Punj L R 413 : 1959 Cr L J 1209 : ILR (1959) Punj 1111 : AIR 1959 Punj 506 (508) (Pt A) (Pr 8).**

——**Art. 22**—Detention in custody — Necessity to inform person of grounds of his arrest — Remand to Police custody under S. 344, Criminal P. C.—Conditions for—Similarity of—Offence under Official Secrets Act—Bail—Grant of. See Criminal P. C. (1898), S. 167. **1958 Cr L J 1248 : AIR 1958 Tripura 34.**

7. Right to be defended by pleader.

(a) Right to be provided with a lawyer by the State.

7. Right to be defended by pleader.

●——Art. 22 (1)—Accused merely alleging that certain relatives who sought interview with him after arrest were refused permission and that procedure resulted in a denial of opportunity to defend himself by engaging a civil lawyer through their help—No request made by accused to the Court martial for being defended by lawyer of his and no such request turned down by the Court—Held there had been no denial of the right guaranteed by the Article. Ram Sarup v. Union of India, **1964 Cur L J (SC) 169 ; (1964) 5 S C R 931 ; 1964 S C D 661 : (1964) 2 S C J 619 ; 1964 M L J (Cri) 626 : 1965 (1) Cri L J 236 : AIR 1965 S C 247 (250) (Pt A) (Pr 9).**

——**Art. 22 (1)—Right to consult and to be defended by pleader—Infringement of — Effect — (Criminal P. C. (1898), S. 340).**

The accused were arrested for offences alleged to have been committed by them under Ss. 120 and 121, Railways Act and were put into prison. Two sets of these persons were tried within the Jail precincts on the 30th of March, 1955, and the other two sets were tried on the 31st of March, 1955. The trial was held under the summary provisions of the Code, and the accused were convicted under the two sections. No information had been given to the accused persons that they had a right to consult a legal practitioner and to be defended by him under Art. 22 of the Constitution and S. 340 of the Code.

Held, that the fundamental right given to the applicant under Art. 22 of the Constitution and the right further conferred upon them, though similar in nature, under S. 340 of the Code of Criminal Procedure, had in a sense been denied to them. The trial was, therefore vitiated. AIR 1947 All 436 and AIR 1926 Bom 551, Rel. on. American case law discussed. **1956 Cr L J 1267 : ILR (1957) 1 All 144 : AIR 1956 All 641 (643) (Pt A) (Pr 88).**

——Art. 22 (1)—Scope—Validity of S. 80, U. P. Panchayat Raj Act, 1947—Proviso to section only enforces the right given by the article to a person whose personal liberty is sought to be deprived to be represented by counsel and is therefore not invalid. See U. P. Panchayat Raj Act (28 of 1947), S. 80, Proviso **AIR 1954 All 655 (DB).**

——Art. 22 (1)—Right to invoke—Complainant in a case.

A complainant in a case cannot take advantage of Art. 22 (1) of the Constitution because he is neither a person arrested nor a person detained in custody. **1952 All WR (HC) 223 : 1952 Cr L J 1666 : 1952 R D (HC) 183 : 1952 All L J 195 : AIR 1952 All 924 (925) (Pt C) (Pr 5).**

——Art. 22 (1)—Applicability.

The only condition necessary for a person to have the right of defence by legal practitioner is that he must have been arrested; it is not at all obligatory that after arrest he should have been detained. If after arrest he was released on security, his right of defence by a legal practitioner which accrued at the moment of his arrest would continue, because the right to be defended is a continuing right. **52 Cri L J 1251 : ILR (1951) 2 All 745 : AIR 1951 All 718 (732) (Pt D) (Pr 30) (DB).**

——Art. 22 (1) and (3) –Public Safety—U. P. Prevention of Crimes (Special Powers) (Temporary) Act (5 of 1949), S. 4 – Warrant to the police directing them to take security from the applicants and to take them in custody only on their default—Police taking them into custody first and then released them on security, thinking that it was warrant for arrest and that the security to be taken from the applicants was for their appearance before the Magistrate and not for being of good behaviour and keeping the peace – Arrest could not be said to be under the Act which was held to be one for preventing detention—Hence Art. 22 (3) held did not apply to rob them of the right of defence by a legal practitioner. **52 Cri L J 1251 : ILR (1951) 2 All 745 : AIR 1951 All 718 (732) (Pt F) (Pr 30) (DB).**

——Art. 22 (1)—Applicability.

The provision as to the right to be defended by a legal practitioner is only conferred on a person who is arrested and is not a general right conferred on every one. **52 Cri L J 1251 : ILR (1951) 2 All 745 : AIR 1951 All 718 (732) (Pt G) (Pr 30) (DB).**

——Art. 22 (1)—Infringement—What constitutes.

In order to show that the Constitution has been infringed it is not necessary to show that a person arrested under a certain Act was actually denied, the right of defence by a legal practitioner. It is sufficient that the Act impugned itself denied the arrested person the right. **52 Cri L J 1251 : ILR (1951) 2 All 745 : AIR 1951 All 718 (732) (Pt H) (Pr 30) (DB).**

——Art 22 (5) — S. 123A (U. P.), Criminal P. C. fails to give right to arrested person to consult or be defended by legal practitioner of his choice as contemplated by Art. 22 (1) — See Criminal P. C. (1898), S. 123A (U. P.). **52 Cri L J 1282 : AIR 1950 All 562.**

——Art. 22 (1) — Legal Practitioner — Professional ethics – Appearing for opposite party after ceasing to represent one party — Criminal appeal — Engagement of Public Prosecutor who appeared for the State terminated pending appeal — He cannot be allowed to appear for the accused — Evidence Act, S. 126, violation of. **(1960) 2 Andh W R 11 : 1960 Mad L J (Cri) 439 : 1960 Andh L T 539 : ILR (1960) 2 Andh Pra 212 : 1961 (1) Cri L J 356 : AIR 1961 Andh Pra 105 (107 to 112) (Prs 5, 6, 7, 8, 9, 10, 11) (DB).**

——Art. 22—Right to be defended by lawyer. See Constitution of India, Art. 19 (1) (g). **AIR 1956 Cal 476.**

——Art. 22 (1)—Whether an accused lawyer can be permitted to appear as lawyer for co-accused in the same case — Rights of the accused to have pleader of his own choice. See Criminal P. C. (1898), S. 561A. **(1965) 6 Guj L R 531.**

——Art. 22—Madras Revenue Recovery Act, S. 48 and Income-tax Act, S. 46 (2)— Validity — (Income-tax Act (1922), S. 46) — (Madras Revenue Recovery Act (2 of 1864), S. 48).

Section 48 of the Madras Revenue Recovery Act is clearly ultra vires and cannot remain on the Statute Book. It clearly offends Art. 22 (1) and (2) of the Constitution. Under it the defaulter has been denied all right of being heard. He has also been deprived of all right of engaging a legal practitioner to appear on his behalf before the Collector, the arrest warrant issued by the Collector being final and unappealable. S. 46 (2) of the Income-tax Act is also ultra vires in so far as it empowers a Collector to proceed under S. 48 of the Revenue Recovery Act. **1954 Cr L J 1775: ILR (1955) Mad 999 : (1954) 2 M L J 683 : (1954) 26 I T R 509 : AIR 1954 Mad 1091 (1094, 1095) (Pt A) (Prs 6, 8) (DB).**

——Art. 22 — Arrest of person — Duty of Magistrate —Accused must be informed of grounds of arrest and be allowed to consult and be defended by a lawyer of his choice. See Criminal P. C. (1898), S. 167. **1963 (2) Cr L J 562 (Manipur).**

——Art. 22 (1) — Engagement of lawyer — Right of party — Witness of one party cannot act as advocate for the opposite party—It is professional misconduct. See Criminal P. C. (1898), S. 340. **1964 (1) Cr L J 601 (Mys).**

——Art. 22 (1)—Under-trial prisoners in police lock up –Duty of police officers.

Article 22 (1) of the Constitution provides that no person detained in custody shall be denied the right to be defended by a legal practitioner of his choice. Hence when a person seeks the permission of the Police Officer to obtain the signature of the under-trial prisoners in the police lock up on a vakalatnama, the police officers should immediately give him the necessary facility. **('65) 31 Cut L T 695.**

——Art. 22 (1) — Scope — Orissa Gram Panchayats Act, S. 94—Validity — If infringes right to be represented by lawyer. See Panchayats - Orissa Gram Panchayats Act (15 of 1948), S. 94. **1957 Cr L J 1437: AIR 1957 Orissa 281 (DB).**

——Art. 22—Criminal P. C. (1898), Ss. 243, 340 and 364—Conviction on plea of guilty — Several accused —Questions put to them jointly about their guilt — Accused were Bengali speaking but examined in Hindi—No certificate by Magistrate that questions were interpreated to them—No opportunity to accused to be defended by pleaders — Conviction held not legal—Constitution of India, Art. 22. See Criminal P. C. (1898), S. 243. **1962 B L J R 390: (1962) 2 Lab L J 404.**

——Art 22 (1) — Right to be defended by pleader — Effect of non-compliance. See Criminal P. C. (1898), S. 191. **AIR 1955 N U C (Pat) 3268.**

——Art. 22—Scope — Right of accused to be defended by counsel of his choice — Scope and extent of. See Panchayats — Punjab Gram Panchayat Act, 1952 (4 of 1953). **AIR 1957 Punj 149 (DB).**

——Art. 22 (1) — Right to be defended — Absolute conformity with provisions of Criminal P. C. (1898) whether essential to comply with requirements of Cl. (1). **54 Pun LR 312 : ILR (1952) Punj 362 : 1953 Cri L J 421 : AIR 1953 Punj 52 (55) (Pt B) (Pr 7) (DB).**

——Art. 22 (1) — Criminal Trial held after Court hours — Opportunity to avail legal assistance not given — Effect — Failure of justice—Trial is vitiated. AIR 1948 Mad 492 and AIR 1956 All 641 and AIR

1926 Bom 551, Rel. on. **1962 Raj L W 266 : 1962 (2) Cr L J 496 : ILR (1962) 12 Raj 620 : AIR 1962 Raj 216 (217, 218) (Prs 6, 10).**

——Art. 22 (1) — **Right to consult legal practitioner while in police custody — Scope and extent of —** (Criminal P. C. (1898), Ss. 340 and 561-A).

Article 22 (1) confers a fundamental right which the authors of the Constitution in their wisdom have guaranteed to every person who may be arrested and detained in custody. The right of an accused to consult his legal adviser and to be defended by him has been put on the highest footing ever since our Constitution came into force with effect from 26th January, 1950. and it is really not necessary to derive it now from other enactments. Certain propositions seem to follow almost axiomatically from it: (1) that ever since his arrest, the accused has a right to be consulted by a legal adviser of his choice and to be defended by him; (2) in order that such consultation may be effective interviews must be allowed to his counsel, when asked for, out of the hearing of the police though within their presence; and (3) that such a right must of course not be abused and must be granted subject to reasonable restrictions as to time and convenience of the police authorities, no less than that of the party seeking the interview. It must be clearly understood, however, that the police must not in any way obstruct such interviews on arbitrary or fanciful grounds with a view to deprive the accused of his fundamental right. **1954 Cri L J 1591; 1954 Raj L W 611 : ILR (1955) 5 Raj 70 : AIR 1954 Raj 241 (241, 243) (Pt A) (Prs 4, 6, 7).**

7 (a). Right to be provided with a lawyer by the State.

——Art. 22 — Right of accused to demand court to supply him with lawyer — See Criminal P. C. (1898), S. 340. **AIR 1958 Mys 150.**

——Art. 22 — Criminal P. C. (1898), S. 340 — Right conferred by section does not extend to right in accused to be provided with lawyer by State. See Criminal P. C. (1898), S. 340. **AIR 1963 Orissa 144.**

——Art. 22 — Right conferred by S. 342, Criminal P. C. does not extend to right in accused to be provided with lawyer by State — See Criminal P. C. (1898), S. 340. **ILR (1962) Cut 726.**

8. Clause (2).

● ——Arts. 22 and 136 — **Arrest and detention of foreigner for purpose of deportation — Protection under Art. 22, if available — Non-production of detenue within 24 hours of his arrest before nearest Magistrate — Legality of detention — Order of High Court under S. 491, Criminal P. C., declaring detention as illegal — Appeal by special leave under Art. 136 — Detenue obtaining interim injunction against State from executing order of deportation pending disposal of his suit — Interference by Supreme Court.**

The two respondents, husband and wife, were arrested for non-compliance with an order of deportation passed against them On the petition for habeas corpus filed by the respondents, the Judges of the High Court confined their attention to the period, viz,, from 1 p.m. on 25th July, 1960 to 2 p.m. on 27th July, 1960 and holding that during this period there had been a violation of the requirements of Art. 22(2) of the Constitution, in that the respondents had not been produced before a Magistrate within 24 hours of the commencement of the custody, expressed their opinion that the detention was illegal and directed the release of the respondents. The State of Uttar Pradesh preferred the appeal by special leave against the said order of the High Court. Subsequent to the filing of the appeal, the respondents filed a suit and obtained an injunction against the State from deporting them to Pakistan pending the disposal of the suit.

Held (Per P. B. Sinha, C. J., Ayyangar, Mudholkar and Venkatarama Aiyer, JJ., Subba Rao, J., dissenting):—that without pronouncing on the precise scope of Art. 22 (1) or (2) in relation to an arrest and detention for the purpose of executing a lawful order of deportation, it could not be said in the circumstances of the case that during the period commencing from 1 p.m. on 25-7-1960 the respondents were illegally detained for more than 24 hours without production before a judicial authority as required by Art. 22 (2). Even if Art. 22 (2) were construed to require that a person arrested and detained has to be produced before a Magistrate every 24 hours during his detention, in this case as the respondents were during 'the second stage' produced before the High Court itself 'for suitable orders' on the 26th and again on the 27th, the requirement was satisfied. Hence there was no justification whatsoever for the finding on the basis of which the High Court directed the release of the respondents.

Per Subba Rao, J. : - The case is not a fit one for exercising the extraordinary jurisdiction, under Art. 136 of the Constitution. The appeal has become infructous, for even if the State succeeds it cannot arrest the respondents till the disposal of the suit. Nor has the High Court decided any such important question of law as to cause some irreparable injury to the appellant unless the Supreme Court sets the matter right. An arrest and detention for the purpose of deportation is not outside the scope of the Constitutional protection under Art 22 (2). It is not permissible to read into that provision exceptions other than the two specific exceptions in Cl. (3). As the respondents were not produced before the nearest Magistrate within 24 hours of their arrest for the purpose of deportation, the arrest and detention were in contravention of Art 22 (2) and illegal. AIR 1953 S C 10 and AIR 1957 S C 688, Dist. State of Uttar Pradesh v. Abdul Samad, **1962 All L J 991 : ILR (1962) 2 All 547 : 1962 All Cr R 440 : 1962 All W R (HC) 780 : (1962) Supp 3 S C R 915 : (1963) 1 S C A 780 : 1963 S C D 385 : 1962 B L J R 952 : 1962 (2) Cr L J 499 : AIR 1962 S C 1506 (1511, 1512, 1513) (Prs 14, 15, 19, 20).**

● ——Art. 22 (2) — **Detention without authority of Magistrate.**

A petition under Art. 32 of the Constitution alleged that A was arrested in Bomby on the 11th March. 1952, and taken in custody to Lucknow to be produced before the Speaker of the Uttar Pradesh Legislative Assembly to answer a charge of breach of privilege. He was not produced before a Magistrate within twenty-four hours of his arrest and was in detention in the Speaker's custody at Lucknow even at the time of petition, which fact was admitted by the State.

Held, that the peremptory provisions of Art. 22 (2) were contravened and that A was entitled to release. Gunupati Keshavram v. Nafisul Hasan, **1954 Cr L J 1704 : AIR 1954 S C 636 (637) (Pr 2).**

[The decision in the case proceeded on the concession of counsel and was not regarded as considered opinion and was not followed in AIR 1959 S C 395—Ed.]

—Art. 22 (2)—**Applicability and scope—Detention in pursuance of conviction and sentence for contempt by Legislative Assembly—Art. 22 (2) does not apply.**

The provisions of Art. 22 (2) of the Constitution cannot apply to a detention in pursuance of a conviction and imposition of a sentence of imprisonment by a competent authority. Article 22 (2) is applicable

only at a stage when a person has been arrested and is accused of some offence or other act and it can have no application after such person has been adjudged guilty of the offence and is detained in pursuance of such adjudication.

Where a person has been convicted and sentenced for contempt by the Legislative Assembly, his production before a Magistrate would be absolutely futile. The Magistrate would have no power either to release such a person on bail or to make any other order or provision regarding his custody. The Constitution-makers could never have intended that an empty formality should be gone through which would serve no useful purpose. Hence the detention of the petitioner following conviction for contempt and sentence by the Legislative Assembly is not violative of the provisions of Art 22 (2) of the Constitution. AIR 1953 S C 10, Rel. on. **1965 All W R (H C) 286 : 1965 All Cr R 213 : (1965) 2 Cri L J 170 : ILR (1965) 2 All 281 : AIR 1965 All 349 (354, 355) (Pt D) (Pr 13) (DB).**

——Art. 22 (2) — Production of arrested person for remand before Magistrate on duty at Kotwali at odd hour — No violation of Art. 22 (2). AIR 1952 Assam 167, Foll. **1960 All L J 206 : 1960 All W R (H C) 145 : 1960 All Cr R 122 : 1960 Cr L J 1049 : AIR 1960 All 467 (467) (Pt A) (Pr 2) (DB).**

——Art. 22 (2) — Production of person arrested before Magistrate posted at Kotwali in executive capacity—Art. 22 (2) is satisfied—(Criminal P. C. (1898), S. 61).

In Art. 22 as well as in S. 61, Criminal P. C., the terms 'Magistrate' and 'Court of a Magistrate' are interchangeable ones and mean the same thing. When a Magistrate is posted at Kotwali with the primary duty to quell any disturbance that might arise, he discharges an executive function. Nevertheless when the arrested person is produced before him, and he has to consider the question of granting a remand, he exercises judicial functions, i.e, acts as a Court. In such a case, the production of the arrested person is before a Court of Magistrate within Art. 22 (2). Petition No. 2762 of 1959 (All), Foll. **1960 All L J 227 : 1960 All W R (H C) 215 : 1960 All Cr R 143 : ILR (1960) 2 All 792.**

——Art. 22 (2) — Applicability.

Article 22 (2) has no application when an arrest is made under a warrant issued by a Court. 1952 S C J 364 : AIR 1952 S C 10 and AIR 1953 All 753, Foll. **1960 All W R (H C) 215 : 1960 All Cr R 143 : 1960 All L J 227 : ILR (1960) 2 All 792.**

——Art. 22 (2) — Production before Magistrate at early hours of morning — Validity.

When the petitioner was produced before the Magistrate in the early hours of the morning and was granted a remand, the Magistrate acted as a Court, and therefore the production was in full conformity with the requirements of Art. 22 (2). **1960 All L J 227 : 1960 All W R (H C) 215 : 1960 All Cr R 143 : ILR (1960) 2 All 792.**

——Art. 22 (2) -Scope and object of—Duty of Magistrate. See Criminal P. C. (1898), S. 167. **1959 Cr L J 685 : AIR 1959 All 384 (DB).**

——Art. 22 (2) -Time of arrest—Materiality of.

The actual time of arrest is material in order to judge whether the police authorities did or did not comply with the requirements of Art. 22 (2) by the production of the accused before a Magistrate within the prescribed time. **1957 All W R (H C) 14 : 1957 All L J 152 : 1957 Cri L J 427 : AIR 1957 All 189 (191) (Pt B) (Pr 4) (DB).**

——Art. 22 (2) — "Shall be produced before the nearest Magistrate".

Petitioner arrested without a warrant by a Station Officer on his own authority - Within few minutes of arrest City Magistrate going to the spot in his executive capacity — Arrested person produced before such Magistrate who was fully competent to authorise detention in custody — Petitioner remanded to jail custody by City Magistrate — Held, that in the circumstances the arrest not having been made by the Station Officer under the direction or supervision of the Magistrate, it was not necessary for him to produce the accused before another Magistrate and in producing the accused before the City Magistrate on the spot there was full compliance with Art. 22 (2). AIR 1954 All 601, Disting. **1955 Cr L J 623: ILR (1955) 1 All 355 : AIR 1955 All 193 (198, 215) (Pt G) (Prs 5, 55) (DB).**

——Art. 22 (2)—Art. 22 (2) and Criminal P. C. (1898), S. 61.

Article 22 (2) of the Constitution in effect not only gives constitutional protection to the provision contained in S. 61, Criminal P. C. but further liberalizes it by making the provision applicable in those cases also where the arrest is made in pursuance of a warrant. **1954 All L J 355 : AIR 1954 All 601 (604) (Pt D) (Pr 29) (DB).**

——Art. 22 (2)—Production before Magistrate.

On 17th February, 1954, the petitioners were arrested by a Magistrate acting under S. 64, Cr. P. Code for having obstructed the entry of the Harijans into the temple of Shri Vishwanathji of Banaras through the main gate and thereby having committed an offence punishable under S. 6 of the U. P. Removal of Social Disabilities Act, 1947. On the same day the Magistrate remanded the petitioners into jail custody. It was contended for the petitioners that they were not produced before the Magistrate within 24 hours of their arrest as required by Art. 22 (2), Constitution of India.

Held, (i) that the Magistrate in directing the arrest of the petitioners did not, as contemplated by S. 167 Cr. P. Code, act as a Court nor had he an opportunity of applying a judicial mind to the facts of the case; and

(ii) that in the circumstances of the case there was no proper production of the petitioners before a competent Magistrate within 24 hours of their arrest without warrants and consequently their further detention in jail was illegal and unconstitutional. AIR 1953 SC 10, Rel. on. **1954 All L J 355 : AIR 1954 All 601 (605) (Pt F) (Prs 32, 34) (DB).**

——Art. 22—"Magistrate"—Magistrate contemplated by Cl. (2) is the Court of Magistrate and not a Magistrate acting in any other capacity such as when he passes orders as a persona designata. See Criminal P. C. (1898), S. 123-A (U. P.) **AIR 1950 All 562.**

——Art. 22 (2)—Order of remand—Who can pass — Subsequent remand — Production of accused before Magistrate — Necessity of — (Criminal P. C. (1898), S. 167).

An order of remand can only be passed by a Magistrate sitting as a Court. It is immaterial where such a Magistrate was sitting at the time of the passing of the order, Neither Art. 22 of the Constitution nor S. 167, Criminal P. C. requires production of an accused person before a Magistrate on the occasion of a subsequent remand. **ILR (1952) 4 Assam 18 : 1952 Cri L J 1659 : AIR 1952 Assam 167 (167, 168) (Pt A) (Pr 2).**

● **——Art. 22** — Non-production of detained person within 24 hours of his arrest—Offends Art. 22 (2) —

Order of detention cannot be upheld. See Bengal Criminal Law Amendment Act (6 of 1930), Preamble. **AIR 1950 Cal 274 (SB).**

9. Right of foreign nationals.

——**Art. 22 (4) (a) and Part III, (General)** — Foreign nationals not entitled to claim fundamental right— (Right under Art. 22). See Ibid, Art. 12. **1964 (2) Cr L J 588 : AIR 1964 Tripura 57.**

10. Validity of Preventive Detention Act (1950).

●——**Art. 22 (4) and (7)**—Scope — S. 11 (1), Preventive Detention Act — Validity. See Public Safety—Preventive Detention Act (1950), S. 11 (1). **1958 Cr L J 283 : AIR 1958 SC 163.**

●——**Art. 22** — Preventive Detention Act (1950), S. 11-A — Classification by, of detentions into those before and after 30-9-1952—Whether ultra vires of Cl. (7) (b) of this article and Art. 14. See Public Safety—Preventive Detention Act (4 of 1950), S. 11A. **AIR 1953 SC 52.**

●——**Art. 22** — Preventive Detention (Amendment) Act (1952), S. 3 — Validity of. See Public Safety — Preventive Detention (Amendment) Act (1952), S. 3. **AIR 1952 SC 324.**

●——**Art. 22** - Preventive Detention Act whether ultra vires of the Constitution. See Public Safety— Preventive Detention Act (1950), Ss. 12 and 14. **51 Cri L J 1383 : AIR 1950 SC 27.**

——**Art. 22** — Applicability and scope — Preventive Detention Act (1950), S. 3—Validity. See Ibid, Art. 19 (1) (a). **AIR 1956 All 589 (DB).**

——**Art. 22** — Preventive Detention Act (1950), Ss. 9 and 10—Validity—S. 10 does not offend against principles of natural justice or test of proper judicial inquiry. See Public Safety—Preventive Detention Act (1950), S. 9. **ILR (1956) Bom 715.**

——**Art. 22 (7) (a)—Ss. 11 (1) and 11-A, Preventive Detention Act (1950) — Validity — Opinion of Advisory Board obtained and final order of detention passed within 3 months of original order—Question of validity of sections does not arise.**

Though the Preventive Detention Act, 1950, does not provide for any circumstance under which a detenu may be detained for a period longer than three months without a reference to an Advisory Board the the omission of such a provision cannot make S. 11 (1) or S. 11-A of the Preventive Detention Act ultra vires. Where, however, the opinion of the Advisory Board had been obtained and the final order of detention made within three months from the date of the original order of detention, invalidity of the order of detention or the question of S. 11 (1) or 11-A of the Preventive Detention Act being ultra vires of Art. 22 (7) of the Constitution cannot arise. **1962 (1) Cr L J 279: AIR 1962 Cal 119 (121) (Pt D) (Pr 8) (DB).**

11. J. & K. Preventive Detention Act— Validity of.

●——**Art. 22**—Jammu and Kashmir Preventive Detention Act (4 of 2011), S. 8 (1) Proviso — Validity — Constitutionality—Constitutionality questioned on the ground of its inconsistency with Arts. 21 and 22 of the Constitution. See Public Safety — Jammu and Kashmir Preventive Detention Act (4 of 2011), S. 8 (1) Proviso. **AIR 1956 SC 197.**

——**Art. 22 (5) as applied to J. & K. State** — Though Art. 22 (5) of the Constitution is violated, the provisions are not ultra vires in view of Art. 35 (c) as applied to J. & K. State. See Public Safety — J. & K. Preventive Detention Act, S. 8 (1). **1963 (1) Cr L J 765 : AIR 1963 J & K 23.**

12. Preventive detention — General.

(a) Meaning and object of preventive detention.

(b) Law of preventive detention — Essentials of validity.

(c) Legislative competency.

(d) Conformity to law.

(e) Criminal prosecution, if a bar to preventive detention.

12. Preventive detention — General.

●——**Art. 22** — Defence of India Act (1962), Section 3 (2) (15) (i) — Detention under Defence of India Act, 1962 not open to challenge by virtue of Presidential Order under Art. 359 (1) of the Constitution — The fact that emergency may last for a long period and as a consequence citizens may be precluded from enforcing fundamental rights under Arts. 14, 21 and 22 during the period of the Order has no bearing on the validity of detention — How long the Proclamation of Emergency should continue and what restrictions should be imposed on the fundamental rights of citizens during the pendency of the emergency, are matters which must inevitably be left to the executive because the executive knows the requirements of the situation and the effect of compulsive factors which operate during periods of grave crisis — Similarly the argument that during the operation of the Presidential Order, the executive may abuse its power and the citizens would have no remedy is essentially political and its impact on the constitutional question is at best indirect — In a democratic State the effective safeguard against abuse of executive powers whether in peace or in emergency, is ultimately to be found in the existence of enlightened, vigilant and vocal public opinion. See Defence of India Act (1962), S. 3 (2) (15) (i). **AIR 1964 S C 381.**

●——**Art. 22** — Deprivation of personal liberty — Obligation to follow procedure established by law— Applicability of rule to preventive detention before Constitution. See Public Safety — Preventive Detention Act (1950), S. 3. **AIR 1952 S C 106.**

●——**Art. 22 — Preventive detention—Whether infringes on rights guaranteed under Part III.**

Preventive detention is not by itself considered an infringement of any of the fundamental rights mentioned in Part III of the Constitution. This is subject to the limitations prescribed in Cl. (5) of Art. 22 of the Constitution. State of Bombay v. Atma Ram, **1951 S C J 208 : (1951) 1 Mad L J 389 : 53 Bom L R 437 : 1951 S C R 167 : 1951 All L J (SC) 36 : 1951 Mad W N 532 : 1951 Mad W N (Cri) 148 : 52 Cri L J 373 : AIR 1951 S C 157 (164, 165) (Pt D) (Prs 15, 18).**

——**Art. 22** — Scope — Freedom of expression—Reasonable restriction—Preventive detention for inciting violence — Legality. See Ibid, Art. 19 (1) (a). **1957 Cr L J 1361 : AIR 1957 All 782 (DB).**

——**Art. 22** — Preventive and punitive detention — Distinction between — Issue of warrant under S. 3, Preventive Detention Act against person in Jail awaiting trial—Legality. See (1) Public Safety—Preventive Detention Act (1950), S. 3. **AIR 1950 Hyd 66.**

——**Arts. 22 (7), 246, Sch. 7, List III, Item 3 — Preventive detention legislation — Powers of State — Successive legislations.**

Per Sarjoo Prasad J. — It is not open to any State to play with the life and liberty of its citizens and in providing legislation for preventive detention. It must always pay due care and attention so that the legislation so enacted or promulgated is beyond exceptions. A State must, therefore, exercise due care

and attention in framing all such law and legislations lest it may be accused of bad faith on account of any hasty or ill-advised move taken in that direction. Successive legislations and orders of detention passed under legislations which have ultimately to be abandoned as found to be defective and void on technical grounds may in most cases lead to the unfortunate result of detaining a person for a period much beyond that contemplated by Art. 22 of the Constitution of India. A State must, therefore, guard against any such unfortunate action. ILR 29 Pat 410: 51 Cri L J 1251 : AIR 1950 Pat 332 (345) (Pt G) (Prs 5, 3).

12 (a). Meaning and object of preventive detention.

● ——Art. 22 — Order of detention — Nature of. See Public Safety — Preventive Detention Act (1950), S. 3. 1959 Cr L J 1501 : AIR 1959 S C 1335.

——Art. 22 (4) — Scope — Criminal P. C., S. 123 — Preventive detention under — If falls within ambit of Art. 22 (4).

The basis of the order under S. 123, Criminal Procedure Code, awarding imprisonment for non-compliance with the same is that the person proceeded against is likely to commit offences or a breach of the peace unless he furnishes security. It is a precautionary and not a punitive measure. The fact that an order demanding security precedes the order of detention under S. 123 would make no difference to the character of the detention being precautionary. The detention contemplated by Cl. (4) of Art. 22 is detention ordered by the executive authority, and not that ordered by a judicial tribunal after the full trial. It follows that that preventive detention ordered by a Court under S. 123, Criminal P. C., does not come within the ambit of Art. 22 (4). 1956 Andh W R 450 : 1957 Cr L J 826 : A I R 1957 A P 268 (271) (Pt C) (Prs 11, 12, 15).

——Art. 22 (4) — Preventive detention — Detention under S. 123, Criminal P. C.—(Criminal P. C. (1898), S. 123).

The preventive detention in the Article means preventive detention by an executive authority and not detention by any order passed by a judicial tribunal after a full trial. Therefore the provisions of S. 123, Criminal P. C., which provides for detention for failure to give security which is ordered after full trial is not the detention referred to in Art. 22 (4) of the Constitution and therefore it is not ultra vires of the Constitution. (1956) 1 M L J 232 : 1956 Cr L J 750 : 1956 Mad W N 77 : AIR 1956 Mad 292 (293) (Pr 4).

——Art. 22 (3)—Preventive detention and externment or banishment — Distinction — Nature, object and effect of latter. 54 Pun L R 312 : ILR (1952) Punj 362 : 1953 Cri L J 421 : AIR 1953 Punj 52 (54, 55) (Pt A) (Pr 5) (DB).

12 (b). Law of preventive detention — Essentials of validity.

——Art. 22 — Defence of India Act (1962) and Defence of India Rules (1962) — Validity of.

A perusal of the Act and the Defence of India Rules clearly reveals that their provisions are violative of Cls. (4), (5) and (7) of Art. 22 of the Constitution. There is no provision in the impugned laws for an Advisory Board or for furnishing grounds to a detenu so that he may know why he is detained and make a representation against the order of detention. Preventive detention for more than 3 months has been provided for without the Act having prescribed the circumstances under which and the class or the classes of cases in which the Act was to apply and the maximum period for which detenus of any class or classes could be detained. No procedure is for consulting an advisory board is provided. It is true that R. 30 (a) provides for review but that does not affect the position. Its provisions do not touch the merits of the order of detention already made but simply provide a machinery by which an order already made can be reviewed by the same or higher authorities at a later stage. (63) 1963 All W R (HC) 559.

[Overruled on another point in AIR 1964 S C 381.]

——Art. 22 — Section 123-A (U. P.), Criminal P. C.— Failure to provide for advisory Board though provision has been made for detention in excess of three months — Validity. See Criminal P. C. (1898), S. 123-A (U. P.). AIR 1950 All 562 (DB).

——Art. 22 — Law under which preventive detention is ordered should not be against the Constitution. 1959 Cri L J 160 : (1958) 2 Andh W R 589 : 1958 Mad L J (Cri) 913 : 1958 Andh L T 1136 : AIR 1959 Andh Pra 73 (75, 76) (Pt A) (Pr 7) (DB).

——Art. 22 — Assam Maintenance of Public Order Act (5 of 1947) (as amended by Assam Act 21 of 1950) — Act whether one providing for preventive detention — Provision in, for imposing restriction without providing for reference to advisory Board — Validity. See Public Safety — Assam Maintenance of Public Order Act (5 of 1947) as amended by Assam Act (21 of 1950), S. 2. 1953 Cri L J 657 : AIR 1953 Assam 77.

——Art. 22 — Violation of safeguards prescribed by article — Effect of.

A preventive detention cannot be justified if there has been a violation of any of the safeguards provided by Art. 22, the most important of which is contained in sub-cl. (6). 52 Bom L R 794 : ILR 1951 Bom 92 : 52 Cri L J 437 : AIR 1951 Bom 252 (253 to 255) (Prs 3, 4, 5) (DB).

● —Art. 22—West Bengal Security Ordinance (1949) — Provides for preventive detention — Absence of provision in, for constitution of advisory board — Offends Art. 22 (4). See Public Safety — West Bengal Security Ordinance (1949), S. 22. AIR 1950 Cal 274 (S B).

——Art. 22—Scope— Art. 22 is to be read as proviso to Art. 21.

Per Govinda Menon J.— One of the modes of depriving the personal liberty is indicated in Art. 22 which should be read as a proviso to Art. 21. The curtailment of personal liberty should be in accordance with what is prescribed by Art. 22. If that article is followed both in letter and spirit the Court cannot question an Act dealing with preventive detention. As Art. 22 prescribes the procedure established by law for making preventive detention valid, it is essential that its terms should be complied with and observed, if preventive detention has to be legally recognised and given effect to. Otherwise the detention will be unlawful. It is, therefore, abundantly clear that the Indian Constituent Assembly intended to define and explain what is meant by "procedure established by law" in Art. 21 by enacting Art. 22 as a proviso to it. So with regard to preventive detention Art. 22 clearly lays down the procedure to be adopted. 1952 Cri L J 170 : A I R 1951 Mad 1015 (1025) (Pt I) (Pr 18) (DB)

12 (c). Legislative competency.

● —— Arts. 22, 246, Sch. 7 List I, Entry 9 and List 3, Entry 3—Preventive detention—Power of Parliament to enact law.

Bearing in mind the provisions of Art. 22 read with Art. 246 and Sch. 7, List I, Entry 9 and List III, Entry

3, it is clear that the Parliament is empowered to enact a law of preventive detention (a) for reasons connected with defence, (b) for reasons connected with foreign affairs, (c) for reasons connected with the security of India, and (under List III), (d) for reasons connected with the security of State, (e) for reasons connected with the maintenance of public order, or (f) for reasons connected with the maintenance of supplies and services essential to the community. A. K. Gopalan v. State of Madras, 1950 Mad W N (Cri) 127 : (1950) 2 Mad L J 42 : 63 Mad L W 638 : 1950 S C J 174 : 51 Cri L J 1383 : 1950 S C R 88 : AIR 1950 S C 27 (42, 121, 122) (Pt Z1) (Prs 26, 244, 245).

12 (d). Conformity to law.

——Art. 22 (5)—Curtailment of freedom of person.

The same act may, at the same time, warrant restriction being placed on two freedoms, namely one, freedom of the right of expression and the other the liberty of the person. However liberty of a person is a much wider thing than freedom of expression. And if what is sought to be curtailed is the liberty of the detenu as distinguished from his freedom of expression the detenu cannot complain against the order of detention on the ground that to the extent that he published secretly unauthorised objectionable news sheets action should have been taken against him under the Press Emergency Powers Act 1931, and not under the Preventive Detention Act, 1950. **53 Bom L R 127 : 52 Cri L J 418 : ILR (1951) Bom 546 : A I R 1951 Bom 33 (41, 45) (Pt F) (Prs 15, 24) (DB).**

——Art. 22 (4)—Detention under Preventive Detention Act for period beyond life of Act—Validity. See Public Safety—Preventive Detention Act (1950), S. 1 (3)). **AIR 1955 Cal 374 (DB).**

——Art. 22— Failure by advisory board to submit report within period prescribed by S. 10, Preventive Detention Act—Consequent omission by Government to pass orders under S. 11 of that Act — Detenu's right to be released. See Public Safety — Preventive Detention Act (1950), S. 10. **AIR 1953 Sau 63 (DB).**

——Art. 22 – Report of advisory Board not submitted to Government within 10 weeks prescribed by S. 10, Preventive Detention Act (1950)—Validity of further detention. See Public Safety — Preventive Detention Act (1950), S. 10 (1). **AIR 1953 Sau 51.**

12 (e). Criminal prosecution, if a bar to preventive detention.

——Art. 22—Scope—Action can be taken under S. 3, Preventive Detention Act (1950) even in respect of matter as to which criminal prosecution can be launched. See Public Safety — Preventive Detention Act (1950), S. 3. **AIR 1957 Cal 74 (DB).**

——Art. 22— Person in jail awaiting trial — Warrant issued against him under S. 3, Preventive Detention Act — Legality of. See Public Safety — Preventive Detention Act (1950), S. 3. **AIR 1950 Hyd 66.**

● ——Art. 22—Person undergoing trial for substantive offence or convicted therefor — Order of detention in respect of — Legality. See Public Safety—Preventive Detention Act (1950), S. 3. **('50) 29 Pat 502 (FB).**

13. Satisfaction of detaining authority.

——Art. 22 — Preventive detention — Satisfaction of detaining authority — Question of maintenance of public order—Grounds must be germane to that question —See Public Safety — Preventive Detention Act (1950), S. 3 (1) (a). **ILR (1956) Bom 715.**

——Art. 22 — Satisfaction of detaining authority — Mistake in describing grounds of detention. See Public Safety — Preventive Detention Act (1950), S. 3. **AIR 1954 Cal 591 (DB).**

——Art. 22— Government exercising discretion under S. 11 (1), Preventive Dentention Act — Opinion and report of Advisory Board, if should be considered — Relevancy of opinion and report — Secrecy of report. See Public Safety — Preventive Detention Act (1950), S. 11. **1958 Cr L J 1047 : AIR 1958 Mad 425 (DB).**

——Art. 22 — Satisfaction of detaining authority — Satisfaction is presumed unless rebutted by detenu — Presumption. See Public Safety — Preventive Detention Act (1950), S. 3 (1) (a) (i). **1965 (2) Cri L J 119 : AIR 1965 Punj 270 (DB).**

14. Bona fides of the order of detention.

● ——Art. 22 — Mala fides of order of detention — Relevant consideration. See Public Safety—Preventive Detention Act (1950), S. 3. **AIR 1958 S C 163.**

● ——Art. 22—Mala fides of detaining authority—See Public Safety —Preventive Detention Act (1950), S. 3. **AIR 1956 S C 531.**

——Art. 22—Preventive detention—Bona fides of the order– Order passed during detention for trial under ordinary criminal law —Validity — (Public Safety—Preventive Detention Act (1950), S. 3 (1)).

If the person is convicted and sentenced for alleged offences under the ordinary law the necessity for an order of detention under the Preventive Detention Act ceases to exist, at least until he has served out his sentence. Even an order of detention passed shortly before the expiry of the sentence and in anticipation of the release would not necessarily be wrong. AIR 1958 S C 451 and A I R 1944 Pat 354 Rel. on; A I R 1948 All 281, Disting. I L R (1957) 2 All 42 : 1957 Cr L J 1361 : AIR 1957 All 782 (796) (Pt G) (Pr 30) (DB).

——Art. 22 — Power should not be exercised in bad faith.

The action of the detaining authority should not be ultra vires the law empowering preventive detention. The power should not be exercised in bad faith or in an arbitrary manner or for a collateral purpose but the detaining authority should be honestly satisfied. **1959 Cri L J 160 : (1958) 2 Andh W R 589 : 1958 Mad L J (Cri) 913 : 1958 Andh L T 1136 : AIR 1959 Andh-Pra 73 (75, 76) (Pt A) (Pr 7) (DB).**

——Art. 22 — Public Safety — Preventive Detention Act (1950), S. 9—Mala fides– Detention order during pendency of case against person or immediately after his discharge — Not mala fide. See Public Safety—Preventive Detention Act (1950), S. 9. **A I R 1955 NUC (Cal) 1009.**

——Art. 22 — Detention under S. 3, Preventive Detention Act — Allegation of mala fide — Burden of proof — Order found to be in conformity with the Act and not outside its scope or object — Question of mala fide, whether can arise. See Criminal P. C. (1898), S. 491. **AIR 1960 Guj 43.**

——Art. 22 — Allegation of mala fide detention — Duty of Court. See Ibid, Art. 226. **A I R 1952 Hyd 112 (DB).**

——Art. 22 — Person arrested and detained in police custody for being prosecuted for certain crime — Government subsequently changing its mind to preventively detain him — Detention, if mala fide. See Public Safety—Preventive Detention Act (1950), S. 3. **AIR 1952 Hyd 112 (DB).**

——Art. 22 — Mala fides of authorities. See Public Safety—Preventive Detention Act (1950), S. 3. **1961 Jab L J 522.**

——Art. 22—Bona fides of detention — Relevant factors. See Public Safety — Preventive Detention Act (1950), S. 3. **1958 Cri L J 1047 : AIR 1958 Mad 425 (DB).**

——Art. 22 — Scope—Detenu charged-sheeted in criminal prosecution—Ground of detention not same as offence set out in charge — No question of mala fides. See Public Safety — Preventive Detention Act (1950), S. 10. 1958 Cri L J 1047 : AIR 1958 Mad 425 (DB).

● ——Art. 22—Person undergoing trial for substantive offence or convicted therefor — Order for preventive detention in respect of. See Public Safety — Preventive Detention Act (1950). (1950) I L R 29 Pat 502 (FB).

——Art. 22 — Preventive detention — Bona fides of the order of detention.

Because a man might have been prosecuted under the ordinary criminal law on the basis of allegations put forward as grounds for the detention, his detention under the Preventive Detention Act is not necessarily illegal. It is quite easy to conceive of circumstances in which, even in such a case, the main purpose of the detention is evidently preventive and not punitive. Where the whole gravamen of the grounds of detention are that the detenu is so powerful himself, and is also a close associate of desperados, that it is impossible to procure witnesses to appear against him for the purpose of dealing with him under the ordinary law recourse to the powers of preventive detention by the authorities is not only legitimate, but is the only course which they could adopt for the purpose of restoring a healthier atmosphere in which the ordinary process of law can be exercised properly. A I R 1953 S C 451; 1950 S C J 433, Disting. 56 Punj L R 291 : 1954 Cri L J 1068 : AIR 1954 Punj 154 (156, 157) (Pt B) (Prs 6, 7).

——Art. 22—Mala fide of detention—Burden of proof. See Public Safety — Preventive Detention Act (1950), S. 7. AIR 1952 Raj 171.

15. Advisory board.

——Arts. 22 (4), 226—Power of High Court to grant writ of habeas corpus— (Public Safety — Preventive Detention Act (1950), S. 8).

Neither S. 8 of the Preventive Detention Act, 1950, nor Cl. (4) (a) of Art. 22 constitutes the Advisory Board a Court of law or imposes on it the duty of determining whether a person's detention is legal. All that S. 8 of the Preventive Detention Act does is to constitute a body which, as its name implies, is a purely advisory body whose duty it is to advise the Government whether in its opinion there is sufficient cause for the continued detention of a particular person or persons. Its opinion cannot operate to oust the jurisdiction of the High Court to determine whether the grounds upon which the petitioner was detained satisfied the requirements of the law. The High Court has no concern with the proceedings of the Advisory Board The fact that the Constitution has provided an Advisory Board for advising on cases of preventive detention does not mean that the right of the High Court to grant a writ of habeas corpus in cases where the initial arrest in the opinion of the High Court was illegal or improper has been taken away. AIR 1953 Raj 177, Rel. on. 1954 All L J 6 : 1954 All W R (H C) 34 : 1954 Cri L J 685 : I L R (1954) 2 All 230 : A I R 1954 All 315 (315, 316) (Pt A) (Prs 5, 10) (DB).

——Art. 22 (7) (c)—Advisory Board does not exercise functions of Court — Its duty is to report about sufficiency of cause for detention — See Public Safety — Preventive Detention Act (1950), S. 10. A I R 1965 Punj 270 (DB).

16. Procedure before advisory board.

——Art. 22 — Object of Advisory Board's report — Communication of Board's report to detenu more than three months after his arrest — Effect of — See Public Safety—Preventive Detention Act (1950), S. 10. AIR 1956 All 589.

——Art. 22 (5) — Scope — Refusal of the Advisory Board to call records of cases required by detenu — There is no infringement either of Art. 22 (5) or of S. 10 of the Preventive Detention Act (1950).

Article 22 (5) provides for a constitutional right to be told as to why a person has been detained. Section 10 of the Preventive Detention Act makes a procedural provision for the Advisory Board to call for such information as it may deem necessary from the appropriate Government or from any person or from the detenu concerned. It is the Board's discretion to call for such further particulars as it may deem necessary in a given case. There is no infringement of either Art. 22 (5) of the Constitution or of S. 10 of the Preventive Detention Act, by reason of the Board's refusal to accede to the request of the detenu to call for the record. 1962 Cri L J 311 : ILR (1961) 1 Cal 276 : AIR 1962 Cal 162 (163, 164) (Pt A) (Pr 5) (DB).

——Art. 22—Report of Advisory Board whether judgment—Opinion of Board—Whether should be backed by report. See Public Safety — Preventive Detention Act (1950), S. 10. 1958 Cri L J 1047 : A I R 1958 Mad 425 (DB).

——Art. 22 (4) — Confirmation of detention must be within three months from the date of detention. See Public Safety—Preventive Detention Act (1950), S 11. 1959 Cri L J 63 : AIR 1959 Mys 7 (DB).

——Art. 22 (4)— Procedure before advisory board — Detenu desiring opportunity of being personally heard —Such opportunity not given—Effect of. See Public Safety—Preventive Detention Act (1950), S. 10. A I R 1955 NUC (Raj) 4639 (DB).

17. Advisory board — Qualification of members.

——Arts. 22 (4) (a) and 165 (1) — Qualifications for appointments under—Age limit, if one such qualification.

The qualifications for appointment as a High Court Judge as contemplated by Art 22 (4) (a) and Art 165 (1) of the Constitution refer only to those qualifications described in Art. 217 (2) and do not refer to the age limit fixed in Art. 217 (1). The age limit is not one of the qualifications. 17 Cut L T 366 : AIR 1952 Orissa 60 (61) (Pt B) (Pr 6) (DB).

18. Clause (7) (a) and (b)—"Any law".

——Art. 22—Scope.

The words employed in Art. 22 (7) are not 'a law in force' or 'an existing law' but only 'any law'. Prima facie, it could not therefore refer to 'a law in force' or 'existing law' but to 'a law'. Art. 22, if read carefully, only indicates that it was intended to apply to a prospective legislation. 52 Cri L J 170 : A I R 1951 Mad 1015 (1040) (Pt J) (Pr 63) (DB).

——Arts. 22 (7), 373 — Power of Parliament and President under.

The Parliament's power under Art. 22 (7) (a) and (b) can only relate to detentions made under any law enacted in pursuance and in conformity with the provisions of Art. 22 (4). Neither the Parliament nor the President acting under Art. 373 can therefore prescribe what it is empowered to do under Art. 22 (7) (a) and (b), in respect of the detentions made under a law in force prior to commencement of the Constitution. 52 Cri L J 170 : AIR 1951 Mad 1015 (1041) (Pt K) (Pr 64) (DB).

19. Maximum period of detention.

● ——Art. 22 — Power of Parliament to prescribe minimum period for a class of cases taken as a whole. See Public Safety — Preventive Detention (Amendment) Act (1952), S. 3. AIR 1952 S C 324.

● —Art. 22 (7) — Power under Art. 22 (7) — Limitation upon.

It cannot be said that once the power given under clause (7) to fix a maximum period has been exercised the power exhausts itself and cannot be exercised again in respect of the same detention. No such limitation is imposed upon Parliament by the Constitution. Shamrao v. Dist. Magistrate, Thana, 1952 S C J 476 : 52 Cri LJ 1503 : 1952 SCR 683 : 54 Bom L R 877 : (1952) S C A 635 : AIR 1952 S C 324 (328) (Pt F) (Pr 22).

● — Art. 22 (7) — Scope—Article, whether confers fundamental right.

Per Mahajan J. — If the Parliament by law under Art. 22 (7) prescribed a maximum period for which any person may be detained under any law providing for preventive detention, then that period does not become a part of the fundamental right conferred on a person under Part III of the Constitution. Article 22 in clause 7 does not confer a fundamental right on a person; on the other hand, in its true concept, it restricts to a certain degree the measure of the fundamental right contained in clause 4 (a) of the Article.

Per Bose J. — The provisions of cls. 4 (a), 4 (b) and 7 (b) of Art. 22 confer a fundamental right not to be detained beyond a certain period. The extent of that period can vary but the maximum period of detention cannot exceed certain fixed limits. Those limits are [a] in the first instance, three months : if not, (b) the maximum prescribed by Parliament under sub-cl. 7 (b). No law can be made authorizing detention either under sub-cl. 4 (a) or 4 (b) [b] unless a maximum period of detention is prescribed by Parliament under sub-cl. 7 (b). Krishnan v. State of Madras, 1951 S C J 453 : (1951) 2 Mad L J 105 : 52 Cri L J 1103 : 64 Mad L W 945: 1951 S C R 621: AIR 1951 S C 301 (307, 308) (Pt E) (Prs 24, 38).

● — Art. 22 (7)—Scope—Does not confer legislative power—Period of detention prescribed by it can be altered by Parliament.

Per Mahajan J. — The ambit of the legislative powers of the Parliament is contained in Art. 245 of the Constitution read with the entries in Sch. 7. Article 22 of the Constitution restricts those powers to a certain extent. It does not enlarge them. Clause 7, however, cuts down these restrictions to a certain extent. Parliament having power to make the law has also the power to alter or amend it, if it so chooses. It cannot, therefore, be argued that the Parliament has no authority to alter the period of one year prescribed under Art. 22 (7) (b) as the section does not confer any legislative power on Parliament. Krishnan v. State of Madras, 1951 S C J 453 : (1951) 2 Mad L J 105 : 52 Cri L J 1103 : 64 Mad L W 945 : 1951 S C R 621 : AIR 1951 S C 301 (307) (Pt F) (Pr 25).

——Art. 22 — C. P. and Berar Public Safety Act (62 of 1948), S. 2 (1) (a) — Implied provision in section conferring power to detain for an indefinite period —Validity of. See Public Safety — C. P. and Berar Public Safety Act (62 of 1948), S. 2 (1) (a). AIR 1950 Nag 203 (DB).

20. Detention beyond three months without obtaining opinion of advisory board.

● — Art. 22 (7)—'Such detention'—If refers to preventive detention or to period of detention—S. 11 (1), Preventive Detention Act—Validity of—See Public Safety—Preventive Detention Act (1950), S. 11 (1). 1958 Cri L J 283 : AIR 1958 S C 163.

● — Art. 22 (4) (a)—Detention order not specifying definite period of detention — Omission is not material rendering order invalid See Public Safety—Preventive Detention Act (1950), S. 12. AIR 1952 SC 350.

● —Art. 22 (7) (a)—'And'—Meaning—Words and Phrases.

(Majority view, Bose J., dissenting)—Sub-clause (a) of cl. 7 of Art. 22 being an enabling provision, the word 'and' should be understood in a disjunctive sense: AIR 1950 S C 27, Rel. on. Krishnan v. State of Madras, 1951 S C J 453 : (1951) 2 Mad L J 105 : 52 Cri L J 1103 : 64 Mad L W 945 : 1951 S C R 621 : AIR 1951 S C 301 (303) (Pt B) (Pr 10).

● —Art. 22 (4) (a)—"Such detention".

Per Fazl Ali J. — The words "such detention" occurring at the end of cl. (4) (a) of Art. 22 mean detention for a period of longer than three months.

Per Patanjali Sastri J. Contra — The words "such detention" in sub-cl. (a) refer back to the preventive detention mentioned in cl. (4) and not to detention for a longer period than three months. A. K. Gopalan v. State of Madras, (1950) 2 Mad L J 42 : 63 Mad L W 638 : 1950 S C J 174 : 51 Cri L J 1383 : 1950 S C R 88 : 1950 Mad W N (Cri) 127 : AIR 1950 S C 27 (61, 76) (Pt Ze) (Prs 80, 120).

● —Art. 22, cls. (4) (a) and (7)—Cl. (7) whether is exception to cl. (4) (a).

Per Kania C. J. and Patanjali Sastri J.:—An attempt to correlate cl. (4) (a) and cl. 7 (a) as a rule and an exception respectively is opposed both to the language and the structure of those clauses. They are two alternatives provided by the Constitution for making laws on preventive detention. A. K. Gopalan v. State of Madras, (1950) 2 Mad L J 42 : 63 Mad L W 638 : 1950 S C J 174 : 51 Cri L J 1383 : 1950 S C R 88 : 1950 Mad W N (Cri) 127 : AIR 1950 S C 27 (42, 63, 77) (Pt Zf) (Prs 25, 83, 124).

● —Art. 22 (7)—Interpretation of.

Per Kania C. J. — In the case of an Act of preventive detention passed by the Parliament, cl. (7) of Art. 22 contained in the Chapter on Fundamental Rights. permits detention beyond a period of three months and excludes the necessity of consulting an Advisory Board, if the opening words of the sub-clause are complied with. Sub-clause (b) is permissive. It is not obligatory on the Parliament to prescribe any maximum period. A. K. Gopalan v. State of Madras, (1950) 2 Mad L J 42 : 63 Mad L W 638 : 1950 S C J 174 : 51 Cri L J 1383 : 1950 S C R 88 : 1950 Mad W N (Cri) 127 : AIR 1950 S C 27 (42) (Pt Zg) (Pr 25).

● —Art. 22 (7) — Interpretation of—Real purpose and intention.

Per Mahajan J. — The real purpose of cl. (7) of Art. 22 is to provide for a contingency where compulsory requirement of an Advisory Board may defeat the object of the law of preventive detention. This clause is incorporated in the Constitution to meet abnormal and exceptional cases, the cases being of a kind where an Advisory Board could not be taken into confidence. The authority to make such drastic legislation was entrusted to the supreme legislature but with the further safeguard that it can only enact a law of such a drastic nature provided it prescribed the circumstances under which such power had to be used or in the alternative it prescribed the classes of cases or stated a determinable group of cases in which this could be done. The intention was to lay down some objective standard for the guidance of the detaining authority on the basis of which without consultation of an Advisory Board detention could be ordered beyond the period of three months. A. K. Gopalan v. State of Madras, (1950) 2 Mad L J 42 : 63 Mad L W 638 : 1950 S C J 174 : 51 Cri L J 1383 : 1950 S C R 88 : 1950 Mad

W N (Cri) 127 : A I R 1950 S C 27: (85) (Pt Zh) (Pr 143).

● —Art. 22 (7) (a) — "The circumstances under which and the class or classes in which" — Sub-clause, whether is conjunctive or disjunctive.

Per Kania C. J., Patanjali Sastri and Das JJ.—The use of the word "which" twice in the first part of sub-cl. (a) of cl. (7) read with the comma put after each, shows that the legislature wanted these to be read as disjunctive and not conjunctive. By cl. (7) (a) of Art. 22, as worded, the legislature intended that the power of preventive detention beyond three months may be exercised either if the circumstances in which or the class or classes of cases in which, a person is suspected or apprehended to be doing the objectionable things mentioned in the section.

Per Fazl Ali and Mahajan JJ. Contra — The provision clearly means that both the circumstances and the class or classes of cases (which are two different expressions with different meanings and connotations and cannot be regarded as synonymous) should be prescribed, and prescription of one without prescribing the other will not be enough. A K. Gopalan v. State of Madras, 1950 Mad W N (Cri) 127 : (1950) 2 Mad L J 42 : 63 Mad L W 638 : 1950 S C J 174 : 51 Cri L J 1383 : 1950 S C R 88 : A I R 1950 S C 27 (44, 63, 79, 86, 123) (Pt Zi) (Prs 34, 84, 126, 144, 248).

● —Art. 22 (7) (a) — Parliament may prescribe either the circumstances or the classes of cases or both —Preventive Detention Act (1950), S. 12 (1).

Per Patanjali Sastri and Das JJ. — Article 22 (7) (a) means that Parliament may prescribe either the circumstances or the classes of cases or both, and in enacting S. 12, Preventive Detention Act, 1950, Parliament evidently regarded the matters mentioned in cls. (a) and (b) of sub-s. (1) of that section as sufficiently indicative both of the circumstances under which and the classes in which a person could be detained for the longer period. To say, for instance, that persons who are likely to act prejudicially to the defence of India may be detained beyond three months is at once to "prescribe a class of persons in which and the circumstances under which" a person may be detained for the longer period. In other words, the classification itself may be such as to amount to a sufficient description of the circumstances for purposes of cl (7).

Per B. K. Mukherjea J.—Sub-clause (a) of Art. 22(7) lays down a purely enabling provision and Parliament, if it so chooses, may pass any legislation in terms of the same. Where an optional power is conferred on certain authority to perform two separate acts, ordinarily it would not be obligatory upon it to perform both; it may do either if it so likes. Here the classes have been specified and the classes apparently are composed of persons who are detained for the purpose of preventing them from committing certain apprehended acts. It is extremely doubtful whether the clauses themselves could be described as 'circumstances' as they purport to have been done in the section. A. K. Gopalan v. State of Madras, 1950 Mad W N (Cri) 127 : (1950) 2 Mad L J 42 : 63 Mad L W 638 : 1950 S C J 174 : 51 Cri L J 1383 : 1950 SCJ 88: A I R 1950 SC 27 (79, 104, 123) (Pt Zj) (Prs 126, 201, 248).

● —Art. 22 (7) (a) — Circumstances and class or classes — Meaning of — Preventive Detention Act (1950), S. 12 (1).

Circumstances ordinarily mean events or situation extraneous to the actions of the individual concerned, while a class of cases means determinable groups based on the actions of the individuals with a common aim or idea. Determinable may be according to the nature of the object also. The classification can be by grouping the activities of people or by specifying the objectives to be attained or avoided. A. K. Gopalan v. State of Madras, 1950 Mad W N (Cri) 127: (1950) 2 Mad L J 42 : 63 Mad L W 638 : 1950 S C J 174 : 51 Cri L J 1383 : 1950 S C R 88 : A I R 1950 S C 27 (45, 78, 86, 104) (Pt Zk) (Prs 35, 125, 145, 199).

—Art. 22 — Power of executive to decide time of detention — Obtaining opinion of Advisory Board on specific question whether detention for more than 3 months was necessary in particular case, is not necessary. AIR 1955 NUC (Madh B) 3100 (DB).

— Art. 22—Detention beyond three months—Meaning of. See Ibid, Art. 21. AIR 1953 Sau 51.

21. President's powers.

● —Arts. 22, 359, 358, 14, 21, 226 and 32 — Interpretation of Art. 359—Article is capable of only one construction — Scope of Art. 358 compared with that of Art. 359 — Effect of Presidential Order — Right to move High Court under Art. 226 falls within mischief of Art. 359 (1) — Nature of proceedings that are barred by Presidential Order under Art. 359 (1) —"Any Court" in Art. 359 (1), means any Court of competent jurisdiction — Vires of Defence of India Act and Rules on ground of violation of fundamental rights in issue in proceedings under S. 491 (1) (b), Criminal P. C. — Proceedings fall within mischief of Art. 359 (1) and the Presidential Order — Validity of Defence of India Act and Rules thereunder cannot be questioned on ground of violation of fundamental rights under Arts. 14, 21 and 22, for period of operation of Presidential Order under Art. 359. 1963 All W R (HC) 559, Overruled. See Ibid, Art. 359 (1). AIR 1964 SC 381.

● —Arts. 22, 359(1), 226—Detention under Defence of India Act and Rules— Presidential Order suspending enforcement of fundamental rights under Arts. 14, 21 and 22 during operation of order — Detention can be challenged on grounds of infringement of rights other than those specified in the order — Defence of India Act (1962), S. 3 (2) (15) (i) — Defence of India Rules (1962), R. 30 (1) (b) — Criminal P. C. (1898), S. 491 (1) (b). See Ibid, Art. 359 (1). AIR 1964 S C 381.

● —Arts. 22, 359 (1), 14, 21 — Presidential Order suspending enforcement of right under Arts. 14, 21 and 22 during period of emergency — By indirectly validating laws in infringement of Arts. 14, 21 and 22, the Order does not become a fraud on powers under Art. 359. See Ibid, Art. 359 (1). A I R 1964 S C 381.

● —Arts. 22, 359 (1), 32 — President ordering suspension of right to move Court for enforcing rights under Arts. 21 and 22 — Effect of the order — Person detained under R. 30 of Defence of India Rules — Petition to Supreme Court under Art. 32 for issue of writ of habeas corpus— Petitioner held had no locus standi to enforce the right — Defence of India Rules (1962), R. 30. See Ibid, Art. 359 (1). A I R 1964 S C 173.

—Art. 22 (4), (5) and (7)—Presidential order under Art. 389 in force — Application under S. 491, Criminal P. C., challenging validity of detention on the ground that the law, namely Defence of India Ordinance, Act and the Rules are ultra vires of the Constitution — Maintainability. ('63) 1963 All W R (HC) 559.

[Overruled in AIR 1964 S C 381.]

● — Arts. 22 (7) and 373 — Preventive Detention Extension of Duration Order (1950) passed by President in exercise of power under Art. 22 (7) (a) and Art. 373 — Whether revived Bengal Crimi-

nal Law Amendment Act, 1930 and West Bengal Security Ordinance, 1949 which had become void under Art 13 (1) on 25-1-1950 — See Public Safety — Preventive Detention (Extension of Duration) Order (1950). 51 Cri L J 1110: AIR 1950 Cal 274 (SB).

——Art. 22—Government can detain person for more than three months only after getting the opinion of the Advisory Board. It has nowhere been laid down that opinion of the Board on a specific question whether the detenu should be detained for more than three months is to be obtained. If the Board sees the detenu's case and confirms the order of detention, then the executive Government is empowered to keep the detenu in detention for any period not exceeding one year. It is within province of the executive to decide for which time the detenu is to be detained. The Advisory Board has nothing to do with the question. Madh B L J 1954 H C R 1195.

——Arts. 22 (7), 373 — Powers of President under Art. 373 — Extent of.

The powers conferred by Art. 373 on the President are not wider than those conferred on Parliament by cl. (7) of Art. 22 of the Constitution and, therefore, he cannot order the continuance of the detention of a person even in a case which is not covered by that clause. 51 Cri L J 1372: 1951 Nag L J 1: AIR 1950 Nag 203 (207) (Pt C) (Prs 18, 19) (DB).

——Art. 22—C. P. and Berar Public Safety Act (62 of 1948), S. 2 (1) (a) — Order of detention under—Effect of President C. O. 8. dated 26-1-1950 on the order of detention — Section, whether amounts to 'any law' so that the President has power to prescribe the circumstances under which period of detention may extend beyond 3 months without obtaining opinion of Advisory Board. See Public Safety—C. P. and Berar Public Safety Act (62 of 1948), S. 2 (1) (a), AIR 1950 Nag 203 (DB).

● ——Art. 22 — Detention under Orissa Maintenance of Public Order Act (4 of 1948 as amended in 1949) —Continuation of, after law in Ss. 2, 3 and 4 of Act became void after Constitution came into force—Whether can be justified under Preventive Detention (Extension of Duration) Order (1950). See ibid, Art. 13. AIR 1950 Orissa 157 (FB).

——Art. 22 (7)—Scope.

Article 22 (7) merely entitles the President to specify circumstances define classes in which a person may be detained under any pre-existing law for preventive detention. but without those limitations imposed by Art. 22 (4). It does not authorise making a new detention law that can stand by itself. 51 Cri L J 1081 : I L R 29 Pat 335 : AIR 1950 Pat 265 (271) (Pt F) (Pr 29) (DB).

——Art. 22—Bihar Maintenance of Public Order Act (3 of 1950), becoming void under Art. 13 (1) — Power of President to render the Act valid under Art. 22 (7) read with Art. 373 or by means of adaptations contemplated under Art. 372. See Public Safety — Bihar Maintenance of Public Order Act (3 of 1950). AIR 1950 Pat 265 (DB).

22. Clause (5)—General.

● ——Art. 22 (5)—'Communicate the grounds'—Communication, meaning of — Communication means bringing home to detenu effective knowledge of facts —Detenu under S. 3 (1) (a) (ii) of the Preventive Detention Act, 1950 not knowing enough English to understand grounds served upon him — In such case grounds should be in a language which he can understand. Harikisan v. State of Maharashtra, 1962 All W R (H C) 429 : 1962 All Cr R 248 : (1962) 2 S C A 233 : 64 Bom L R 522 : 1962 Nag L J 583 : 1962 M P L J 1015 : 1962 (1) Cr L J 797: (1963) 2 S C J 352 : (1963) 2 Mad L J (SC) 82 : 1963 Mad L J (Cri) 461 : (1963) 2 Andh W R (S C) 82 : 1962 Supp (2) S C R 918 : 1962 M P L J 1015 : 1963 Mad W N 16 : AIR 1962 S C 911 (913, 914) (Prs 7, 8).

● ——Art. 22 (5)—Public Safety — Preventive Detention Act (1950), S. 3—Right of detenu to be furnished with facts — Limitations — Satisfaction of appropriate authority — Grounds of satisfaction — Rights conferred by Art. 22 (5) of Constitution—Public Safety. See Public Safety — Preventive Detention Act (1950), S. 3. AIR 1958 S C 163.

——Art. 22 (5) — Power of State Government to revoke or modify under S. 13 order of detention—Does not include power to modify grounds under S. 7. See Public Safety — Preventive Detention Act (1950), S. 3. ILR (1961) 1 All 427.

——Art. 22 (5)—Non-compliance of—Effect.

Order of detention passed by District Magistrate under S. 3 (2), Preventive Detention Act—Grounds of detention supplied to detenu by District Magistrate superseded by those supplied by State Government — No evidence to show that District Magistrate had signified his assent to modified grounds supplied by State—No affidavit by State that detention was necessary on modified grounds supplied by it — Held, in the facts and circumstances that there was clear violation of the constitutional guarantee under Art. 22 (5) vitiating the final order of detention. ILR (1961) 1 All 427.

——Arts. 22 (1) and 22 (5) — Decisions under Art. 22 (5)—Use of, under Art. 22 (1)—(Precedent).

Decisions of Courts under clause (5) of Art. 22 will be of much assistance in interpreting cl. (1) of Art. 22. 1956 Cr L J 13 : I L R (1956) 2 All 527 : AIR 1956 All 56 (59) (Pt B) (Pr 19) (DB).

——Art. 22 — Refusal by Advisory Board to call for records required by detenu — There is no infringement of Art. 22 (5). 1962 (1) Cri L J 311 : AIR 1962 Cal 162 (163, 164) (Pt A) (Pr 5) (DB).

——Art. 22 (5) — Scope of, indicated — Non-compliance, when amounts to infringement of fundamental rights, stated — (Public Safety—Preventive Detention Act (1950), S. 11). A I R 1955 N U C (Cal) 1009 (DB).

23. "Grounds on which the order has been made."

● ——Art. 22 (5) — Communication of grounds of detention—Sufficiency.

(Per Kania C. J., Patanjali Sastri and Das JJ.—Mahajan and Bose JJ., dissenting.)

To hold that Art. 22 (5) requires that, wherever detention is grounded on alleged prejudicial speeches the detaining authority should indicate to the person detained the passages which it regards as objectionable, would rob the provisions of the Act of much of their usefulness in the very class of cases where those provisions were doubtless primarily intended to be used and where their use would be most legitimate. Where, therefore, an order of detention is based upon speeches made by the person sought to be detained, the detaining authority need not communicate to the person the offending passages or even the gist of such passages on pain of having the order quashed if it did not. If the time and place at which the speeches were alleged to have been made are specified and their general nature and effect (being such as to excite disaffection between Hindu and Muslims) is also stated these constitute sufficient particulars to enable the person to make his representation to the authority concerned, and the requirements of Art. 22 (5) are complied with.

Per Mahajan J. — The sufficiency of the material supplied is a justiciable issue though the sufficiency of the grounds on which the detaining authority made up its mind is not a justiciable issue. In the absence of any indication in the grounds as to the nature of the words used by the detenu in his speeches from which an inference has been drawn against him, he would not be able fully to exercise his fundamental right of making a representation and would not be able to furnish a proper defence to the charge made against him; Case No. 22 of 1950, Rel. on.

Per Bose J.—On the facts and circumstances of the present cases, the grounds supplied were insufficient and the gist of the offending passages should have been supplied. The omission to do so invalidates the detention. Ram Singh v. State of Delhi, 1951 All L J (S C) 111 : 1951 Mad W N 765 : 1951 Mad W N (Cri) 233 : 1951 S C R 451 : 1951 S C J 374 : 52 Cr L J 904 : AIR 1951 S C 270 : (273, 274 275, 277) (Pt B) (Prs 9, 10, 18, 33).

——Art. 22 (5), (6) — Good grounds mixed up with bad grounds. See Ibid, Art. 21. AIR 1954 All 315 (DB).

——Art. 22—Grounds disclosed under—Essentials of —Grounds as evidence of satisfaction under S. 3— See Public Safety — Preventive Detention Act (1950), S. 7 (1). AIR 1956 Bom 490.

——Art. 22 (5) — Scope — Non-compliance —Detention order — Failure to give sufficient particulars— Detention, if legal — Subsequent amplification or improvement by further and better particulars—If cures defect and legalises order of detention. See Preventive Detention Act, S. 7. AIR 1951 Bom 268 (DB).

——Art. 22 (5) and (6) — Construction and relative scope — Duty of detaining authority—Discretion of detaining authority — Power of Court to examine — Grounds on which exercise can be challenged.

Article 22 of the Constitution which deals with preventive detention confers upon the subject certain rights and privileges which are fundamental in their character and the observance of which is obligatory upon the Legislatures of the country. A preventive detention cannot be justified or supported if there has been a violation of any of the safeguards provided by Art. 22, one of the most important of which is contained in sub-cl. (5) of the Article. The true position, on a reading of sub-cls. (5) and (6) of Art. 22, is that sub-cl. (6) refers to that limited class of facts which the detaining authority is not under an obligation to disclose, i. e., where in the opinion of the detaining authority it is against the public interest to disclose the facts and under that sub-clause it is entirely for the detaining authority to decide whether a certain fact is or is not against public interest. The exercise of discretion under that clause may be challenged on the ground that the discretion has been exercised arbitrarily, capriciously or mala fide; but if the discretion is exercised properly, it is not for the Court to sit in judgment on an opinion formed by the detaining authority that certain facts are not in the public interest to disclose. But subject to that it is incumbent upon the detaining authority under Art. 22 (5) to disclose all facts which would enable the detenu to make a representation against the order which has been passed depriving him of his liberty, and it would be for the Court to determine whether the facts disclosed are sufficient or not sufficient to give the detenu the necessary opportunity to make the representation under sub-cl. (5). This is also the position under S. 7 (1) and (2) of the Preventive Detention Act, which has been passed in conformity with Art. 22 of the Constitution. A I R 1948 Bom 334; AIR 1949 Bom 319, Ref. I L R (1951) Bom 92 : 52 Cri L J 437 : 52 Bom L R 794 : A I R 1951 Bom 252 (253, 254, 255) (Prs 3, 4, 5) (DB).

——Art. 22 (5) — Scope — Right of person arrested and detained — Sufficiency of grounds or facts to be disclosed. See Preventive Detention Act, Ss. 3 and 7. AIR 1951 Bom 33 (DB).

——Arts. 22 (5), 246 — "Grounds" — Meaning of — Conflict between Act of Legislature and Constitution.

Where there is a conflict between an Act of a Legislature, which is enacted by it under a particular power given to it by Constitution, and the Constitution itself, then the words of the Constitution must prevail. 53 Bom L R 127 : 52 Cri L J 418 : I L R (1951) Bom 546 : A I R 1951 Bom 33 (36) (Pt H) (Pr 4) (DB).

——Art. 22 (5) — Object of—Vagueness of ground — Test—Scrutiny by Court—Permissibility.

Article 22 (5) of the Constitution enjoins upon the detaining authority the duty to communicate to the detenu, as soon as may be, the grounds on which the order has been made and the detaining authority should afford him the earliest opportunity of making a representation against the order. The object of this constitutional safeguard appears to be this that the grounds must be such as to enable the detenu to make what has been called an "effective representation". Vagueness of grounds therefore is not an abstract notion but is always to be examined by the test whether the grounds permit the detenu to make an effective representation or not. While the sufficiency of the grounds in the sense whether the same could give satisfaction to the Government is not a matter for examination by the Courts, the sufficiency of grounds in the sense of enabling a detenu to make an effective representation can be examined by the Courts. A I R 1951 Cal 194 and A I R 1951 S C 174, Referred to. 56 C W N 42 : 1952 Cri L J 204 : I L R (1953) 1 Cal 89 : A I R 1952 Cal 26 (28, 29) (Pt A) (Prs 7, 8, 9) (DB).

——Art. 22 — Detention without furnishing grounds — Validity—Preventive Detention Act, 1950, S. 7.

Under Art. 22 of the Constitution and S. 7 of the Preventive Detention Act a detenu is entitled at the earliest possible opportunity to know the grounds of his detention. If there is any detention without furnishing of grounds to the person concerned such detention is not lawful. 52 Cri L J 502 : I L R (1951) Hyd 187 : AIR 1951 Hyd 79 (1) (79) (Pr 2) (DB).

——Art. 22 (5) — Scope — Failure to communicate grounds of detention to detenu — Effect on legality of detention.

Authorities directing detention of persons should have regard to the conditions attached to the exercise of the power of detention, e. g., that the persons detained must be informed as soon as may be of the grounds for their liberty being curtailed. These conditions have to be fulfilled before the arrested persons can be allowed to remain under arrest. Section 7 of the Preventive Detention Act also contains a similar provision. Since curtailment of personal liberty is subjected to certain conditions, such conditions must be complied with both in letter and in spirit in order to continue the detention. Non-compliance with the conditions, i. e., failure to communicate the grounds to the detenu renders the detention illegal. AIR 1950 Mad 162; AIR 1950 E P 222, Ref. A I R 1950 Hyd 68 (69) (Pt A) (Pr 2).

——Art. 22 (5)—Scope—Compliance—"Grounds" of detention — Order under S. 3, Preventive Detention Act, reciting grounds as to security of State and maintenance of public order—Grounds served recit-

ing only maintenance of public order — If amounts to withholding some grounds for detention.

The expression "the maintenance of public order" is comprehensive enough to include "the security of the State" as used in S. 3 of the Preventive Detention Act. Grounds relating to the maintenance of public order are not therefore necessarily different from the grounds relating to the security of the State. Whether an order of detention stated that the detenu had to be detained "with a view to prevent him from acting in a manner prejudicial to the security of the State and maintenance of public order," but the grounds served on the detenu and communicated to him disclosed only grounds concerning the maintenance of public order, it cannot be said that the grounds relating to the security of the State have been withheld from him and therefore that Art. 22 (5) of the Constitution has not been complied with. When the grounds served do not show or suggest that there were other grounds which led to the passing of the order of detention, the detention cannot be challenged as invalid because some grounds have been withheld from him contrary to Art. 22 (5) of the Constitution in that all the grounds have not been served on or communicated to the detenu. **1952 Cri L J 543 : A I R 1951 Pat 439 (2) (441, 443) (Pt B) (Prs 4, 12) (DB).**

——Art. 22 (5) and (6) — Scope — "Grounds" and "facts"—Distinction—Court's power to scrutinise or examine.

Under Art. 22 (5) of the Constitution the grounds on which an order of detention is made against a person have to be communicated to the detenu as soon as may be so as to afford the detenu an opportunity of making a representation against the order. Article 22 (6) makes a restriction in this respect and says that the detaining authority need not disclose facts which that authority considers to be against the public interest to disclose. A distinction is clearly drawn between grounds and facts. The grounds are the basis of the allegations, and the facts are the evidence on which the basis of the allegations are to be established. The "grounds" are based on and arise out of the "facts". The Court is concerned only with such facts as have been disclosed and on which the grounds are based, in order to find whether there has been any failure to comply with the mandatory provisions of Art. 22 (5), or whether the order is mala fide or whether it is bad for any other reason. AIR 1951 Cal 194, Ref. **30 Pat 630 : 52 Cri L J 406 : AIR 1951 Pat 47 (54) (Pts F & G) (Pr 20) (DB).**

——Art. 22—Detention ordered by District Magistrate — Detention later on extended by State Government — Detenu's right to fresh grounds on which order of Government is based. See Public Safety — Preventive Detention Act (1950), S. 3. **A I R 1951 Punj 119 (DB).**

——Art. 22 (5)—Formulation of grounds — Duty of detaining authority.

It is the duty of the detaining authority to formulate the statement of grounds, against the detenu in a precise and concise manner. The grounds furnished to the detenu should consistently with the privilege not to disclose facts which are not desirable to disclose in public interest, be as full and adequate as the circumstances permit, and a departure from this desideratum would amount to a violation of Art. 22(5) of the Constitution which must entail the quashing the order of detention. **1958 Cri L J 962 : 1958 Raj L W 247: I L R (1958) 8 Raj 386 : AIR 1958 Raj 158 (161) (Pt C) (Pr 11) (DB).**

——Art. 22—Grounds of detention—Particulars of—If should be furnished—Right of detenu to ask for further particulars. See Public Safety—Preventive Detention Act (1950), S. 7. **AIR 1952 Raj 171.**

24. Vagueness of grounds.

(a) Effect of, on validity of detention.

24. Vagueness of grounds.

● **——Art. 22**—Scope—Vagueness of grounds—What amounts to - Particulars of events—If to be definitely stated. See Public Safety — Preventive Detention Act (1950), S. 7. **1959 Cri L J 1501 : AIR 1959 S C 1335.**

● **——Art. 22 (6)**—Public Safety — Preventive Detention Act (1950), S. 3—Right of detenu to be furnished with facts—Limitations—Satisfaction of appropriate authority — Grounds of satisfaction — Question of satisfaction whether justiciable and when — Rights conferred by Art. 22 (5) of Constitution. See Public Safety — Preventive Detention Act (1950), S. 3. **AIR 1958 S C 163.**

● **——Art. 22 (5)**—Grounds of detention—Vagueness of grounds. See Public Safety—Preventive Detention Act (1950), S. 7. **AIR 1956 S C 531.**

● **——Art. 22 (5) — Vagueness of grounds — (Public Safety - Preventive Detention Act (1950), S. 7).**

A layman who is not experienced in the interpretation of documents, can hardly be expected without legal aid, which is denied to him, to interpret the grounds in the proper sense. It is therefore, up to the detaining authority to make his meaning clear beyond doubt, without leaving the person detained to his own resource for interpreting them. Otherwise such grounds would be regarded as vague so as to render it difficult, if not impossible, for the petitioner to make an adequate representation. Ramkrishan Bhardwaj v. State of Delhi, **(1953) S C J 444 : 1953 Cri L J 1241 : 1953 All W R (Supp) 66 : 1953 S C R 708 : 1953 S C A 604: AIR 1953 S C 318 (320) (Pt A) (Pr 4).**

● **——Arts. 22 (5), 21—One of several grounds vague —Effect—(Public Safety—Preventive Detention Act (1950), S. 7).**

Preventive detention is a serious invasion of personal liberty and such meagre safeguards as the Constitution has provided against the improper exercise of the power must be jealously watched and enforced by the Court.

A petitioner has the right, under Art. 22 (5), to be furnished with particulars of the grounds of his detention sufficient to enable him to make a representation which on being considered may give relief to him. This constitutional requirement must be satisfied with respect to each of the grounds communicated to the person detained, subject of course to a claim of privilege under Cl. (6) of Art. 22. Where it has not been done in regard to one of the grounds mentioned in the statement of grounds, the petitioner's detention cannot be held to be in accordance with the procedure established by law within the meaning of Art. 21 and he is, therefore, entitled to be released. A I R 1951 S C 157, Rel. on. Ram Krishan Bhardwaj v. State of Delhi, (1953) S C J 444 : 1953 Cri L J 1241 : 1953 All W R (Supp) 66 : 1953 S C R 708 : 1953 S C A 604 : AIR 1953 S C 318 (320) (Pt B) (Pr 5).

● **——Art. 22 (5)—Information conveyed to detenu—Nature of—Public Safety—Preventive Detention Act (4 of 1950), S. 7.**

If the representation to be made by detenu contemplated by Art. 22 (5) has to be intelligible to meet the charges contained in the grounds, the information conveyed to the detained person must be sufficient to

attain that object. Without getting information sufficient to make a representation against the order of detention it is not possible for the man to make the representation. Indeed the right will be only illusory but not a real right at all. The right to receive the grounds is independent but it is thus intentionally bound up and connected with the right to make the representation. State of Bombay v. Atma Ram, 52 Cri L J 373 : 1951 S C J 208 : (1951) 1 Mad L J 389 : 53 Bom L R 437: 1951 S C R 167: 1951 All L J (SC) 36 : 1951 Mad W N 532 : 1951 Mad W N (Cri) 148 : AIR 1951 S C 157 (161, 162) (Pt C) (Prs 7, 8).

——Art. 22 (5) – Vague grounds. See Public Safety—Preventive Detention Act (1950), S. 7. A I R 1954 All 315 (DB).

——Art. 22 — Grounds of detention — Must be communicated with sufficient clarity and precision, as early as possible. (1958) 2 Andh W R 589 : 1958 Mad L J (Cri) 913 : 1958 Andh L T 1136 : 1959 Cri L J 160 : A I R 1959 Andh Pra 73 (75, 76) (Pt A) (Pr 7) (DB).

——Art. 22 (5) — Preventive Detention Act (1950), S. 7 — Constitution of India, Art. 22 (5) — Grounds of detention — Insufficiency of particulars — Detenu has right to obtain further details. See Public Safety — Preventive Detention Act (1950), S. 7. 1963 (2) Cri L J 499 : AIR 1963 Cal 589 (DB).

——Art. 22 (5)—Vagueness of grounds — (Preventive Detention Act (1950), S. 7).

Held, that even singly, far more so collectively, the grounds were conclusions drawn from the available facts showing that suspected activities of the detained persons fell within the category of prejudicial acts affecting the maintenance of supplies essential to the community. Moreover, though not all the 'grounds' were equally full, even in the case of the grounds' with the least details, they were capable of being intelligently understood and were sufficiently definite to furnish materials to enable the detained persons to make a representation against the respective orders of detention. The only answer of the detenus to the grounds being to deny them, the grounds were not necessarily vague on that account only. Case-law discussed. 1954 Cri L J 1722 : A I R 1954 Cal 591 (599) (Pt I) (Pr 22) (DB).

——Art. 22—Vagueness—How determined.

Vagueness of grounds is not an abstract notion but is always to be examined by the test whether the grounds permit the detenu to make an effective representation. 56 Cal W N 42 : 1952 Cri L J 204 : I L R (1953) 1 Cal 89 : A I R 1952 Cal 26 (28, 29) (Pt A) (Prs 7, 8, 9) (DB).

——Art. 22 — Question whether grounds are vague—Test to determine. See Criminal P. C. (1898), S. 491. AIR 1960 Guj 43.

——Art. 22 (5) — Vagueness of grounds. See Public Safety — Preventive Detention Act (1950), S. 7. AIR 1953 Hyd 277 (DB).

● ——Art. 22—Grounds of detention — Statements in — Vagueness—Test. See Public Safety — Preventive Detention Act (1950), S. 7. A I R 1951 Hyd 162 (FB).

——Art. 22 — Vagueness of grounds. See Public Safety—Preventive Detention Act (1950), S. 7. 1961 Jab L J 522.

——Art. 22 (5), (6)—Basis of grounds—Disclosing of — Public Safety — Preventive Detention Act 1950, S. 7.

Though if the grounds of detention are very vague and indefinite so as to render the object of furnishing the grounds nugatory the order may be set aside, the detaining authority is under no obligation to disclose to the detenu the basis of the allegation, i. e., the particulars of the allegations on which the detention is made. It is not correct to say that what clause (6) of Art. 22 entitles the detaining authority is only to refrain from disclosing the detenu the evidence of the allegations. Grounds of detention cannot be said to be vague and indefinite for the reason that they do not contain the basis of those grounds. (1951) 1 M L J 274 : 64 Mad L W 311 : 1951 Mad W N 248 : 1951 Mad W N (Cri) 76 : 52 Cri L J 688 : A I R 1951 Mad 182 (184, 185) (Pt A) (Prs 8, 13) (DB).

——Art. 22 (5), (6) — Grounds — Vagueness—Public interest — Proof of — (Public Safety — Preventive Detention Act (1950), S. 11).

Clauses (5) and (6) of Art. 22 if read together make it obligatory on the Government to disclose all the grounds on which the order has been made though not all the facts constituting such grounds.

Where the State takes recourse under Cl. (6) of Art. 22, it must prove that the authority concerned was satisfied that it was not in public interest to disclose facts upon which the grounds for detention were based. I L R (1957) Mys 374 : 1958 Mad L J (Cri) 670 : 1959 Cri L J 63 : 36 Mys L J 424 : A I R 1959 Mys 7 (11) (Pt B) (Pr 19) (DB).

——Art. 22 (5)—Infringement of fundamental rights —Grounds of detention supplied to the detenu.

There can be no infringement of any fundamental right of a detenu petitioner or the contravention of any constitutional provision if he has been supplied with sufficient particulars as soon as he raised the objection that the grounds supplied are vague.

Merely because a ground is vague it cannot be considered that it is no ground at all and therefore not sufficient to satisfy the authorities, and a vague ground does not stand on the same footing as an irrelevant ground, which can have no connection at all with the satisfaction of the Government. I L R (1951) Mys 455 : 1952 Cri L J 1526 : A I R 1952 Mys 85 (86) (Pt A) (Pr 4) (DB).

——Art. 22 (5)—Grounds of detention — Vagueness of—Preventive Detention Act 1950, S. 3.

The grounds on which the officer passes the order for detention within the meaning of S. 3, Preventive Detention Act, 1950 should necessarily mean the detailed facts on which a prosecution in a criminal Court may be launched. It is not necessary to mention in the grounds the particulars in the same way as they are mentioned in a charge of a criminal offence.

Where in a case of detention for instigating in collaboration with a notorious outlaw, the landless labourers to loot foodgrains the grounds served upon the detenu clearly mentioned the places at which the disturbances have taken place and also the period when they took place, the mere fact that the exact date and hour and the part played by the detenu in each of the occurrences were not set out in detail will not render the grounds vague. 1952 Cri L J 543 : AIR 1951 Pat 439 (2) (441) (Pt C) (Pr 5) (DB).

——Art. 22 (5) — Vagueness of grounds. See Public Safety — Preventive Detention Act (1950), S. 7 (1). 1965 (2) Cri L J 119 : AIR 1965 Punj 270 (DB).

——Art. 22—Scope—Vagueness—Test—Government unable to make disclosure on ground of public interest—Detention—If valid—(Public Safety—Preventive Detention Act (1950), S. 3).

The question as to whether the grounds furnished are vague or not is ultimately a question that has to be determined on a consideration of the circum-

stances of each case. Even if there is a challenge on the ground of vagueness owing to the absence of certain particulars and facts which according to the Government could not be disclosed on the ground of public interest, the order of detention will still be valid in certain circumstances. It is for the Government to decide to what extent information could be supplied consistent with considerations of public interest. ('60) 62 Punj L R 257.

——Art. 22 (5)—Sufficiency of grounds — Vagueness —See Public Safety—Preventive Detention Act (1950), S. 7. AIR 1954 Punj 154.

——Art. 22 (5)—Grounds of detention—Vagueness.

A detenu has the right, under Art. 22 (5) to be furnished with particulars of the grounds of his detention sufficient to enable him to make a representation which on being considered may give relief to him.

The ground that all murderers and all badmashes not only of the Punjab but from Pepsu and Rajasthan meet at the 'place of detenu' and that he and members of his party are 'schemers' and do no cultivation themselves, is much too vague a ground and does not comply with the fundamental right which is given to the detenu under Art. 22 (5) of the Constitution. AIR 1953 S C 318, Rel. on. A I R 1951 S C 157, Disting. 1954 Cri L J 940 : AIR 1954 Punj 133 (133) (Pr 5) (DB).

——Art. 22 (5) — Vagueness of grounds — Effect — Right of detenu.

It is open to the petitioners to have applied for further particulars in case they had any real grievance that the grounds applied to them were not precise enough to enable them to make an effective representation. A I R 1951 S C 157, Foll. 1958 Cri L J 962 : 1958 Raj L W 247 : ILR (1958) 8 Raj 386 : AIR 1958 Raj 158 (160) (Pt A) (Pr 8) (DB).

——Art. 22 (5)—Vagueness of grounds—Test.

No hard and fast rule can be laid down to determine the vagueness or otherwise of the grounds, supplied to the person detained, and each case will have to be decided on its own facts and circumstances. 1958 Cri L J 962 : 1958 Raj L W 247 : ILR (1958) 8 Raj 386 : A I R 1958 Raj 158 (160) (Pt B) (Pr 9) (DB).

24 (a). Effect of, on validity of detention.

● ——Art. 22—One of several grounds vague—Effect on validity of detention—Detention cannot be upheld as it would not be in accordance with procedure established by law. Dr. Ram Krishan v. State of Delhi, 1953 S C J 444 : 1953 Cri L J 1241 : 1953 S C A 604 : 1953 All W R (Sup) 66 : 1953 S C R 708 : AIR 1953 S C 318 (320) (Pt B) (Pr 5).

● ——Art. 22 (5) and Preventive Detention Act (4 of 1950), S. 3 — Vague grounds — Effect on validity of detention — Supplemental grounds — Serving of—If and when affects validity of detention.

"Vague" grounds do not stand on the same footing as "irrelevant grounds". An irrelevant ground has no connection at all with the satisfaction of the Provincial Government which makes the order of detention. For the reasons stated in State of Bombay v. Atma Ram Sridhar, (A I R 1951 S C 157) the contention that if the grounds are vague and no representation is possible there can be no satisfaction of the authorities as required by Section 3 of the Preventive Detention Act cannot be accepted. This argument mixes up two objects. The sufficiency of the grounds, which gives rise to the satisfaction of the Provincial Government is not a matter for examination by the Court. The sufficiency of the grounds to give the detained person the earliest opportunity to make a representation can be examined by the Court, but only from that point of view. The contention that the quality and characteristic of the grounds should be the same for both sets cannot be accepted. On the question of satisfaction, one person may be but another may not be satisfied on the same grounds. That aspect, however, is not for the determination of the Court, having regard to the words used in the Act. The second part of the enquiry is clearly open to the Court under Art. 22 (5).

A description of the contents of a second communication by the Government to the detained person, as "supplementary grounds" does not necessarily make them additional or new grounds. One has to look at the contents to find out whether they are new grounds as explained in State of Bombay v. Atma Ram Sridhar, (A I R 1951 S C 157). When they only furnish details of the grounds of detention already supplied, they cannot be treated as fresh or new grounds. It is not proper to consider the true effect of the communication only by reading its opening words. The whole of it must be read and considered together. Tarapada De v. The State of West Bengal, (1951) S C J 233 : 1951 Mad W N 549 : 1951 Mad W N (Cri) 165 : 52 Cri L J 400 : 5 A I Cr D 467 : 1951 All L J (SC) 70 : (1951) 1 M L J 431 : AIR 1951 S C 174 (176) (Pt C) (Pr 8).

——Art. 22 (5) — Notice under S. 7, Preventive Detention Act containing grounds and other facts — Vagueness in facts - Effect on validity of notice. See Public Safety—Preventive Detention Act (1950), S. 7. 1957 Cri L J 1361 : A I R 1957 All 782 (DB).

——Art. 22 (5)—Scope — Vagueness of the ground—If contravention of Art. 22 (5).

Where one or more of a number of grounds are found to be vague, the provisions of cl. (5) of Art. 22 of the Constitution of India cannot be said to have been complied with. 60 Cal W N 464 : 1957 Cri L J 172 : ILR (1957) 2 Cal 463 : A I R 1957 Cal 74 (76) (Pt C) (Pr 12) (DB).

——Art. 22 (5)—Order of detention—Validity—One of grounds stated vague. See Preventive Detention Act, S. 3. 1952 Cri L J 204 : A I R 1952 Cal 26 (DB).

——Art. 22—Preventive detention—Grounds vague—No disclosure of grounds in public interests — Rights of detenu—Detention held invalid. See Public Safety —Preventive Detention Act (1950), S. 3. I L R (1965) Guj 644.

——Arts. 22, 21—Grounds of detention — Vagueness — One of the grounds vague — Detention held illegal —(Public Safety — Preventive Detention Act (1950), S. 7). See Ibid, Art. 21. A I R 1955 J & K 38.

——Art. 22 (5) — One of grounds of detention vague would infringe constitutional safeguard provided in Art. 22 (5). A I R 1955 N U C (Madh B) 3100 (DB).

——Art. 22 (5) — Public Safety — Preventive Detention Act (1950), S. 7 — Insufficient and vague grounds — Violation of safeguards under Art. 22 (5).

The Court can scrutinise the grounds to see whether they are sufficiently explicit to enable the detenu to make a representation or not. If the grounds do not fulfil that condition, it would amount to the violation of the safeguard under Art. 22 (5) of the Constitution. Where the grounds supplied to the detenu are so vague as to make the detention order void, the detenu deserves to be released. A I R 1952 S C 350; A I R 1951 S C 157; A I R 1953 S C 318, Rel. on ; A I R 1952 Pat 374, Disting. 1956 Cri L J 86 : A I R 1956 Pat 1 (4) (Pt E) (Pr 12) (DB).

——Arts. 22 (5) and 226 — Vague grounds of detention, effect — (Criminal P. C. (1898), S. 491) — (Preventive Detention Act (1950), S. 3).

All the grounds supplied to the petitioner must be clear and specific and even if one of them does not satisfy this condition the right of representation guaranteed to the detenu under Art. 22 (5) of the Constitution is affected and consequently the order of detention is illegal. **1953 Cri L J 1838 : I L R (1953) Patiala 423 : A I R 1953 Pepsu 207 (208) (Pr 4).**

——Art. 22 (5)—Public Safety—Preventive Detention Act (1950), S. 7—Grounds supplied vague — There is breach of Article — Detention becomes illegal. **A I R 1955 N U C (Punj) 5712 (DB).**

——Art. 22 (5) — Vagueness of grounds — (Public Safety—Preventive Detention Act (1950), S. 3).

Where the grounds are so vague that the detenu cannot make an effective representation he has a right to approach the Court and complain that there has been an infringement of his fundamental right, and even if the infringement of the second part of the right under Art. 22 (5) is established, he is bound to be released by the Court. **A I R 1951 S C 157, Foll. 1953 R L W 343 : 1953 Cri L J 1424 : ILR (1950) 3 Raj 63 : A I R 1953 Raj 177 (178) (Pr 4) (DB).**

25. Grounds of detention — Consideration by Court.

● **——Art. 22** — Satisfaction of the detaining authority—Whether can be challenged in Court of law—If so on what grounds. See Public Safety — Preventive Detention Act (1950), S. 3. **A I R 1958 S C 163.**

● **——Art. 22—Justiciability of sufficiency of particulars.**

The sufficiency of the particulars conveyed to a detenu in accordance with the provision embodied in Art. 22 (5) of the Constitution is a justiciable issue, the test being whether they are sufficient to enable the detenu to make an effective representation. Shibban Lal Saksena v. State of Uttar Pradesh, **(1954) 1 Mad L J 143 : 1954 S C J 73 : 1954 All L J 48 : 1954 Cri L J 456 : 1954 B L J R 113 1954 S C A 53 : 1954 S C R 418 : 1954 Andh L J (W) H C 20 : A I R 1954 S C 179 (180) (Pt A) (Pr 7).**

● **——Art. 22 — Sufficiency of grounds — Examination by Court.**

The sufficiency of the grounds which gives rise to the satisfaction of the Provincial Government is not a matter for examination by the Court. The sufficiency of the grounds to give the detained person the earliest opportunity to make a representation can be examined by the Court only from that point of view. The contention that the quality and characteristic of the ground should be the same for both sets cannot be accepted. On the question of satisfaction one person may be but another may not be satisfied on the same grounds. That aspect however is not for the determination of the Court having regard to words used in Preventive Detention Act. The second part of the enquiry is clearly open to the Court under Art. 22 (5). Tarapada De v. State of West Bengal, **52 Cri L J 400 : 1951 S C J 233 : (1951) 1 Mad L J 431 : 1951 S C R 212 : 1951 All L J (SC) 70 : 1951 Mad W N 549 : 1951 Mad W N (Cri) 165 : A I R 1951 S C 174 (177) (Pt C) (Pr 8).**

● **——Art. 22 (5) and (6) and Preventive Detention Act (4 of 1950)—Scope and extent of the rights of a person detained in preventive detention—Communication of grounds — Requirements as to — Supplemental communications, if and when valid.**

Preventive detention is not by itself considered an infringement of any of the fundamental rights mentioned in Part III of the Constitution. This is subject to the limitations prescribed in Cl. (5) of Art. 22 of the Constitution. That clause requires two things to be done for the person against whom the order is made. The detained person has to be furnished with "the grounds on which the order has been made" and which has to be done "as soon as may be". He has also to be afforded "the earliest possible opportunity of making a representation against the order". Although both these rights are separate and are to be exercised at different times, they are still connected with each other. While there is a connection between the obligation on the part of the detaining authority to furnish grounds and the right given to the detained person to have the earliest opportunity to make the representation, the test to be applied in respect of the contents of the grounds for the two purposes is quite different. For the first the test is whether it is sufficient to satisfy the authority and for the second, whether it is sufficient to enable the detained person to make the representation at the earliest opportunity. The two rights cannot be treated as one indivisible right. The two rights are connected by the word "and". Furthermore the use of the words "as soon as may be" with the obligation to furnish the grounds of the order of detention, and the fixing of another time limit, viz., "the earliest opportunity for making the representation" makes the two rights distinct. The second right as it is right of objection, has to depend first on the service of the grounds on which the conclusion (i.e.) satisfaction of the Government about the necessity of making the order is based. To that extent and that extent alone, the two are connected. But when grounds which have rational connection with the ends mentioned in S. 3 of the Preventive Detention Act are supplied, the first condition is satisfied. If the grounds are not sufficient to enable the person detained to make a representation he can rely on his second right and if he likes he may ask for particulars which will enable him to make the representation. On an infringement of these two rights the detained person has a right to approach the Court and complain that there has been an infringement of his fundamental right and even if the infringement of the second part of the right under Art. 22 (5) is established he is bound to be released by the Court. To treat these two rights mentioned in Art. 22 (5) as one is neither proper according to the language used nor according to the purpose for which the rights are given. By reason of the fact that Cl. (5) of Art. 22 forms part of Part III of the Constitution its provisions have the same force and sanctity as any other provision relating to fundamental rights.

Apart from the duties mentioned above there exists no express provision contemplating a second communication from the detaining authority to the person detained. While the authorities must discharge the duty in furnishing the grounds for the order of detention "as soon as may be" and also provide "the earliest opportunity to the detained person to make the representation", the number of communications from the detaining authority to the detenu may be one or more and they may be made at intervals, provided the two parts of the aforesaid duty are discharged in accordance with the working of Cl. (5). So long as the later communications do not make a new ground, their contents are no infringement of the two procedural rights of the detenu mentioned in the clause. They may consist of a narration of facts or particulars relating to the grounds already supplied. But in doing so, the time factor in respect of the second duty, viz., to give the detained person the earliest opportunity to make a representation, cannot be overlooked.

While the Constitution gives the Government the privilege of not disclosing in public interest facts

which it considers undesirable to disclose, by the words used in Art. 22 (5) there is a clear obligation to convey to the detained person materials (and the disclosure of which is not necessary to be withheld) which will enable him to make a representation.

From the fact that Cl. (6) of Art. 22 gives a right to the authorities to withhold facts which they consider not desirable to be disclosed in the public interest, it does not follow that what is not stated or considered to be withheld on that ground must be disclosed and if not disclosed, there is a breach of a fundamental right.

There is nothing in Art. 22 (5) to warrant the view that the grounds on which the order of detention has been made must be such that, when communicated to the person detained, they are found by a Court of law to be sufficient to enable him to make what the Court considers to be an adequate representation. The combined effect of Cls. (5) and (6) of Art. 22 is to require the detaining authority, to communicate to the person affected only such particulars as that authority and not a Court of law considers sufficient to enable the said person to make a representation. It cannot be said that Cl. (5) deals with two distinct and independent matters. The collocation in the same clause of the right to be informed of the grounds of detention and the right to make a representation indicate that the grounds communicated are to form the basis of the representation and, indeed, are intended mainly, if not solely, for that purpose. To suggest that apart from those grounds any right of making a representation imports by necessary implication a further obligation to give such details and particulars as would render that right effective is not to construe the clause in its natural meaning but to stretch it by the process of implication so as to square with one's preconceived notions of justice and fairplay. It is not the province of the Court to examine the sufficiency of the grounds for the purpose of making a representation a matter left entirely to the discretion of the executive authority.

While Cl. (5) does not allow the authority after making the order of detention and communicating the grounds of such order, to put forward fresh grounds in justification of that order, there is nothing in that clause to preclude the authority furnishing particulars or details relating to the grounds originally communicated, or the person under detention availing himself of such particulars and making a better or a further representation.

Per Das J.—There is no doubt some correlation between the two parts of Art. 22 (5). To say that Cl. (5) itself indicates that the grounds must be such as will enable the detenu to make a representation is to read into Cl. (5) something which is not there. If the sufficiency of the grounds of detention is not justiciable at the initial stage when the order is made, it is wholly illogical to say that the intention of the Constitution is to make the sufficiency of the same grounds justiciable as soon as they are communicated to the detenu.

On a plain reading of Cl. (5) there is no justification for assuming that a second communication of particulars is contemplated either under the first part or under the second part of Cl. (5). This does not, however, mean that the authority may not supply particulars either suo motu or on the application of detenu. Clause (5) imposes no constitutional obligation on the authority to supply particulars so as to remove the vagueness of the grounds or to enable the detenu to make a representation and non-supply of further particulars does not constitute an infraction of any fundamental right State of Bombay v. Atma Ram Sridhar Vaidya, **(1951) S C J 208 : 1951 S C R 167 : 1951 Mad W N 532 : 1951 Mad W N (Cri) 148 52 Bom L R 437 : 52 Cr L J 373 : 1951 A L J 36 : (1951) 1 M L J 389: A I R 1951 S C 157 (161, 162, 163, 164, 165) (Pts B, C, D) (Prs 7, 8, 12, 15, 18).**

——Art. 22 — Detention under Preventive Detention Act — Allegation as to non-existence of grounds— Opportunity to be heard — Re agitation of matter before High Court—Absence of provision — Remedy. See Ibid, Art. 226. **AIR 1956 All 589.**

——Art. 22—Grounds of detention — Sufficiency of— Power of Court to go into—Actions committed outside jurisdiction of authority — Preventive and punitive detention—Distinction. See Public Safety — Preventive Detention Act (1950), S. 7. **A I R 1958 All 589.**

——Art. 22—Gronnds of detention—Examination by Court—Court whether can consider their sufficiency for giving satisfaction.

The Courts can examine the grounds disclosed by the Government to see if they are relevant. If the relevancy is placed beyond doubt the sufficiency of the grounds which give rise to the satisfaction of the detaining authority is not a matter for examination by Court. **(1958) 2 Andh W R 589 : 1958 Mad L J (Cri) 913 : 1958 Andh L T 1136 : 1959 Cri L J 160 AIR 1959 Andh Pra 73 (76, 77) (Pt B) (Pr 8) (DB).**

——Art. 22—Preventive Detention Act (1950)— Duty of Court — Principles to be applied in construing grounds of detention—See Public Safety— Preventive Detention Act (1950), S. 1. **ILR (1956) Bom 715.**

——Art. 22—Order under — Duty of Court — Considerations of—Security of State — How far material— See Public Safety — Preventive Detention Act (1950), S. 3. **AIR 1956 Bom 490.**

——Art. 22 — Grounds of detention supplied to detenu — Facts disclosed in — Court is entitled to determine whether they are sufficient or not sufficient to give detenu necessary opportunity to make representation against order of detention. **52 Bom L B 794 : ILR (1951) Bom 92 : 52 Cr L J 437 : AIR 1951 Bom 252 (253 to 255) (Prs 3, 4, 5) (DB).**

——Art. 22 — Examination of grounds — Powers of Court—Limitation on.

While the sufficiency of the grounds in the sense whether the same could give satisfaction to the government is not a matter for examination by Courts, their sufficiency in the sense of enabling a detenu to make an effective representation can be examined by the Court. **56 Cal W N 42 : 1952 Cri L J 204 : ILR (1953) 1 Cal 89 : AIR 1952 Cal 26 (28, 29) (Pt A) (Prs 7, 8, 9) (DB).**

——Art. 22—Criminal P. C. (1898), S. 491 — Order of detention under S. 3 of Preventive Detention Act (1950) — Satisfaction of detaining authority — Order whether mala fide — Truth of facts — Vagueness of grounds — Powers of High Court to question — See Criminal P. C. (1898), S. 491. **AIR 1960 Guj 43.**

——Art. 22—Detention under Preventive Detention Act — Sufficiency of material to arrive at conclusion that detenu is likely to indulge in prejudicial activities — Question is solely for detaining authority — Correctness of statement of past activities is not justiciable—See Public Safety — Preventive Detention Act (1950). **AIR 1952 Hyd 112 (DB).**

●**——Art. 22** — Correctness of statement relating to past conduct in grounds of detention — Whether justiciable—See Public Safety — Preventive Detention Act (1950), S. 3. **AIR 1951 Hyd 162 (FB).**

●**——Art. 22 (5)— Delay in supplying grounds of detention — It justiciable.**

Delay in supplying the grounds of detention to the detenu and in affording him opportunity to make representation is justiciable issue in Indian law. The authorities concerned can apprehend prejudicial activities on the part of a detenu from his past conduct, even though such conduct may have been long time ago and he has in the interval been in Jail. When the authorities are apprehensive of such future conduct, their satisfaction is subjective and is not justiciable. But the rights to have the ground and to make representation against it are secured by the Constitution and the obligations of 'as soon as may be' and 'earliest opportunity' in each are cast on the authority concerned. Enquiry about the limitations is therefore, an important judicial function. B. Santhamma v. State of Hyderabad, 52 Cri L J 1402: ILR (1951) Hyd 654:AIR 1951 Hyd 128 (129) (Pt A) (Pr 4) (FB).

● **——Art. 22 (5) and (6)—Scope of inquiry—Grounds of detention— Statements made in—Truth or correctness of — If can be challenged or gone into — Power of Court. See Preventive Detention Act, S. 3. 52 Cri L J 1402 : AIR 1951 Hyd 128 (FB).**

——Art. 22 (5) — Sufficiency of particulars conveyed to detenu is justiciable. AIR 1955 N U C (Madh B) 3100 (DB).

——Art. 22 — High Court is precluded from going into the truth or adequacy of the grounds of detention communicated to the detenu. See Preventive Detention Act (1950), S. 3. AIR 1955 N U C (Madh B) 3100 (DB).

——Arts. 22 and 226 — Habeas corpus — Detention under Preventive Detention Act—Factual correctness of ground for detention verified by Advisory Board after hearing petitioner—Matter cannot be investigated by High Court under Art. 226. See Ibid, Art. 226. 1958 Crj L J 1047 : (1958) M L J (Cr) 607 : (1958) 2 M L J 169 : ILR (1958) Mad 692 : 71 Mad L W 328: AIR 1958 Mad 425 (DB).

——Art. 22—Power of Court to scrutinise grounds of detention.

The Court can scrutinise the grounds to see whether they are sufficiently explicit to enable the detenu to make a representation or not. **1956 Cri C J 86 : AIR 1956 Pat 1 (4) (Pt E) (Pr 12) (D B).**

——Art. 22 — Power of Court to consider ground — Extent.

The Court is concerned only with such facts as have been disclosed in order to find whether there has been any failure to comply with the mandatory provisions of Art. 22 (5) or whether the order is mala fide or whether it is bad for any other reason — Distinction between grounds and fact pointed out. **30 Pat 630 : 52 Cri L J 406 : A I R 1951 Pat 47 (55, 56) (Pt G) (Pr 20) (DB).**

——Art. 22—Scope— Preventive detention—Grounds for — Consideration by Court. See Public Safety — Preventive Detention Act (1950), S. 3. AIR 1957 Punj 235 : 1957 Cri L J 1168.

——Art. 22 — Sufficiency of grounds for satisfaction of detaining authority—Court whether has power to enquire into. See Public Safety—Preventive Detention Act (1950), S. 7. AIR 1952 Raj 171.

26. Supplementary grounds.

● **——Art. 22—Description of contents of communication by the Government — Whether amounts to supplementary ground.**

A description of the contents of a communication by the Government to the detained person does not necessarily make them additional or new grounds. One has to look at the contents to find out whether they are new grounds as explained in State of Bombay v. Atma Ram Sridhar, AIR 1951 S C 157. When they only furnish details of the grounds of detention already supplied they cannot be treated as fresh or new grounds. It is not proper to consider the true effect of the communication only by reading its opening words. The whole of it must be read and considered together. Tarapada De v. State of West Bengal, **52 Cri L J 400 : 1951 S C J 233 (1951) 1 Mad L J 431 : 1951 S C R 212 : 1951 All L J (SC) 70 : 1951 Mad W N 549 : 1951 Mad W N (Cri) 165 : AIR 1951 S C 174 (176) (Pt B) (Pr 7).**

● **——Art. 22 (5)—Supplementary grounds—Connotation of — When do they infringe right given by Art. 22 (5)— Public Safety — Preventive Detention Act (4 of 1950), S. 7.**

The adjective "supplementary" in the words "supplementary grounds" is capable of covering cases of adding new grounds to the original grounds, as also giving particulars of the facts which are already mentioned or of giving facts in addition to the facts mentioned in the grounds to lead to the conclusion of fact contained in the ground originally furnished. If by "supplementary grounds" is meant additional grounds, i. e., conclusions of fact required to bring about the satisfaction of the Government, the furnishing of any such additional grounds at a later stage will amount to an infringement of the first mentioned right in Art. 22 (5) as the grounds for the order of detention must be before the Government before it is satisfied about the necessity for making the order and all such grounds have to be furnished as soon as may be. The other aspects, viz., the second communication (described as supplemental grounds) being only particulars of the facts mentioned or indicated in the grounds firstly supplied or being additional incidents which taken along with the facts mentioned or indicated in the ground already conveyed lead to the same conclusion of the fact, (which is the ground furnished in the first instance) stand on a different footing These are not new grounds within the meaning of the first part of Art. 22 (5). Thus, while the first mentioned type of "additional" grounds cannot be given after the grounds are furnished in the first instance, the other types even if furnished after the grounds are furnished as soon as may be, but provided they are furnished so as not to come in conflict with giving the earliest opportunity to the detained person to make a representation, will not be considered an infringement of either of the rights mentioned in Art. 22 (5).

Having regard to this principle, the summary rejection by a Court of the later communication solely on the ground that all materials in all circumstances must be furnished to the detenu when the grounds are first communicated, is not sound. AIR 1951 Bom 266, **Reversed**, State of Bombay v. Atma Ram, **52 Cri L J 373 : 1951 S C J 208 : (1951) 1 M L J 389 : 53 Bom L R 437 : 1951 S C R 167 : 1951 A L J (S C) 36 : (1951) 21 Bom Cr C 134 : 1951 M W N 532 : 1951 M W N Cr 148 : AIR 1951 S C 157 : (164, 165) (Pt D) (Prs 15, 18).**

——Art. 22—Supply of grounds in several instalments —If permissible — Failure to give sufficient particulars — Subsequent amplification or improvement by further and better particulars — If cures defect and legalises order of detention. See Preventive Detention Act, S. 7. AIR 1951 Bom 266.

27. Grounds on which detention can be ordered.

● **——Art. 22— Scope — Order on the ground of making statements prejudicial to maintenance of public order — Instigation against personal safety of Prime Minister—Whether irrelevant to main object of**

order of detention, namely maintenance of public order. See Public Safety—Preventive Detention Act (1950), S. 3. 1959 Cr L J 1501 : AIR 1959 S C 1335.

● ——Art. 22 (5)— Ground of detention — Rational connection with objects of detention. See Public Safety — Preventive Detention Act (1950), S. 11 (1). 1958 Cr L J 283 : AIR 1958 S C 163.

——Art. 22—Notice under S. 7 of Preventive Detention Act—Satisfaction based on two circumstances—One of them irrelevant—Effect on validity of order. See Public Safety—Preventive Detention Act (1950), S. 7. 1957 Cr L J 1361 : AIR 1957 All 782 (DB).

——Art. 22—Absence of connection between grounds supplied to detenu and preventive order — Right of detenu. See Public Safety — Preventive Detention Act (1950), Ss. 3, 7 and 12. 52 Cri L J 732 : AIR 1950 All 709.

——Art. 22 — Ground on which order for preventive detention is based should be rationally connected with the objects of the Act, viz., Preventive Detention Act—Preaching of violence or incitement thereto is not essential for passing order under S. 3 of that Act — Grounds, whether taken individually or otherwise, not irrelevant to objects of Act—No infringement of Art. 22 (5) is occasioned. (1958) 2 Andh W R 589 : 1958 Mad L J (Cri) 913 : 1958 Andh L J 1136 : 1959 Cri L J 160 : AIR 1959 Andh Pra 73 (75, 76) (Pt A) (Pr 7) (DB).

——Art. 22—Relevant grounds for passing order under S. 3, Preventive Detention Act.

It is not correct to say, that, for coming to the conclusion that the detenu or the organisation to which he belongs is acting or likely to act in a manner prejudicial to the security of the State and the maintenance of public order and pass the order under S. 3, Preventive Detention, Act, the past activities are not at all relevant. The preaching of violence or open incitement thereto is not a sine qua non for an order under S. 3, Preventive Detention Act. (1958) 2 Andh W R 589 : 1958 Mad L J (Cri) 913 : 1958 Andh L T 1136: 1959 Cri L J 160 : AIR 1959 Andh Pra 73 (76, 77) (Pt C) (Pr 8) (DB).

——Art, 22—Grounds — Membership of Communist party which was declared as unlawful under S. 16 which was struck down as void — Declaration also void — Being members of Communist party one of grounds of detention—Detention—Validity. See Public Safety — Preventive Detention Act (1950), S. 9. AIR 1955 NUC (Cal) 1009.

——Art. 22—Some of grounds irrelevant and outside scope of Act—Detention is illegal—Grounds of detentionrand particulars thereof—Distinction. See Public Safety — Preventive Detention Act (1950), S. 9. A I R 1955 NUC (Cal) 1009 (DB).

——Art. 22—Detention under Preventive Detention Act—Past activities of detenu whether can be considered—Prejudicial activities alleged to continue till time of arrest—Fact that activities in remote past were considered, if affects validity. See Public Safety—Preventive Detention Act (1950), S. 3. AIR 1952 Hyd 112 (DB).

——Art. 22 — Membership of Communist party—If sufficient ground for taking action under Preventive Detention Act. See Public Safety— Preventive Detention Act (1950), S. 7. AIR 1952 Hyd 112 (DB).

——Art. 22—Detention under Preventive Detention Act (1950) for investigation of crime — Legality. See Public Safety—Preventive Detention Act (1950), S. 3. AIR 1950 Hyd 68.

——Art. 22—Relevancy of grounds. See Public Safety —Preventive Detention Act (1950), S. 3. 1961 Jab L J 522.

——Art. 22 (5)—Grounds — Being habitual offender —Sufficiency—Public Safety—Preventive Detention Act (1950), S. 11).

Obiter : Per Das Gupta, C. J. — Preventive Detention Act is not meant for the purpose of detaining habitual criminals, as in that case it would really take the place of the Criminal Procedure Code. ILR (1957) Mys 374 : 1958 Mad L J (Cri) 670 : 1959 Cr L J 63 : 36 Mys L J 424 : AIR 1959 Mys 7 (11) (Pt C) (Pr 20) (DB).

——Arts. 22 and 226 — Preventive detention — Grounds of detention — Rational relation between the two necessary—Legality of detention—(Public Safety—Preventive Detention Act (1950), S. 3 (3).)

There must be a rational relation between the detention and the object thereof. Where the grounds on which the detention of the petitioner has been ordered have no rational probative value and are extraneous to the scope or purpose of the object in view as laid down by law, the detenu in such a case has a right to come to Court and attack the order of detention. 1957 Cri L J 100 : 1957 Raj L W 28 : ILR (1956) 6 Raj 821 : AIR 1957 Raj 5 (7) (Pt B) (Prs 12, 13) (DB).

——Art. 22 — Grounds supplied should not be irrelevant—Grounds having no bearing on objects of detention — Effect. See Public Safety—Preventive Detention Act (1950), S. 7. AIR 1952 Raj 171.

28. "As soon as may be".

● ——Art. 22 (5) —"As soon as may be."

Where the State Government had suddenly to deal with a large number of cases of detention under the Preventive Detention Act, 1950, on one day and the detention orders on all the detenus were served on 26-2-1950, it was held that it could not be said that the grounds of detention served on 14-3-50 were not communicated "as soon as may be." Tarapada De v. The State of West Bengal, 52 Cri L J 400: 1951 S C J 233 : (1951) 1 Mad L J 431 : 1951 S C R 212 : 1951 All L J (SC) 70 : 1951 Mad W N 549 : 1951 Mad W N (Cri) 165 : A I R 1951 S C 174 (176) (Pt A) (Pr 5).

——Art. 22 (5)—"As soon as may be" — Supplementary grounds—Preventive Detention Act (1950), S. 7.

The detenus were detained in February 1950 and did not receive the particulars of the grounds served in the middle of March, until towards the end of July 1950. The so-called supplementary grounds or particulars did not state any new grounds for the orders of detention. They were in the nature of particulars of the rather general grounds given earlier. They merely amplified those grounds giving specific instances to support the general statements made earlier.

Held that the detenus had been given the grounds of detention "as soon as may be" and had been given "the earliest opportunity of making representations. AIR 1953 Cal 129 (133) (Pt A) (Pr 23) (DB).

——Art. 22 — Delay in furnishing grounds. See Public Safety — Preventive Detention Act (1950), S. 7. AIR 1953 1953 Hyd 277 (DB).

——Art. 22—Preventive Detention Act— Delay of 14 days in furnishing grounds — Effect of. See Public Safety— See Preventive Detention Act (1950), S. 7. AIR 1952 Hyd 112 (DB).

● ——Art. 22—Grounds of detention—Delay in communication —Question of is one of fact. See Public Safety — Preventive Detention Act (1950), S. 7. AIR 1951 Hyd 162 (FB).

● —Art. 22 (5) —"As soon as may be"—Meaning—Delay in communication of grounds.

The phrase "as soon as may be" in Art. 22 (5) does not exclude reasonable time for formulating the grounds on the material in the possession of the authority. The time must necessarily vary with the activities of the person and the other circumstances of the case. It is, therefore, a question of fact in each case whether there has been delay. AIR 1951 Bom 30 (FB), Rel. on. Santhamma B v. State of Hyderabad, ILR (1951) Hyd 654 : 52 Cri L J 1402 : AIR 1951 Hyd 128 (132) (Pt D) (Pr 14) (FB).

● —Art. 22—Obligation to supply of grounds at earliest opportunity is cast on authorities.

The rights to have the ground and to make representation against it are secured by the Constitution and the obligation of 'as soon as may be' and 'earliest opportunity' in each are cast on the authority concerned. Santhamma B. v. State of Hyderabad, 52 Cri L J 1402 : ILR (1951) Hyd 654 : A I R 1951 Hyd 128 (129) (Pt A) (Pr 4) (FB).

—Art. 22 (5) – 'As soon as may be"—Held delay of of 22 days was not unreasonable in the case. A I R 1951 Pat 439 (2) (442) (Pt E) (Pr 8) (DB).

—Arts. 22 and 226—Habeas corpus—District Magistrate passing order of preventive detention—Grounds of detention drawn more than three weeks thereafter —Legality—(Public Safety—Preventive Detention Act (1950), S. 3 (3) and (4)).

The grounds of preventive detention are required to be prepared soon after the detention if not simultaneously with it or prior thereto and the fact of detention along with grounds thereof has to be reported by the District Magistrate to the State Government, and by the State Government, if it has approved the detention to the Central Government together with the grounds on which the order has been made.

Held on facts that, either the District Magistrate or the State Government had not before them proper material on the basis of which the detention of the petitioner could be ordered or approved.

Held, further that an order of detention under sub-s. (2) of S. 3, Preventive Detention Act, 1950, after twelve days of the making thereof, must spend itself under sub-s. (3) of S. 3 unless in the meantime it has been approved by the State Government. Such approval can only be accorded if the order made has been reported to the State Government. The detention of the petitioner in any case beyond the twelve days of the order of detention was altogether illegal inasmuch as it was impossible for the detaining authorities to have formed any rational opinion about the necessity of the detention. 1957 Cri L J 100 : 1957 Raj L W 28 : I LR (1956) 6 Raj 821: AIR 1957 Raj 5 (6) (Pt A) (Prs 7, 8) (DB).

29. Right to make representation against order of detention.

● —Art. 22 –Right to make representation— Implication from —Grounds supplied not sufficient to enable of exercise of the right—Remedy of detenue—Limitations on, imposed by cl. (6) See Public Safety — Preventive Detention Act (1950), S. 3. AIR 1958 S C 163.

—Art. 22 (5) – Right of detenue detained under Preventive Detention Act (1950) —Order of detention not served or copy thereof not furnished even after request —Communication of grounds alone — Legality of detention —Writ of habeas corpus—Issue of—Right of detenu.

A person who is directed to be detained under the Preventive Detention Act has, under Art. 22 (5) of the Constitution, the right of making a representation against the "order" of detention. To enable him to do that and to seek redress in a Court of law he should necessarily have a copy of that order as without it, it would not be possible for him to say whether the order was passed by a competent authority or whether the order is a valid order. The right of the detenu is not merely to take exception to the grounds or to show that those grounds are not tenable, but also to take exception to the validity of the order, for which the detenu must be put in possession of a copy of the order, especially when he has made a request for it. Refusal to comply with his request for a copy of the order deprives him of his right to object to the validity or the legality of the order, and he thereby gets a right to seek redress in a Court of law under Art. 226 of the Constitution.

The right to move the High Court under Art. 226 can be exercised by the detenu not only after he has been served with a copy of the grounds of the order, but also during the period between the commencement of the detention and the date on which the grounds are communicated to him. When a copy of the order is not furnished to the detenu even after he has requested for it, and only the grounds of detention are served on him three days after his arrest and detention, and there is no legal proof of any order of detention having been passed at all by a competent authority, the detention must be held to be illegal and a writ of habeas corpus will issue for his release. 1951 KLT 34 : ILR (1951) T C 114 : 52 Cr L J 845 : AIR 1951 T C 130 (131, 132) (Prs 8, 9, 10).

30 Clause (6).

● —Art. 22 (5) and (6) — Grounds of detention — Right to be furnished particulars — Withholding of facts in public interest —Discretion.

The right of detenu under Art. 22 (5) to be furnished particulars is subject to the limitation under Art. 22 (6)' whereby disclosure of facts considered to be against public interest, cannot be required.

The duty to consider whether the disclosure of any facts involved therein is against public interest, is vested in the detaining authority, not in any other.

There is no obligation under Art. 22 (5) and (6) to communicate to the detenu the decision not to disclose the facts as well as the ambit of the non-disclosure at the time when the grounds are furnished. The necessity for such a communication would arise only if the detenu asks for particulars. Lawrence Jaochim Joseph D'Souza v. State of Bombay, 1956 S C A 766 : 1956 Cr L J 935 : 1956 S C J 559 : 1956 All W R (Sup) 121 : 58 Bom L R 989 : 1956 S C R 382 : AIR 1956 S C 531 (535) (Pt C) (Pr 5).

—Art. 22 –Evidence Act (1872), S. 123 — "Affairs of State", meaning of—Report relating to individual with a view to take action under Preventive Detention Act is matter relating to affairs of State. See Evidence Act (1872), S. 123. AIR 1960 Assam 210.

—Art. 22 (6)— Privilege of detaining authority to refuse to disclose grounds of detention — Nature and scope of — Bald averment of public interest held not sufficient —Satisfaction of court as to bona fides is necessary. See Public Safety — Preventive Detention Act (1950), S. 7. 58 Bom L R 614 : ILR (1956) Bom 797.

—Art. 22—Detaining authority withholding facts under cl. (6) –Power of court to interfere — Limitations.

Sub-cl. (6) refers to that limited class of facts which the detaining authority is not under an obligation to disclose i. e. where in the opinion of the detaining authority it is against the public interest to disclose the facts and under that sub-clause it is entirely for the detaining authority to decide whether any fact is

or is not against public interest. The discretion under that clause may be challenged on the ground that the discretion has been exercised arbitrarily, capriciously or mala fide; but if the discretion has been exercised properly it is not for the court to sit in judgment on an opinion formed by the detaining authority that certain facts are not in the public interest to disclose. 52 Bom L R 794 : ILR (1951) Bom 92 : 52 Cri L J 437 : AIR 1951 Bom 252 (253, 255) (Prs 3, 4, 5) (DB).

——Art. 22 (5), (6) – Grounds – Vagueness – Public interest – Proof of – (Public Safety — Preventive Detention Act (1950), S. 11). 1958 Mad L J (Cri) 670 : 1959 Cri L J 63 : ILR (1957) Mys 374 : AIR 1959 Mys 7 (11) (Pt B) (Pr 19) (DB).

——Art. 22 (6) – Disclosure of facts – Withholding of facts in public interest – Right vests only in detaining authority. See Public Safety — Preventive Detention Act (1950), S. 7 (2). 1965 (2) Cr L J 119 : AIR 1965 Punj 270 (DB).

——Art. 22 – Disclosure not made on ground of public interest – If affects validity of detention.

Even if there is a challenge on the ground of vagueness owing to absence of certain particulars and facts which according to the Government could not be disclosed on the ground of public interest the order of detention will still be valid in certain circumstances. It is for the Government to decide to what extent information could be supplied consistent with considerations of public interest. ('60) 62 Punj L R 257.

31. Fresh order of detention.

● ——Art 22 — Preventive detention — Former defective order — Power of detaining authority to supersede order and make a fresh order free from defect — Question of bad faith. See Public Safety — Preventive Detention Act (1950), S. 3. AIR 1952 S C 106.

ARTICLE 23

SYNOPSIS

(Constitution of India, Art. 23).

1. Traffic in human beings.
2. Begar or forced labour.
3. Compulsory service for public purposes—Clause (2).

1. Traffic in human beings.

——Arts. 23 and 35 — Suppression of Immoral Traffic in Women and Girls Act — Validity — If offends Art. 19 (1) (g) – (Suppression of Immoral Traffic in Women and Girls Act (1956), Ss. 3 to 10 and 18).

A mere perusal of Ss. 3 to 10 and 18 of the Suppression of Immoral Traffic in Women and Girls Act shows that the acts made punishable under those sections are acts which result in traffic in human beings. Therefore quite apart from all considerations of reasonable restrictions those sections have been validily enacted by Parliament under Arts. 23 and 35 of the Constitution. Even if those provisions to some extent curtailed the fundamental rights of prostitutes to carry on their trade of prostitution those provisions would nonetheless be valid because if there is any conflict between a fundamental right guaranteed under Art. 19 and what is prohibited under Art. 23 the prohibition contained in the latter provision will prevail over the fundamental right guaranteed by the former Article. 1959 All W R (HC) 509 : 1959 All Cr R 427 : AIR 1959 All 57 (62) (Pt C) (Pr 6).

[Overruled on another point in AIR 1964 S C 416].

——Art. 23 – T. P. Act (1882), S. 6 (h) (2) — Transfers for immoral objects — Setting aside — Plea of particeps criminis by defendant — The rule in Ayerst v. Jenkins, (1874) 16 Eq 275 should never be used to violate the express prohibition of the Constitution such as Art. 23 saying that traffic in human beings is prohibited — Lease of house by owner for running brothel — Right of executors and trustees of will of owner to recover back property with aid of Court — Relief, whether can be denied on grounds of public policy. See T. P. Act (1882), S. 6 (h) (2). AIR 1958 Cal 713.

2. Begar or forced labour.

——Art. 23 — U. P. Removal of Social Disabilities Act (14 of 1947) – Validity.

The passing of the U. P. Removal of Social Disabilities Act does not contravene Art. 23 at all.

When a person is prohibited from refusing to render service merely on the ground that the person asking for it belongs to a scheduled caste he is not thereby subjected to forced labour similar in form to begar. 1951 All L J 282 : 1951 All W R (HC) 305 : 52 Cri L J 899 : 1951 All Cri R 59 : AIR 1951 All 615 (617) (Pt F) (Pr 5).

——Art. 23 (1) — Essential Services Maintenance Ordinance (1960) – Constitutional validity — No contravention of Art. 23, Cl. (1) of the Constitution – Constitution of India, Art. 23, Cl. (1) — 'Begar' — Meaning of. See Essential Services Maintenance Ordinance (1960). AIR 1962 Bom 53 (DB).

——Art. 23 — Industrial Disputes Act (1947) — Validity — Act does not infringe Art. 23 of the Constitution. An Industrial Tribunal has no power to impose upon an employee forced labour akin to Traffic in human beings and begar. Therefore the Industrial Disputes Act does not contravene Art. 23. ILR (1958) 2 Cal 525.

——Art. 23 (1) — Forced labour — Extra work agreed to be done by licensed railway porter.

Licensed railway porters entered into a contract for doing extra work for at least two hours a day. They were paid some remuneration for their two hours' labour. Further they got the benefit of a reduced license fee and in addition they were allowed the privilege of free user of the Railway premises for earning their livelihood.

Held, that the porters could not be said to be doing begar or forced labour within the meaning of Art. 23 (1) of the Constitution. AIR 1952 Cal 496 (498, 499) (Pt C) (Prs 10, 11, 13).

——Art. 23 (1) — Begar or forced labour — Enforcement of personal service as per stipulation under contract — Refusal to perform personal service rendering party liable to punishment for offence under law — It amounts to Begar or similar form of forced Labour – It is open to aggrieved party to sue for damages or compensation for breach of contract. (1910) 55 Law Ed. 191, Rel. on. : AIR 1952 Cal 496. Dissent. 1962 Ker L J 1176 : ILR (1961) 2 Ker 645 : 1961 Ker L T 1110 : AIR 1962 Ker 138 (144) (Prs 38, 40).

——Art. 23 – M. B. Civil Service (Classification, Control and Appeal) Rules, 1956 — Withholding of pay by way of punishment — Validity – Such punishment is against the spirit of Art. 23 of the Constitution.

To ask a man to work and then not to pay him any salary or wages savours of Begar which is prohibited in Art. 23. It is a fundamental right of a citizen of India not to be compelled to work without wages. In this view of the matter, the stopping of pay and making the teacher to work is not only against the Rules of 1956 but it also offends against the spirit of Art. 23 of the Constitution. 1960 Jab L J 423 : 1960 M P C 370 : 1960 M P L J 836 : AIR 1960 Madh Pra 303 (304) (Pr 7) (DB).

——Art. 23 (1) — Custom requiring one day's free labour to be given to village headman — Validity —

Money compensation for violation of custom—If can be awarded—Art. 265—Scope.

The custom for each of the house-holders of a village to offer one day's free labour (free in the sense that the labour has to be given without payment of any wages and not in the sense that it is voluntary) to the Headman or Khullakpa of the village for his being Headman and for his first settlement in the village, even if immemorial, will certainly be hit by Art. 23 (1). Even granting that the labour is performed for certain services rendered by the khullakpa, the element of compulsion still exists which compulsion Art. 23 prohibits. The only authority who can compel a citizen to render service is the State as provided in Art. 23 (2). As the custom to perform free labour is void, then no Court of law can give a decree for money compensation if the custom is violated. Only the State can levy a tax on a citizen under Art. 265 and that too by an Act of the legislature. A I R 1956 Manipur 41, Expl and Not foll. **AIR 1961 Manipur 1 (4, 5) (Pt B) (Prs 11, 13, 14, 15, 16).**

——Art. 23 (1) — Begar — Custom in Manipur State according to which villagers render free service to their Chief once in year for service rendered by him—Legality of.

In the Ukhrul sub-division in the hill area of Manipur State, there is a custom according to which in lieu of the onerous duties rendered by the Chiefs (Khulakpas) to secure the well-being and peaceful living in their village, the villagers render free service to the Chiefs for only one day in a year and if any villager did not want to render actual service he is allowed by the custom to pay money compensation.

Held, that such free service for one day in a year or compensation in lieu thereof does not amount to any Begar and the custom does not contravene in any way the provision of Art. 23 (1) of the Constitution. **AIR 1956 Manipur 41 (41) (Pr 7).**

[The case was dissented from in subsequent case, A I R 1961 Manipur 1—Ed.]

——Art. 23 — Punjab Civil Service Rules (1959), Vol. I, R. 3.26 (d) —Validity—Rule does not contravene Art. 23.

The 1959 Rules specifically provide in Rule 3.26 (d), Vol. I, for retention in service in the circumstances mentioned in the rule. When service is continued according to and under the service rules even after the date of compulsory retirement or superannuation, that is not 'begar' or forced labour but service according to the conditions of service as provided in the rules applying to the Government servant. Where the government servant has been retained in service and placed under suspension and the order says that he is entitled to subsistence allowance according to the rules there is no case of 'begar' or forced labour. **AIR 1960 Madh Pra 303 and AIR 1961 Cal 1, Disting. ILR (1962) 2 Punj 642 : AIR 1963 Punj 298 (316) (Pt Z1) (Pr 27) (DB).**

——Art. 23—Compulsory labour is prohibited.

A panchayat cannot force persons to perform labour. And an order to that effect made by sirpanch of a panchayat is clearly against Art. 23 of the Constitution which forbids Begar. **1956 Raj L W 311 : I L R (1956) 6 Raj 797 : A I R 1956 Raj 188 (190) (Pt F) (Pr 10) (DB).**

3. Compulsory service for public purposes—Clause (2).

——Art. 23 — Rule 3.26 (d), Punjab Civil Service Rules (1959) — Validity — Does not contravene Art. 23.

The services to be rendered by the Government servant subsequent to the age of superannuation in view of R. 3.26 (d), is in no sense a service which can be equated with the expression 'begar' or 'forced labour' in Art. 23. The Government servant is not forced to do any work. Assuming that the retention in service of the Government servant, can come within the expression "forced labour", this rule would be valid in view of Art. 23 (2), as such retention will be for public purposes. Partap Singh v. State of Punjab, (1965) 1 S C A 259 : (1966) 1 Lab L J 458 : (1964) 4 S C R 733 : A I R 1964 S C 72 (100) (Pt R) (Pr 70).

——Art. 23 — 'Accept employment' does not mean 'accept recruitment'—Words refer to persons already in employment. See Essential Services Maintenance Ordinance (1960), S. 2 (1) (a). **1962 (1) Cri L J 629 (All).**

——Art. 23 — Scope — Police Act (1861), S. 17—Validity—If contravenes Art. 23 (1).

The kind of forced labour that is contemplated in the constitutional prohibition has to be something in the nature of either traffic in human beings or begar. The conscription for police service or military service under S. 17, Police Act, cannot come under either. Even if such conscription were held to be a form of forced labour within Art. 23 (1), this forced labour is permitted by sub-art. (2) of Art. 23 as a kind of compulsory service for public purposes. **A I R 1958 Cal 365 (372) (Pt E) (Prs 28, 29).**

——Art. 23 (1) —Forced labour — Licensed Railway porters — Agreement to do extra work for railway each day — Extra work not forced labour within Art. 23 (1).

The petitioners, who were licensed porters at a railway station, agreed to do 2 hours extra work for the railway administration, by entering into a contract to that effect. The petitioners were paid some remuneration for their two hours' labour. Further they got the benefit of a reduced license fee and in addition they were allowed the privilege of free user of the railway premises for earning their livelihood.

Held, that in the circumstances, the petitioners could not be said to be doing Begar or forced labour within the meaning of Art. 23 (1).

The very idea that the petitioners had voluntarily agreed to do extra work by entering into a contract to that effect repels the idea of their work being a forced labour.

There was no element of force or illegality in the system of license or in realizing the fees for such licenses.

The railway authorities had the power to regulate the use of the station : (1897) A C 479 ; A I R 1951 Cal 501, Rel. on ; 35 All 136 : A I R 1933 All 891, Disting. **A I R 1952 Cal 496 (498, 499) (Pt C) (Prs 10, 11, 13).**

——Art. 23—Chamba Paid Forced Labour Act (3 of 2004-B) invalid.

Chamba Paid Forced Labour Act was repugnant to the provisions of Art. 23 of the Constitution of India. Conscription for the defence of the country, or for social services, are possible instances of imposition of compulsory service for public purposes under the article. That cannot however be said of imposition of compulsory service for the purpose of carrying a load of Government property by the Tahsildar or any Government servant in normal times. **1953 Cri L J 400 : A I R 1953 Him Pra 18 (18) (Pr 3).**

——Arts. 23, 304 and 19 (1) (g) — Madhya Pradesh Motor Vehicles (Taxation of Passengers) Act, 1959 (M. P. 17 of 1959), S. 3 — The Act is valid — It does not offend Arts. 19, 23 and 304. The duty imposed on the operator of collection of the tax from the passengers and of paying it to the Government cannot be viewed as begar or forced labour within

the meaning of Art. 23. See Ibid, Art. 19 (1) (g). A I R 1962 Madh Pra 108.

——Art. 23 (2) —State law imposing tax on passengers and goods carried by public service motor vehicles—Constitutional validity — Levy and collection of tax through owners of motor vehicles—Reasonableness.

Article 23 (2) makes an exception in favour of the State and enables the State to impose compulsory service for public purposes provided that such an imposition is not vitiated on grounds of discrimination. It is manifest, therefore, that the Legislature is entitled to impose burdens upon citizens in public interest. In the case of a taxing statute, where the Legislature has to levy tax for the purpose of State Revenue, it has to collect the tax through the most convenient and efficient channel. The State will therefore be justified in imposing obligation upon the citizens concerned to assist in the collection of tax. A I R 1963 Pat 16 (19, 20, 21, 22, 23) (Pt A) (Prs 4, 5, 7, 10, 11) (DB).

——Art. 23 — Bihar Finance Act (17 of 1950), Part III—Contravention of fundamental rights.

The provisions of Part III of the Bihar Act do not contravene any of the fundamental rights guaranteed under Arts. 14, 19 and 23. Article 23 (2) clearly makes an exception in favour of the State and enables it to impose compulsory service for public purposes, provided such imposition is not vitiated on grounds of discrimination. The Legislature is therefore, entitled to impose burdens on citizens in the interest of the public. Atma Ram v. State of Bihar, A I R 1952 Pat 359 (365, 366, 367, 368) (Pt E) (Prs 16, 17) (SB).

——Art. 23 — Taxation Law — State Act requiring owners of motor vehicles to keep accounts—Compulsory service—There is nothing savouring of 'begar' or forced labour in requiring the owners of motor vehicles to keep accounts and statements under the Taxation Act. A I R 1955 N U C (Punj) 1887 (DB).

——Art. 23—Punjab Passengers and Goods Taxation Act (16 of 1952), Ss. 3 (3) and 4 — Imposition of compulsory service for public purposes. See Ibid, Art. 226. A I R 1954 Punj 264 (DB).

ARTICLE 25

SYNOPSIS

(Constitution of India, Art. 25.)

1. Scope.
2. Corresponding provisions in American Constitution.
3. Freedom of religion.
   (a) Right to propagate religion.
   (b) Right to enter into a public temple.
4. "Subject to the other provisions of this Part."
5. Power of State to provide for social welfare and social reform.
   (a) Constitutionality of legislative provisions under Article.
6. State regulation—Clause 2 (a).
7. Religious institutions of public character — Clause 2 (b).
8. Explanation I.
9. Explanation II.

1. Scope.

——Arts. 25, 26—Scope—Articles embody principles of religious toleration.

Per Ayyangar, J.: — Articles 25 and 26 embody the principles of religious toleration that has been the characteristic feature of Indian civilization from the start of history, the instances and periods when this feature was absent being merely temporary aberrations. Besides, they serve to emphasize the secular nature of the Indian Democracy which the founding fathers considered should be the very basis of the Constitution. Saifuddin Saheb v. State of Bombay, (1963) 2 S C A 192 : (1963) 2 S C J 519 : 1962 Supp (2) S C R 496 : A I R 1962 S C 853 (871) (Pt B) (Pr 50).

——Arts. 25 and 26—Duties of Mutawalli are purely secular in character and not comparable with rights of Mahant — Validity of S. 55, U. P. Muslim Waqfs Act (1960) cannot be challenged under Arts. 19 (1) (f), 25 or 26 by a Mutawalli. See Constitution of India, Art. 19 (1) (f). AIR 1965 All 333.

——Art. 25 — Right to take out religious procession —Magistrate can prohibit it, if he apprehends breach of peace—(Religious procession—Right to take out).

Persons of whatever sect are entitled to conduct religious procession through public streets provided that they do not interfere with the ordinary use of such streets by the public and subject to such directions as the Magistrates may lawfully give to prevent obstructions of the thoroughfare or breaches of the public peace. This right of a person of a particular religious sect to freely profess practise and propagate his religion is now a part of the fundamental rights guaranteed by Art. 25 of the Constitution but it has been made subject to public order and there can be no doubt that in exercise of the police powers of the State it is open to a Magistrate, in a case where he apprehends breach of the peace to pass such orders as he may consider necessary to prevent breach of the peace.

It is no part of the Magistrate's duty to fix the date, time and the route and if he thinks that he cannot fix a date, time and route which would not lead to a breach of the peace and rejects the application, the order cannot be read as meaning that he purported to hold that the parties have no right to take out a procession. It is not for the Court to consider whether the Magistrate was right in his apprehension that there was a likelihood of breach of peace, when his bona fides have not been questioned. It is a matter entirely for the District authorities to consider whether in the particular circumstances if a procession was taken out it would lead to public disturbance. Whether it would be more suitable on a particular occasion to bind down a particular party and to allow the procession to be taken out by the others is a matter in the discretion of the Magistrate. It is not open to courts to take the administration in their own hands and to issue orders to the Magistrate in this respect. ILR (1955) 1 All 121 : 1954 All W R (HC) 514 : 1954 Cr L J 1607 : 1954 All L J 665 : AIR 1954 All 756 (757, 758) (Prs 5, 6, 7) (DB).

——Art. 25—Article 25 guarantees the right to profess and practice religion freely. But there is no guarantee to preserve any particular form of its exercise. See Ibid, Art. 326. AIR 1961 Cal 289.

——Arts. 25, 29 (2), 30 and 226 — Applicability and scope — Educational institution run on Christian principles and receiving State aid—Power of, to impose restrictions on practice of other religions within college precincts — Refusal of Principal to permit Hindu students to celebrate Saraswati Puja in College compound — Legality — Powers of High Court to give directions.

The petitioner was admitted to the first year class of the St. Paul's College at Calcutta on his undertaking to submit to the rules and discipline of the College as laid down in the prospectus. The college was receiving recurring grant from the Government. Although it was a Christian College more than 90 per cent. of the students belonged to Hindu Community. The petitioner along with other students sought permission of the Principal to celebrate Saraswati Puja within the College compound, but the Principal

refused to grant permission. The petitioner thereupon filed a petition under Art. 226 questioning the legal validity of such refusal.

Held, that in so far as this application was intended to force the hands of the authorities to allow idol worship being conducted within the precincts of the college, it must be declared to be misconceived and consequently must be rejected.

Merely because as a result of Art. 29 (2), there was a legal right in members of the Hindu community to get admission into the College, it does not follow that there is every right under Art. 25 to freely profess, practise and propagate their religion within the precincts of the college receiving State aid.

The Constitution protects the freedom of conscience and the right freely to profess, practise and propagate religion but it does not protect secular activities. AIR 1953 Bom 342, Rel. on.

Under Art. 30 of the Constitution, Christian institutions opened primarily for the propagation of Christian religion are within the bounds of law. There is nothing illegal in laying down conditions under which such services can be availed of, provided the conditions do not militate against public order, morality or health. Such an institution can lay down that all religious practices which will be carried out inside its precincts, should be in conformity with Christian principles. 61 Cal W N 717 : AIR 1957 Cal 524 (526) (Pt A) (Pr 6).

——Arts. 25, 26 — Scope.

Article 25 protects religious freedom as far as individuals are concerned. But the right is not an unrestricted right. It is a right subject to public order, morality and health and further it permits the State to make any law regulating or restricting any economic, financial, political or secular activity although it may be associated with religious practice and there is a further right given to the State and that is that the State can legislate for social welfare and reform even though in doing so it may interfere with the profession, practice and propagation of religion by an individual. Article 26 does not deal with the rights of an individual or of a citizen. It deals with the right of a religious denomination or a section of a religious denomination. AIR 1953 Bom. 242 Foll. 58 Cal W N 73 : AIR 1954 Cal 241 (242) (Pt B) (Pr 10).

——Art. 25 — Scope — Article creates no offence. 1960 Ker L J 624 : 1960 Ker L T 599 : (1960) 1 Ker L R 819 : 1960 Mad L J (Cr) 711 : 1961 (1) Cr L J 265 : AIR 1961 Ker 55 (57) (Pt B) (Pr 4).

——Art. 25—Applicability and scope—Ruler granting exclusive right to person to practise priesthood in certain villages—Order is not a grant but has a force of law and offends against Art. 25 and becomes void. See Ibid, Art. 13. AIR 1960 Manipur 34.

——Art. 25 – Applicability and scope — If protects acts done in pursuance of religion.

The guarantee under the Constitution not only protects the freedom of religious opinion, but it protects also acts done in pursuance of a religion and this is made clear by the use of the expression 'practice of religion' in Art. 25. ILR (1959) 9 Raj 424 : 1959 Raj L W 496 : AIR 1959 Raj 177 (190) (Pt I) (Pr 68) (DB).

[Reversed on another point in AIR 1961 S C 1402].

2. Corresponding provisions in American Constitution.

——Art. 25 — Scope.

The first amendment of the American Constitution consists of two clauses, which deal with distinct subjects. The first clause is directed against legislation in respect of "an establishment of religion" and the second against any law prohibiting the free exercise of religion. Under the former, the State is disconnected from "establishment of religion"; under the latter the individual is guaranteed freedom in the profession and practice of religion. The scope of the two clauses is thus different and the questions that arise with reference to them are also different. While Arts. 25 and 26 of Constitution of India reproduce the law as enacted in the second clause of the First Amendment, there is nothing in our Constitution which corresponds to the first clause therein. There are some specific prohibitions enacted in Arts. 27 and 28. But apart from them, there is no general prohibition against legislation in respect of "establishment of religion." On the other hand, there are provisions in our Constitution which are inconsistent with the theory that there should be a wall of separation between Church and State. Case Law discussed. 66 Mad L W 947 : 1953 Mad W N 807 : (1953) 2 Mad L J 699 : ILR (1955) Mad 356 : AIR 1954 Mad 385 (387, 390) (Pt A) (Prs 3, 6) (DB).

3. Freedom of religion.

(a) Right to propagate religion.

(b) Right to enter into a public temple.

3. Freedom of religion.

● ——Art. 25 (1)—s. 11 (f) and (h), Durgah Khawaja Saheb Act (1955)—Validity.

What S. 11 (f) and (h) of Durgah Khawaja Saheb Act intend to achieve is the regulation of the discharge of duties by the Khadims and the discharge of functions and powers by the Sajjadanashin. The impugned provisions merely provide for the regulation of the discharge of the duties, by the Khadims and nothing more. Section 15 makes it obligatory for the Committee in exercise of its powers and discharge of its duties to follow the rules of Muslim Law applicable to Hanafi muslims in India, and so all the ceremonies in the Durgah have necessarily to be conducted and regulated in accordance with the tenets of the Chishti saint. The powers conferred on the Committee by S. 11 (f) and (h) must be read in the light of the mandatory provisions of S. 15. The vires of S. 11 (f) and (h) cannot be challenged on the ground that the Committee has been given power by these provisions to determine the privileges of the Khadims as well as the functions and powers, if any, which the Sajjadanashin may exercise in relation to the Durgah which amounts to infringement of the freedom of the Khadims to practise their religions according to the custom and according to their concept. AIR 1959 Raj 177, Reversed. Durgah Committee, Ajmer v. Syed Husain Ali, (1961) 2 S C A 171 : (1962) 1 S C R 383 : AIR 1961 SC 1402 (1418) (Pt F) (Prs 40, 41, 42).

● ——Art. 25—Religion — Its content and extent — (Words and phrases—'Religion.')

Religion is not necessarily theistic; there are well known religions in India like Buddhism and Jainism which do not believe in the existence of God or of any intelligent First Cause. A religion has its basis in a system of beliefs and doctrines which are regarded by those who profess that religion to be conducive to their spiritual well being, but it is not correct to say that matters of religion are nothing but matters of religious faith and religious belief. A religion is not merely an opinion, doctrine or belief. It has its outward expression in acts as well.

The article protects acts done in pursuance of religious belief as part of religion. For, religious practices or performances of acts in pursuance of religious belief are as much a part of religion as faith or belief in particular doctrines. AIR 1954 SC 282, Reiterated. Ratilal Panachand Gandhi v. State of Bombay, (1954) S C J 480 : (1954) 1 M L J 718 :

1954 S C A 538 : 56 Bom L R 1184 : 1954 S C R 1055 : AIR 1954 SC 388 (392) (Pt C) (Prs 12, 13).

● ——Art. 25 – 'Religion', meaning of—(Words and Phrases—"Religion").

Religion is a matter of faith with individuals or communities and it is not necessarily theistic. There are well krown religions in India like Buddhism and Jainism which do not believe in God or in any intelligent First Cause. A religion undoubtedly has its basis in a system of beliefs or doctrines which are regarded by those who profess that religion as conducive to their spiritual well being, but it will not be correct to say that religion is nothing else but a doctrine or belief. A religion may not only lay down a core of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral parts of religion, and these forms. and observances might extend even to matters of food and dress.

The guarantee under the Constitution of India not only protects the freedom of religious opinion but it protects also acts done in pursuance of a religion and this is made clear by the use of the expression "practice of religion" in Art. 25. (1888) 133 U S 333 (342), Criticised. 67 Com W L R 116 (127), Appr. Commr. H. R. E., Madras v. Sri Lakshmindra Thirtha Swamiar, 1954 Mad W N 363 : (1954) S C J 335 : (1954) 1 M L J 596 : 1954 S C A 415 : 20 Cut L T 250 : (1954) S C R 1005 : 67 Mad L W 1220 : AIR 1954 SC 282 (289, 290) (Pt G) (Prs 17, 18).

● ——Arts. 25 and 26 –Fundamental rights and restrictions with respect to matters of religion.

The language of Arts. 25 and 26 is sufficiently clear to enable the Court to determine without the aid of foreign authorities as to what matters come within the purview of religion and what do not. Freedom of religion in the Constitution of India is not confined to religious beliefs only; it extends to religious practices as well subject to the restrictions which the Constitution itself has laid down.

Under Art. 26 (b), therefore, a religious denomination or organization enjoys complete autonomy in the matter of deciding as to what rites and ceremonies are essential according to the tenets of the religion they hold and no outside authority has any jurisdiction to interfere with their decision in such matters. Of course, the scale of expenses to be incurred in connection with these religious observances would be a matter of administration of property belonging to the religious denomination and can be controlled by secular authorities in accordance with any law laid down by a competent Legislature; for, it could not be the injunction of any religion to destroy the institution and its endowments by incurring wasteful expenditure on rites and ceremonies.

However, under Art. 26 (d), it is the fundamental right of a religious denomination or its representative to administer its properties in accordance with law; and the law, therefore, must leave the right of administration to the religious denomination itself subject to such restrictions and regulations as it might choose to impose. A law which takes away the right of administration from the hands of a religious denomination altogether and vests it in any other authority would amount to a violation of the right guaranteed under Cl. (d) of Art. 26. 67 Com W L R 116 : (1939) 310 U S 586; (1942) 319 U S 105 and (1942) 319 U S 621; (1941) 316 U S 584, Ref. Commr. H. R. E., Madras v. Sri Lakshmindra Thirtha Swamiar, 1954 Mad W N 363 : (1954) S C J 335 : (1954) 1 M L J 596 : 1954 S C A 415 : 20 Cut L T 250 : 1954 S C R 1005 : 67 Mad L W 1220 : AIR 1954 S C 282 (291) (Pt I) (Pr 22).

——Art. 25—Applicability and scope—U. P. Government Servants Conduct Rules, R. 27, of infringing Article.

Rule 27, U. P. Government Servants Conduct Rules, which provides that a Government servant cannot marry a second wife during the presence of the first wife without the permission of the State Government does not infringe the fundamental right guaranteed under Art. 25, because the act of performing a second marriage in the presence of the first wife cannot be regarded as an integral part of Hindu religion nor can it be regarded as practising or professing or propagating Hindu religion which is protected under Art. 25. Even if bigamy be regarded as an integral part of Hindu religion the impugned rule is protected under Art. 25 (2) (b). 1957 All L J 439 : 1957 All W R (H C) 420 : (1957) 2 Lab L J 172 : AIR 1957 All 411 (413, 414) (Pt A) (Prs 7, 8).

——Art. 25—Criminal P. C., S. 488 (3)—Validity — (Criminal P. C. (1898), S. 488).

It may be that under the Personal Law of Muslims, a Muslim may have as many as four wives. But having more than one wife is not a part of religion. Any legislative requirement to the effect that a Mussalman may not have more than one wife does not amount to interference with freedom of conscience or interference with the right to profess, practice and propagate religion. The provision of law in favour of monogamy does not involve violation of Art. 26. 1957 All W R (HC) 155 : 1957 All L J 300.

——Arts. 25 and 26—Religious freedom.

The religious freedom as contemplated by the Constitution is not an unrestricted freedom. The religious freedom which has been safeguarded by the Constitution is religious freedom which must be envisaged in the context of a secular State. It is not every aspect of religion that has been safeguarded, nor has the Constitution provided that every religious activity cannot be interfered with. "Religion" as used in Arts. 25 and 26 must be construed in its strict and etymological sense. Therefore, whatever, binds a man to his own conscience and whatever moral and ethical principles regulate the lives of men, that alone can constitute religion as understood in the Constitution. 55 Bom L R 86 : ILR (1953) Bom 1187 : AIR 1953 Bom 242 (244, 245) (Pt B) (Pr 4) (DB).

[Reversed on another point in AIR 1954 SC 388].

——Art. 25—Scope.

In considering Art. 25, a sharp distinction must be drawn between religious faith and belief and religious practices. What the State protects is religious faith and belief. If religious practices run counter to public order, morality, health or a policy of social welfare upon which the State has embarked, then the religious practices must give way before the good of the people of the State as a whole. AIR 1952 Bom 84, Foll. 55 Bom L R 1 : AIR 1953 Bom 183 (187) (Pt G) (Pr 18) (DB).

[Overruled on another point in AIR 1962 S C 853.]

——Art. 25—If there is any custom or usage which is in force in India which is inconsistent with the fundamental rights, that custom or usage is void. See Ibid, Art. 13. AIR 1952 Bom 84.

——Art. 25 — A sharp distinction must be drawn between religious faith and belief and religious practices What the State protects is religious faith and belief. It is rather difficult to accept the proposition that polygamy is an integral part of Hindu religion. See Bombay Prevention of Hindu Bigamous Marriages Act (25 of 1946). AIR 1952 Bom 84 (DB).

——Art. 25—Applicability and scope—Meaning and scope of religious freedom—Religion and practice.

Where the Commissioner of Police refused his permission to the use of an electrical loud-speaker five times a day for calling the Azan (call for prayer) as several residents of the locality complained against the practice, it was argued for the Mutawalli of the mosque that the liberty allowed under Art. 25 of the Constitution has been curtailed by the suppression of the use of loud-speakers.

The High Court rejected the argument :

A sharp distinction must be drawn between religious faith and belief and religious practices. What the State protects is religious faith and belief. If religious practices run counter to public order, morality or health, then the religious practices must give way before the good of the people of the State as a whole. AIR 1952 Bom 84, AIR 1953 Bom 242 and (1879) 25 L Ed. 244, Rel. on. **59 Cal W N 293 : 95 Cal L J 129 : AIR 1956 Cal 9 (10) (Pt A) (Prs 4, 7, 9).**

——Arts. 25 and 26—Religious beliefs and practices —Nature and extent of.

The fundamental right guaranteed under Art. 25 (1) is the right to profess, practise and propagate religion. Religious practices or performances of acts in pursuance of religious beliefs which are guaranteed under Art. 25 (1) and Art. 28 (b) subject to the limitation of public order, morality and health and the limitations stated in Art. 25 (2), are religious practices and performances according to the doctrines of that religion. Religious practices are matters of religion within the meaning of Art. 26 (b) What constitutes the essential part of religion is primarily to be ascertained with reference to the doctrines of that religion itself. AIR 1954 S C 282 and AIR 1954 S C 388, Rel. on.

The presence of a Shivling and the worship of it is repugnant to the principles of Jainism and of Jain worship of Tirthankars and to the sentiments of Jains who worship in the temple. Such act as the presence of Shivling in the temple amounts to a violation of the fundamental rights of those people under Arts. 25 (1) and 26 (b) of the Constitution. **1957 M P C 725 : 1957 Jab L J 1088 : I L R (1957) Madh Pra 658 : AIR 1958 Madh Pra 115 (127) (Pt E) (Pr 17) (DB).**

——Art. 25—Scope.

Freedom of conscience is the minimum of religious liberty. It is intangible as it is subjective and is not capable of legal protection except that a person may not be compelled by law to abandon his belief, creed or opinion. A man may not only hold his religious opinions but may put them to practice and translate them into articulate force by profession, practice and propagation. Unless these are also protected, there is no meaning in protecting freedom of conscience. It is very difficult to separate religious belief and practice from politics or ethics. But in the interests of the State it cannot be contended, at any rate at the present day that such practices cannot legitimately be prohibited by legislation though such legislation might infringe religious liberty. **1952 Mad W N 299: 1952-1 Mad L J 557 : AIR 1952 Mad 613 (636, 638) (Pt L) (Prs 36, 38) (DB).**

——Arts. 25, 26 — Denominational institutions — If unconstitutional.

The Constitution recognizes that every community or section thereof is entitled to establish its own institutions. This is subject only to public order, morality and health. In granting a freeship or free treatment to a Christian there may be discrimination between one community and another; there is nothing in the Constitution which prohibits such preferential treatment. The law contemplates denominational institution. The internal management of such institutions is not the concern of Government. Everybody is free to enter a Christian hospital or not; but if he does, he cannot complain that a Christian is being given free treatment and not he. **(1957) M P L J 1 (Nag).**

——Arts. 25, 26—Duty of Court.

The Judge when called upon to pronounce, on religious freedom is not justified in writing his private notions of policy into the Constitution. 319 U S 624, Rel. on. **(1957) M P L J 1 (Nag).**

● **——Art. 25—Applicability—Religion, its sense.**

Religion in its broadest sense includes all forms of faith and worship, all the varieties of man's belief in a Superior Being or a Moral Law transcending the things that are Caesar's and demanding his affection and obedience. P. M. Baimadathan Nambooripad v. Cochin Devaswami Board, **1955 Ker L T 516 : I L R (1955) T C 741 : AIR 1956 Tra-Co 19 (22) (Pt E) (Pr 12) (FB).**

——Art. 25 (1) — Sacrifice of cow on Bakr-id-Day is not obligatory act for Muslim and protection of fundamental right under Art. 25 (1) cannot be avalied of. See Penal Code (1860), S 295. AIR 1965 Tripura 22.

Religious practices — Power of Government to enquire into.

——Arts. 25, 26— Right of religious practices — Inquiry by State.

No one can deny that under colour of religion harmful activities of a secular nature cannot be allowed to grow. A liberal meaning has been given to the expression "practices of religion". All practices of religion are part of religion and are also guaranteed. A person may, thus not only profess a particular religion but, subject to public order, morality and health, may exercise his religious beliefs in any way he likes. If religious freedom is to be real, the State cannot interfere, unless a question of loyalty arises.

How far it is moral to ask a man to accept a different faith on the assurance of worldly gain is a matter of pure ethics. It is not a matter of law. Morality, as used in Arts. 25 and 26 of the Constitution, has reference to that morality which the law makes it, its concern to maintain. **(1957) M P L J 1 (Nag).**

——Arts. 25 and 26—Inquiry about money received by foreign Missions—Power of State.

No doubt, Government, has a right to inquire how much foreign money comes in as aid to foreign missions, and no objections can be taken to such an inquiry. But the expenditure of the money belonging to these Missions is a matter for them to decide. It may not be a part of religious practice, though a portion of it may well be spent for that purpose. The Missions are certainly at liberty to apply their money to the best advantage, they can find, without having to account to any one unless the money is used in a way which promotes a breach of public order, morality and health. **(1957) M P L J 1 (Nag).**

——Arts. 25, 26—Scope — Appointment of inquiry Committee to inquire into harassment by and against Christian Missions—If offends Arts. 25 and 26—(Criminal P. C. (1898), Ss. 107, 144, 145)—(Penal Code (1860), Chaps. 8, 16).

The freedom of conscience and religion guaranteed under Arts. 25 and 26 of the Constitution is subject only to considerations of public order, morality and health but it cannot be gainsaid that an attempt forcibly or fraudulently to convert a person from his belief to another is a matter which must be the concern of Government. Indeed these three expressions exclude everything undesirable in such activities. Force and fraud are covered both by public order and morality; but an approach with a view to

convincing others of the spiritual benefits to be acquired from the faith preached is a necessary foundation of the religious freedom guaranteed under the Constitution. That freedom cannot be taken away, except perhaps in the interests of public order, morality and health. Where the subject of the inquiry is whether the methods to propagate religion adopted by the Christian Missions in any way contravened "public order, morality and health" and whether the Christian Missions and Christians were being harassed, and whether the Christian Missions were transgressing the limits of law as to public order and morality, it is well within the powers of Government. The test of clear and present danger is applied to religious freedom and freedom of speech and press, to discover at what stage the freedom of the citizen ends and the power of the State begins. What applies to positive action does not necessarily apply to an inquiry, because while inquiry goes on there is no interference such as there is when positive action is taken. **(1957) M P L J 1 (Nag).**

——Arts. 25, 26—Religious community indulging in politics—Inquiry by Government—Legality.

No doubt, religion and politics have to be kept completely apart. An enquiry into political activities associated with religion is well within the terms of the Constitution. No one can deny the right of Government to know the kind of political activity a section of the public indulges in. Undesirable political activity is one thing and taking part in political activity legitimately as it is open to any other person is another, and the latter cannot be called in question. **(1957) M P L J 1 (Nag).**

——Arts. 25, 26 — Christian Missions — Attitude towards Indians—Inquiry as to.

Government is entitled to know whether people who have come from abroad and who have established Missions are friendly to Indian aspirations and Indian culture. The inquiry is legitimate to find out how far they are hostile to Indian aspirations and Indian culture. **(1957) M P L J 1 (Nag).**

——Arts. 25, 26 — Inquiry into social relations between Christians and others—Propriety.

Inquiry into the social relations between the Christians and non-Christians which is comprehensive and non-discriminatory, is perfectly legitimate. **(1957) M P L J 1 (Nag).**

——Arts. 25, 26—Inquiry by Government about operations of Christian Missions—Power of Government.

Government is entitled to know where the Christian population resides and what Missions are working. If the Government is interested in knowing whether these Missions operate in areas other than those peopled largely by scheduled castes and aboriginal tribes there is nothing sinister in it. **(1957) M P L J 1 (Nag).**

——Arts. 25, 26—Inquiry about Pracharaks—Power of Government.

Of course the methods of the Pracharaks can be looked into to find out if they offend against public order, morality and health; but it is not the concern of anybody or even of Government if the Pracharaks are paid beyond their worth and are rewarded. That is matter of internal administration of the Christians themselves, who have the liberty to preach their faith to outsiders and can employ such agency as they choose. **(1957) M P L J 1 (Nag).**

3 (a). Right to propagate religion.

● **——Art. 25 (1) — Scope — Bihar Preservation and Improvement of Animals Act (2 of 1956), Ss. 2, 3—U. P. Prevention of Cow-Slaughter Act (1 of 1956), S. 3—C. P. and Berar Animal Preservation Act (52 of 1949), (as amended by M. P. Acts (23 of 1951 and (10 of 1956), S. 4—Validity.**

Subject to the restrictions which this article imposes every person has a fundamental right under the Constitution not merely to entertain such religious belief as may be approved of by his judgment or conscience but to exhibit his belief and ideas in such overt acts as are enjoined or sanctioned by his religion and further to propagate his religious views for the edification of others. The free exercise of religion by which is meant the performance of outward acts in pursuance of religious belief, is, as stated above, subject to State regulation imposed to secure order, public health and morals of the people. AIR 1954 S C 388, Foll.

Held, that the sacrifice of a cow on Bakr-Id Day is not an obligatory overt act for a Mussalman to exhibit his religious belief and idea and consequently there was no violation of the fundamental rights of the Mussalmans under Art. 25 (1). Mahomed Hanif Quareshi v. State of Bihar, **1958 S C A 783 : 1958 S C J 975 : (1958) M L J (Cr) 727 : 1959 S C R 629 : AIR 1958 S C 731 (739) (Pt G) (Pr 13).**

● **——Art. 25 - Practice and propagation of religious tenets — Applicability of Art. 25 to Mathadhipati — (Hindu Law - Religious Endowment).**

A Mathadhipati is not a corporate body; he is the head of a spiritual fraternity and by virtue of his office has to perform the duties of a religious teacher. It is his duty to practise and propagate the religious tenets, of which he is an adherent and if any provision of law prevents him from propagating his doctrines, that would certainly affect the religious freedom which is guaranteed to every person under Art. 25. Institutions, as such cannot practise or propagate religion; it can be done only by individual persons and whether these persons propagate their personal views or the tenets for which the institution stands is really immaterial for purposes of Art. 25. It is the propagation of belief that is protected no matter whether the propagation takes place in a church or monastery, or in a temple or parlour meeting. Commissioner, H. R. E., Madras v. Sri Lakshmindra Thirtha Swamiar, **1954 Mad W N 363 : (1954) S C J 335 : (1954) 1 M L J 596 : 1954 S C A 415 : 20 Cut L T 250 : 1954 S C R 1005 : 67 Mad L W 1220 : A I R 1954 S C 282 (289) (Pt D) (Pr 14).**

——Art. 25—Religious procession—Right to take out religious procession—Magistrate can prohibit it, if he apprehends breach of peace. **55 Cri L J 1607 : A I R 1954 All 756 (757, 758) (Prs 5, 6, 7) (DB).**

——Arts. 25, 19 (1) (a)—Penal Code (1860), S. 295-A—Section 295-A is valid—Intention of writer found clearly to outrage religious feelings of Muslims deliberately and maliciously—Offence under S. 295-A held made out.

A person is entitled to express and propagate his own views so long as he does not affect public order, morality and health or offend any of the provision of the Constitution or laws of the land. **(1964) 1 Mad L J 147 : 1964 All Cri R 61 : 1964 Mad L J (Cri) 123: 1964 (1) Cri L J 672: AIR 1964 Mad 258 (259) (Prs 6, 7, 8).**

——Arts. 25, 26 — Extolling one's own religion—Propriety.

Anyone who preaches the benefits of his religion is likely to extol his own and, to some extent, dispute the truth and efficiency of another religion. Propagation of religion cannot otherwise be carried on and within limits; regard being had to the law of blasphemy, profanity, etc., everybody is free to dispute the truth of another's religion. **(1957) M P L J 1 (Nag).**

3 (b). Right to enter into a public temple.

● ——Art. 25 (2) (b)—Scope—If controls Arts. 25 (1) and 26 (b).

Right conferred by Art. 25 (2) (b), is a right conferred 'on all classes and sections of Hindus' to enter into a public temple, and on the unqualified terms of that Article, that right must be available, whether it is sought to be exercised against an individual under Art. 25 (1) or against a denomination under Art. 26 (b). Though Art. 25 (1) deals with rights of individuals, Art. 25 (2) is much wider in its contents and has reference to the rights of communities, and controls both Art. 25 (1) and Art. 26 (b). Sri Venkataramana Devaru v. State of Mysore, 36 Mys L J 232 : 1958 Mad W N (SC) 96 : (1958) S C J 382 : (1958) 1 Mad L J (S C) 109 : (1958) 1 Andh W R (S C) 109 : 1958 S C R 895 : A I R 1958 S C 255 (268) (Pt H) (Pr 28).

——Art. 25 (2) (b) — Scope — Jain temple—Right of untouchable to enter — Cannot insist upon entering it. See Untouchability (Offences) Act (1955), S. 3. 1958 Cr L J 1398 : AIR 1958 Madh Pra 352 (DB).

——Art. 25 — Applicability and scope — Right to worship in temple.

Where the temple is exclusively a public Jain temple dedicated to and for the benefit of the Jain community, then the members of the Jain community, have clearly a right to enter and worship in the temple according to the principles and forms of their religion. That right is a fundamental and guaranteed right under Art. 25 (1) of the Constitution. 1957 Madh Pra L J 788 : I L R (1957) Madh Pra 507 : 1957 Madh Pra C 725 : 1957 Jab L J 1088 : A I R 1958 Madh Pra 115 (126) (Pt D) (Pr 15).

4. "Subject to the other provisions of this part."

● ——Art. 25 (1) and (2)—Relative scope of.

The limitation "subject to the other provisions of this Part" occurs only in cl. (1) of Art. 25 and not in cl. (2). Cl. (1) declares the rights of all persons to freedom of conscience and the right freely to profess, practise and propagate religion. It is this right that is subject to the other provisions in the Fundamental Rights Chapter. One of the provisions to which the right declared in Art. 25 (1) is subject to is Art. 25 (2). A law, therefore, which falls within Art. 25 (2) (b) will control the right conferred by Art. 25 (1) and the limitation in Art. 25 (1) does not apply to that law. Sri Venkataramana Devaru v. State of Mysore. 36 Mys L J 232 : 1958 Mad W N (SC) 96 : (1958) S C J 382 : (1959) 1 Andh W R (SC) 109 : (1958) 1 M L J (SC) 109 : 1958 S C R 895 : A I R 1958 S C 255 (267) (Pt G) (Pr 26).

——Arts. 25 and 26 — Mutawalli can neither claim personal interest in waqf property nor claim to fall within definition of religious denomination or section thereof—Mutawalli cannot complain about violation of Art. 19 (1) (f) and neither Art. 25 nor Art. 26 can help him. See Ibid, Art. 19 (1) (f). AIR 1965 All 333.

■ ——Arts. 25 (1) and 31 — Compulsory acquisition of Waqf property under Art. 31 — Right to profess religion if affected.

The acquisition of Waqf property under Art. 31 (to which the right conferred by Art. 25 is expressly subject) has nothing to do with such right and in no way interferes with a Mutawalli's right to profess his religion. Raja Surya Palsingh v. U. P. Government, 1951 All L J 365 : 1951 R D (HC) 122 : 1951 All W R (HC) 317 : I L R (1952) 2 All 46 : A I R 1951 All 674 (690) (Pt Q) (Pr 81) (FB).

5. Power of State to provide for social welfare and social reform.

(a) Constitutionality of legislative provisions under Article.

5. Power of State to provide for social welfare and social reform.

——Arts. 25 and 26—Scope — Power of Legislature to make law with regard to religious matter or property possessed by religious institutions.

Arts. 25 and 26 clearly make a distinction between matters of religion and holding and management of property by religious institution. In matters of property there is always a secular angle which is supplied by the law of the country, and no religious denomination can make a law about its own property and thus nullify the law of the land. The property of the Christian religious institutions, therefore, is as much subject to law as any other property privately held in our country. Hence the State Legislature is not incompetent to make laws with regard to property possessed by religious institutions. AIR 1954 S C 388, Rel. on. I L R (1957) Madh Pra 599 : 1958 Jab L J 713 : 1959 Madh Pra L J 611 : 1958 Madh Pra C 588 : A I R 1958 Madh Pra 362 (365) (Pt B) (Pr 14) (DB).

——Arts. 25, 26—Public temple—Temple belonging to a particular religious denomination — Right of State claiming ownership to instal idols of other religions.

Where a temple belonging to Jain religion is a public temple and therefore res extra commercium, its character as a public Jain temple cannot be taken away by any assertion on the part of the State of a right to ownership; and by that assertion a public temple cannot be made a museum for an exhibition of deities and idols of all religions. The temple being a public Jain temple, only images or deities of Jain religion can be kept therein even if the State is the owner of the temple. 1957 M P C 725 : 1957 Jab L J 1088 : A I R 1958 Madh Pra 115 (127, 128) (Pt G) (Pr 19) (DB).

——Arts. 25 and 26 — Scope—Madras Hindu Religious and Charitable Endowments Act (19 of 1951), S. 100 (2) (y) - Rules under R. 10—Validity—Mathadhipathi's right to manage affairs of Math—Unreasonable restrictions on.

Rule 10 framed under S. 100 (2) (y) of the Act imposes an unreasonable restriction on the right of the Mathadhipathi to manage the affairs of the Math. The restrictions are such as would bring the Mathadhipathi down to the level of a servant under a State department. In relation to Maths the Government cannot claim that power in derogation of the Mathadhipathi's right of management of a denominational institution like a Math. 69 Mad L W 337 : (1956) 1 M L J 532 : AIR 1956 Mad 491 (499) (Pt K) (Pr 36) (DB).

——Art. 25—Bihar Hindu Religious Trusts Act (1 of 1951)—Validity.

The freedom of religion guaranteed by Art. 25 is not an uncontrolled freedom. The religious freedom which has been safeguarded by this article is religious freedom in the background of a secular State. The freedom which Art. 25 guarantees is freedom in a social organisation which requires the protection of law against the evils masquerading in name of religion, against evils which menace the welfare and the morals of the people. Unless the legislation directly attempts to control the practice and propagation of religion there is no violation of the guarantee under Art. 25 (1) of the Constitution. The Bihar Hindu Religious Trusts Act is not legisla-

tion directly interfering with the practice and propagation of religion. On the contrary, the object of the Act is to provide for the better administration of Hindu Religious Trusts and for the protection and the preservation of the properties appertaining to such trusts. There is no violation of the guarantee under Art. 25 of the Constitution. AIR 1950 S C 27, Foll. 32 Pat 1148 : AIR 1954 Pat 269 (274) (Pt I) (Prs 16, 17) (DB).

5 (a). Constitutionality of legislative provisions under Article.

● ——Arts. 25 (1), 26 and 31 (2)— Legislature taking over secular affairs of religious institution — Validity of Nathdwara Temple Act—Act does not contravene Arts. 14, 19 (1) (f), 31 (2), 25 and 26—Provisions of the Act except first part of S. 30 (2) (a) are valid. See Rajasthan Nathdwara Temple Act (13 of 1959), S. 2 (viii). **AIR 1963 S C 1638.**

● ——Arts. 25 (2), 26, cl. (b)—Law interfering with right of religious denomination to ex-communicate its members — Constitutional validity — Dawoodi Bohras—Dai-ul-Mutlaq—Legislation invalidating his power of excommunicating members on religious grounds—Legislation violates Art. 26 (b) and is void —Legislation not saved by Art. 25 (2)—Bombay Prevention of Excommunication Act (42 of 1949). A I R 1953 Bom 183, **Overruled.** See Ibid, Art. 26 cl. (b). **AIR 1962 S C 853.**

● ——**Art. 25 (1)—S. 13 (1), Durgah Khawaja Saheb Act (1955)—Validity—AIR 1959 Raj 177, Reversed.**

Section 13 (1) of Act 36 of 1955 authorises the Committee to make provisional interim arrangement if a vacancy occurs in the office of the Sajjadanashin. In considering the scope and effect of this provision it cannot be read apart from the provisions of the remaining sub-sections of S. 13. Section 13 is really intended to lay down the procedure for determining disputes as to the succession to the office of the Sajjadanashin. If a vacancy occurs suddenly all that S. 13 (1) empowers the Committee to do is to make an appropriate interim arrangement in that behalf and to proceed to take the necessary steps for the appointment of a permanent successor as prescribed by the other provisions of S. 13. Section 13 (1) does not offend against Art. 25 (1) of the Constitution. AIR 1959 Raj 177, **Reversed.** Durgah Committee, Ajmer v. Syed Hussain Ali, **(1961) 2 S C A 171 : (1962) 1 S C R 383 : AIR 1961 S C 1402 (1418, 1419) (Pt H) (Pr 44).**

● ——**Arts. 25, 26 and 27** — Scope — Bihar Act (1 of 1951) — Act does not infringe Arts. 14, 19 (1) (f) 25, 26 and 27 of Constitution. See Bihar Hindu Religious Trusts Act (1 of 1951). **AIR 1959 S C 1073.**

● ——**Arts. 25 and 26—Bihar Hindu Religious Trusts Act — Validity — (Bihar Hindu Religious Trusts Act (1 of 1951), Preamble and S. 60 (6)).**

It cannot be said that the power to alter or modify the budget relating to a religious trust or the power to give directions to a trustee may be exercised by the Board in such a way as to affect the due observance of religious practices in a math or temple so as to constitute an encroachment on the right guaranteed under Art. 25; the power to alter the budget is subject to cl. (6) of S. 60 of the Act and the Board is not authorised to alter or modify the budget in a manner inconsistent with the wishes of the founder or with the provisions of the Act. The keynote of all the relevant provisions of the Act is the due observance of the objects of the religious trust and not its breach or violation. Secondly, an apprehension that the powers conferred may be abused in individual cases does not make the provision itself bad or invalid in law.

With regard to Art. 26, cls. (a) and (b), the position is the same. There is no provision of the Act which interferes with the right of any religious denomination or any section thereof to establish and maintain institutions for religious and charitable purposes; nor do the provisions of the Act interfere with the right of any religious denomination or any section thereof to manage its own affairs in matters of religion. The Act by its several provisions seeks to fulfil rather than defeat the trust. There is, therefore, no substance in the argument that the provisions of the Act contravene Arts. 25 and 26 of the Constitution. Moti Das v. S. P. Sahi, **(1959) 2 S C A 432 : ILR 38 Pat 639 : (1959) Supp 2 S C R 563 : 1959 S C J 1144: AIR 1959 S C 942 (949, 950) (Pt F) (Prs 13, 14).**

● ——**Art. 25**—Infringement of—Sections 38, 39 and the proviso to S. 46 of the Orissa Hindu Religious Endowments Act, are invalid. The rest of the Act is not invalid or ultra vires the Orissa legislature. SriJagannath Ramanuj Das v, State of Grissa, **(1954) S C J 329 : (1954) 1 M L J 591 : AIR 1954 S C 400 (403) (Pt A) (Pr 11).**

——**Arts 25, 26 and 19 (1) (f)**—U. P. Muslim Waqfs Act (1960), S. 55—Validity—Duties of Mutwalli are purely secular in character and not comparable with rights of Mahant — Validity cannot be challenged under Arts. 19 (1) (f), 25 or 26 - Muslim Law—Waqf — Rights of Mutwalli — U. P. Muslim Waqfs Act (16 of 1960), S. 55. See Ibid, Art. 19 (1) (f). **AIR 1965 All 333.**

——Art. 25—Hindu Marriage Act (1955), Ss. 5 (i), 11 and 17 — U. P. Govt. Servants' Conduct Rules R. 27 — Prohibition of bigamy — Not invalid. See Hindu Marriage Act (1955), S. 5 (1). **AIR 1961 All 334.**

——**Art. 25 (2) (b)** — Scope — Ss. 5, 9, 10 and 13 and other provisions of Hindu Marriage Act are protected under the Article — (Hindu Marriage Act (1955), Ss. 5, 9, 10 and 13). **1957 All L J 439 : 1957 All W R (HC) 420 : (1957) 2 Lab L J 172 : AIR 1957 All 411 (413) (Pt B) (Pr 7).**

——**Art. 25—Freedom of religion—U. P. Act (14 of 1947) is saved by Art. 25 (2)—[U P. Removal of Social Disabilities Act (14 of 1947), S. 1].**

By the U. P. Removal of Social Disabilities Act the freedom guaranteed under Art. 25 (1) of the Constitution has in no manner been affected. The U. P. Act falls within the definition of 'existing law' given in Art. 366 (10) and is thus protected by cl. (2) of Art. 25. The Act only provides for the removal of those distinctions which caste Hindus enforced on the Harijans in respect of, among other matters, entry of Harijans in temples on the same footing as caste Hindus. **1954 All L J 355 : 1954 All W R (H C) 424 : AIR 1954 All 601 (603) (Pt B) (Pr 21) (DB).**

——**Arts. 25 and 26 — Commissions of Inquiry Act (1952), S. 5 (3)—Validity.**

S. 5, sub-s. (3) of the Act gives only a limited power to the authorised officers to enter any building or place; the search and seizure of books of account or documents that may be found in the building or place can be done only after observing the formalities prescribed by Ss. 102 and 103, Criminal P. C. The power of search and seizure is hedged in by several restrictions and safeguards. Sub-s. (3) of S. 5 of the Act is constitutionally valid and does not violate the provision contained in Arts. 25 and 26 of the Constitution. AIR 1954 S C 282, Disting. **1959 Andh L T 235 : (1959) 1 Andh W R 258: ILR (1959) Andh Pra 67 : AIR 1959 Andh Pra 148 (152) (Pt C) (Pr 19) (DB).**

——Art. 25—Madras Hindu Religious and Charitable Endowments Act (19 of 1951), S. 52—S. 52 of the Act, when interpreted in the context of the rights guaranteed to Mathadhipathi, is not unreasonable and unconstitutional. See Ibid, Art. 19. AIR 1957 Andh Pra 283.

——Arts. 25 and 26 — Bombay Public Trusts Act (29 of 1950), Preamble and Ss. 18, 31, 32, 35, 36, 37, 44, 47, 48, 50 (e), and (g), 55, 56, 57, 58, 59, and 62 — Validity of Act.

The provisions of the Act, particularly Ss 18, 31, 32, 34, 35, 36, 37, 44, 47, 48, 50 (e) and (g), 55, 56, 57, 58, 59 and 62 do not contravene the fundamental rights embodied in Arts. 25 and 26 of the Constitution nor is any provision of the Act beyond the competence of the State Legislature. 55 Bom L R 86 : ILR (1953) Bom 1187 : AIR 1953 Bom 242 (251) (Pt A) (Pr 21) (DB).

[Reversed in AIR 1954 S C 388, where the following provisions of Bombay Public Trusts Act to wit :—(i) S. 44 of the Act to the extent that it relates to the appointment of the Charity Commissioner as a trustee of religious public trust by the Court; (ii) the provisions of cls. (3) to (6) of S. 47 and (iii) Clause (c) of S. 55 and the part of cl. (1) of S. 56 corresponding thereto were held invalid.

Note—In addition to the above sections, the other sections, validity of which also was challenged, were Ss. 18, 31 to 37, 48, 50, cls. (e) and (g), 58 and 68. Rejecting the contention of the appellants with respect to these sections the Supreme Court held that they are validly enacted—Ed.].

——Art. 25 — Bombay Prevention of Bigamous Marriages Act (1946) is valid. See Bombay Prevention of Bigamous Marriages Act, 1946. AIR 1952 Bom 84 (DB).

——Arts. 25 and 26 — The West Bengal Foodgrains (Intensive Procurement) Order, 1952, in so far as it authorises the State to acquire the entire produce of a land dedicated to a deity or in trust does not infringe the rights confered by either Art. 25 or Art. 26 and is not unconstitutional on that ground. See West Bengal Foodgrains (Intensive Procurement) Order, 1952—Validity. AIR 1954 Cal 241.

——Art. 25 — Madras Temple Entry Authorization Act (5 of 1947 as amended by Madras Act 13 of 1949) is not ultra vires the Constitution. See Ibid, Art. 17. AIR 1956 Mad 541.

——Art. 25 (2) (b) — Madras Temple Entry Authorisation Act (5 of 1947)—Validity—Is not ultra vires or illegal. See Madras Temple Entry Authorization Act (5 of 1947). AIR 1956 Mad 528.

——Art. 25—Madras Hindu Religious and Charitable Endowments Act (19 of 1951), S. 21 (as amended by Act 27 of 1954). S. 21 is invalid even as amended. See Ibid, Art. 13. AIR 1956 Mad 491.

——Art. 25—Madras Hindu Religious and Charitable Endowments Act (19 of 1951), S. 31 (as amended by Act 27 of 1954) — Section 31 is invalid — See Ibid, Art. 13. AIR 1956 Mad 491.

——Arts. 25 and 26 — Scope — Madras Hindu Religious and Charitable Endowments Act (19 of 1951), S. 30 (2) (as amended by Act (27 of 1954), S. 30 (2)) — Validity.

Section 30 (2), even as amended, constitutes an unreasonable restriction on the Mathadhipathi's powers of disposal over the income of Math. Designed as a fetter on the Mathadhipathi's power of disposal, S. 30 (2) as it now stands amended, has to be struck down as void and unenforceable in its application to the Mathadhipathis of their Maths. 69 Mad L W 337 : (1956) 1 M L J 532 : AIR 1956 Mad 491 (496) (Pt E) (Pr 18) (DB).

——Arts. 25 and 26 — Scope — Hindu Religious and Charitable Endowments Act (19 of 1951), S. 52 (1) (f) (as amended by Act 27 of 1954), S. 52 (1) (f) — Validity.

Section 52 (1) empowers a Commissioner or person authorised by him to move the Court to remove a Mathadhipathi on any of the grounds mentioned in S. 52 (1) as it now stands amended. It is for the Court to consider, even with reference to S. 52 (1) (f) as it stands, whether a case for removal has been made out. It is not possible to hold that S. 52 (1) (f) constitutes an unreasonable and unconstitutional restriction on the fundamental right of the Mathadhipathi. 69 Mad L W 337 : (1956) 1 M L J 532 : AIR 1956 Mad 491 (498) (Pt H) (Pr 30) (DB).

——Art. 25—Validity of provisions of Madras Hindu Religious and Charitable Endowments Act (19 of 1951). See Madras Hindu Religious and Charitable Endowments Act (19 of 1951), S. 20. AIR 1952 Mad 613 (DB).

——Art. 25 — Madras Hindu (Bigamy Prevention and Divorce) Act (6 of 1949) — Validity — Act does not offend Arts. 15 and 25 of the Constitution and is valid—Constitution of India, Arts. 15, 25 and Sch. 7, List 3, Item 5 — Government of India Act (1935), Sch. 7 List 3, Items 6, 7. See Madras Hindu (Bigamy Prevention of Divorce) Act (1949). AIR 1952 Mad 193.

——Art 25 — Hindu Marriage Act (1955) — Validity of—Act does not offend Arts. 14, 15 or 25. See Hindu Marriage Act (1955), S. 5. 1959 Cr L J 493 : AIR 1959 Manipur 20.

——Art 25 (1) —Section 295 A, Penal Code, is a law creating an offence relating to religion in the interests of public order and is therefore not inconsistent with the right guaranteed by Art. 25 (1) of the Constitution to propagate religion. See Penal Code (1860), S. 295-A. 1962 (2) Cr L J 564 (Mys).

——Arts. 25 and 26 — Power to appoint temporary Mutawalli — Majlis is empowered—Section not violative of Arts. 25 and 26 of the Constitution. See Bihar Wakf Act (8 of 1948), S. 7. 1963 B L J R 151.

——Art. 25—Bihar Hindu Religious Trusts Act (1 of 1951) — Validity.

The Bihar Hindu Religious Trusts Act, 1 of 1951 is a valid piece of legislation and does not violate Arts. 19 (1) (f) and 25 of the Constitution. See Bihar Hindu Religious Trusts Act (1951). AIR 1954 Pat 279.

——Art. 25 — Bihar Act 1 of 1951 does not violate the constitutional guarantee under Arts. 19 (1) (f), 25, 26 and 27 of the Constitution and the legislation is valid. See Bihar Hindu Religious Trusts Act (1 of 1951). AIR 1954 Pat 278 (DB).

——Art. 25 — Bihar Hindu Religious Trusts Act (1 of 1951), S. 28 (2) (j) — Is not invalid. See Constitution of India, Art. 19. AIR 1957 Pat 615 (DB).

——Art. 25 — Bihar Hindu Religious Trusts Act (1 of 1951), S. 60 (2) — Is not invalid. See Ibid, Art. 19. AIR 1957 Pat 615.

——Arts. 25 and 26 — Bihar Hindu Religious Trusts Act (1 of 1951), Ss. 30, 49 — Validity.

Sections 30 and 49 of the Act enact in statutory form the doctrine of Cy pres so far as the Hindu Religious Trusts are concerned. The provisions enacted in these sections are wholly reasonable and there is no violation of the guarantee of freedom of religion under Arts. 25 and 26 of the Constitution. The Act empowers the Board of Religious Trust to interfere only if the object of the Religious Trusts

has ceased to exist or has become impossible of achievement or, in the alternative, if the object of the trust was vague or uncertain. AIR 1954 SC 388, Dist. **ILR 33 Pat 682: AIR 1957 Pat 615 (615) (Pt C) (Pr 4) (DB).**

——Arts. 25, 26 (b) and 26 (d) — Legislation taking over administration of secular affairs of religious institution — Validity — Nathdwara Temple Act (13 of 1959), S. 2 (viii), 16, 28 (2) and (3), 30 (2) (a), 36 and 37 — Provisions ultra vires the Constitution. See Ibid, Art. 14. **AIR 1962 Raj 196 (DB).**

——Arts. 25 (1), 14 and 19 (1) (g) — Durgah Khwaja Saheb Act, S. 11 (f) — Section whether hit by Articles.

Section 11 (f) of the Act inasmuch as it authorized the committee to regulate the presence of the Khadims in the Durgah by the grant of licence, and impliedly to prohibit the entry of any Khadim by refusal of licence is hit by Art. 25 (1) of the Constitution. The grant or refusal to grant licence is left arbitrarily in the hands of the committee, and no guidance is afforded by the Act in the matter of grant or refusal of licences. **ILR (1959) 9 Raj 424 : 1959 Raj L W 496 : AIR 1959 Raj 177 (189, 191) (Pt F) (Prs 63, 76) (DB).**

[Reversed in AIR 1961 S C 1402.]

——Art. 25 — Durgah Khwaja Saheb Act, S. 11 (h) — Validity.

A Sajjadanashin has well-known powers in respect of the Durgah so far as the spiritual side is concerned and the power given to the secular committee by S. 11 (h) of the Act to define the religious or spiritual functions of the Sajjadanashin is hit by Art. 25 of the Constitution. **ILR (1959) 9 Raj 424 : 1959 Raj L W 496: AIR 1959 Raj 177 (189) (Pt G) (Pr 64) (DB).**

[Reversed in AIR 1961 S C 1402].

——Art. 25 — Durgah Khwaja Saheb Act, S. 13 (1) — Validity.

The office of the Sajjadanashin is a spiritual office, and the appointment of a Sajjadanashin is regulated by custom pertaining to the institution.

Section 13 (1) is hit by Art. 25 so far as it empowers the secular committee to make interim arrangements for the performance of the spiritual functions of the Sajjadanashin as it may think fit with the previous approval of the Chief Commissioner. **ILR (1959) 9 Raj 424:1959 Raj L W 496 : AIR 1959 Raj 177 (189, 190, 191) (Pt H) (Prs 65, 66, 76) (DB).**

[Reversed in AIR 1961 S C 1402].

6. State regulation — Clause 2 (a).

■ ——Art. 25 (2) (a)—Scope.

What sub-cl. (a) of Cl. (2) of Art. 25 contemplates is not State regulation of the religious practices as such which are protected unless they run counter to public health or morality but of activities which are really of an economic, commercial or political character though they are associated with religious practices. Ratilal Panachand Gandhi v. State of Bombay, (1954) S C J 480 : (1954) 1 M L J 718 : 1954 S C A 538 : 56 Bom L R 1184 : 1954 S C R 1055 : A I R 1954 S C 388 (391) (Pt A) (Pr 10).

——Art. 25—"Restriction" and "Regulation"— Meaning and interpretation of—Distinction—The expression 'restriction' in Art. 19 (6) is not synonymous with regulation. Restriction may be complete or partial; and when it is complete it would imply absolute prohibition. That the framer of the constitution were aware of the distinction between the power to regulate and the power to restrict will be apparent from a scrutiny of sub-cl. (a) of Cl. (2) of Art. 25. See Ibid, Art. 19 (6). **AIR 1952 Orissa 42.**

7. Religious institutions of public character — Clause 2 (b).

■ ——Arts. 25 (2) (b) and 26 (b) — 'Matters of religion' — Denominational temple founded for benefit of Gouda Saraswath Brahmins — Right to exclude others from worship — Conflict between Arts. 25 (2) (b) and 26 (b) — Art. 25 (2) (b) prevails — Litigation under Madras Act 5 of 1947—Parties — Government agitating on behalf of Public — Public if bound by decisions—(Madras Temple Entry Authorisation Act, 5 of 1947 as amended by Act 13 of 1940), S. 2 (2).

The expression 'matters of religion' in Art. 26 (b) embraces not merely matters of doctrine and belief pertaining to the religion but also the practice of it. AIR 1954 S C 282, Relied on.

Under the ceremonial law pertaining to temples, who are entitled to enter into them for worship and how the worship is to be conducted are all matters of religion. The conclusion is also implicit in Art. 25. Exclusion of persons from temple is a matter of religion with reference to the tenets of the institution.

There is a fundamental distinction between excluding persons from temples open for purposes of worship to the Hindu public in general on the ground that they belong to the excluded communities and excluding persons from denominational temples founded, say, for the benefit of Gowda Saraswath Brahmins on the ground that they are not objects within the benefit of the foundation. The former will be hit by Art. 17 and the latter protected by Art. 26. Article 25 (2) (b) applies in terms to all religious institutions of a public character without qualification or reserve, and denominational temples would be comprised therein. It must be held that denominational institutions are within Art. 25 (2) (b). The validity of S. 3 of the Madras Act 5 of 1947 does not depend on its own force but on Art. 25 (2) (b) of the Constitution. The very Constitution which is claimed to have rendered S. 3 of the Madras Act void as being repugnant to Art. 26 (b) has, in Art. 25 (2) (b) invested it with validity, and, therefore, the trustees can succeed only by establishing that Art. 25 (2) (b) itself is inoperative as against Art. 26 (b).

Applying the rule of harmonious construction it must be held that Art. 26 (b) must be read subject to Art. 25 (2) (b).

Exclusive right of the members of the community to worship for all the time will be hit by Art. 25 (2) (b) but the distinct right, namely, that during certain ceremonies and on special occasions, it is only members of the Gowda Saraswath Brahmin community that have the right to take part therein, and that on those occasions, all other persons would be excluded, would clearly be a denominational right. If this right is recognised, what is left to the public of the right under Art. 25 (2) (b) is substantial and unaffected.

Held, on facts that even though the members of the public were not parties to the litigation, they could be bound by the result of it, since it was their rights that had been agitated by the Government and not any of its own rights. Sri Venkataramana Devaru v. State of Mysore, 36 Mys L J 232 : 1958 Mad W N (S C) 96 : (1958) S C J 382 : (1958) 1 Mad L J (S C) 109 : (1958) 1 Andh W R (S C) 109 : 1958 S C R 895 : AIR 1958 S C 255 (263, 265, 267, 268, 269) (Pt F) (Prs 16, 18, 24, 25, 27, 29, 31, 32, 33, 34).

8. Explanation I.

——Art. 25 — Kripan means a sword and its size or shape has not been prescribed by the Sikh Religion;

it may be a sword of any size or shape. 1952 Cri L J 218 : AIR 1952 All 53 (55) (Pt A) (Pr 13).

——Art. 25—A person as a Sikh is entitled to possess only one sword. He cannot possess an extra sword without a licence. 1952 Cri L J 218 : A I R 1952 All 53 (55) (Pt B) (Prs 16, 18).

9. Explanation II.

● ——Art. 25 (2) (b), Expl. II — 'Hindu' includes Buddist only for purpose of Art. 25 (2) (b) and for no other. See Constitution (Scheduled Castes) Order (1950), Cl. (3). AIR 1965 S C 1179.

——Art. 25, Expl. II—Applicability — Explanation II to Art. 25 lays down that reference to Hindus shall be construed as including a referenee to persons professing the Sikh, Jain or Buddhist religion only in sub-cl. (b) of Cl. (2) of that article. In general the term Hindu does not include those professing the Buddhist religion. It includes only those persons who are governed by Hindu law. See Ibid, Art. 14. ILR (1961) 11 Raj 63.

ARTICLE 26

SYNOPSIS

(Constitution of India, Art. 26)

1. Scope of the Article.
2. Right to manage its own affairs in matters of religion — Clause (b).
3. Right to own and acquire property—Clause (c).
4. Right to administer property—Clause (d).

1. Scope of the Article.

● ——Art. 26 (1) — Institutions for charitable purposes — In a larger sense an educational institution may be regarded as charitable. Rev. Sidhrajbhai Sabhaj v. State of Gujarat, (1963) 3 S C R 837 : (1963) 2 S C A 394 : 1962 Ker L T (S C) 135 : A I R 1963 S C 540.

● ——Art. 26 — Scope — Articles 25 and 26 embody principles of religious toleration. See Ibid, Art. 25. AIR 1962 S C 853.

● ——Art. 26 — 'Denomination', meaning of — Followers of the three Acharyas.

The word 'denomination' has been defined in the Oxford Dictionary to mean 'a collection of individuals classed together under the same name; a religious sect or body having a common faith and organisation and designated by a distinctive name'. The practice of setting up Maths as centres of theological teaching was started by Shri Sankaracharya and was followed by various teachers since then. After Sankara, came a galaxy of religious teachers and philosophers who founded the different sects and sub-sects of the Hindu religion. Each one of such sects or sub-sects can be called a religious denomination, as it is designated by a distinctive name —in many cases it is the name of the founder—and has a common faith and common spiritual organisation. The followers of Ramanuja, who are known by the name of Shri Vaishnavas, constitute a religious denomination, and so do the followers of Madhwacharya and other religious teachers.

Further, Art. 26 contemplates not merely a religious denomination but also a section thereof, the Math or the spiritual fraternity represented by it can legitimately come within the purview of this article. Commr., H. R. E., Madras v. Sri Lakshmindra Thirtha Swamiar, 1954 Mad W N 363 : (1954) S C J 335 : (1954) 1 M L J 596 : 1954 S C A 415 : 20 Cut L T 250 : 1954 S C R 1005 : 67 Mad L W 1220 : A I R 1954 S C 282 (289) (Pt E) (Pr 15).

——Arts. 26, 25 and 19 (1) (f) — Mutwalli can neither claim personal interest in waqf property nor claim to fall within definition of religious denomination or section thereof — Mutwalli cannot complain about violation of Art. 19 (1) (f) and neither Art. 25 nor Art. 26 can help him — U. P. Muslim Waqfs Act (16 of 1960), Ss. 49, 50. See Ibid, Art. 19 (1) (f). A I R 1965 All 333.

——Arts. 26, 30, 226 — Wearing a nun's religious habit by expelled nun while teaching in Convent school — Whether a fundamental right — Petition under Art. 226 against private body — Maintainability.

A was a nun working as woman teacher in the school run by Roman Catholic Mission. By reason of conduct unbecoming of a nun, the Bishop in his capacity as the head of the Diocese expelled A from the sisterhood. In defiance of the Canon Law, A persisted in wearing the religious habit of a nun after her expulsion. The authorities also removed her as a teacher. On appeal to the educational authorities, A was ordered to be reinstated. On representation of the Mission authorities the reinstatement was made subject to the discipline of the Convent with regard to the dress. The Mother-General issued a direction that A should attend the school wearing a saree and blouse as a lay woman teacher. In writ petition A contended that such a direction about her dress was illegal and that it was still open to her to wear the religious habit of a nun.

Held (1) that the Educational authority had not passed a direction adverse to A on an appeal of which due notice was not given to the petitioner; (2) that under Art. 26 the Roman Catholic Mission could establish and maintain the churches and manage their affairs in matters of religion. Any religious body has a right to establish and maintain institutions for religious and charitable purposes and manage their affairs. The term 'administer' in Art. 30 is wide enough to take in enforcement of discipline in regard to dress and other matters by the educational institution. Thus the direction that A, an expelled nun should not wear the 'religious habit' of a nun could not be questioned when indisputably nuns have a distinctive dress known as the 'religious habit' which only nuns could wear. There is nothing in the chapter of fundamental rights embodied in Part III of the Constitution whereunder such a right is expressed or could be inferred. AIR 1954 S C 282, Rel. on. (3) that A could wear a nun's 'religious habit' could not be a right which could be recognised under the chapter of Fundamental Rights and much more so when she had ceased to be a nun; (4) that the Mission authority was a private body and the petition under Art. 226 complaining of an infringement of a fundamental right did not lie against the said body : AIR 1952 S C 59 and AIR 1956 S C 108, Rel. on. AIR 1964 Andh Pra 277 (279) (Prs 9, 10, 11, 13) (DB).

——Art. 26 — Scope — Article 26 does not deal with the rights of an individual or of a citizen. It deals with the rights of a religious denomination or a section of a religious denomination. See Ibid, Art. 25. AIR 1954 Cal 241.

——Art. 26 (a) — Right to perform Santhi at temple confined to particular Brahmin community — Purchase of right by institution on this condition — Validity.

Where the right of performing "Santhi" at the temple was confined by custom to a particular Brahmin community, and the right was put up to auction by the State in whom the right to manage the temple had vested and the bid of a certain institution was accepted, and the auction was subject to the condition that the "Santhi" would be performed by the particular Brahmin community according to the established custom and usage, the right of the public

under Art. 26 (a) of the Constitution is not infringed. 1960 Ker L T 250 : AIR 1960 Ker 312 (313) (Pr 1).

——Art. 26 — Religious denomination — Gowd Sarswath Brahmin community is a religious denomination — Inclusion of Shri Venkataramana Temple, Mulki in list under S. 38, Madras Act (19 of 1951) — Petition under Art. 26 is maintainable.

The Gowd Saraswath Brahmin community is undoubtedly a religious denomination or at any rate a section of a religious denomination. Therefore, the protection under Art. 26 can be claimed on behalf of the trustees of a temple belonging to the denomination. Therefore the provisions of the Act in so far as they interfere with the autonomy of the religious denomination which own and has the sole and exclusive control of the temple should not be allowed to be enforced including the provision relating to notification procedure which vests an arbitrary power in the Commissioner and the Government to wrest from the hands of the trustees the power to administer the temple.

Mere inclusion of the temple in the list under S. 38 is enough for the trustees to move the Court under Art. 26 since inclusion of temple in the list means that the Board have taken a definite decision to apply the provisions of the Act to the temple owned by the trustees. The petition cannot be thrown out in limine on the ground that the petitioners are not persons aggrieved and that there is at present no danger of the provisions of the Act being applied to the temple. (1952) 2 M L J 481 : 65 Mad L W 968 : A I R 1953 Mad 149 (151, 152) (Prs 3, 4, 5) (DB).

——Art. 26 — Denomination — Who could form and claim benefit of Art. 26. See Madras H. R. and Charitable Endowments Act (19 of 1951), S. 20. A I R 1952 Mad 613 (DB).

——Art. 26—Scope—Denomination, meaning of.

The dictionary meaning of the word 'denomination' as given by Webster is "a collection of individuals classed together under the same name; now almost always specially a religious sect or body having a common faith and organization and designated by a distinctive name." There being several religions in India such as Islam, Christianity, Zorostrianism and Hinduism, it may not be wrong to take Hinduism and the members of that religion as constituting a religious denomination in a larger sense or if it should be taken in a limited sense. Advaita, Dwaita, Visishtadwaita, Saivaites may be another classification and the members of each faith may be be treated as members of one denomination. Even taking it in the sense as only a 'sect writ large' the division of the members of the Hindu religion based upon a system of philosophy which is adopted by a group of members may be treated as a denomination or sect and any section of that denomination and a division made either on territorial or sectional basis, may be treated as a section thereof. The contention that the denomination contemplated by Art. 26 is not identical with a religious sect or members of a religious persuasion but it must be a closed body like a Corporation cannot be accepted. It is rather difficult to dissociate the religious affairs of an institution from the property or its secular affairs. The secular affairs are only directed for the purpose of better management of the religious affairs for which alone the institution exists. They are inextricably mixed up.

Article 26 is concerned with religious institutions and the consideration of the question whether there is any beneficial ownership in the properties of the institution by the members of the denomination is irrelevant as it is solely concerned with the institution which exists for spiritual and not for material benefit.

It is unnecessary, that in order to claim the benefit of Art 26, a religious denomination should be capable of holding all the four rights in the four sub clauses of that article. Each clause recognises a distinct and separate right. The denomination may exercise all or any of those rights and it is unnecessary that it should own all the rights before it can claim recognition as a religious denomination. 1952 Mad W N 299 : 1952 1 Mad L J 557 : A I R 1952 Mad 613 (639, 640) (Pt D) (Prs 40, 41, 42, 43) (DB).

——Art. 26 — Mysore Police Act (5 of 1908) S. 40— Notification under — Validity — If can be challenged on ground that proceedings under S. 144, Criminal P. C., would have been more appropriate so as to protect rights of petitioners in respect of management of religious institution—Duty of State to protect civil rights — Extent of, in cases of emergency arising out of breach of public peace. See Mysore Police Act (5 of 1908), S. 40. 1962 Mys L J (Supp) 411.

——Art. 26 — Denominational Institutions — If unconstitutional. See Ibid, Art. 25. (1957) M P L J 1 (Nag).

——Art. 26—Extolling one's own religion—Propriety. See Ibid, Art. 25. (1957) M P L J 1 (Nag).

——Art. 26—Duty of Court—The Judge when called upon to pronounce on religious freedom is not justified in writing his private notions of Policy into the Constitution. See Ibid, Art. 25. (1957) M P L J 1 (Nag).

——Art. 26 — Religion and "religious denomination — Meaning — Institution belonging to Hindu public in general.

The expression 'religious denomination' in Art. 26 may be used both in a larger sense and in a narrow sense and its construction will depend on the context. Thus in a country like India where there are several religious faiths the followers of each religion may also be quite appropriately called a religious denomination. The contention that the followers of the Hindu religion in general will not form members of a religious denomination within the meaning of Art. 26 cannot, therefore, be accepted and an institution meant for the Hindu public generally will also get the protection of Art. 26. A I R 1954 S C 282, Rel. on : A I R 1958 S C 255, Disting. I L R (1958) Cut 369 : A I R 1959 Orissa 5 (12) (Pt D) (Pr 17) (DB).

——Art. 26 — Durgah Khwaja Saheb Act, S. 5 — Validity,

The Chishtia order can be considered to be a religious denomination or a section thereof mentioned in Art. 26 of the Constitution.

Section 5 of the Act is hit by Art. 26 of the Constitution so far as it lays down that the Committee shall consist of Hanafi Muslims without further restricting that they shall be of the Chishtia order believing in the religious practices and rituals in vogue at this Shrine. I L R (1959) 9 Raj 424 : 1959 Raj L W 496 : AIR 1959 Raj 177 (190, 191) (Pt E) (Prs 68, 76) (DB).

[Reversed in A I R 1961 S C 1402.]

Religious Practices — Power of Government to enquire into.

——Art. 26—Scope—Appointment of inquiry committee to inquire into harassment by and against Christian Missions — If offends Arts. 25 and 26 (Criminal P. C. (1898), Ss. 107, 144, 145) — (Penal Code (1860), Chapters 8, 16). See Ibid, Art 25 (1957) M P L J 1 (Nag).

——Art. 26 — Christian Missions — Attitude towards Indians — Inquiry as to. See Ibid, Art. 25. (1957) M P L J 1 (Nag).

——**Art. 26**—Inquiry about money received by foreign Missions — Power of State. See Ibid, Art. 25. **1957 M P L J 1 (Nag).**

——**Art. 26** — Inquiry about Pracharaks — Power of Government. See Ibid, Art. 25. **1957 M P L J 1 (Nag).**

——**Art. 26** — Inquiry by Government about operations of Christian Missions—Powers of Government. See Ibid, Art. 25. **1957 M P L J 1 (Nag).**

——**Art. 26** — Inquiry into social relations between christians and others — Propriety. See Ibid, Art. 25. **1957 M P L J 1 (Nag).**

——**Art. 26** — Religious community indulging in politics — Inquiry by Government — Legality. See Ibid, Art. 25. **1957 M P L J 1 (Nag).**

——**Art. 26**—Right of religious practices —Inquiry by State. See Ibid, Art. 25. **1957 M P L J 1 (Nag).**

2. Right to manage its own affairs in matters of religion—Clause (b).

● ——**Arts. 26, 25 (1), 31 (2), 14 and 19 (1) (f)** — Legislature taking over secular affairs of religious institution—Validity of Nathdwara Temple Act—Act does not contravene Arts. 14, 19 (1) (f), 31 (2), 25 or 26—Provisions of the Act except first part of S. 30 (2) (a) are valid—A I R 1962 Raj 198, Reversed in part — Religious practice to which Art. 25 (1) refers and affairs in matters of religion to which Art. 26 (b) refers, include practices which are an integral part of the religion itself and the protection guaranteed by Art. 25 (1) and Art. 26 (b) extends to such practices. See Rajasthan Nathdwara Temple Act (12 of 1959), S. 2 (viii). A I R 1963 S C 1638.

● ——**Arts. 26, Cl. (b), 25 (2)**—Law interfering with right of religious denomination to ex-communicate its members — Constitutional validity — Dawoodi Bohra — Dai-ul-Mutlaq — Legislation invalidating his power of ex-communicating members on religious grounds—Legislation violates Art. 26 (b) and is void —Legislation not saved by Art. 25 (2)—Bombay Prevention of Ex-communication Act (42 of 1949). AIR 1953 Bom 183, Overruled.

Per Majority (Sarkar, Das Gupta and Mudholkar, JJ.; Ayyangar, J., concurring; Sinha, C J., contra):

The Bombay Prevention of Ex-communication Act, 42 of 1949, in so far as it destroys the right of the Dai ul-Mutlaq of excommunicating any member of the Dawoodi Bohra Community on religious ground, is void being in violation of Art. 26 (b) of the Constitution: AIR 1953 Bom 183 Overruled.

Since the decision of the Privy Council in A I R 1948 P C 66 it is no longer open to dispute that the Dai ul-Mutlak as the head of the Dawoodi Bohra Community has the right to excommunicate any member of the community.

The impugned Act makes even such excommunications invalid and takes away the power of the Dai as the head of the community to excommunicate even on religious grounds. It therefore, clearly interferes with the right of the Dawoodi Bohra Community under Cl. (b) of Art. 26 of the Constitution. The necessary consequence of excommunication will be that the excommunicated member will lose his right of enjoyment of property. The right given under Art 26 (b) has not, however, been made subject to preservation of civil rights. Hence, the fact that civil rights of a person are affected by the exercise of the fundamental right under Art. 26 (b) is of no consequence. The right under Art. 26 (b) is subject to cl. (2) of Art. 25 of the Constitution. The impugned Act, however does not come within the saving provisions embodied in cl. (2) of Art. 25. As the Act invalidates excommunication on any ground whatsoever, including religious grounds, it must be held to be in clear violation of the right of the Dawoodi Bohra Community under Art. 26 (b) of the Constitution.

Per Ayyangar, J., concurring:

The impugned enactment is a violation of the right to practise religion guaranteed by Art. 25(1) and is also violative of Art. 26 in that it interferes with the rights of the Dai as the trustee of the property of the denomination to so administer it as to exclude dissidents and excommunicated persons from the beneficial use of such property.

Per Sinha C. J., contra: Art. 26 (b) must be read subject to Art. 25 (2) (b).

The Act is aimed at fulfilment of the individual liberty of conscience guaranteed by Art. 25 (1) of the Constitution, and not in derogation of it. Sardar Syedna Taher Saifuddin v State of Bombay, (1962) 2 S C A 192: (1963) 2 S C J 519: 1962 Supp (2) S C R 496: AIR 1962 S C 853 (865, 866, 867, 869, 870, 873, 874, 875, 876) (Pt A) (Prs 19, 21, 22, 23, 24, 27, 40, 41, 42, 44, 46, 56, 57, 60, 64, 65).

● ——Art. 26—**Applicability—'Matters of religion'—What constitute.**

Matters of religion in Art. 26 (b) include even practices which are regarded by the community as part of its religion. In order that the practices in question should be treated as a part of religion they must however be regarded by the said religion as its essential and integral part; otherwise even purely secular practices which are not an essential or an integral part of religion are apt to be clothed with a religious form and may make a claim for being treated as religious practices within the meaning of Art. 26. Unless the practices are found to constitute an essential and integral part of a religion their claim for the protection under Art. 26 may have to be carefully scrutinised: A I R 1954 S C 282 and A I R 1958 S C 255, Rel. on. Durgah Committee, Ajmer v. Syed Hussain Ali (1962) 1 S C R 383: (1961) 2 S C A 171: A I R 1961 S C 1402 (1415) (Pt B) (Pr 33).

● ——Arts. 26, 19 (1) (f), 25, 14 and 27 — Bihar Hindu Religious Trusts Act (1 of 1951), does not infringe Arts. 14, 19 (1) (f), 25, 26 and 27 of Constitution. See Bihar Hindu Religious Trusts Act (1 of 1951). **AIR 1959 S C 1073.**

● ——**Arts. 26 and 25**—Bihar Hindu Religious Trusts Act — Provisions of Act do not contravene Arts. 25 and 26. See Ibid, Art. 25. **AIR 1959 S C 942.**

● ——**Art. 26 (b)** — Principle of direct election on universal denominational suffrage —Not a matter of religion within Art. 26 (b). See Punjab Sikh Gurdwaras Act (6 of 1925), S. 148 B. **AIR 1959 S C 860.**

● ——**Art. 26 (b) and (d)—Distinction between.**

The distinction between Cls. (b) and (d) strikes one at once. So far as administration of its property is concerned, the right of a religious denomination is to be exercised in accordance with law, but there is no such qualification in cl. (b). The administration of its property by a religious denomination has thus been placed on a different footing from the right to manage its own affairs in matters of religion. The latter is a fundamental right which no legislature can take away, whereas the former can be regulated by laws which the legislature can validly impose. Freedom of religion in our Constitution is not confined to religious beliefs only, but extends to essential religious practices as well, subject to the restrictions which the Constitution has laid down. Under Art. 26 (b) a religious denomination or organisation enjoys complete autonomy in the matter of deciding as to what rites and ceremonies are essential according to the tenets of the religion they hold. A I R 1954 S C

282 and A I R 1958 S C 255, Rel on. Sarup Singh v. State of Punjab, (1960) 1 S C A 163 : (1959) Supp (2) S C R 499: 1959 SCJ 1115: A I R 1959 S C 860 (865) (Pt B) (Pr 7).

● —Art. 26 (b) — "Matters of religion" — Denominational temple founded for benefit of Gowda Saraswath Brahmins — Right to exclude others from worship— Conflict between Arts 25 (2) (b) and 26 (b) —Art. 25 (2)(b) prevails. See Ibid, Art. 25 (2) (b). AIR 1958 SC 255.

● —Art. 26 (b)— Right conferred by Art. 25 (2) (b) is available against individual under Art. 25 (1) or against denomination under Art. 26 (b). See Ibid, Art. 25 (2) (b). AIR 1958 S C 255.

● —Art. 26 — Infringement of. See Orsssa Hindu Religious Endowments Act (4 of 1939), S. 38. A I R 1954 S C 400.

● —Art. 26 (b) and (d) — Fundamental rights and restrictions with respect to matters of religion.

In regard to affairs in matters of religion, the right of management given to a religious body is a guaranteed fundamental right which no legislation can take away. On the other hand, as regards administration of property which a religious denomination is entitled to own and acquire, it has undoubtedly the right to administer such property but only in accordance with law. This means that the State can regulate the administration of trust properties by means of laws validly enacted; but under Art. 26 (d), it is the religious denomination itself which has been given the right to administer its property in accordance with any law which the State may validly impose. A law, which takes away the right of administration altogether from the religious denomination and vests it in any other or secular authority, would amount to violation of the right which is guaranteed by Art. 26 (d) of the Constitution. AIR 1954 S C 282 Reiterated. Ratilal Panachand Gandhi v. State of Bombay, (1954) S C J 480 : (1954) 1 M L J 718 : 1954 S C A 538 : 56 Bom L R 1184 : 1954 S C R 1055 : AIR 1954 S C 388 (391) (Pt B) (Pr 11).

● —Art. 26 — Matters of religion and secular administration.

The distinction between matters of religion and those of secular administration of religious properties may, at times, appear to be a thin one. But in cases of doubt, the Court should take a common sense view and be actuated by considerations of practical necessity. 67 Com W L R 116 (129), Rel. on. Ratilal Panachand Gandhi v. State of Bombay, (1954) S C J 480 : (1954) 1 M L J 718 : 1954 S C A 538 : 56 Bom L R 1184 : 1954 S C R 1055 : AIR 1954 S C 388 (392) (Pt D) (Pr 14).

● —Art. 26—Trust created for religious purposes —Right to spend trust property—Diversion of trust property—Infringement of fundamental right.

A religious sect or denomination has the undoubted right guaranteed by the Constitution to manage its own affairs in matters of religion and this includes the right to spend the trust property or its income for the religious purposes and objects indicated by the founder of the trust or established by usage obtaining in a particular institution. To divert the trust property or funds for purposes which an Authority created under a State Act or the Court considers expedient or proper, although the original objects of the founder can still be carried out, is an unwarrantable encroachment on the freedom of religious institutions in regard to the management of their religious affairs. Ratilal Panachand Gandhi v. State of Bombay, (1954) S C J 480 : (1954) 1 M L J 718 : 1954 S C A 538 : 56 Bom L R 1184 : 1954 S C R 1055 : AIR 1954 S C 388 (393) (Pt G) (Pr 19).

● —Art. 26 — Fundamental rights and restrictions with respect to matters of religion. See Ibid, Art. 25. AIR 1954 S C 282.

● —Art. 26 — Distinction between Art. 26, Cl. (b) and following two clauses.

Besides the right to manage its own affairs in matters of religion, which is given by Art. 26, Cl. (b), the next two clauses of Art. 26 guarantee to a religious denomination the right to acquire and own property and to administer such property in accordance with law. The administration of its property by a religious denomination has thus been placed on a different footing from the right to manage its own affairs in matters of religion. The latter is a fundamental right which no Legislature can take away, whereas the former can be regulated by laws which the Legislature can validly impose. It is clear, therefore, that questions merely relating to administration of properties belonging to a religious group or institution are not matters of religion to which Cl. (b) of the article applies. Commissioner, H. R. E., Madras v. Sri Lakshmindra Thirtha Swamiar, 1954 Mad W N 363 : (1954) S C J 335 : (1954) 1 M L J 596 : 1954 S C A 415 : 20 Cut L T 250 : 1954 S C R 1005 : 67 Mad L W 1220 : A I R 1954 S C 282 (289) (Pt F) (Pr 17).

● —Art. 26 (b)—What are matters of religion.

What constitutes the essential part of a religion is primarily to be ascertained with reference to the doctrines of that religion itself. If the tenets of any religious sect of the Hindus prescribe that offerings of food should be given to the idol at particular hours of the day, that periodical ceremonies should be performed in a certain way at certain periods of the year or that there should be daily recital of sacred texts or oblations to the sacred fire, all these will be regarded as parts of religion and the mere fact that they involve expenditure of money or employment of priests and servants or the use of marketable commodities will not make them secular activities partaking of a commercial or economic character; all of them are religious practices and should be regarded as matters of religion within the meaning of Art. 26. Commissioner of H. R. E., Madras v. Shri Lakshmindra Thirtha Swamiar, 1954 Mad W N 363 : (1954) S C J 335 : (1954) 1 M L J 596 : 1954 S C A 415 : 20 Cut L T 250 : 1954 S C R 1005 : 67 Mad L W 1220 : AIR 1954 S C 282 (290) (Pt H) (Pr 19).

—Art. 26 - U. P. Muslim Waqfs Act (1960), S. 55— Validity — Duties of Mutwalli are purely secular in character and not of a religious character — Validity cannot be challenged under Arts. 19 (1) (f), 25 and 26. See Ibid, Art. 19 (1) (f). AIR 1965 All 333.

—Art. 26—Commissions of Inquiry Act (1952), S. 5 (3)—Sub-section (3) of S. 5 is constitutionlly valid— The right of entry, search and seizure, conferred by S. 5 (3) of the Act, does not violate the sanctity of the institution nor is it likely to wound religious feelings. Hence sub-s. (3) of S. 5 of the Act is constitutionally valid and does not violate the provision contained in Arts. 25 and 26 of the Constitution. See Ibid, Art. 25. AIR 1959 Andh Pra 148.

—Art. 26—Bombay Public Trusts Act (29 of 1950). Preamble and Ss. 18, 31, 32, 34 to 37, 44, 47, 48, 50 (e) and (g), 55 to 59 and 62 — Whether provisions contravene the fundamental rights embodied in Arts. 25 and 26. See Bombay Public Trusts Act (29 of 1950), Preamble. AIR 1953 Bom 242 (DB).

[Reversed on another point in AIR 1954 S C 388.]

—Art. 26—Religion as used in Arts. 25 and 26 must be construed in its strict and etymological sense. 55 Bom L R 86: I L R (1953) Bom 1187: AIR 1953 Bom 242 (244, 245) (Pt B) (Pr 4) (DB).

[Reversed on another point in AIR 1954 S C 388.]

——Art. 26 (b)—Management of domestic affairs.

What is safeguarded under sub-cl. (b) is the right of a religious denomination to manage its own domestic affairs provided those affairs only refer to matters of religion. What was obviously contemplated was that when a religious denomination is dealing with things like dogmas, things like religious ceremonies, things like matters concerning its own day to day affairs, the State should not interfere with those matters. But where the religious denomination is managing its own affairs connected with property it cannot be said that those are affairs in matters of religion. 55 Bom L R 86 : I L R (1953) Bom 1187 : AIR 1953 Bom 242 (244, 245) (Pt D) (Pr 4) (DB).

[Reversed on another point in AIR 1954 S C 388.]

——Art. 26 (b)—Scope—"To manage its own affairs in matters of religion" meaning of.

To manage its own affairs in matters of religion can only mean that in domestic matters of a religious denomination, where those matters are concerned with questions of religion, the Legislature cannot interfere unless the denomination is managing its affairs in such a way as to interfere with public order, morality and health. 55 Bom L R 1: AIR 1953 Bom 183 (187, 188) (Pt H) (Pr 18) (DB).

[Overruled on another point in AIR 1962 S C 853.]

——Art. 26—Dispute regarding worship in a temple —Matter governed by religious law — Matter to be decided in a civil Court — No outside authority has any jurisdiction to interfere with the decision of the religious denomination. A I R 1954 S C 282 and AIR 1958 S C 255, Rel. on. 1962 M P L J (Notes) 181.

——Art. 26 (d) — Muslim Wakfs Act (29 of 1954), S. 11—Provisions do not violate Art. 26 (b) and (d) of the Constitution. See Muslim Wakfs Act (1954), S. 11. AIR 1959 Madh Pra 377.

——Art. 26 Religious beliefs and practices. See Ibid, Art. 25. AIR 1958 Madh Pra 115.

——Art. 26 — Scope and applicability — Madras Temple Entry Authorisation Act (5 of 1947 as amended by Madras Act 13 of 1949) — Validity — Act is not ultra vires the Constitution and continues to be in force as a valid piece of legislation. See Ibid, Art. 17. AIR 1956 Mad 541.

——Art 26—Madras Hindu Religious and Charitable Endowments Act (19 of 1951), S. 21 (as amended by Act 27 of 1954) — S. 21 is invalid even as amenedd. See Ibid, Art. 13. AIR 1956 Mad 491.

——Art. 26—Madras Hindu Religious and Charitable Endowments Act (19 of 1951), S 100 (2) (y)— Rule 10 of the Rules framed under section — Right of Mathadhipathis to manage affairs of Math — Unreasonable restrictions on — Rule 10 is invalid. See Ibid, Art. 25. AIR 1956 Mad 491.

——Art. 26—Madras Hindu Religious and Charitable Endowments Act (19 of 1951), S. 20 The impugned Act in so far as it takes away the right to administer the religious and secular affairs of the Mutt is invalid as infringing Art. 26. See Madras Hindu Religious and Charitable Endowments Act (19 of 1951), S. 20. AIR 1952 Mad 613 (DB).

——Art 26 (b) and (d)—Scope of. See Orissa Hindu Religious Endowments Act (2 of 1952), S. 42. A I R 1959 Orissa 117 (DB).

——Art. 26 (b) — Scope — Religion — Includes religious practices of all sects.

The expression 'religion' in Art. 26 (b) includes not only the philosophical side of religion, but also religious practices as laid down in the tenets of any religious sect. By virtue of clause (b) of Art. 26, the religious practices sanctioned by a particular denomination should be preserved inviolate. The legislature is not competent to alter or modify the same, subject of course to certain limitations such as public order, morality or health as specified in the article itself. A I R 1954 S C 282 and A I R 1954 S C 388, Rel. on. ILR (1958) Cut 369 : AIR 1959 Orissa 5 (10) (Pt B) (Pr 10) (DB).

——Art. 26 (b) — Sri Jagannath Temple Act (1955), Ss. 1, 15 — Validity of Act — Does not contravene Art. 26 (b). See Sri Jagannath Temple Act (11 of 1955), S. 1. AIR 1959 Orissa 5.

——Art. 26 — Bihar Wakf Act (7 of 1948), S. 32 — Validity of.

Article 26 empowers every religious denomination or any section thereof to manage its own affairs in matter of religion. Therefore no provision of the Act interferes with such management and the power of the majlis to appoint a temporary Mutawalli as contained in S. 32 of the Act does not amount to interference with such affairs. 1963 B L J R 151.

——Art. 26 — Bihar Hindu Religious Trusts Act — Validity of — There is no violation of the guarantee under Arts. 19, 25 and 26 of the Constitution of India and Bihar Act 1 of 1951 is a valid piece of legislation. See Ibid, Art. 19. A I R 1957 Pat 615 (DB).

——Art. 26 — Bihar Hindu Religious Trusts Act (1 of 1951)— Validity — Legislation constitutionally valid. See Bihar Hindu Religious Trusts Act (1951). A I R 1954 Pat 278.

——Art. 26 — Scope — Punjab Sikh Gurdwaras Act (1925), S. 148-B—Constitution of interim Board under, if amounts to interference in religious matter. See Punjab Sikh Gurdwaras Act (8 of 1925), S. 148-B (as Amended in 1959). AIR 1959 Punj 623 (DB).

——Arts. 26 and 226 — Appointment of temporary khateeb for Idgah by Wakf Board — Fundamental or legal right of the members of the congregation of Muslims entitled to offer prayers at Idgah not infringed — High Court will not issue writ under Art. 226. 1964 Raj L W 278 : I L R (1964) 14 Raj 497.

——Art. 26 (b) — Legislation taking over administration of secular affairs of religious institution — Validity — Nathdwara Temple Act (13 of 1959), Ss. 2 (viii), 16, 28 (2) and (3), 30 (2) (a), 36 and 37 — Provisions ultra vires the Constitution. See Ibid, Art. 14. AIR 1962 Raj 196.

● ——Art. 26 — Section 66 of Trav-Co Act (15 of 1950) does not offend Arts. 19, 26 and 254 of the Constitution. See Ibid, Art. 19. AIR 1956 Trav-Co 19 (FB).

● ——Art. 26 — Restrictions imposed in Ss. 63 and 64 of Trav Co Act (15 of 1950) in choosing members of Cochin Devaswom Board. See Ibid, Art. 14. AIR 1956 Trav-Co 19 (FB).

3. Right to own and acquire property—Clause (c).

● **——Art. 26 (c), (d)—Scope—S. 5, Durgah Khawaja Saheb Act (1955) — Validity. A I R 1959 Raj 177, Reversed.**

Article 26 (c) and (d) merely safeguard and guarantee the continuance of rights which a denomination or its section had. If the right to administer properties never vested in the denomination or had been validly surrendered by it or has otherwise been effectively and irretrievably lost to it Art. 26 cannot be successfully invoked.

The endowments of Durgah Khawaja Saheb have always been made on such terms as did not confer on the denomination represented by the Khadims the

right to manage the properties endowed. The management of the properties endowed was always in the hands of officers appointed by the State who were answerable to the State. Hence the vires of S. 5 of Act 36 of 1955 and the subsidiary sections which deal with the powers of the Committee cannot be challenged on the ground that the said provisions violate the fundamental right guaranteed to the denomination represented by the Khadims under Art. 26 (c) and (d). A I R 1959 Raj 177, Reversed. Durgah Committee, Ajmer v. Syed Hussain Ali, (1962) 1 S C R 383 : (1961) 2 S C A 171 : A I R 1961 S C 1402 (1416, 1417) (Pt C) (Pr 37).

● —Art. 26 (c)—Scope of the right conferred by.

Article 26 (c) of the Constitution confers on every religious denomination the right to own and acquire property, but it does no more than this and there is no ground for holding that it prevents, or was intended to prevent, property belonging to a religious body being acquired by authority of law. Suryapal Singh v. Government of U. P., ILR (1952) 2 All 46 : 1951 A W R (HC) 317 : 1951 A L J 365 : A I R 1951 All 674 (690) (Pt R) (Pr 82) (FB).

—Art. 26 — Constitutional validity of W. B Foodgrains Order under article — Order is valid. See West Bengal Foodgrains (Intensive Procurement), Order, 1952. AIR 1954 Cal 241.

—Art. 26—Acquisition of Devadayam inam under Estates Abolition Act—Validity — (Tenancy Laws—Orissa Estates Abolition Act, 1951 (1 of 1952), S. 3).

The acquisition of a Devadayam inam under S. 3 of the Orissa Estates Abolition Act does not interfere with the fundamental rights guaranteed under Art. 26. There is only a change in the form of the property, namely, from immovable property into money, and the fundamental rights guaranteed are not in any way affected. A I R 1952 S C 252, Foll.; A I R 1954 S C 282, Disting. 23 Cut L T 205 : ILR (1957) Cut 328 : A I R 1958 Orissa 18 (19) (Pt C) (Pr 7) (DB).

—Art. 26 — Bihar Hindu Religious Trusts Act (1 of 1951), S 60 (2)—Validity. See Ibid, Art. 19. A I R 1957 Pat 615 (DB).

4. Right to administer property — Clause (d).

● —Art. 26 (d) Shri Jagannath Temple Act, 1954 (Orissa Act 11 of 1955) Act is not hit by Art. 26 (d). Articles 27 and 28 have nothing to do with the matters dealt with under the Shri Jagannath Temple Act, 1954 (Orissa Act 11 of 1955). In the absence of any indication as to which was the denomination which was concerned with the Temple and whose rights to administer the Temple have been taken away and in the absence of any claim on behalf of any denomination, the Act is not open to argument that it is bad on the ground that it is hit by Art. 26 (d). See Shri Jagannath Temple Act (11 of 1955). A I R 1964 S C 1501.

● —Arts. 26, 14, 19 (1) (f), 31 and 31A — Tenancy Law — Mysore Tenancy Act (13 of 1952), S. 6 — Section is valid. See Tenancy Laws — Mysore Tenancy Act (13 of 1952), S. 6. (1963) 2 S C J 246 : AIR 1966 S C 1172.

● —Art. 26 (d)— S. 5, Durgah Khawaja Saheb Act (1955)—Validity. AIR 1959 Raj 177, Reversed.

The vires of S. 5 of the Durgah Khawaja Saheb Act (1955) cannot effectively be challenged on the narrow ground that since the Committee constituted under the Act was likely to include Hanafi Muslims who may not be Chisti Muslims the provision authorising the appointment of the Committee was ultra vires. If the right of the denomination or a section of such denomination is adversely affected by the statute the relevant provision of the statute must be struck down as a whole and in its entirety. The infirmity or the vice in the statute cannot be cured by confining the members of the proposed Committee to the denomination itself. A I R 1959 Raj 177, Reversed. Durgah Committee Ajmer v. Syed Hussian Ali, (1961) 2 S C A 171 : (1962) 1 S C R 383 : A I R 1961 S C 1402 (1416) (Pt D) (Pr 35).

—Art. 26—Right to manage property is secular and has not been taken away by S. 19, U. P. Muslim Waqfs Act, 1960 — Provisions of Constitution of India, Art. 26 are not attracted. See U. P. Muslim Waqfs Act (1960), S. 19. AIR 1965 All 333.

—Art. 26—Madras Hindu Religious and Charitable Endowments Act (19 of 1951), S. 52 — Validity—The avowed purposes and object of the Act is to see that religious trusts and institutions wherever they exist, are properly administered. See Ibid, Art. 19. A I R 1957 Andh Pra 283.

—Art. 26 (d)—Right to administer property.

The right to administer property given to a religious denomination or any section thereof is not an unqualified right. This right clearly contemplates the right of the State to make laws with regard to the administration of property owned and acquired by religious denomination or any section thereof. 55 Bom LR 86 : ILR (1953) Bom 1187 : AIR 1953 Bom 242 (244, 245) (Pt C) (Pr 4) (DB).

[Reversed on another point in AIR 1954 S C 388.]

—Art. 26 (d) — Regulation 58 framed under S. 16 of the Hyderabad Endowments Regulation if repugnant to Art. 26. See Hyderabad Endowments Regulation (1358 H.), S. 12. AIR 1955 Hyd 82.

—Art. 26 (d) — S. 30 of Gwalior State Places of Worship and Religious Endowments Aid and Administration Act (Smt. 1983), if interpreted as authorising permanent taking over by State, would be inconsistent with Art. 26 (d) of the Constitution. See Gwalior State Places of Worship and Religious Endowments Aid and Administration Act (Samvat 1983), S. 30. AIR 1965 Madh Pra 183.

—Art. 26 (b) — Muslim Wakfs Act (29 of 1954), S. 11 — Provisions do not violate Art. 26 (b) and (d) of the Constitution. See Muslim Wakfs Act (1954), S. 11. AIR 1959 Madh Pra 377.

—Arts. 26 and 25—Scope— Power of Legislature to make law with regard to religious matter or property possessed by religious institutions. See Ibid, Art. 25. AIR 1958 Madh Pra 362.

—Art. 26 — Religious institution denominational in character — Body entitled to protection under Article—Area Committee under the Madras H. R. E. Act purporting to nominate members — Fact not sufficient to cure vice or infirmity if rights guaranteed under Art. 26 (d) are effectively taken away by nomination — Madras Hindu Religious and Charitable Endowments Act (22 of 1959), Ss. 49 and 107.

A religious institution, which is denominational in character, belongs to the members of that community in the district as a whole and does not belong merely to the members of certain villages, or of certain named villages. It is this corporate body which has the right to manage the temple and to administer the endowments, presumably through the elected trustees; the rights of this body will be entitled to protection under Art. 26 of the Constitution particularly sub-cl. (d) thereof. Section 107 of the Madras Act (22 of 1959) statutorily embodies the right of any corporate body with regard to a denominational religious institution to have its functions preserved from invasion under Art. 26 of the Constitution. There is no need to strike down S. 49 in the 1959 Act as ultra

vires but the fact that the Area Committee purported to nominate members of the particular religious denominations will not be enough to cure the vice or infirmity, if otherwise the rights guaranteed to this body under Art. 26 (d) are effectively taken away by the nomination. AIR 1961 S C 1042, Foll ; AIR 1950 Mys 18, Rel. on. 78 Mad L W 388 : (1965) 2 Mad L J 220.

——Art. 26—Madras Hindu Religious and Charitable Endowments Act (19 of 1951), S. 31 (as amended by Act 27 of 1954) — Section 31 is invalid. See Ibid, Art. 13. AIR 1956 Mad 491.

——Art. 26—Madras Hindu Religious and Charitable Endowments Act (19 of 1951), S. 30 (2) (as amended by Act 27 of 1954) — S. 30 (2), though amended, is invalid. See Ibid, Art. 25. AIR 1956 Mad 491.

——Art. 26—Madras Hindu Religious and Charitable Endowments Act (19 of 1951), S. 52 (1) (f) (as amended by Act 27 of 1954) — S. 52 (1) (f) of Madras Act is valid. See Ibid, Art. 25. AIR 1956 Mad 491.

——Art. 26 (d) — Scope — Madras Act (19 of 1951), S. 18 — Validity. See Madras Hindu Religious and Charitable Endowments Act (19 of 1951) (As Amended by Madras Act (27 of 1954). AIR 1960 Mys 18 (DB).

——Art. 26 (d)—Madras Act (19 of 1951), Ss. 39, 41, 42 and 44—Validity — Taking away right of administration from religious denomination. See Madras Hindu Religious and Charitable Endowments Act (19 of 1951) (as amended by Madras Act 27 of 1954)), S. 39. AIR 1960 Mys 18 (DB).

——Art. 26 (d) — Orissa Hindu Religious Endowments Act (1952) — S. 42 —(Constitution of India, Art. 26 (b) and (d) — Scope of pointed out). See Orissa Hindu Religious Endowments Act (2 of 1952), S. 42. AIR 1959 Orissa 117.

——Art. 26 (d) — Religious denomination—Worshippers of Jagannath Temple Act — Validity. See Sri Jagannath Temple Act (11 of 1955), S. 1. AIR 1959 Orissa 5 (DB).

——Art. 26—Bihar Hindu Religious Trusts Act (1 of 1951), S. 28 (2) (i) — Validity. See Ibid, Art. 19. AIR 1957 Pat 615 (DB).

——Art. 26—Bihar Hindu Religious Trusts Act (1 of 1951), Ss. 30, 49 — Not invalid—The legislature has simply enacted in statutory form the doctrine of cypres applicable in the general law of charitable trust. See Ibid, Art. 25. AIR 1957 Pat 615.

——Art. 26—Bihar Hindu Religious Trusts Act (1 of 1951)—Validity.

Art. 26 (d) expressly states that the right of a religious denomination to administer property is not an unqualified right. Art. 26 (d) contemplates the right of the State to make a law with respect to administration of property owned and acquired by religious denominations or by any section thereof. All that is safeguarded is that so long as the religious denomination or a section thereof administers its property in accordance with such law as the State Legislature has passed, that right should not be interfered with. The expression 'law' in Art. 26 (d) should be construed to mean enacted law or State made law and not to mean the principles of natural justice outside the realm of positive law. The impugned Act does not violate the freedom given under Art. 26 of the Constitution of India. AIR 1950 S C 27, Foll. 32 Pat 1148 : AIR 1954 Pat 266 (275) (Pt J) (Pr 18) (DB).

——Art. 26 (d) — Legislation taking over administration of secular affairs of religious institution — Validity—Nathdwara Temple Act (13 of 1959), Ss. 2 (viii), 16, 28 (2) and (3), 30 (2) (a), 36 and 37—Provisions ultra vires the Constitution. See Ibid, Art. 14. AIR 1962 Raj 196.

——Art. 26 (d)—Scope—T C. Hindu Religious Institutions Act, S. 93—Framing of scheme—If infringement of fundamental right — (Travancore-Cochin Hindu Religious Institutions Act (15 of 1950), Ss. 61 (6) and 93).

Section 93, Travancore-Cochin Hindu Religious Institutions Act, which provides for the framing of a scheme by the Cochin Devaswom Board in respect of institutions falling within the definition of institution in S. 61 (6) of the Act is perfectly valid and is not ultra vires Art. 26. AIR 1954 S C 282 and AIR 1954 S C 388, Foll. AIR 1957 Trav-Co 307 (310) (Pt D) (Pr 12).

ARTICLE 27

● ——Art. 27 — Shri Jagannath Temple Act, 1954 (Orissa Act 11 of 1955)—Act cannot be attacked on the ground that it is hit by Art. 27—Articles 27 and 28 have nothing to do with the matters dealt with under the Act. See Shri Jagannath Temple Act 1954 (Orissa Act 11 of 1955). AIR 1964 S C 1501.

● ——Art. 27 — Bihar Hindu Religious Trusts Act (1951)—Act does not infringe Arts. 14, 19 (1) (f), 25, 26 and 27 of Constitution. See Bihar Hindu Religious Trusts Act (1 of 1951). AIR 1959 SC 1073.

● ——Art. 27—Bihar Hindu Religious Trusts Act (1 of 1951), S. 70 Section imposes fee and not tax—Imposition is not hit by Article—AIR 1954 S C 400, Applied. Moti Das v. S. P. Sahi, ILR 38 Pat 639 : (1959) Supp (2) S C R 563 : (1959) 2 S C A 432 : 1959 S C J 1144 : AIR 1959 S C 942 (950) (Pt G) (Pr 15).

● ——Arts. 27 and 265, Sch. VII, List 1, Item 96, List 2, Items 66; List 3, Item 47—Tax and fee—Distinction.

There is no generic difference between a tax and a fee and both are different forms in which the taxing power of a State manifests itself. Our Constitution, however has made a distinction between a tax and a fee for legistative purposes and while there are various entries in the three lists with regard to various forms of taxation, there is an entry at the end of each one of these lists as regards fees which could be levied in respect of every one of the matters that are included therein. A tax is undoubtedly in the nature of a compulsory exaction of money by a public authority for public purposes, the payment of which is enforced by law. But the essential thing in a tax is that the imposition is made for public purposes to meet the general expenses of the State without reference to any special benefit to be conferred upon the payers of the tax. The taxes collected are all merged in the general revenue of the State to be applied for general public purposes. Thus, tax is a common burden and the only return which the tax-prayer gets is the participation in the common benefits of the State. Fees, on the other hand, are payments primarily in the public interest but for some special service rendered or some special work done for the benefit of those from whom payments are demanded. Thus in fees there is always an element of quid pro quo which is absent in a tax. Two elements are thus essential in order that a payment may be regarded as a fee. In the first place it must be levied in consideration of certain services which the individuals accepted either willingly or unwillingly. But this by itself is not enough to make the imposition a fee, if the payments demanded for rendering of such services are not set apart or specifically appropriated for that purpose but are merged in the general revenue of the State to be spent for general public purposes. Jagannath v. State of Orissa, (1954) S C J 329 : (1954) I M L J 591 : 20 Cut L T 298 : ILR (1954) Cut 334 : 1954 S C A 569 : 1954 S C R 1129 : AIR 1954 S C 400 (403) (Pt E) (Pr 9).

● ——Art. 27—Orissa Hindu Religious Endowments Act (4 of 1939), S. 49—Not invalid. What is forbidden by Art. 27 is the specific appropriation of the proceeds of any tax in payment of expenses for the promotion and maintenance of any particular religion or religious denomination. See Orissa Hindu Religious Endowments Act (4 of 1939), S. 49. AIR 1954 S C 400.

● ——Arts. 27, 110 (a) and 265 and Sch. VII, List 3, Entry 47—Distinction between tax and fee.

A tax is in the nature of a compulsory exaction of money by a public authority for public purposes, the payment of which is enforced by law. The other characteristic of a tax is that the imposition is made for public purpose to meet the general expenses of the State without reference to any special advantage to be conferred upon the payers of the tax. Thus, although a tax may be levied upon particular classes of persons or particular kinds of property it is imposed not to confer any special benefit upon individual persons and the collections are all merged in the general revenue of the State to be applied for general public purposes. Tax is a common burden and the only return which the taxpayer gets is participation in the common benefits of the State.

Fees are payments primarily in the public interest, but for some special service rendered or some special work done for the benefit of those from whom the payments are demanded. Thus in fees there is always an element of quid pro quo which is absent in a tax. In order that the collections made by the Government can rank as fees, there must be correlation between the levy imposed and the expenses incurred by the State for the purpose of rendering such services. Thus two elements are essential in order that a payment may be regarded as a fee. In the first place, it must be levied in consideration of certain services which the individuals accepted either willingly or unwillingly and in the second place, the amount collected must be ear-marked to meet the expenses of rendering these services and must not go to the general revenue of the State to be spent for general public purposes.

However, too much stress should not be laid on the presence or absence of what has been called the 'coercive' element. It is not correct to say that as distinguished from taxation which is compulsory payment, the payment of fees is always voluntary, it being a matter of choice with individuals either to accept the service or not for which fees are to be paid. AIR 1954 S C 288, Reiterated; AIR 1953 Bom 242, Appr. Ratilal Panachand Gandhi v. State of Bombay, (1954) S C J 480 : (1954) 1 M L J 718 ; 1954 S C A 538 : 56 Bom L R 1184 : 1954 S C R 1055 : AIR 1954 S C 388 (395) (Pt H) (Pr 22).

● ——Arts. 27, 110 (a) and 265—Tax—Indicia of.

A tax is a compulsory exaction of money by public authority for public purposes enforceable by law and is not payment for services rendered. This definition brings out the essential characteristics of a tax as distinguished from other forms of imposition which, in a general sense, are included within it. The essence of taxation is compulsion, that is to say, it is imposed under statutory power without the tax-payer's consent and the payment is enforced by law. The second characteristic of tax is that it is an imposition made for public purpose without reference to any special benefit to be conferred on the payer of the tax. This is expressed by saying that levy of tax is for the purposes of general revenue, which when collected forms part of the public revenues of the State. As the object of a tax is not to confer any special benefit upon any particular individual, there is no element of quid pro quo between the tax-payer and the public authority. Another feature of taxation is that as it is a part of the common burden, the quantum of imposition upon the tax-payer depends generally upon his capacity to pay. 60 C L R 283 (276), Foll. Commr. of H. R. E., Madras v. Sri Lakshimindra Thirtha Swamiar, 1954 Mad W N 363 : (1954) S C J 335 : (1954) 1 M L J 596 : 1954 S C A 415 : 20 Cut L T 250 : 1954 S C R 1005 : 67 Mad L W 1220 : AIR 1954 S C 282 (295) (Pt L) (Pr 43).

● ——Art. 27. Sch. VII, List 1, Entry 96, List 2. Entry 66 and List 3, Entry 47—'Fee'—Meaning of.

A fee is generally defined to be a charge for a special service rendered to individuals by some Governmental agency. The amount of fee levied is supposed to be based on the expenses incurred by the Government in rendering the service, though in many cases the costs are arbitrarily assessed. Ordinarily, the fees are uniform and no account is taken of the varying abilities of different recipients to pay. These are undoubtedly some of the general characteristics, but as there may by various kinds of fees, it is not possible to formulate a definition that would be applicable to all cases. Commr. of H. R. E., Madras v. Sri Lakshmindra Thirtha Swamiar, (1954) S C J 335 : (1954) 1 M L J 596 : 1954 Mad W N 363 : 1954 S C A 415 : 20 Cut L T 250 : 1954 S C R 1005 : 67 Mad L W 1220 : AIR 1954 S C 282 (295) (Pt M) (Pr 44).

● ——Arts. 27, 110 (a) and 265 — Distinction between tax and fee.

A careful examination reveals that the element of compulsion or coerciveness is present in all kinds of imposition, though in different degrees and it is not totally absent in fees. This, therefore, cannot be made the sole or even a material criterion for distinguishing a tax from fees.

The distinction between a tax and a fee lies primarily in the fact that a tax is levied as a part of a common burden while a fee is a payment for a special benefit or privilege. Fees confer a special capacity, although the special advantage, as for example, in the case of registration fees for documents or marriage licences, is secondary to the primary motive of regulation in the public interest. Public interest seems to be at the basis of all impositions, but in a fee it is some special benefit which the individual receives. It is the special benefit accruing to the individual which is the reason for payment in the case of fees; in the case of a tax, the particular advantage if it exists at all is an incidental result of State action.

As fee is a sort of return or consideration for services rendered, it is absolutely necessary that the levy of fees should on the face of the legislative provision, be co-related to the expenses incurred by Government in rendering the services. If the money thus paid is set apart and appropriated specifically for the performance of such work and is not merged in the public revenues for the benefit of the general public, it could be counted as fees and not a tax. There is really no generic difference between the tax and fees and the taxing power of a State may manifest itself in three different forms known respectively as special assessments, fees and taxes. Commr. of H. R. E., Madras v. Shri Lakshmindra Thirtha Swamiar, (1954) S C J 335 : 1954 Mad W N 363 : (1954) 1 M L J 596 : 1954 S C A 415 : 20 Cut L T 250 : 1954 S C R 1005 : 67 Mad L W 1220 : AIR 1954 S C 282 (295, 296) (Pt N) (Prs 45, 46, 47).

● ——Art. 27—What is forbidden by Art. 27.

What is forbidden by Art. 27 is the specific appropriation of the proceeds of any tax in payment of expenses for the promotion or maintenance of any particular religion or religious denomination. The

reason underlying this provision is that India being a secular State and there being freedom of religion guaranteed by the Constitution, both to individuals and to groups, it is against the policy of the Constitution to pay out of public funds any money for the promotion or maintenance of any particular religion or religious denomination. Commissioner of H. R. E., Madras v. Sri Lakshmindra Thirtha Swamiar, (1954) S C J 335 : (1954) 1 M L J 596 : 1954 S C A 415 : 20 Cut L T 250 : 1954 S C R 1005 : 1954 Mad W N 363 : 67 Mad L W 1220 : AIR 1954 S C 282 (296) (Pt O) (Pr 50).

● —Art. 27 — Tax, meaning of — Land revenue is tax and not rent — See Ibid, Art. 265. AIR 1956 Assam 33 (SB)

—Arts. 27 and 265—Scope—Contribution collected as fees under provision of enactment — Legality — Tests.

The following tests will have to be satisfied before the contribution levied, under the provision of an enactment can be upheld as a fee, within the legislative competence of the State Legislature (1) the levy can be justified as intra vires the State Legislature, only if it falls within the ambit of Entry 47 read with Entry 28 in List III of Schedule VII of the Constitution; (2) there should be a quid pro quo basis to justify the levy as a fee. The correlation between the fee levied and the services rendered should appear ex facie the legislative provision. The correlation should be between the actual levy and the expense incurred by the Government for rendering the services for which the levy is made; (3) the services rendered by the Government, which constitute the quid pro quo for the levy of the fee, must be incidental to a system of regulation; (4) that regulation itself must be solely on considerations of public interest; and (5) that statutory regulation should not exceed the limits of a reasonable restriction on the fundamental rights guaranteed by the Constitution. AIR 1954 S C 282, Foll. 69 Mad L W 337 : (1956) 1 M L J 532 : AIR 1956 Mad 491 (501) (Pt L) (Pr 46) (DB).

—Art. 27—Scope—There are some specific prohibitions enacted in Arts. 27 and 28. But apart from them, there is no general prohibition against legislation in respect of 'Establishment of religion." See Ibid, Art. 25. AIR 1954 Mad 385.

—Art. 27—Tax — Contribution under the Madras H. R. and Charitable Endowments Act, 1951, S. 76. The levy of five percentum of the income of a religious institution provided for in S. 76 (1) of the new Act is a tax within the meaning of Art. 27. See Madras H. R. and Charitable Endowments Act (19 of 1951), Ss. 20, 21, etc. AIR 1952 Mad 613 (DB).

—Art. 27—Not violated by Bihar Act (1 of 1951). See Bihar Hindu Religious Trusts Act (1 of 1951). AIR 1954 Pat 278 (DB).

—Art. 27—Imposition of tax —Nomenclature given to it as licence fee will not affect its validity. See Ibid, Art. 265. AIR 1954 Trav Co 504 (DB).

ARTICLE 28

● —Art. 28—Shri Jagannath Temple Act, 1954 (Orissa Act 2 of 1955) — Act is not hit by Art. 28. Articles 27 and 28 have nothing to do with the matters dealt with under the Act. See Shri Jagannath Temple Act, 1954 (Orissa Act 2 of 1955). AIR 1964 S C 1501.

—Art. 28—Scope—While Arts. 25 and 26 of Constitution of India reproduce the law as enacted in the second clause of the first Amendment to the American Constitution, there is nothing in our constitution which corresponds to the first clause therein. There are some specific prohibitions enacted in Arts. 27 and 28. But apart from them, there is no general prohibition against legislation in respect of "Establishment of religion." See Ibid, Art. 25. AIR 1954 Mad 385.

ARTICLE 29

SYNOPSIS

(Constitution of India, Art. 29).

1. Scope of the article.
2. Admission into educational institutions—Clause 2.
3. Special provision for benefit of backward classes.
4. Ground of discrimination.
5. Directive principles of State policy.

1. Scope of the article.

● —Art. 29 (1) — Election — Corrupt practice—Appeal to voters to vote or refrain from voting on ground of candidate's language. Right to conserve the language of the citizens includes the right to agitate for the protection of the language; political agitation for conservation of the language of a section of the citizens cannot therefore be regarded as a corrupt practice within the meaning of S. 123 (3) of the Representation of the People Act. See Representation of the People Act (1951), S. 123(3). AIR 1965 S C 183.

● —Arts. 29 and 30—"Minority"—Test.

Where a bill passed by a State Legislature extends to the whole of the State, the minority for the purposes of Arts. 29 and 30 must be determined by reference to the entire population of that State. By this test, so far as the Kerala Education Bill, 1957, is concerned, Christians, Muslims and Anglo-Indians will be minorities in the State of Kerala. In re, The Kerala Education Bill, 1957, ILR (1958) Ker 1167 : 1959 S C A 450 : 1959 S C J 321 : 1959 S C R 995 : 1958 Ker L T 465 : AIR 1958 S C 956 (976) (Pt G) (Pr 21).

● —Arts. 29 and 30 — Minority communities—Right to establish educational institutions of their choice.

A minority community can effectively conserve its language, script or culture by and through educational institutions and therefore, the right to establish and maintain educational institutions of its choice is a necessary concomitant to the right to conserve its distinctive language, script or culture and that is what is conferred on all minorities by Art. 30 (1). This right, however, is subject to Cl. 2 of Art. 29 which provides that no citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them. In re, The Kerala Education Bill, 1957, ILR (1958) Ker 1167 : 1959 S C A 450 : 1959 S C J 321 : 1959 S C R 995 : 1958 Ker L T 465 : AIR 1958 S C 956 (976) (Pt H) (Pr 20).

● —Arts. 29 (2), 30 (2) — 'Aid' — If covers grant under Art. 337.

Although the word 'grant' is used in Art. 337, the word 'aid' is used in Art. 29 (2) and Art. 30 (2). But there can be no question that the word 'aid' in these two articles will cover the 'grant' under Art. 337. In re, The Kerala Education Bill, 1957, ILR (1958) Ker 1167 : 1959 S C A 450 : 1959 S C J 321 : 1959 S C R 995 : 1958 Ker L T 465 : AIR 1958 S C 956 (979) (Pt L) (Pr 26).

● —Arts. 29 (1) and 30 (1)—Power of State to determine medium of instruction.

Where a minority, like the Anglo-Indian community, which is based, inter alia on religion and language has the fundamental right to conserve its language, script and culture under Art. 29 (1) and has the right to establish and administer educational institutions of their choice under Art. 30 (1), surely then there must be implicit in such fundamental right, the right to impart instruction in their own institutions to the children of their own community in their own language. To hold otherwise will be to deprive Article 29 (1) and Art. 30 (1) of the greater parts of their contents. Such being the fundamental right, the police power of the State to determine the medium of instruction must yield to this fundamental right to the extent it is necessary to give effect to it and cannot be permitted to run counter to it. State of Bombay v. Bombay Education Society, (1954) S C J 678 : 1954 S C A 784 : (1954) 2 M L J 359 : 56 Bom L R 1211 : (1955) S C R 568 : AIR 1954 S C 561 (568) (Pt C) (Pr 17).

● ——Art. 29 (2) –Art. 29 (2) is not limited to minority group — Distinction between Arts. 15 and 29 (2). See Ibid, Art. 15. **AIR 1954 S C 561.**

——Art. 29 (2)—Scope.

Article 29 (2) embodies two important principles. One is the right of the citizen to select any educational institution maintained by the State and receiving aid out of State funds and the other is that an educational institution which the State recognises cannot restrict admission to members of a particular religion, race, caste or language.

Once the State gives its grant and puts its imprimatur upon the school the article must come into operation and the right of the citizen immediately arises. The right of the citizen arises by virtue of the fact that it is the State funds that are helping to maintain the school, and if State funds are helping to maintain the school, that school cannot refuse admission to any citizen on the ground of religion, race, caste or language. Therefore, the only two conditions that are necessary for the operation of Art. 29 (2) are that there must be an institution maintained by the State and it must receive aid out of State funds. Therefore, as soon as there is such an educational institution the right of the citizen to admission to this school arises and that right cannot be defeated only on the ground that he belongs to a particular religion, race, caste or speaks a particular language. **56 Bom L R 643 : ILR (1954) Bom 1333 : AIR 1954 Bom 468 (474) (Pt C) (Pr 12) (DB).**

——Arts. 29 (1) and 30 (1)—"Institutions of their own choice."

Under Art. 30 (1) not only is a minority given the right to establish and administer educational institutions, but the educational institutions must be of their own choice. It is not open to the State to dictate to a minority what the nature of its educational institution should be. It is for the minority itself to decide through what educational institution it would be able to conserve the rights given to it under Article 29 (1). **56 Bom L R 643 : ILR (1954) Bom 1333 : AIR 1954 Bom 468 (476) (Pt E) (Pr 17) (DB).**

——Arts. 29 (2), 15— Applicability — Educational institution run on Christian principles and receiving State aid—Power to impose restrictions on practice of other religions within college precincts — Refusal of Principal to permit Hindu Students to celebrate Saraswati Puja in College compound—Held, that Art. 29 (2) did not apply. See Ibid, Art. 25. **AIR 1957 Cal 524.**

——Art. 29—Whether Art. 15 (1) controls Art. 29 (2) —(Quaere). See Ibid, Art. 15 (1). **56 Cal W N 801 : AIR 1952 Cal 825 (DB).**

——Art. 29 (2) — Art. 15 (1) controls Art. 29 (2) — Article 15 (1) which is of wider application than Art. 29 (2) prohibits discrimination on the ground of sex on all matters and so it includes discrimination in matters of admission to educational institutions. The result is that Art. 15 (1) should be construed as controlling Art. 29 (2). **AIR 1952 Cal 822 (824) (Pt A) (Pr 9),**

● ——Arts. 29 and 30—Validity of Gujarat University Act, Ss. 4 (27) 5, 38-A — Provisions contravene Arts. 29 (1) and 30 (1). See Ibid, Art. 13. **A I R 1962 Guj 88 (FB).**

● ——Arts. 29 and 30 — Statute contravening provisions of Arts. 29 and 30 — Person whose rights as distinct from infringement of fundamental rights are affected can maintain petition under Art. 226 —Threat to right is sufficient — Actual infringement not necessary. See Ibid, Art. 226 **AIR 1962 Guj 88 (FB)**

——Art. 29 (2)—Rules for admission to Government professional colleges are not statutory—They serve as code of guidance to selecting authorities — Candidate satisfying qualification rules rejected—No violation of Art. 29 (2)—Law Courts cannot interfere. See Ibid, Art. 226. **1962 M P L J (Notes) 327.**

——Arts. 29 (2) and 15 (1)—Scope.

The true scope of Art. 15 (3) is that notwithstanding Art. 15 (1), it will be lawful for the State to establish educational institutions solely for women and that the exclusion of men students from such institutions would not contravene Art. 15 (1). That is not inconsistent with the authorities of educational institutions not falling within Art. 15 (3) from being clothed with power to admit or exclude women students from those institutions. The combined effect of both Arts. 15 (3) and 29 (2) is that while men students have no admission to women's colleges, the right of women to admission in other colleges is a matter within the regulation of the authorities of these colleges. Article 29 (2) is a special Article and is the controlling provision when the question relates to the admission to colleges. **(1953) 2 M L J 287 : 66 Mad L W 665 : ILR (1954) Mad 426 : AIR 1954 Mad 67 (70) (Pt D) (Pr 9) (DB).**

——Art. 29 — Scope — Article 29 saves the cultural and educational rights of any section of citizens residing in any part of India. See Ibid, Art. 15. **AIR 1955 Orissa 113 (DB).**

● ——Arts 29, 30 (1) and 226 — School managed and administered by Brahmo Samaj is entitled to protection guaranteed by S 30 (1), even though majority of students are not of Brahmo faith and no instructions in that faith are given — Order of Government interfering with management is ultra vires and void — The language of Art 30 (1) should not be restricted by reference to Art. 29 (1). See Ibid, Art. 30 (1). **AIR 1962 Pat 101 (FB).**

——Arts. 29 (1) and 30 — Bihar Education Code, Art. 182 (e) — Government (Bihar) (Education) Resolution No. 17714 D/- 7-5-1956 requiring school committee to be of 11 members representing different interests — Secretary and President to be from these members — Director of Public Instruction requiring committee to appoint person not member of committee — Failure to comply—D. P. I if can appoint ad hoc committee under Art. 182 of Code — Denominational school managed by denomination — Order violates the guarantee contained in Arts. 29 (1) and 30 of the Constitution See Bihar Education Code, Art. 182 (e). **AIR 1958 Pat 359 (DB).**

2. Admission into educational institutions — Clause 2.

● ——Art. 29 — Minority educational institutions — Admission to outsider — Effect — The real import of

Art. 29 (2) and Art. 30 (1) is that they clearly contemplate a minority institution with a sprinkling of outsiders admitted into it. See Ibid, Art. 30 (1). **AIR 1958 S C 956.**

● —**Arts. 29 (2) and 337, Proviso 2 — Government circular order — Admission to Anglo-Indian Schools — Restriction—Constitutionality of circular.**

On 6th January, 1954, the Government of Bombay issued a circular directing in Cl. (5) that "no primary or secondary school shall from the date of these orders admit to a class where English is used as a medium of instruction any pupil other than a pupil belonging to a section of citizens the language of which is English, namely, Anglo-Indians and citizens of Non-Asiatic descent." In Cl. (7) of the Circular all schools using English as a medium of instruction were "advised to open progressively divisions of Standards using Hindi or an Indian language as the medium of instruction, starting from Standard I in 1954." One of the Anglo-Indian Schools affected by the circular having applied for the issue of a writ of mandamus against the State Government preventing it from enforcing the said circular order against it.

Held that ordinarily the word "namely" imports enumeration of what is comprised in the preceding clause. In other words, it ordinarily serves the purpose of equating what follows with the clause described before. Therefore relying on the word, "namely" in Cl. (5) it could not be contended that the clause did not limit admission only to Anglo-Indians and citizens of non-Asiatic descent, but permitted admission of pupils belonging to any other section of citizens the language of which is English.

(2) that assuming that the contention was true, even then, citizens, whose language was not English were certainly debarred by the order from admission to a School where English was used as a medium of instruction in all the classes.

(3) that granting that the object of the order was to promote advancement of the national language, the object was sought to be achieved by denying to all pupils, whose mother-tongue was not English, admission into any school where the medium of instruction was English.

(4) that, therefore, the order offended against the fundamental right guaranteed to all citizens by Art. 29 (2).

(5) that whether Cl. (7) of the order was treated as operative or merely as advice, in either view of the matter the order could not but be regarded as unconstitutional in view of Proviso 2 to Art. 337 AIR 1954 Bom 468, Affirmed. State of Bombay v. Bombay Education Society, **(1954) S C J 678 : 1954 S C A 784 : (1954) 2 M L J 359 : 58 Bom L R 1211:(1955) S C R 568 : AIR 1954 S C 561 (565, 567, 569) (Pt A) (Prs 12, 13, 16, 18).**

——**Arts. 29 (2) and 337, Proviso — Government circular — Admission to Anglo-Indian Schools — Restriction — Validity of circular.**

On 6-1-1954 the Government of Bombay issued a circular directing that 'no primary or secondary school shall from the date of these orders admit to a class where English is used as a medium of instruction any pupil other than a pupil belonging to a section of citizens the language of which is English, namely, Anglo-Indians and citizens of non-Asiatic descent." One of the schools affected by the circular having applied for the issue of a writ of mandamus against the State preventing it from enforcing the said order against it.

Held, (i) that although the grounds on which the State based the circular might not be grounds of religion, race or caste, still the effect of the circular was to deprive the citizens of their right only on the grounds mentioned in Art. 29 (2). AIR 1951 S C 226, Rel. on.

(ii) that in face of the proviso to Art. 337 the State was asking the Anglo-Indian school not only not to make available 40 per cent. of the annual admissions which are reserved for non Anglo-Indians, but to prohibit any non-Anglo-Indian from entering the school.

(iii) that, therefore, the circular was bad on the ground that it contravened Arts. 29 (2) and 337. 56 Bom L R 643 : ILR (1954) Bom 1333:AIR 1954 Bom 468 (475, 477, 478) (Pt A) (Prs 14, 19, 22) (DB).

——Arts. 29 (2) and 226—Writ against college authority for refusal to admit student.

The Constitution does not guarantee to the student studying in an educational institution to enforce a right to be admitted to a class for no such right exists.

All persons have not a right to be admitted members of a college ; they must be approved of by the college or by others to whom the college has delegated the power of exercising a discretion as to the person they admit. If, therefore, an authority has exercised the discretion bona fide in accordance with the rules of the institution and not influenced by extraneous or irrelevant considerations and such discretion has not been exercised arbitrarily or illegally the Court would not interfere. (1910) 2 K B 165; 107 E R 1277, Rel. on; A I R 1918 Mad 783, Dist.

The Courts would not ordinarily interfere in the internal autonomy of educational institutions. It would be encroaching upon the sphere of activity of persons responsible for running educational institutions if the High Court were to interfere with their discretion. The determination of the fitness of the candidate lies in the discretion of the college authorities and the Court would not wrench such discretion from them nor interrupt them in the proper exercise of it. **I L R (1953) Hyd 665 : AIR 1954 Hyd 25 (27) (Pt D) (Pr 5) (DB).**

——**Art. 29 (2)— Admissions to educational institutions —Reservation of seats under Art. 15 (4) — Few seats reserved for children of medical practitioners and for sportsmen—No legal basis for such preference —Order held invalid.** See Ibid, Art. 15 (4). **AIR 1964 Ker 39.**

[Reversed in A I R 1964 Ker 316 to the extent it held that the reservation for sports men was invalid].

——**Arts. 29 (2), 226—Admission to professional Colleges — Selection of candidates on merit — Number of marks obtained is not the only criterion to judge merit —No mechanical or absolutely objective measure —Selection to be fair — Court will not interfere in selection. AIR 1962 M P 18 (50) (Pr 6) (DB).**

——**Arts. 29 (2), 15 (1) and 12 — Applicability and scope of Art. 29.**

Held, that the University of Madras is not a State as defined in Art. 12 of the Constitution and that its regulations are not subject to the prohibition enacted in Art. 15 (1). admission to colleges is regulated by Art. 29 (2) and the regulations of the University requiring that colleges should provide certain facilities for women before they could be admitted are not discriminatory on the ground of sex. American case-law, ref. **(1953)2 M L J 287:66 Mad L W 665:I L R (1954) Mad 426 : AIR 1954 Mad 67 (71) (Pt A) (Pr 12) (DB).**

——**Art. 29 (2)—Consideration of other grounds.**

Under Art. 29 (2) the exclusion which is based on the ground of religion, race, caste, language or any of them is prohibited. Under the Constitution race, caste, religion, language or any of them cannot be the basis of

selection, but it cannot be said that other grounds cannot be taken into consideration when the question of admission of candidates is being decided. 53 Pun LR 218 : ILR (1951) Punj 344 : AIR 1951 Punj 93 (96) (Pt E) (Pr 17) (DB).

——Art. 29 (2)— Mandamus — Admissions to public institution—Right of eligible persons — Nature of — Refusal by principal on the basis of illegal instructions of University —Mandamus lies against the University and the authority refusing the admission. See Ibid, Art. 226. AIR 1963 Raj 172 (DB).

3. Special provision for benefit of backward classes.

——Art. 29 (2)—Scope — Admission into educational institutions—Reservation of seats for backward classes —Principle of selection. See Ibid, Art. 15 (4). A I R 1958 Andh Pra 569 (DB).

——Arts. 29 (2) and 15— Admission into educational institutions —Special provision for benefit of backward classes — Provision in effect abridging their rights —Constitutionality.

Every individual citizen as a citizen whether he belongs to the backward classes or not has a right to get admission into an educational institution of the kind mentioned in Cl. 2 of Art. 29. The said fundamental right is abridged by the special provision made by the State for the advancement of any socially and educationally backward classes of citizens. If the provision is for the advancement of such classes, the fundamental right of a citizen is not infringed.

Held on facts, that it may be that in other localities where the members of other communities are more advanced educationally than in the area in question, this rule may work for the advancement of the backward class candidates. It was therefore not necessary to hold that the rule was bad, but it would be enough to confine the operation of that rule to a case where the assumption underlying that rule applied and to hold that in other cases where the rule does not operate for the advancement of the backward classes the fundamental right of a citizen of that class was unaffected by the provisions. 1957 An L T 763 : (1957) 2 An W R 416 : ILR (1957) Andh Pra 772 : AIR 1958 A P 129 (131) (Prs 10, 11) (DB).

——Art. 29 (2)—Admission into medical colleges in Kerala—Order of Kerala Government (dated 7-6-1963) reserving seats for Ezhavas, Muslims and Latin Catholics inclusive of Anglo-Indians on ground that they were socially and educationally backward classes — Reservation held valid. See Ibid, Art. 15 (4). A I R 1964 Ker 316 (DB).

——Arts. 29, 15 (4), 14 — Admission to educational institutions — Order dated 7-6-1963 reserving seats under Art. 15 (4) on districtwise basis —Classification not based on scientific data nor related to object claimed—Such reservation held invalid. A I R 1958 Ker 33, Foll. 1963 Ker L T 783 : (1963) 2 Ker L R 372 : 1963 Ker L J 820 : AIR 1964 Ker 39 (67, 68) (Pt G) (Prs 119, 120).

[Reversed on another point in A I R 1964 Ker 316.]

——Art. 29 (2) — Scope — Classification on basis of caste or literacy —Admission to Medical and Technical Colleges — Reservation of seats for backward classes—Separate reservation for each class—Provision for unfilled seat reserved for one class being filled by candidate of other backward class — Reservation is discriminatory and unconstitutional — Selection of candidates on basis of marks obtained at qualifying examination and those awarded at interview — Not objectionable. See Ibid, Art. 15 (4). A I R 1961 Mys 220 (DB).

——Art. 29 (2)—Discrimination on sole ground of caste—Orders of State Government reserving seats for 'backward classes' for admission to Medical College—Classification made solely on consideration of their castes —Orders held illegal — Government of Bihar Letters Nos. 2 M-173/49 A 7079, dated 25-7-1951 and III/S/2-1028/51-A 1883 D, dated 28-2-1952. A I R 1963 S C 649, Applied. See Ibid, Art. 15 (1). A I R 1965 Pat 372 (DB).

——Arts. 29 (2), 46—Scope— Reservation of seats for scheduled castes in educational institutions.

If it is incumbent on the State to promote the educational and economic interest of Scheduled castes then it can well do that by reserving certain seats in educational institutions for these castes. If Art. 37 makes Art. 46 a fundamental principle of the governance of this country then a correct way of interpreting would be to read Art. 46 as an exception to Art. 29 (2), and it could not have been the intention of the Constituent Assembly to make Art. 29 (2) as an article overriding Art. 46. 1950 2 M L J 404, Dissent. [Editorial Note. —On this point the decision must be treated as Overruled by A I R 1951 S C 226.] 53 PLR 218 : I L R (1951) Punj 344 : AIR 1951 Punj 93 (96, 97) (Pt F) (Prs 18, 19) (DB).

4. Ground of discrimination.

——Arts. 29 (2) and 226—Decision of the head of an educational institution not to readmit a student for the academic year 1952-53 — No reasons given— Rights under Art. 29 (2) if infringed.

The principal of a College sent an intimation to the parent of a student C that he will not be readmitted into the College for the academic year 1952-53. No reasons were given. C therefore applied under Art. 226 that the decision was against all principles of natural justice to refuse admission to the 2nd year class without assigning any reasons and an appropriate writ be issued.

Held, the action of the principal did not amount to an invasion of any fundamental right under Art. 19 (1) (a) or Art. 29 (2). C could have his right of freedom of speech and expression outside. He had not been denied admission on any of the prohibited grounds mentioned in Article 29 (2). There is no guarantee for his being allowed to continue against the decision of the authorities to the interest of discipline.

There is nothing in R. 96 (c) of U. P. Education Code requiring that the principal should give his reasons for refusing readmission. He had only to refuse for adequate reasons. The fact that neither the managing committee nor the Inspector of Schools took any action in the matter leads to the inference that the reasons were adequate.

There is a tendency to indiscipline and the action taken by the heads of institutions in the interest of discipline which seems to be the reason for the decision in the case, are not to be interfered with in the exercise of discretionary powers under Art. 226. 1952 All W R (H C) 587 : 1952 All L J 731 : 1952 R D (H C) 331 : A I R 1953 All 90 (91) (Prs 3, 4) (DB).

[Overruled in A I R 1966 All 477 (FB).]

——Art. 29 — Reservation of seats in pre-professional (Medical) classes for candidates passing Multipurpose examination held not repugnant to Art. 14 — Arts. 15, 16 and 29 have no bearing on the question. See Ibid, Art. 14. A I R 1962 Andh Pra 212 (DB).

——Art. 29 (2) — Discrimination on ground of residence — Articles not contravened by it. See Ibid, Art. 15 (1). A I R 1964 Ker 39.

[Reversed on another point in A I R 1964 Ker 316.]

——Arts. 29 (2) and 15 (1)—Applicability — Admission into educational institutions—Discrimination.

The distribution of seats in Colleges between two areas of a State is not on the basis of the place of birth of the candidates but of their domicile, that is, their place of residence. Residence and place of birth are two distinct conceptions with different connotations both in law and in fact, and when Art. 15 (1) prohibits discrimination based on the place of birth, it cannot be read as prohibiting discrimination based on residence. A I R 1955 S C 334, Rel. on.

It is Art. 29 (2) and not Art. 15 (1) which prevails in matters of admission into educational institutions. While Art. 15 (1) prohibits discrimination on the ground inter alia of 'place of birth' these words are omitted in Art. 29 (2). The omission is deliberate and there is a purpose behind it. If persons from other and more advanced region are to insist on being admitted and the restriction in favour of persons who belong to the locality is to be rejected as inconsistent with Art. 15 (1), the result would be that persons in the locality might be prevented for all times from improving their lot. It is to avoid such consequence that 'place of birth' which is included in Art. 15 (1) would appear to have been omitted in Art. 29 (2). **A I R 1954 Mad 67 and A I R 1954 S C 561, Rel. on. 1957 Ker L T 971 : 1957 Ker L J 976 : I L R (1958) Ker 65 : A I R 1958 Ker 33 (34) (Pt A) (Prs 5, 7) (DB).**

——Art. 29—Admission to educational institution in State restricted to residents of State — Capitation fee charged to non-residents — No violation of Art. 14 read with Art. 29. See Ibid, Art. 14. A I R 1954 Madh B 119 (DB).

——Art. 29 (2) — Denial of admission to educational institution on ground of residence.

The fundamental right bearing on the subject of admission to an educational institution run or aided by State funds will only arise on a denial of admission on the grounds of religion, race, caste, language or any of them. Hence if denial of admission proceeds on any other ground (such as residence or non-residence in a State) no right arises. **I L R (1953) Madh B 87 : Madh B L J 1952 H C R 431 : A I R 1954 Madh B 119 (121) (Pt B) (Pr 12) (DB).**

5. Directive principles of State policy.

●——Arts. 29 (2) and 46 — Communal G. O. fixing proportionate seats for different communities in State Colleges—Validity.

The Chapter of fundamental rights is sacrosanct and not liable to be abridged by any legislative or executive act or order, except to the extent provided in the appropriate Article in Part III. The directive principles of State policy cannot override the provisions found in Part III but have to conform to and run as subsidiary to the Chapter of fundamental rights. Hence the argument that having regard to the provisions of Art. 46, the State is entitled to maintain the Communal G. O. fixing proportionate seats in State Colleges for different communities, and if certain individual citizens are unable to get admissions into the educational institutions, there is no infringement of their fundamental rights, cannot be sustained. ——

The classification in the said Communal G. O. proceeds on the basis of religion, race and caste and is opposed to the Constitution and constitutes a clear violation of the fundamental rights guaranteed to the citizen under Art. 29 (2). State of Madras v. Champakam Dorairajan, **64 Mad L W 430 : 1951 S C J 313 : 1951 S C R 525 : 1951 Ker L T (SC) 41 : (1951) 1 Mad L J 621 : 1951 Mad W N 470 : 1951 All L J (SC) 107 : 1951 Raj L W 333 : 87 Cal L J 379 : A I R 1951 S C 226 (227, 228) (Prs 8, 11).**

ARTICLE 30

●——Art. 30 — Right of minorities to establish and administer educational institution—Ambit and limits of right under Cl. (1) — Severe restrictions on right of private Training Colleges to admit students of their choice — Threat to withdraw recognition and to refuse to pay grant-in-aid in case of breach—Art. 30 (1) is violated.

Unlike Art. 19, the fundamental freedom to establish and administer educational institutions by minorities guaranteed under Cl. (1) of Art. 30, is absolute in terms : it is not made subject to any reasonable restrictions of the nature of the fundamental freedoms enunciated in Art. 19 may be subjected to. All minorities, linguistic or religious have by Art. 30 (1) an absolute right to establish and administer educational institutions of their choice ; and any law or executive direction which seeks to infringe the substance of that right under Art. 30 (1) would to that extent be void. The fundamental freedom is to establish and to administer educational institutions. Regulations made in the true interests of efficiency of instruction, discipline, health, sanitation, morality, public order and the like may undoubtedly be imposed. Such regulations are not restrictions on the substance of the right which is guaranteed : they secure the proper functioning of the institutions, in matters educational.

Clause (2) is only a phase of the non-discrimination clause of the Constitution and does not derogate from the provisions made in Cl. (1). The State is enjoined not to discriminate in granting aid to educational institutions on the ground that the management of the institution is in the hands of a minority, religious or linguistic, but the form is not susceptible of the inference that the State is competent otherwise to discriminate so as to impose restrictions upon the substance of the right to establish and administer educational institutions by minorities, religious or linguistic.

The right established by Art. 30 (1) is intended to be a real right for the protection of the minorities in the matter of setting up of educational institutions, of their own choice. Regulations which may lawfully be imposed either by legislative or executive action as a condition of receiving grant or of recognition must be directed to making the institution while retaining its character as minority institution effective as an educational institution. Such regulation must satisfy a dual test—the test of reasonableness, and the test that it is regulative of the educational character of the institution and is conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it.

Rule 5 (2) of the Rules made by Bombay Government for Primary Training Colleges, and Rr. 11 and 14 for recognition of private Training institution, and directions given regarding reservation of 80 per cent. of the seats and the threat to withhold grant-in-aid and recognition of the College, infringe the fundamental freedom guaranteed to the petitioners under Art. 30 (1) and are unconstitutional. Rev. Sidhrajbhai Sabbaj v. State of Gujarat, **(1963) 2 S C A 394 : 1962 Ker L T (SC) 135 : (1963) 3 S C R 837 : A I R 1963 S C 540 (545, 547) (Pt C) (Prs 10, 15, 16).**

●——Art. 30 (1) — Kerala Education Bill (1957), cl. 3 (5) — Constitutional validity — Right of minorities to establish and maintain educational institutions—Right to State aid and recognition—Restrictions on—Validity. See Kerala Education Bill (1957), cl. 3 (5). AIR 1958 S C 956.

●——Art. 30 (1) — Applicability to pre-Constitution educational institutions.

The language employed in Art. 30 (1) is wide enough to cover both pre-Constitution and post-Constitution institutions. It must not be overlooked that

Art. 30 (1) gives the minorities two rights, namely, (a) to establish, and (b) to administer educational institutions of their choice. The second right clearly covers pre-Constitution schools. In re, The Kerala Education Bill, 1957, I L R (1958) Ker 1167 : 1959 S C A 450 : 1959 S C J 321 : 1959 S C R 995 : 1958 Ker L T 465 : A I R 1958 S C 956 (977) (Pt I) (Pr 22).

● —Arts. 30 (1) and 29 (2) — Minority educational institutions—Admission to outsider—Effect.

The real import of Art. 29 (2) and Art. 30 (1) is that they clearly contemplate a minority institution with a sprinkling of outsiders admitted into it. By admitting a non-member into it the minority institution does not shed its character and cease to be a minority institution. Indeed the object of conservation of the distinct language, script and culture of a minority may be better served by propagating the same amongst non members of the particular minority community. In re, The Kerala Education Bill, 1957, I L R (1958) Ker 1167 : 1959 S C A 450 : 1959 S C J 321 : 1959 S C R 995 : 1958 Ker L T 465 : AIR 1958 S C 956 (977) (Pt J) (Pr 22).

● —Art. 30 (1)—Scope and ambit of right.

Article 30 (1) in the first place gives certain rights not only to religious minorities but also to linguistic minorities. In the next place, the right conferred on such minorities is to establish educational institutions of their choice. There is no limitation placed on the subjects to be taught in such educational institutions.

The article leaves it to their choice to establish such educational institutions as will serve both purposes, namely, the purpose of conserving their religion, language or culture, and also the purpose of giving a thorough, good general education to their children. The next thing to note is that the article in terms gives all minorities, whether based on religion or language, two rights namely, the right to establish and the right to administer educational institutions of their choice. In re, The Kerala Education Bill, 1957, ILR (1958) Ker 1167 : 1959 S C A 450 : 1959 S C J 321 : 1959 S C R 995 : 1958 Ker L T 465 : AIR 1958 S C 956 (978) (Pt K) (Pr 23).

● —Art. 30 (2)—"Aid"—Whether covers "grant."

Although the word "grant" is used in Art. 337 the word "aid" is used in Art. 29 (2) and Art. 30 (2). But there can be no question that the word "aid" in these two articles will cover the "grant" under Art. 337. In re, The Kerala Education Bill, 1957, 1958 Ker LT 465 : ILR (1958) Ker 1167 : 1959 S C A 450 : 1959 S C R 995 : 1959 S C J 321 : AIR 1958 S C 956 (980) (Pt L) (Pr 26).

● —Art. 30 (1) — Reasonable regulations as condition for State aid—Validity.

Article 30 (1) gives two rights to the minorities (1) to establish and (2) to administer educational institutions of their choice. The right to administer cannot obviously include the right to maladminister. The minority cannot surely ask for aid or recognition for an educational institution run by them in unhealthy surroundings without any competent teachers, possessing any semblance of qualification, and which does not maintain even a fair standard of teaching or which teaches matters subversive of the welfare of the scholars. The constitutional right to administer an educational institution of their choice does not necessarily militate against the claim of the State to insist that in order to grant aid the State may prescribe reasonable regulations to ensure the excellence of the institution to be aided. Reasonable regulations may certainly be imposed by the State as a condition for aid or even for recognition. In re, The Kerala Education Bill, 1957, ILR (1958) Ker 1167 : 1959 S C A 450 : 1959 S C J 321 : 1959 S C R 995 : 1958 Ker L T 465 : AIR 1958 S C 956 (982) (Pt O) (Pr 31).

● —Arts. 30 (1) and 29 (1) — Power of State to determine medium of instruction—The police power of the State to determine the medium of instruction must yield to the fundamental right under Arts. 29 (1) and 30 (1) to the extent it is necessary to give effect to it and cannot be permitted to run counter to it. See Ibid, Art. 29 (1). AIR 1954 S C 561.

—Arts. 30, 26, 226 — Wearing a nun's religious habit by expelled nun while teaching in Convent school — Whether a fundamental right — Petition under Art. 226 against private body—Maintainability —The term "administer" in Art. 30 is wide enough to take in enforcement of discipline in regard to dress and other matters by the educational institution. Thus the direction that A, an expelled nun, should not wear the religious habit of a nun, could not be questioned when indisputably nuns have a distinctive dress known as "the religious habit" which only nuns could wear There is nothing in the chapter of Fundamental Rights embodied in Part III of the Constitution, whereunder such a right is expressed or could be inferred See Ibid, Art 26. A I R 1964 Andhra Pra 277.

—Art. 30 (1) — Scope—Right of minorities to administer educational institutions of their choice—Power of State to prescribe reasonable regulations as a condition of granting aid to such institution—Extent of — Order of Director of Public Instruction directing institution to re-employ teachers retrenched from service — It violative of right under article 30 (1).

The constitutional right of minorities under Art. 30 (1) to administer an educational institution of their choice does not necessarily militate against the claim of the State to insist that in order to grant aid the State may prescribe reasonable regulations to ensure the excellence of institutions to be aided, but the State cannot grant aid in such a manner as to take away fundamental right of the minority community under Art 30 (1) and the State cannot disregard or override the fundamental rights by employing indirect methods of achieving exactly the same result. AIR 1958 S C 956; AIR 1963 S C 540, Rel. on.

Held that the orders of the Director of Public Instruction, Andhra Pradesh, directing the Board of Management of the Methodist Boys' Multipurpose Higher Secondary School to re-employ the ten teachers whose services were terminated assuming that they were passed by him in exercise of any power vested in him under any rule or regulation in the Education Code or under the rules for the recognition of Schools of the Grant-in-Aid Rules, would not offend Art. 30 (1) of the Constitution of India. (1963) 2 Lab L J 496 (Andh Pra).

—Art. 30—Scope of.

In order to bring the case under the first part of Art. 30 of the Constitution, a minority community has to establish its character first as a religious or linguistic minority. It is then to show that an institution was established by it and it will then follow that it will have the right to administer the educational institution according to its choice. A mere statement that a College is to all intents and purposes a minority college, will not bring the case under Art. 30, for there is no statement that it was a college established by a minority. Without establishing the college, a minority cannot claim the right to administer it. ILR (1951) 3 Assam 348 : AIR 1951 Assam 163 (164) (Pt A) (Pr 8) (DB).

—Arts. 30 (1) and 29 (1) — "Institutions of their own choice."

Under Art. 30 (1) not only is a minority given the right to establish and administer educational institutions, but the educational institutions must be of their own choice. It is not open to the State to dictate to a minority what the nature of its educational institution should be. It is for the minority itself to decide through what educational institution it would be able to conserve the rights given to it under Art. 29 (1). 56 Bom L R 643 : ILR (1954) Bom 1333 : AIR 1954 Bom 468 (476) (Pt E) (Pr 17).

—Art. 30—Educational institution run on Christian principles and receiving State aid—Power to impose restrictions on practice of other religions within college precincts — Refusal of Principal to permit Hindu Students to celebrate Saraswati Puja in College compound — Held that such institution although could not interfere with the belief and profession of religion, could control the outward manifestation of it within the boundaries of its property. See Ibid, Art. 25. AIR 1957 Cal 524.

● —Arts. 30, 226, 29—Statute contravening provisions of Arts. 29 and 30 — Person whose rights as distinct from infringements of fundamental rights are affected can maintain petition under Art. 226 — Threat to right is sufficient—Actual infringement not necessary—If an Act is inconsistent with the provisions of Arts. 29 (1) and 30 (1), it is bad because it is violative of them and not because it is challenged or only when a conflict between it and the fundamental rights guaranteed by these articles is established. See Ibid, Art. 226. AIR 1962 Guj 88 (FB).

● —Arts. 30, 13, 29, 350-A — Gujarath University Act (50 of 1949), Ss. 4 (27), 5, 38-A and statutes 207, 208 and 209 — Validity — Provisions contravene Arts. 29 (1) and 30 (1)—The words "of their choice" in Art 30 (1) if read with Art. 29 (1) would mean that a minority has a right not only to conserve its own language and culture but also has a right to establish educational institutions of its choice and to administer them in such manner as the members thereof choose without the State having a right to impose upon them any particular mode or method of administering them. See Ibid, Art. 13. AIR 1962 Guj 88 (FB).

● —Art. 30 (1) — Minority — What constitutes — Roman Catholics in State of Kerala.

The word "minority" is not defined in the Constitution; and in the absence of any special definition it must be held that any community, religious or linguistic, which is numerically less than fifty per cent. of the population of the State is entitled to the fundamental right guaranteed by Art. 30 of the Constitution.

Held, that as the Christians, at the 1961 census, amounted only to 21.22 per cent. of the population of the State of Kerala, the Roman Catholics who formed a section of that community were a minority within Art. 30 (1) of the Constitution. Aldo Maria Patroni v. E. C Kesavan, 1964 Ker L T 791 : I L R (1964) 2 Ker 478 : 1964 Ker L J 1055 : (1964) 2 Ker L R 67 : AIR 1965 Ker 75 (76) (Pt A) (Prs 6, 7) (FB).

● —Art. 30 (1) —Kerala Educational Rules (1959), Ch. 14, Pt. A, R. 44 — Catholic School managed by Jesuits of Calicut Mission — Junior member of mission appointed as Headmaster — Appointment set aside by Director—Order held constituted violation of Art. 30 (1)—Meaning of 'ordinarily' in R. 44.

Held, on facts that the right to choose the headmaster was perhaps the most important facet of the right to administer a school: and the imposition of any trammel thereon—except to the extent of prescribing the requisite qualifications and experience—could not but be considered as a violation of the right guaranteed to the minority by Art. 30 (1) of the Constitution. (2) That the order impugned in the petition, the Director of Public Instruction abrogating the appointment by the management of a person of their choice as the headmaster of the school conducted by a minority on the sole ground that he was junior in the service of the school, was a violation of their right under Art. 30 (1) of the Constitution, and should be struck down on that account. (3) That all that R. 44, stipulated was that when other things are equal seniority shall prevail. The word "ordinarily" in R. 44, gave a certain amount of elasticity to that rule. One of the "extraordinary" circumstances visualised by the rule is the appointment of headmasters in institutions like the one in this case. Aldo Maria Patroni v. E. C. Kesavan, 1964 Ker L T 791 : I L R (1964) 2 Ker 478 : 1964 Ker L J 1055 : (1964) 2 Ker L R 67 : AIR 1965 Ker 75 (77) (Pt B) (Prs 14, 16, 17) (FB).

—Art. 30 (1)—Scope—Establishment of non-denominational school by minority in village—Setting up rival school by member of majority community—No violation of right of minority under Art. 30 (1).

The right, which may be characterised as part of the right to freedom of religion, is what is guaranteed in Art. 30 (1), so that it may not be subjected to the vicissitudes of political controversies or the whims of electoral majorities. But it does not mean that the minority of a village has an exclusive right to conduct a non-denominational shool in the village, unmolested by any competition from the majority population of the village. The setting up of a rival school by a member of the 'majority' community cannot therefore, be characterised as a violation of any fundamental right of 'the minority' under Art. 30 (1) or any other Article of the Constitution. 1960 Ker L J 986 : 1960 Ker L T 917 : (1960) 2 Ker L R 442: AIR 1962 Ker 33 (34) (Pr 3) (DB).

—Art. 30 (2)—Discrimination on ground of minority—Establishment of another school in same locality—Effect.

The establishment of another school in the same locality by other person does not interfere with the petitioner's right to run his school and if the result thereof is that petitioner who was a member of a minority community cannot get enough pupils to earn a grant from the Government, surely it cannot be said that the State is discriminating against him on the ground of his community. Even if the sanction granted to the other person is against the provision of the Cochin Education Code—a body of rules which have no statutory force and are mere administrative directions—that sanction cannot amount to a discrimination against the petitioner on the ground of his community. 1959 Ker L T 418 : 1959 Ker L J 650 : 1959 Ker L R 497 : AIR 1959 Ker 331 (332) (Pr 1) (DB).

—Art. 30 — Bihar Education Code (1944) — Bihar High Schools (Control and Regulation of Administration) Act (13 of 1960), S. 8—Brahmo Samaj is minority based on religion - Educational institution established by Brahmo Samaj — Fundamental right of Samaj to administer and manage the same under Art. 30 — Applicability of Bihar Education Code to such schools indicated. AIR 1958 SC 956 and AIR 1958 Pat 359, Rel. on. I L R 40 Pat 527 : AIR 1963 Pat 54 (57, 58, 59) (Prs 13, 14, 17) (DB)

● —Arts. 30 (1), 29 and 226—Language of Art. 30 (1) not to be restricted by reference to Art. 29 (1). AIR 1958 SC 956, Rel. on—School managed and administered by Brahmo Samaj a religious minority is entitled to protection guaranteed by Art. 30 (1), even though majority of students are not of Brahmo faith and no instructions in that faith are given—But State Government can impose regulation with regard to

maintenance of discipline or standard of efficiency — Order of Government interfering with the rights of the Samaj to management and administration of school is ultra vires and void — Mandamus will go principally to the Board commanding them not to give effect to the resolution and to withdraw the recognition of the existing managing committee constituted under the resolution—Direction under Art. 226 will issue to managing committee of school to hand over charge of the school to the committee appointed by the Samaj. AIR 1957 SC 529, Disting. Dipendra Nath Sarkar v. State of Bihar, ILR 40 Pat 783 : AIR 1962 Pat 101 (105, 106, 107, 108, 109) (Pt B) (Prs 5, 6, 7, 8, 9, 11) (FB).

——Art. 30 — Bihar Education Code, Art. 182 (e) — Government (Bihar) (Education) Resolution No. 17714, D/- 7-5-1958 requiring school committee to be of 11 members representing different interests—Secretary and President to be from these members – Director of Public Instruction requiring Committee to appoint person not member of Committee—Failure to comply — D. P. I. appointing ad hoc Committee under Art. 182 – Denominational school managed by denomination—Order violates the guarantee contained in Arts. 29 (1) and 30 of the Constitution. See Bihar Education Code, Art. 182 (e). AIR 1958 Pat 359.

ARTICLES 31, 31A and 31B

SYNOPSIS

(Constitution of India, Articles 31, 31A & 31B).

ARTICLE 31

1. Amendments—Validity.
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   (a) Articles 31 and 19, compared.
3. Clause (1)—General.
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   See also Ibid, Note 5 (a).
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13. "Property".
14. Property of Rulers of merged States.
15. Clause (3).
16. Clause (4).
17. Clause (5).
18. Taxation.
19. Evacuee property.
20. Public health, etc.
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ARTICLES 31-A AND 31-B

22. Article 31-A—Scope.
    (a) Arts. 31-A and 31-B.
    (b) Article 31 (4) compared.
    (c) Rights conferred by this Part — Before Fourth Amendment of 1955.
23. "Acquisition."
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29. Rights – Clause (2) (b).
30. Article 31-B—Scope.

ARTICLE 31

1. Amendments—Validity.

● ——Art. 31, Arts. 31A, 31B—Validity of.

Articles 31A and 31B inserted in the Constitution do not either in terms or in effect seek to make any change in Art. 226 or in Arts. 132 and 136. Article 31A aims at saving laws providing for the compulsory acquisition by the State of a certain kind of property from the operation of Art. 13 read with other relevant articles in Part III, while Art. 31B purports to validate certain specified Acts and Regulations already passed which but for such a provision, would be liable to be impugned under Art. 13. The new articles being essentially amendments of the Constitution, Parliament alone had the power of enacting them. That the laws thus saved relate to matters covered by List II does not in any way affect the position. To make a law, which contravenes the Constitution constitutionally valid is a matter of constitutional amendment and as such it falls within the exclusive power of Parliament.

Quaere.— Whether the latter part of Art. 31B is too widely expressed. Shankari Prasad v. Union of India, 1951 R D S C 219 : 64 Mad L W 1005 : 1951 All L J 740 : (1951) 2 Mad L J 683 : 88 Cal L J 281 : 1951 S C J 775 : I L R 30 Pat 1176 : 1952 S C R 89 : AIR 1951 S C 458 (463, 464) (Pt G) (Prs 14, 15).

2. Scope of Article 31.

(a) Articles 31 and 19, compared.

2. Scope of Article 31.

● ——Art. 31 and Part III — Scope—Termination of licence to cut forest trees under S. 22 long prior to Constitution — Protection of Part III of Constitution cannot be invoked. See Ibid, Art. 19. AIR 1961 S C 1684.

● ——Arts. 31, 14, 16 (1), 19 (1) (g) and 32 — Petitioner holding contracts for supply of milk to Government Hospital—Petitioner's tender for certain year accepted but later on cancelled—Articles are not applicable. See Ibid, Art. 14. AIR 1959 S C 490.

● ——Arts. 31 and 19—Act of State.

No State Government has a right to do anything against its citizen in the nature of an act of State.

Virendra Singh v. State of U.P., 1954 S C J 705 : (1954) 2 Mad L J 369 : 1954 S C A 686 1955 S C R 415 : AIR 1954 S C 447 (454) (Pt B) (Pr 31).

[Overruled on another point in AIR 1984 S C 1043.]

● ——Art 31—Under the scheme of the Constitution rights of private property are separately dealt with and their protection provided for in Art. 31. See Bengal Land Revenue Sales (West Bengal Amendment) Act (7 of 1950), S. 7. AIR 1954 S C 92.

● ——Arts. 31 and 19 — Neither Art. 19 nor Art. 31 has anything to do with the settling of the estates or with the maintenance of possession. See Tenancy Laws—U. P. Land Reforms (Supplementary) Act (31 of 1952), S. 3. AIR 1964 All 213 (FB).

——Art. 31 (as it stood prior to its amendment in 1955) —Scope and meaning of old Art. 31.

The following propositions of law may be laid down regarding the scope and meaning of the old Art. 31 : (1) Clauses (1) and (2) of Art. 31 are not mutually exclusive in scope but should be read together as dealing with the same subject namely, the protection of right to property by means of limitation on the State's powers. (2) The expressions 'taking possession of' or 'acquisition' used in Cl. (2) convey the same meaning as conveyed by the word 'deprivation' used in Cl. (1) or, in other words, the deprivation contemplated by Cl (1) is no other than acquisition or taking possession of the property referred to in Cl. (2). (3) Article 31 gives complete protection to private property against executive action no matter how a person is deprived of his property or to what use the State puts that property or what title it acquires in it. (4) The protection given by Art. 31 is against the loss of the property to the owner and there is no protection given to the State by the Article. (5) Article 31 imposes limitation on the power of the State in taking property and the limitations are in the interest of the person deprived of his property. (6) Deprivation cannot be done except (i) under the authority of law, (ii) for public purposes, and (iii) on payment of compensation. (7) The property may be both tangible and intangible such as a right of business. AIR 1954 S C 92 and AIR 1954 S C 119 and AIR 1954 S C 728, Rel. on. AIR 1962 All 521 (530) (Pt B) (Pr 24) (DB).

——Arts. 31 and 19 (1) (f) and (5)—Landlord served with notice under municipal law to pull down building—Tenants challenging validity of municipal law under Art. 19 (1) (f) — Applicability of Art. 19 (1) (f) and Art. 31 — (Municipalities — Bombay Municipal Corporation Act (3 of 1888), Ss. 354, 68 (1) (c) —Constitutional validity of S. 354). See Ibid, Art. 19 (1) (f). A I R 1959 Bom 332.

——Art. 31 — Scope—Tenancy Laws—Bombay Tenancy and Agricultural Lands Act (67 of 1948) as amended by Act (18 of 1956), Ss. 32 to 32-R.

[Article 31A is an exception to Art. 31 and even if it be assumed that, the provisions relating to extinction of the landlord's interest in land are not protected by cl. (1) of Art. 31, they are protected from the operation of cl. (2) by cl. 1 (a) of Art 31A — Ed.] 59 Bom L R 616 : A I R 1957 Bom 252 (DB).

[Overruled on another point in AIR 1959 S C 459.]

——Art. 31 — State claiming to be owner of land in possession of petitioner and giving notice to quit—Art. 31 not applicable—Art. 31 relates to compulsory acquisition of property by the State and lays down limitations thereto. See Ibid, Art. 19 (1) (f). A I R 1956 Cal 437.

——Art. 31 — West Bengal Food Grains (Intensive Procurement) Order, 1952, is intra vires Art. 31. A I R 1954 Cal 97.

——Art. 31, Sch. 7, List 1, Entry 33 and Sch. 7, List 2, Entry 38—Scope.

Article 31 itself contemplates the existence of the requisite powers in the legislature of the country to pass laws authorising deprivation of property and such power cannot be limited by reference to Entry 33 of List 1 or Entry 36 of List 2. A I R 1952 S C 252; AIR 1952 S C 59, Rel. on ; A I R 1951 S C 41, Ref. to. A I R 1953 Cal 695 (698) (Pt B) (Pr 8).

——Art. 31 — Tenancy Laws — Bombay (Saurashtra Area) Aghat Tenure and Ujaras Abolition Act (Bom. 65 of 1959), S. 4 — Validity of Act — It falls within scope of Art. 31-A — It cannot be challenged on grounds covered by Arts. 14 and 31 — The Act is valid. See Ibid, Art. 31-A. A I R 1962 Guj 297 (DB).

——Art. 31—Municipalities—Bombay District Municipal Act (3 of 1901), S. 90 (5)—Constitutional validity —If violates Art 19 (1) (f) and Art. 31 of the Constitution. See Municipalities—Bombay District Municipalities Act (3 of 1901), S. 90 (5). A I R 1962 Guj 25 (DB).

——Art. 31 (1) — Invasion of fundamental right by executive—Duty of Court—See Ibid, Art. 226. A I R 1953 Him Pra 57.

——Arts. 31 and 31-A — Landlord's rights extinguished for agrarian reforms — Section protected by Art. 31-A—Impeachment under Arts. 14, 19 or 31 not permitted. See Tenancy Laws — Malabar Tenancy Act (14 of 1953), S. 58. 1960 Ker L T 1224.

——Art. 31—Tenancy Laws—M. P. Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 (1 of 1951) — Validity — Art. 31B expressly saves the Act being held to be void on ground that it is inconsistent with or takes away or abridges any of the fundamental rights conferred by the provision of Part III within which Art. 31 falls. 1957 M P C 771.

——Arts. 31 and 31-A — Inam, its concept and effect — Assessment does not amount to resumption — Act whether colourable legislation—Act though inconsistent with rights under Art. 14 or 19 or 31 it is saved by Art. 31 A — Act is not invalid. See Madras Inam (Assessment) Act (40 of 1956). A I R 1964 Mad 90 (DB).

——Art. 31—Scope — Settlement of certain tribe in a village under private agreement Order of S. D. O. asking them to move away under threat of prosecution—Legality — Order held not covered by Ss. 60 to 64 of Hill Peoples Regulation and infringing rights under Arts 19 (1) (f) and 31 — Interference with administrative order — Jurisdiction of High Court — Even if writ of certiorari quashing the order cannot be passed, writ of mandamus can be issued by High Court compelling the authority to act in accordance with law. See Ibid, Art. 226. AIR 1961 Manipur 21.

● ——Arts. 31, 14, 19 (1) (f), Sch. VII List II, Entries 18, 45 — Bombay Saranjams, Jahagirs and Other Inams of Political Nature Resumption Rules, 1952 — Rules are not ultra vires — The Saranjamdars have no such proprietary right in the Saranjams as to entitle them to claim protection under Art. 19 or 31. See Bombay Saranjams, Jahagirs and Other Inams of Political Nature Resumption Rules, 1952. (1963) 2 Mys L J 164 (FB).

——Arts. 31 and 19—From the examination of Art. 19 (1) (f) read with 5) thereof and Art 31 clauses (1), (2) and (3) it is clear that no property can be acquired or taken possession of, nor any restraint, reasonable or otherwise, imposed on the proprietary right of any person in the interest of any individual or individuals. I L R 30 Pat 1085 : A I R 1952 Pat 166 (171) (Pt E) (Pr 26) (DB).

——Art. 31 — Running of parallel buses by State on routes for which private transport companies hold

permits—Neither Art. 19 nor Art. 31 comes into play. See Ibid, Art. 19 (1) (g). **A I R 1956 Pepsu 3.**

——**Arts. 31, 19 and 226 — Conduct acquiescing in order of Government—Order challenged to be ultra vires on ground of contravention of fundamental right—Waiver of fundamental right—(Evidence Act (1872), S. 115).**

Where a petitioner under Art. 226 alleged that certain Government orders are illegal and ultra vires being infringements of his fundamental right and being in contravention of Art. 31, his conduct in acquiescing in the orders and the requisitioning thereunder and not questioning their legality for a year has to be considered. It does not, however, mean that because of his conduct he is estopped from questioning the legality of the order. But his conduct has very important bearing on the question whether he should be allowed to have the matter decided in his petition under Art. 226. After all, when a valuable right is guaranteed to a person either by the constitution or by some other law, it is ordinarily open to him to waive that right, unless there be an express or implied provision to the contrary. **ILR (1952) Patiala 482 : A I R 1953 Pepsu 9 (11) (Pt A) (Pr 7).**

——**Arts. 31 and 31-A — Punjab Security of Land Tenures Act (10 of 1953), S. 19E (added by Punjab Act 14 of 1962) — Pepsu Tenancy and Agricultural Lands Act (13 of 1955), S. 32-KK (added by Pepsu Act 16 of 1962)—Constitutional validity — Impugned sections are a measure of agrarian reform within ambit of Art. 31 A and are saved from attack for violation of Arts. 14, 19 and 31. See Tenancy Laws—Punjab Security of Land Tenures Act (10 of 1953), S. 19-E. A I R 1963 Punj 319 (DB).**

● ——**Art. 31 — East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (50 of 1948), S. 36 — Amendment of S. 36 by Punjab Act 20 of 1953—Amending Act not reserved for assent by President but subsequent amending Acts removed for and assented to by President — Effect of such assent on validity of S. 36—Art. 31-A (1) is attracted - S. 36 of the Punjab Act is not void. See Ibid, Art. 31-A. A I R 1963 Punj 255 (FB).**

——Art. 31—Conditions for applicability of Article.

In order to bring a case within Art. 31, Constitution of India, the following conditions must be satisfied :—(a) the impugned legislation must authorise the taking possession of or the acquisition of property; (b) the property must be capable of possession or acquisition; (c) the acquisition or taking possession of property must be for public purposes; and (d) the acquisition or the taking possession of property must be without paying or providing for compensation. **1952-22 Com Cas (Ins) 33 : ILR (1952) Punj 11: AIR 1952 Punj 9 (15) (Pt C) (Pr 29) (DB).**

——**Arts. 31 and 19—Applicability—Articles have no application to a case, where there is no question that any fundamental right of the applicant is taken away or the applicant is being deprived of any property. 1956 Raj L W 50 : ILR (1955) 5 Raj 324: AIR 1955 Raj 166 (167) (Pt D) (Pr 7) (DB).**

——**Arts. 31 and 31-A—Tenancy Laws—Tripura Land Revenue and Land Reforms Act (43 of 1960), Chap. XI and S. 134 (1) — Violation of Arts. 14, 19 and 31 of Constitution cannot be urged in view of Art. 31-A. See Tenancy Laws—Tripura Land Revenue and Land Reforms Act (43 of 1960), Chap. XI. AIR 1963 Tripura 1.**

——**Arts. 31 and 31-A — Tenancy Laws — Tripura Land Revenue and Land Reforms Act (43 of 1960), Ss. 123, 167—Cannot be challenged on ground that they are made retrospective so as to operate from date of Bill—As Art. 31-A applies to the acquisition of estates by the Act, the argument that the retrospective operation affects Art. 31 cannot hold water. See Tenancy Laws—Tripura Land Revenue and Land Reforms Act (43 of 1960), S. 123. AIR 1963 Tripura 1.**

2 (a). Articles 31 and 19, compared.

● ——**Art. 31 (1)—Article 19 applies both to concrete and abstract rights of property — Such construction given to Art. 19 (1) (f) does not make Art. 31 (1) otiose. See Ibid, Art. 19 (1) (f). AIR 1963 S C 864.**

● ——**Arts. 31 (1) and 19 (1)—Scope—Art. 31 (1) does not exclude Art. 19 (1). See Ibid, Art. 19 (1). A I R 1960 S C 1080.**

● ——**Art. 31—Arts 19 (1) (f) and 31 deal with different subjects and cover different fields. There is no overlapping. See Ibid, Art. 19 (1) (f). AIR 1955 S C 41.**

● ——**Art. 31 — Scope of Arts. 19 and 31. See Ibid, Art. 19. AIR 1954 S C 119.**

——**Arts. 31 (1) and 19 (1)—Whether mutually exclusive. See Ibid, Art. 19 (1). AIR 1962 All 521 (DB).**

——**Art. 31—Scope—Distinction between Art. 31 and Art. 19 (1) (f). See Ibid, Art. 19 (1) (f). A I R 1958 All 126.**

——**Arts. 31(1) and 19 (1) (f) — Difference between—Person acquiring rights of occupant before order cancelling patta—Applicability of Art. 19 (1) (f). See Constitution of India, Art. 19 (1) (f). AIR 1955 (N U C) Bhopal 1784.**

● ——**Art. 31 — Deprivation of property — Article applicable is Art. 31 and not Art. 19 (1) (f). See Ibid, Art. 19 (1) (f). AIR 1955 Bom 220 (FB).**

——**Art. 31 (1) —Scope of—Article 31 (1) and (2) must be read in conjunction with Art. 19 (1) (f). See Ibid, Art. 19 (1) (f). AIR 1951 Bom 440 (DB).**

——**Art. 31 (2) and (2-A)—West Bengal Land Requisition and Acquisition Act (2 of 1948) — Constitutionality — Act cannot be held to be ultra vires of Art. 19 (1) (f) of the Constitution — Art. 31 (2) read with Art. 31 (2-A) excludes operation of Art. 19 (1) (f). See West Bengal Land Requisition and Acquisition Act (2 of 1948). AIR 1962 Cal 269.**

● ——**Arts. 31, 19 (1) (f), 19 (1) (g)—Scope—Article 19 (1) (f) and (g) on the one hand and Article 31 on the other deal with different subjects and cover different fields—They are mutually exclusive—If Art. 31 applies, Art. 19 cannot be invoked. Paschim Banga Malbahi Cycle Mazdoor Union v. Commr. of Police, Calcutta, 65 Cal W N 213 : AIR 1961 Cal 125 (133-144) (Pt L) (Prs 27, 77) (SB).**

——**Art. 31—Where property is acquired by the State, Art. 31 and not Art. 19 applies. See Ibid, Art. 19 (1) (f). AIR 1959 Cal 402.**

——**Art. 31—Applicability—Act dealing with proprietary right — Test of validity—If a piece of legislation directly deals with a proprietary right it would be valid if it conforms to Art. 31—Its constitutional validity need not be further tested by a reference to Art. 19 (1). See Ibid, Art. 19. AIR 1954 Cal 248 (DB).**

[Reversed on another point in AIR 1961 S C 16.]

——**Arts. 31 and 19—Scope—A Legislative enactment empowering Government to acquire property of a citizen compulsorily for public purpose attracts Art. 31 and not Art. 19. Where it is a composite piece of legislation the Court has to distinguish that part of it which deals with acquisition from the rest. 57 Cal W N 397 : AIR 1953 Cal 548 (553) (Pt D) (Pr 28).**

——**Arts. 31 and 19—Legislation dealing with acquisition of property—If should satisfy requirements of both articles.**

Legislation dealing with acquisition or taking possession of property need not satisfy the requirements of both Art. 31 and also Art. 19 (5) of the Constitution. If the legislation is not directly in respect of any of the subjects mentioned in Art. 19 but as a result of the operation of other legislation any rights guaranteed by the sub-clauses in Art. 19 (1) are abridged the question of the application of Art. 19 does not arise. The contents and subject-matters of Arts. 19 and 31 are not the same and they proceed to deal with the rights covered by their respective words from totally different angles. Art. 19 should be read as a separate complete article. 55 Cal W N 463 : AIR 1951 Cal 97 (99, 100) (Pt F) (Pr 16).

——Art. 31 — If there has been expropriation of property either under Cl. (1) or Cl. (2) of Art. 31, the question of enforcement of the fundamental right under Art 19 (1) (f) does not arise. See Ibid, Art. 19 (1) (f). AIR 1953 Him Pra 95.

——Art. 31—Hyderabad Jagirdars Debt Adjustment Act (12 of 1952)—Validity.

Every curtailment of right does not amount to its deprivation. Arts. 19 (1) (f) and 31 deal with different subjects. The former read with Cl. (5) postulates the existence of property; otherwise the reasonable restrictions contemplated by Cl. (5) could not be brought into play; whereas if there be substantially total deprivation of property, Art 31 becomes applicable. Where the property of the decree-holders has not been entirely taken away, no question of the exercise of the right of eminent domain arises.

The impugned Act cannot be declared void on the ground that the decree-holder is deprived of the fruits of his decree which is his property without any compensation. AIR 1955 S C 41, Foll. I L R (1955) Hyd 510 : AIR 1955 Hyd 194 (200) (Ft C) (Pr 25) (DB).

——Arts. 31 and 19 (1) (f) — Scope — Per Qamar Hasan J.—Art. 19 (1) (f) is not restricted to abstract rights and capacity of citizen to acquire, hold and dispose of property — It also applies to concrete rights—Per Ansari J (Contra). — Art. 19 relates to status of citizen—Rights of private property are dealt with by Art. 31. I L R (1955) Hyd 337 : A I R 1955 Hyd 82 (91) (Pt B) (Pr 39).

——Arts. 31, 19 (1) (f) — Latter Article applies in cases where property has not been taken away under Art 31. See Arms Act (11 of 1878), S. 14. AIR 1953 Madh B 236 (DB).

——Arts. 31 (2) and 19 (1) (f) — Property deprived under Art 31 (2) — Article 19 (1) (f) does not apply in such case — Right given to tenart under S. 9 of Madras Act 3 of 1922 — Deprivation of landlord's right to possession — (Tenancy Laws — Madras City Tenants Protection Act (3 of 1922) (as amended by Madras Act 19 of 1955), Ss. 3 and 9). See Ibid, Art. 19 (1) (f). AIR 1960 Mad 108.

——Art. 31—Section 3 (8) of Madras Buildings (Lease and Rent Control) Act (25 of 1949) (as amended by Madras Act 8 of 1951) — Section does not infringe Art. 19 (1) (f) of Constitution — The subject-matter of requisition directly comes under Art. 31 which excludes the general Art. 19. See Houses and Rents — Madras Buildings (Lease and Rent Control) Act (25 of 1949), S. 3 (8). AIR 1953 Mad 257.

——Arts. 31 (2) and 19 (1) (f)—Article 19 (1) (f) must be read subject to Art. 31 (2) and where there is valid acquisition under that article there is no property in respect of which the rights conferred under Art. 19 (1) (f) could be claimed. I L R (1952) Mad 982 : 1952-2 Mad L J 298 : 1952 Mad W N 677 : 65 Mad L W 747 : A I R 1952 Mad 756 (757) (Pt B) (Pr 4).

● ——Arts. 31 and 19 — Distinction — Both cover different grounds — Art. 31 (1) has to be read with Clause (2) of the same Article. See Ibid, Art. 19. AIR 1955 Nag 225 (FB).

——Arts. 31, 19—Scope of—Rights over property conferred by Art. 19 are subject to Art. 31. See Ibid, Art. 19. AIR 1955 N U C (Nag) 1341.

——Arts. 31, 19 (1) (f) and 19 (5) — Have no application to a case of total and complete deprivation of property. The test of constitutional validity in such a case is Art. 31. See Land Acquisition Act (1894), S. 4. AIR 1958 Pat 183.

——Art. 31 — Complete deprivation of property — Art. 31 applies to a case where there is complete and total deprivation of property and Art. 19 (1) (f) does not apply to such a case. Hence Bihar Koshi Area (Restoration of Lands to Raiyats) Act (30 of 1951) does not violate the guarantee under Art. 19 (1) (g). 1956 B L J R 760 : I L R 35 Pat 847 : A I R 1957 Pat 44 (51) (Pt I) (Pr 20) (DB).

● ——Arts. 31 and 19 (1) (f) — Article 31 cannot be read as an exception to the fundamental rights as declared in Art. 19 (1) (f). See Ibid, Art. 19 (1) (f). AIR 1950 Pat 392 (SB).

——Arts. 31 and 19 — Scope — While Art. 19 (1) (f) speaks of general rights of a citizen to acquire, hold and dispose of property, Art. 31 deals with the specific rights of a person (whether a citizen or not) in the property that he owns. See Ibid, Art. 19 (1) (f). AIR 1956 Pepsu 58.

——Art. 31 and Art. 19 (1) (f)—Correlation.

Where the property has been lawfully acquired in the terms of Art. 31 then it can be of no avail to contend that the right guaranteed by Art. 19 (1) (f) must all the same remain inviolable. I L R (1956) Patiala 205 : AIR 1955 Pepsu 148 (152) (Pt E) (Pr 12) (DB).

——Arts. 31 and 19 — Deprivation of right — When an enactment deprives a person of a right, it cannot be regarded as the law placing restrictions upon the enjoyment of that right. I L R (1954) Patiala 433 : AIR 1953 Pepsu 161 (167) (Pt B) (Pr 17) (DB).

[Overruled on another point in AIR 1963 S C 222].

● ——Arts. 31 and 19 (1) (f) —Distinction between — Articles do not overlap—shelter under both of them cannot be taken at same time. See Ibid, Art. 19 (1) (f). AIR 1955 Trav.Co 227 (FB).

3. Clause (1)—General.

(a) Clauses (1) and (2)—Correlation.

(b) Authority of law.

See also Ibid, Note 5 (a).

(c) Protection only against State action.

(d) Deprivation.

(e) Who can enforce right.

(f) Duty of Court.

(g) "Person".

3. Clause (1)—General.

● ——Art. 31 — Applicability—Government agreeing to grant necessary sanction to transfer of certain coal bearing areas to certain persons subject to condition that they paid enhanced rate of royalty — Contention that there was a misrepresentation by Government to the effect that it was going to enhance the rate of royalty all round, and that it was under the influence of that belief that such persons entered into the agreement in question - Held that simply because the draft amendment to the mining rules published for inviting objections from the public on July 12, 1947 was not finalised would not afford any cause of

action to such persons against Government — What they paid to the Government was realisable under the terms of the contract which was not vitiated — The fact that the persons might have struck a hard bargain could not be brought under the prohibition of Art. 31 (1) of Constitution, even assuming that the Constitution applied to the transaction in question entered into in 1949. M/s M. Hassanji & Sons v. State of M. P., (1963) Supp 2 S C R 235 : 1963 Mah L J 726 : 1963 M P L J 734 : A I R 1965 S C 470 (472, 473) (Pt C) (Prs 10, 11).

● ——Art. 31 — Validity of Drugs and Magic Remedies (Objectionable Advertisements) Act (1954), S. 8 — Contravenes Arts. 21 & 31 of the Constitution — Held invalid. See Drugs and Magic Remedies (Objectionable Advertisements) Act (1954), S. 8. 1960 Cri L J 735 : AIR 1960 S C 554.

● ——Art. 31 (1) — Unregistered document granting petitioner right to cut trees in forest — Subsequent vesting of forest in State — Petitioner stopped from cutting trees —Fundamental right not infringed. See Ibid, Art. 32. AIR 1958 S C 532.

● ——Art. 31 (1)—Contract to grant licenses to catch fish in lake in Estate—Subsequent vesting of estate in State - State refusing to recognise contract—No question of infringement of fundamental rights under Art. 19 (1) (f) and Art. 31 (1) arises. See Ibid, Art. 19 (1) (f). AIR 1956 S C 17.

——Art. 31—S. 6, Electricity Act, does not create any option; it merely regulates procedure and manner of exercise of option—S. 6 merely empowered the State Electricity Board to exercise already existing option and not placed any burden or restriction on right of licensee—Held, S. 6 did not violate Arts. 14 or 19 (1) (f) or 31, and was not invalid. 1965 All L J 187.

——Art. 31 — Scope — Right to obtain mining lease, is not a fundamental right either under Art 19 (1) (f) or under Art. 31—Further Art. 31 has no application where the State Government is not acquiring the alleged right of the petitioner to obtain the lease. See Ibid, Art. 19 (1) (f). AIR 1958 All 621 (DB).

——Arts. 31, 19—West Bengal Closing of Canals Act (2 of 1959) — Validity — Art. 31 (1) does not afford protection against legislative expropriation — Substantial abridgement of right of ownership — No compensation payable under Art. 31 — Closing of canals for considerations of health and growth of city of Calcutta — Action of Government is saved under Art 19 (5), (6)—West Bengal Closing of Canals Act is valid. AIR 1964 Cal 45 (47) (Prs 11, 12).

——Art. 31 (1)—Scope.

What Art. 31 (1) of the Constitution requires is not so much that the Act should be enacted for public purposes as that it should make provision for acquisition of property for such purposes. ('56) 60 Cal W N 962.

——Art. 31 (1)—S. 4 of West Bengal Land Development and Planning Act (1948) does not contravene Article 31 (1). 92 Cal L J 279 : AIR 1953 Cal 704 (DB).

● ——Art. 31 (1) — (Hyderabad) Wali-ud-Daula Succession (Decision of Disputes) Act (Hyderabad Act (16 of 1950), S. 2 (1) — Act if ultra vires — Act takes away the property of person in contravention of Art. 31. See (Hyderabad) Wali-ud-Daula Succession (Decision of Disputes) Act (Hyd. Act 16 of 1950), S. 2 (1). AIR 1951 Hyd 1 (FB).

——Art. 31 (1) — What Art. 31 (1) aims at is that no person shall be deprived of his property by any executive act or fiat — Unauthorised sale of property by Collector — Deprivation of property. See Ibid, Art. 19 (1) (f). AIR 1954 Kutch 11.

——Art. 31 (1)—Scope of.

Clause (1) of Art. 31 only contains a declaration of the fundamental rights in a negative form, namely, that no person shall be deprived of his property save by authority of law. In other words, this clause implies that a person may be deprived of his property, provided he is so deprived by authority of law. Article 31 (1) by itself in no way helps the petitioner. It is only if he shows that the legislation in question is otherwise invalid, that he can question the constitutionality of the Act on the ground that the Act infringes the provisions of Art. 31 (1). AIR 1952 Madh B 181 (186) (Pt B) (Pr 9) (DB).

——Art. 31 (1)—Scope—Search warrant—Failure to record grounds of belief — Effect — It renders the warrant illegal. See Arms Act (1878), S. 25. AIR 1957 Orissa 130 (DB).

——Art. 31—Orissa Court of Wards Act (26 of 1947), S. 10 (f) — Validity — Depriving the proprietor 'temporarily of his management of the property for the professed purpose of benefiting the very proprietor standing by itself, falls neither within sub-Art. (1) or sub-Art. (2) of Art. 31. ILR (1952) Cut 529 : AIR 1953 Orissa 121 (138, 139) (Pt O) (Pr 31) (DB).

——Art. 31 — Person in occupation of land and his name entered in revenue papers — Sub-Divisional Officer cannot restrain person from cultivating or transferring same — He must take legal proceedings if he considers such person's title or possession illegal. See Ibid, Art. 226. AIR 1964 Raj 75 (DB).

3 (a). Clauses (1) and (2)—Correlation.

● ——Art. 31 (1) — Scope of Arts. 31 (1) and 31 (2)—They are not mutually exclusive — Effect of enactment of Art 31 (2A). See Bombay Labour Welfare Fund Act (40 of 1953), S. 3 (1). AIR 1958 S C 328.

● ——Art. 31 (1) and (2)—Scope.

Clauses (1) and (2) of Article 31 are not mutually exclusive in scope but should be read together as dealing with the same subject, namely, the protection of the right to property by means of limitations on the State's powers, the deprivation contemplated in clause (1) being no other than acquisition or taking possession of the property referred to in clause (2). AIR 1954 S C 92 and AIR 1954 S C 119, Rel. on. Saghir Ahmad v. State of U. P., 1954 S C J 819 : (1954) 2 Mad L J 622 : 1954 S C A 1218 : 1955 All W R 23 : 68 Mad L W 8 : 1955 All L J 38 : 1955 S C R 707 : AIR 1954 S C 728 (740) (Pt I) (Pr 25).

● ——Art. 31 (1) and (2)—Scope.

(Per Majority, S. R. Das J., Contra.) - The American doctrine of police power as a distinct and specific legislative power is not recognised in our Constitution and it is therefore contrary to scheme of the Constitution to say that cl. (1) of Art 31 must be read in positive terms and understood as conferring police power on the Legislature in relation to rights of property. It is the Legislature alone that can interpose and compel the individual to part with his property. It is this limitation which the framers of our Constitution have embodied in cl. (1) of Art. 31 which is thus designed to protect the rights to property against deprivation by the State acting through its executive organ, the Government. Cl (2) imposes two further limitations on the Legislature itself. It is prohibited from making a law authorising expropriation except for public purposes and on payment of compensation for the injury sustained by the owner. These important limitations on the power of the State, acting through the executive and legislative organs, to take away private property are designed to protect the owner against arbitrary deprivation of the property. Cls. (1) and (2) of Art. 31

are thus not mutually exclusive in scope and content, but should be read together and understood as dealing with the same subject namely, the prosecution of the right to property by means of the limitations on the State power referred to above, the deprivation contemplated in cl. (1) being no other than the acquisition or taking possession of property referred to in cl. (2). S. R. Das J.'s view in AIR 1951 S C 41, Dissented from.

(Per S. R. Das J.) — It is not correct to say that cls. (2) to (6) of Art. 19 recognise the police power of the State in that they permit it to make laws imposing restrictions on the seven rights of the citizens and that they at the same time regulate that power by placing limitations upon it by requiring that the restrictions which may be imposed must be reasonable and that the State's police power is further saved by Art. 31 (5) (b) and that the police power having been recognised and provided for in Art. 19 and Art. 31 (5) (b) there is no necessity to read Art. 31 (1) as concerned with the State's police power at all. State of West Bengal v. Subodh Gopal Bose, (1954) 1 Mad L J 314 : 1954 S C A 65 : 1954 SCR 587 : 67 Mad L W 206 : 1954 S C J 127 : AIR 1954 S C 92 (96, 97, 98, 99, 108, 117) (Pt D) (Prs 10, 12, 14, 15, 46, 65).

——Art. 31 (2) — Scope — Clauses (1) and (2) are mutually exclusive. See Ibid, Art. 31 (1). AIR 1965 Madh Pra 77 (DB).

——Art. 31 (1) and (2) — Scope — Cls. (1) and (2) are mutually exclusive — Valid law in Cl. (1) — Meaning of — Law infringing Art. 19 (1) (f) and not saved by Art. 19 (5) is not valid law — M. P. Abolition of Cash Grants Act (16 of 1963) — Validity — Cl. (1) of Art. 31, is attracted and not Cl. (2) — Act is repugnant to Art. 31 (1) in that it takes away property in violation of Art. 19 (1) (f) and is not saved by Art. 19 (5) — Act, if can be supported on ground of a "Public purpose" within Art. 31 (2). A I R 1960 S C 1080, Foll; A I R 1952 S C 252 (274 275), Rel. on. 1964 Jab L J 527 : 1964 M P L J 874 : AIR 1965 Madh-Pra 77 (82, 83, 84, 85) (Pt C) (Prs 9, 10, 11, 12, 13, 19) (DB).

——Art. 31 (1) and (2)—Scope.

Clause (1) of Art. 31 must have reference to deprivation of property otherwise than by acquisition or by taking possession for compensation. The Act, providing as it does for a general acquisition of property of a particular kind, for compensation to be determined in accordance with certain rules laid down therein, comes within the purview of Cl. (2) and not Cl. (1). AIR 1955 NUC (Nag) 1341.

● ——Art. 31 (1) and (2)—Scope.

It would be wrong to say that Cl. (1) of Art. 31 must be read in positive terms and understood as conferring police power on the legislature in relation to rights to property. Even Cl. (1) of Art. 31 is designed to protect the rights to property against deprivation by the State acting through its executive organ and Cl. (2) imposes two further limitations on the legislature itself. The legislature is prohibited from making a law authorising expropriation except for public purposes and on payment of compensation for the injury sustained by the owner. Clauses (1) and (2) are not mutually exclusive in scope and content and should be read together and understood to have dealing with the same subject, namely, the prosecution of the right to property by limitation on the State power. AIR 1954 S C 92; A I R 1954 S C 119, Foll. Brij Bhukan v. S. D. O. Siwan, 1954 B L J R 513 : I L R 33 Pat 690 : A I R 1955 Pat 1 (13, 14) (Pt F) (Pr 7) (SB).

——Art. 31 (1) and (2)—Scope.

Clause (1) enacts a general rule that no person shall be made to lose his property, either temporarily or permanently or with or without compensation, except by the authority of law, while Cl. (2) deals with particular kinds of deprivations. The statute law under which a person can be deprived of his property must be a valid and enforceable law. A I R 1952 S C 252, Foll.; A I R 1951 Bom 86, Ref. I L R (1954) Patiala 433 : A I R 1953 Pepsu 161 (168, 169) (Pt C) (Prs 19, 23) (DB).

[Overruled on another point in AIR 1963 S C 222.]

——Art. 31 (1) and (2)—Construction — Importation of expressions from foreign constitution.

The Indian Constitution being elaborate and written while construing Art. 31 (1) and (2) it is best to confine to the plain meaning of words used in it without importing unnecessarily expressions like "police power" and "eminent domain". Looking therefore, at the words of the two articles, it is clear that Art. 31 (1) is wider in its application than Art. 31 (2), and there may be deprivation of a person's property without there being acquisition or taking possession by the State. What Article 31 (1) has provided, therefore, is that if a person is deprived of his property without the State acquiring it or taking possession of it by paying compensation under Art. 31 (2) there should be authority of law for such deprivation. AIR 1951 S C 41, Rel on. Provisions of S. 133 of the Code of Criminal Procedure also provide for destruction of property in certain circumstances by order of a Magistrate. In such a case, the owner is deprived of the property but is not entitled to any compensation and the action of the Magistrate would be protected under Art. 31 (1), for the deprivation is by authority of law. 1953 Raj L W 144 : ILR (1952) 2 Raj 951 : AIR 1953 Raj 78 (81, 82) (Pt C) (Prs 12, 14) (DB).

3 (b). Authority of law.

See also Ibid, Note 5 (a).

● ——Art. 31 — Central Civil Services (Classification, Control and Appeal) Rules (1957), R. 12 (4)—Constitutional validity — As all the attacks on the validity of R. 12 (4) fail, the further attack on the Rule on the basis of Art. 31 (1) of the Constitution also necessarily fails for, whatever deprivation of property may result from R. 12 (4) would be by authority of law, the law being R. 12 (4). See Ibid, Art. 309. A I R 1963 S C 687.

● ——Arts. 31 (1) and 20 — 'By authority of law' — Difference between this expression and expression 'law in force at the time' used in Art. 20 (1) — Notification issued under prior invalid Act — Its validation by subsequent valid Act — Subsequent Act containing provisions operating retrospectively — Subsequent Act satisfies provision of Art. 31 (1).

The Madras Electricity Supply Undertakings (Acquisition) Act (29 of 1954) is retrospective in operation and S. 24 thereof has been enacted for the purpose of retrospectively validating actions taken under the provisions of the earlier invalid Madras Electricity Supply Undertakings (Acquisition) Act (43 of 1949). It, therefore, follows by the very retrospective operation of the relevant provisions that at the time when the notification under the prior invalid Act was issued, these provisions of the Act of 1954 were in existence. The expression 'law in force' is used in both the parts of Art. 20 (1) of the Constitution. It indicates that even if a criminal law is enacted by any Legislature retrospectively, its retrospective operation will be controlled by Art. 20 (1). A "law in force at the time" postulates actual factual existence of the law at the relevant time and that excludes the retrospective application of any subsequent law. Article 31 (1), on the other hand does not use the expression 'law in force at the time'; it merely says 'by authority of law' and so, if a subsequent law passed by the Legislature is retrospective in its operation, it would satisfy the requirement of Art. 31 (1) and

would validate the notification issued under the prior Act. Hence, it is not correct to contend that the said notification is invalid for the reason that at the time when it was issued there was no law by whose authority it could be sustained. West Ramnad Electric Distribution Co., Ltd. v. State of Madras, (1964) 1 S C J 484 : (1964) 1 Mad L J (S C) 126 : (1964) 1 Andh W R (S C) 126 : (1963) 2 S C R 747 : (1963) 2 S C A 422 : A I R 1962 S C 1753 (1759, 1760) (Pt B) (Prs 13, 14).

● ——Art. 31 (1)—Scope—If deals with police power.

Article 31 (1) does not deal with police power. The plain meaning of the clear words used in Art. 31 (1) enables the State to discharge its functions in the interest of social and public welfare which the State in America can do in exercise of police power. The limitation on the power of the State to make a law depriving a person of his property is found in the word 'law'. The law made can be sustained only if it imposes reasonable restrictions in the interest of the general public. Kochuni v. States of Madras and Kerala. 1960 Ker L J 1077 : A I R 1960 S C 1080 : 1960 Ker L T (S C) 31 : (1960) 2 S C A 412 : (1960) 3 S C R 887 : (1961) 2 S C J 443 : A I R 1960 S C 1080 (1095) (Pt H) (Pr 30).

● ——Arts. 31 (1), 13 (2), 19 (1) (f), (5)—Scope—Law depriving person of his property—Validity—Law depriving person of fundamental right—Validity.

Under Art. 31 (1) a person cannot be deprived of his property save by authority of law. The law must be a valid law. Under Art. 13 (2) a law depriving a person of his property cannot take away or abridge the right conferred by Part III of the Constitution. Thus the law depriving a person of his property will be invalid if it infringes Art. 19 (1) (f) unless it imposes a reasonable restriction on the person's fundamental right. The State can establish that a law, though it purports to deprive a person of his fundamental right, under certain circumstances amounts to a reasonable restriction within the meaning of Art. 19 (5). A I R 1960 S C 430 and A I R 1959 S C 648 and AIR 1959 S C 149, Rel. on. Kochuni v. States of Madras and Kerala, 1930 Ker L J 1077 : (1960) 2 S C A 412 : 1960 Ker L T (S C) 31 : (1960) 3 S C R 887 : (1961) 2 S C J 443 : AIR 1960 S C 1080 (1091, 1092, 1096, 1097) (Pt J) (Prs 24, 32, 33).

● ——Art. 31, Cl. 9 (a) — Cancellation of licence on ground that it has been obtained by fraud—It is reasonable restriction—No infringement of fundamental right the cancellation being under a valid law. See Imports Control Order (1955), Cl. 9 (a). A I R 1960 S C 415.

● ——Art 31—U. P. Sugarcane (Regulation of Supply and Purchase) Act (24 of 1953)—Notification under—Notifications dated 27-9-1954 and 9-11-1955—Act and notifications do not infringe fundamental right guaranteed by Art. 19 (1) (f) and (g) and Art. 31—None of the petitioners is being deprived of his property, if any, save by authority of law. See Ibid, Art. 19 (1) (f). AIR 1956 S C 676.

——Art. 31—Illegal seizure of goods in possession of petitioner in India, under no authority of law, at instance of Jammu and Kashmir Police—Infringement of fundamental rights—Writ under Art. 226. See Ibid, Art. 226. AIR 1954 S C 415.

——Art. 31 — Deprivation of property of insolvent under S. 28 (2) of the Provincial Insolvency Act—Not hit by Art. 31, Constitution of India—S. 28 (2) does not contravene Art. 31 Cl. (1) in as much as the vesting of the property is due to duly enacted piece of legislation and as such supported by authority of law. See Provincial Insolvency Act (1920), S. 28 (2). AIR 1962 All 256 (DB).

——Art. 31 — S. 3, Essential Supplies (Temporary Powers, Act, 1946 declared as constitutional by Supreme Court—It is a declaration of "law" binding on High Court—High Court cannot enter into question of validity of S. 3 (4), even on grounds not alleged before Supreme Court. See Essential Supplies (Temporary Powers) Act (1946), S. 3 (4). AIR 1955 N U C (All) 3594.

——Arts. 31 (1), 265, 300 — Seizure of goods by Revenue Officer, beyond his authority—Seizure is illegal and not only irregular—Person from whose custody goods are seized is wrongfully deprived of the property, without authority of law - State is not immune in respect of such acts of its subordinates. See Ibid, Art. 300. AIR 1966 Bom 134.

——Art. 31 (1) — Restrictions under S. 31A, on landlord's right to property are imposed under the law and the provision is valid under Art. 31 (1) and 31A (1) (a)—Tenancy Laws — Bombay Tenancy and Agricultural Lands Act (67 of 1948), as Amended by Act (13 of 1956), S. 31-A. 59 Bom L R 616 : AIR 1957 Bom 252 (263) (Pt E) (Pr 31) (DB).

[Overruled on another point in AIR 1959 S C 459.]

——Arts. 31 (1) and 31 (2) — Authority of law — Meaning—See West Bengal Land (Requisition and Acquisition) Act (2 of 1948). AIR 1963 Cal 373.

——Art. 31 (1)—Infringement of fundamental right.

A purchasing a State house from Government—Government reserving right to repurchase it by specific term in sale deed — Notice by Deputy Commissioner asking A to vacate house within a month—A admitted to be in proprietary possession—Action by Deputy Commissioner amounts to deprivation of A by the State of his property not by authority of law and thus constitutes breach of Art. 31 (1). AIR 1931 P C 248, Rel. on. AIR 1953 Him Pra 57 (58) (Pt A) (Pr 7).

● ——Art. 31 (1)—Law, meaning of.

The word "law" in Art. 31 is equivalent to State-made law but that law must also be a valid law. AIR 1950 S C 27, Rel. on. Mahbub Begum v. Hyderabad State, AIR 1951 Hyd 1 (10) (Pt F) (Pr 21) (FB).

● — Art. 31—Regulating relations between landlord and tenant—J. & K. Tenancy Act (2 of 1980)—Constitutional validity—Deprivation of property by authority of law. See Tenancy Laws—J. & K. Tenancy Act (2 of 1980) (as amended by Act 12 of 1955), S. 15-A. AIR 1959 J & K 35 (FB).

——Art. 31—'Law' and 'authority of law' — Meaning of.

The expression 'authority of law' in Art. 31 (1) of the Constitution means the permission under the law to do a thing and 'law' means 'State made law'. When Art. 31 (1) says 'authority of law', all that the statute should prescribe is an enabling power leaving it open to the parties concerned neither of which may necessarily be the State, to make their own arrangements by way of contract, or a set of rules or conditions by one, which are accepted by the other party.

When a grant of uncultivated forest land called the pagras tenancy is made by the Government under S. 53 (d), Bhopal Land Revenue and Tenancy Act, and the Government cancels the patta for breach of conditions in the grant and effects its right of re-entry without going to a civil Court, there is no denial of the fundamental right of the grantee under Art. 31 (1) as the action taken by the Government is under 'authority of law' as contemplated by Art. 31 (1). 1961 M P L J 138 : 1960 M P C 570 : 1960 Jab L J 1028 : AIR 1960 Madh Pra 282 (286) (Pt C) (Pr 14).

——Art. 31 (1)—"By authority of law" — Meaning—'By authority of law" means by authority of statute

law (obiter). AIR 1950 S C 27, Ref. (1951) 2 F J R 229 : 64 Mad L W 851 : 1951-2 Mad L J 382 : AIR 1951 Mad 974 (977, 978) (Pt E) (Pr 10) (DB).

——Art. 31 (1)—Object of.

The first clause in Art. 31 is meant to guard against taking away one's property arbitrarily or by executive action. There must be legal sanction for every act of deprivation. ILR (1956) Nag 264 : 1955 Nag L J 668: AIR 1956 Nag 50 (52) (Pt C) (Pr 11) (DB).

——Art. 31 (1)—Validity — Cl. 8 (c) does not violate Art. 31 (1) — Houses and Rents — C. P. and Berar House Rent Control Order 1947, Cl. 8 (c).

If what the landlord suffers under the provisions of cl. 8 (c), C. P. and Berar House Rent Control Order is deprivation of property, it is in accordance with law, viz., Cl. 8 (c). A law of this kind is not invalid. AIR 1951 S C 41 and M P No. 29 of 1951, Foll. 1952 Nag L J (Notes) 59 (DB).

——Art. 31 — Entry in Appendix IV, East Punjab Land Resettlement Manual has no force of law. (1965) 67 Pun L R 867.

——Art. 31 (1)—Deprivation of proprietary rights in land by State — State unable to justify its action on the authority of any law — Its orders are liable to be struck down without going any further into the matter. 67 Pun L R 867 : 1965 Cur L J 673.

——Art. 31—Vesting of land which takes place under Land Acquisition Act — Necessity of possession — Order of possession passed by Ruler of Mewar after Constitution of Mewar had come into force — Effect on rights of subjects—The rights of the plaintiff over property in dispute could not be taken away without due process of law and mere executive order of the Rulers could not amount to due process of law. See Land Acquisition Act (1894), S. 6. AIR 1957 Raj 59 (DB).

——Art. 31 (1)— Deprivation of property by executive order.

The making of a grant is a sovereign act of the ruler. The grant can only be revoked by a sovereign act of the successor to that ruler. The terms of the grant could not be varied by an act of the executive Government unless it was authorized under any law. The order of the Vindhya Pradesh Government, dated 27th June 1949, was not passed under any law but was purely an executive order.

When a power is conferred and the mode of exercising it is prescribed, it can only be exercised in the prescribed manner.

It is the rule in every civilised country that no one can be deprived of his property save by authority of law. It was the rule in this country before the present constitution came into force. The State having wrongfully sold the tendu leaves belonging to the plaintiffs the latter were entitled to recover damages. They were also entitled to a declaration that they had the rights to manage their forests and the interference on behalf of the State was illegal and for a permanent injunction restraining the latter from trespassing on their right in this manner.

The deduction of 25 per cent. of the sale price by way of expenses was not justifiable. The State was not managing the forests of the plaintiffs. They were themselves managing them. The State had only sold the tendu leaves growing in them and collected the sale price. The question was not what the State actually spent in doing this but what the plaintiffs would have spent if they had done it themselves. The plaintiffs must be maintaining their staff in order to keep watch over their forests. For it was they who must be seeing to it that no one steals anything from them. If they had themselves sold the leaves, they would have incurred expenditure only in publishing the sale, and in conducting it. To meet that expense 1 per cent. of the sale-money would be ample. For they already had the necessary paid staff with them to do this work. A I R 1936 P C 253 (2), Foll.; AIR 1952 Vind Pra 13, Dissented from. **A I R 1955 Vin Pra 19 (20, 21) (Pt C) (Prs 5, 7).**

——Art. 31 — Seizure of goods without authority of law. It amounts to infringement of the owner's fundamental rights both under Art. 19 and Art. 31. See Ibid, Art. 19. **AIR 1955 Vind Pra 17.**

——Arts. 31 and 226 — V. P. Government Revenue Department Order No. 115, dated 8-4-53/22-4-53 held without jurisdiction — Executive Order depriving property rights of petitioner without adequate reasons held not justified — Tenancy Laws — (Rewa Land Revenue and Tenancy Code (1935), Ss. 305, 322 and 325). **AIR 1955 (N U C) Vind Pra 767.**

——Art. 31—Realization of dues under Ordinance (57 of 1949).

The procedure by which the debtors of the Bank of Baghelkhand are likely to be deprived of their property under S. 3 of the Ordinance 57 of 1949 is in accordance with law, that is enacted law—they being the Ordinance and Rewa State Demand Rules of 1936. **AIR 1951 Vind Pra 11 (13) (Pt B) (Pr 12).**

3 (c). Protection only against State action.

● ——Arts. 31 and 32—Petition challenging constitutionality of Madras Act 32 of 1955 on ground of infringement of fundamental rights under Art. 19 (1) (f) and Art. 31 (1) — Dispute held not to be of private nature—Petition maintainable. See Ibid, Art. 32. **AIR 1959 S C 725.**

● ——Art. 31 (1) — Does not provide protection against private actions. See Ibid, Art. 19 (1) (f). **AIR 1952 S C 59.**

——Arts. 31 and 19 — Dispute between two individuals regarding their respective civil rights and not between State and an individual — No question of invasion of fundamental rights. 23 Cut L T 403 : I L R (1957) Cut 501 : A I R 1958 Orissa 15 (17) (Pt B) (Pr 11) (DB).

3 (d). Deprivation.

——Art. 31—'Deprived of his property.'

Even when a person has been deprived only of his right to possess and enjoy property, it amounts to deprivation of property within Art. 31 though he continues to be the owner of the same. **A I R 1954 Ajmer 3 (1) (3) (Pt A) (Pr 3).**

——Art. 31 (as it stood prior to its amendment in 1955)—Law regulating relationship of creditors and ex-zamindars — U. P. Zamindars Debt Reduction Act (15 of 1953), Ss. 3, 4, 7 and 9 — Provisions do not amount to deprivation as contemplated by Art. 31 and do not violate that article. A I R 1960 S C 1080, Rel. on.; A I R 1953 Nag 40 and A I R 1956 Trav Co 19 (FB) and A I R 1958 Pat 442, Disting. **A I R 1962 All 521 (530, 531, 532, 533, 534, 537, 541) (Pt C) (Prs 26, 27, 28, 35, 37, 38, 46, 62, 63, 65, 68, 80) (DB).**

——Art. 31—Andhra Inams (Assessment) Act, 1955—Validity—There is no deprivation of property — Nor is there resumption of inam. The Andhra Inams (Assessment) Act cannot be assailed on the ground that there has been a virtual deprivation of property by reason of the levy of full assessment under the Act. See Andhra Inams (Assessment) Act (17 of 1955) S. 3. **AIR 1960 Andh Pra 461 (DB).**

——Art. 31 (1) and (2) — S. 84-C, Bombay Tenancy and Agricultural Lands Act—Validity.

Section 84-C, Bombay Tenancy and Agricultural Lands Act, does not deal with acquisition of property for a public purpose and, therefore, it is not violative of Art. 31 (2) of the Constitution.

Section 84-C in so far as it refers to the forfeiture of the land to the Government by reason of the sale being declared invalid is constitutional and can be sustained under Art. 31 (1). Under Art. 31 (1) it is open to a Legislature to make a law whereunder a person may be deprived of his property. Such deprivation, of course, may be in the exercise of the police power or may be for the purpose of taxation or penalty. The same, however, cannot be said with regard to another provision of S. 84-C which is to the effect that the purchase price received by the occupant of the land shall be forfeited to the Government and will be recoverable as an arrear of land revenue. 61 **Bom L R 1276 : I L R (1960) Bom 188 : AIR 1960 Rom 459 (460) (Prs 3, 4) (DB).**

——**Art.** 31—Saurashtra Land Reforms Act, S. 39—Validity — No deprivation of property as such — Section is not ultra vires as contravening Art. 31. See Tenancy Laws—Saurashtra Land Reforms Act (25 of 1951), S. 39. **AIR 1959 Bom 43 (DB).**

——**Art.** 31—Sea Customs Act (1878), S. 178A — Section is valid. Article 31 relates to deprivation of property of a person. On the language of S. 178A it has no relation to the question of deprivation of property. **ILR (1959) Bom 1771.**

[Reversed on another point in A I R 1962 S C 1559.]

——**Art. 31—Deprivation must be direct.**

Before a person can complain of deprivation and can urge that the deprivation is illegal because it is without compensation, the deprivation must be direct and not an indirect or incidental consequence of legislation. **ILR (1955) Bom 870 : 57 Bom L R 892 : AIR 1956 Bom 21 (25) (Pt B) (Pr 11) (DB).**

——**Art. 31—Bombay Agricultural Produce Markets Act (22 of 1939) does not violate Art. 31.**

The Bombay Agricultural Produce Markets Act (22 of 1939) cannot be challenged on the ground that it violates Art. 31 as there is no deprivation of property within the meaning of that Article. **ILR (1955) Bom 870 : 57 Bom L R 892 : A I R 1956 Bom 21 (25) (Pt I) (Pr 12) (DB).**

——**Art. 31 (1)—"Deprivation of property"—If same as acquiring or taking possession under Art. 31 (2).**

The "deprivation of property" prohibited by Art. 31 (1) of the Constitution does not mean the same thing as "acquisition" or 'taking' 'possession' used in Art. 31 (2). It is wider in its signification than "acquisition" or taking "possession". **ILR (1951) Bom 473: 53 Bom L R 218 : A I R 1951 Bom 86 (92) (Pt H) (Pr 9) (DB).**

[Reversed on another point in AIR 1954 S C 119.]

——**Art.** 31— C. P. and Berar Prohibition Act (7 of 1938), S. 24—Deprivation of property under Act— It is limited to persons who have committed an offence under the Act and no other. See Government of India Act (1935), S. 299. **1957 Nag L J 120 (Bom).**

——**Art.** 31 (1)—The principle had been enshrined as the "fundamental right" of a person, in two articles, namely Art. 21, relating to life and personal liberty and Art. 31 (1), relating to property. No logic was required to assert that confiscation of goods seized from possession of a person was deprivation of his property within the meaning of Art. 31 (1). AIR 1956 S C 17 and AIR 1954 S C 415, Rel. on. **68 Cal W N 383 : 1965 (2) Cri L J 477 : AIR 1965 Cal 507 (515) (Pr 38) (DB).**

——**Art.** 31—Civil Motor Transport Vehicles Control Order (1944), Cl. 5—Owner of motor vehicle directed by Government to deliver his vehicle to dealer — Government is liable to pay price as the effect of the order is to deprive the owner of the bus of his property for an indefinite period. See Government of India Act (1935), S. 299. **AIR 1956 Cal 87.**

——**Art.** 31— Licence to use loud-speaker refused — Petitioner using loud-speaker—Seizure of microphone —No deprivation —Art. 31 of the Constitution is not violated. See Bombay Police Act (22 of 1951), S. 33 (1) (r) (iii). **(1963) 2 Cr L J 502 : AIR 1963 Guj 259 (DB).**

——**Art.** 31—Right of office not a fundamental right —Removal does not amount to deprivation. See Ibid, Art. 226. **AIR 1957 Him Pra 49.**

——**Art.** 31 (1) — Auction of trees in Government forest—Default in payment of price—Deficit on resale —Recovery of balance as arrears of land revenue — No deprivation of property—Art. 31 (1) is not attracted. See Sale of Goods Act (1930), S. 54 (4). **A I R 1957 Him. Pra 1.**

——**Art.** 31 — Applicability — Ss. 48 to 51, Kerala Forest Act (4 of 1962) — Validity — Provisions contravene Arts. 19 (1) (f) and (g) and 31—Total deprivation of the rights of persons who carry on business in timber —Entire group of the sections has to be struck down as unconstitutional —Provisions are void so far as private forests and their owners in the Malabar area of Kerala State are concerned. See Ibid, Art. 13. **AIR 1964 Ker 287.**

——Art. 31—Kerala Buildings (Lease and Rent Control) Act (16 of 1959), Ss. 4 (3), 4 (4)—Arts. 19 (1) (f) and 31 of Constitution are not offended. — There is no deprivation of property. See Houses and Rents—Kerala Buildings (Lease and Rent Control) Act (16 of 1959), S. 4 (3). **1960 Ker L T 456.**

——**Art.** 31—Tenancy Laws — Madras City Tenants Protection (Amendment) Act (13 of 1960), S. 9— Validity —Does not violate Arts. 19 (1) (f) and 31—Deprivation of statutory right from a subject cannot be said to amount to taking property or deprivation of property. See Tenancy Laws — Madras City Tenants Protection (Amendment) Act (13 of 1960), S. 9. **ILR (1961) Mad 976.**

——**Art. 31—Madras Aliyasanthana Act (9 of 1949), Ss. 35 and 36 —Partition of Kutumba property — If 'deprivation'.**

There is no reason to hold that a partition of the property of an Aliyasanthana Kutumba on any other basis than per capita would be deprivation of the right of property vested in the members within the meaning of Art. 31 of the Constitution of India. **ILR (1956) Mad 785 : AIR 1956 Mad 642(656) (Pt K) (Pr 50) (DB).**

——**Art. 31—Deprivation of property.**

The Madras Aliyasanthana Act, 1949, is in the language of American Constitutional law an exercise of Police Power —A power to regulate and determine the internal relationships that should subsist between the members of the family and one passed to secure the contentment and well being of the community. The deprivation of property referred to in Art. 31 has nothing to do with the so-called impairment of rights involved in a partition or with the allotment of shares to the divided groups. **ILR (1956) Mad 785 : A I R 1956 Mad 642 (657, 658) (Pt N) (Pr 55) (DB).**

——**Art. 31 (1)—"Deprived".**

It is to be seen in every case whether there has been deprivation in substance. A I R 1954 S C 119, **Foll. AIR 1955 Manipur 49 (54) (Pt D) (Pr 19).**

——Art. 31—Occupant's right to enjoy property — Reasonable restriction of — No deprivation — See Tenancy Laws — Berar Regulation of Agricultural Leases Act (34 of 1951), S. 3. AIR 1955 (N U C) Nag 3959.

——Art. 31 (1), 13 (2)—Forfeiture under S. 7 (1) (b) of Essential Commodities Act (1955)—If punishment —Does not contravene Art. 13 (2) — Essential Commodities Act (1955), S. 7.

The punishment for contravention of an order referred to in S. 7 of Essential Commodities Act is imprisonment and fine and also forfeiture of the property in respect of which the order has been contravened. Hence provision for forfeiture of foodgrains in S. 7 (1) (b) cannot be held to violate Art. 13 (2) on the ground that it is not by way of punishment but by way of deprivation of property within the meaning of Art. 31 (1). 1964 B L J R 638.

——Art. 31 (1)—Applicability—Employer's contribution to employees' provident fund — Demand for—Effect of—(Employees' Provident Funds Act (1952), S. 6).

An order for an employer to contribute one anna in the rupee of his employee's wages to a provident fund to which the employee also has to contribute the same amount out of his wages does not amount to deprivation of property such as was contemplated when Art. 31 was drawn up. A I R 1958 Punj 177 (179) (Pt C) (Pr 10).

——Art. 31 (1)— "Deprived of his property.".

To force a mill-owner to work the mills with the result that he would be made to suffer losses amounts to depriving him of property. I L R (1953) 3 Raj 363 : 1953 Raj L W 569 : A I R 1953 Raj 188 (191) (Pt D) (Pr 15) (DB).

[Impliedly overruled on another point in A I R 1963 S C 1811].

——Art. 31 (1)—Object of Industrial Disputes Act is to harmonise the relations between the employer and employees and it is not contemplated by the Act that the employer or employees should be deprived of their property. 1953 Raj L W 569 : ILR (1953) 3 Raj 363 : AIR 1953 Raj 188 (191) (Pt E) (Pr 15) (DB).

[Impliedly overruled on another point in A I R 1963 S C 1811].

——Art. 31 (1)—Deprivation —Person may be deprived of property even if he still remains owner of it.

A person may be deprived of his property even though he may not have been deprived of all the rights that he has in that property. A person would be deprived of the possession of his property, even if he still remains the owner of it, if he has no control over it. The result, therefore, of the State assuming control is that the undertaking is going to be worked in the future by the State and the owner will have no voice in the management and if any loss is incurred, the State will hold the owner responsible for it. Thus the owner is deprived of effective possession as well as right of management and is attempted to be saddled with the liability that if any loss is incurred in running the undertaking, he will make it good. 68 C L R 261, Rel. on. ILR (1952) 2 Raj 951 : 1953 Raj L W 144 : AIR 1953 Raj 78 (82, 83) (Pt D) (Pr 17) (DB).

3 (e). Who can enforce right.

■ ——Art. 31 (1)—Sea Customs Act (1878), S. 52-A—Foreign company whose vessel has been confiscated not entitled to challenge validity of S. 52A as being ultra vires Arts. 14, 19 and 31 (1). See Sea Customs Act (1878), S. 52 A. 1964 (2) Cri L J 234 : A I R 1964 S C 1140.

■ ——Art. 31(1)—Infringement of fundamental rights —Who can apply under Art. 226—Title to hold property in dispute and subject of adjudication — Complaint about infringement of right to hold property is premature. See Ibid, Art. 226. AIR 1963 S C 516.

——Art. 31 — Person who can complain — (Iron and Steel Companies Amalgamation Ordinance (8 of 1952)) — (Iron and Steel Companies Amalgamation Act, 89 of 1953).

Neither the Iron and Steel Companies Amalgamation Ordinance nor the Iron and Steel Companies Amalgamation Act deprives the Iron and Steel Company of any of its under-takings or its assets or acquires its properties. If at all they do so it is Bengal Steel Corporation that suffers and hence only that company or its share-holders can complain about the legislation and not the Iron and Steel Company or its share-holders. A I R 1953 Cal 695 (698) (Pt A) (Pr 7).

——Arts. 31 and 226—Retrospective operation—Acquisition proceedings started before Constitution — Attempt to take possession after Constitution.

Where the acquisition proceedings in respect of the factory of the petitioner were commenced before the Constitution, but an attempt to take possession of the factory was still being made after the Constitution came into force:

Held, that it was futile to contend that the application of the petitioner could not be entertained and that he was not legitimately entitled to challenge the attempt to dispossess him in contravention of the provisions of Art. 31 by praying for the issue of an appropriate writ under Art. 226 I L R (1955) Hyd 494: AIR 1955 Hyd 203 (207) (Pt C) (Pr 18) (DB).

3 (f). Duty of Court.

——Art. 31 (1)—Exercise of power under — Duty of Court.

The power given to the State under Art. 31 (1) is a very drastic power, but it is a power which it is necessary to confer upon any State, and the State must be armed with such a power to be exercised wisely and under circumstances where its exercise would be absolutely necessary. On the other hand, the Court must also be careful to see that any deprivation of property by the State is not too easily put in the category of deprivation referred to in Art. 31 (1) so as to entitle the State to take possession of the property of the subject without the very salutary limitations laid down upon its power under Art. 31 (2). 53 Bom L R 218, Rel. on. 53 Bom L R 621: I L R (1952) Bom 378: AIR 1951 Bom 440 (449) (Pt II) (Pr 12) (DB).

——Art. 31 (1)—Scope—Duty of State — Interference by executive with citizen's property rights—Deprivation against will and without recourse to or authority of law—Violation of rights—Duty of High Court to remedy wrong by writ of certiorari or direction See Ibid, Art. 226. 1952 Cri L J 340.: AIR 1952 Hyd 36 (DB).

3 (g). "Person".

■ ——Art. 31—Coal Bearing Areas (Acquisition and Development) Act (1957), Ss. 4, 7 — Acquisition of coal-bearing areas vested in State by Union — Provisions are not ultra vires.

By Cl. (2) of Art. 31 property is protected against compulsory acquisition or requisition. The clause grants protection in terms of widest amplitude against compulsory acquisition or requisition of property and there is nothing in the Article which indicates that the property protected is to be of individuals or corporations. Even the expression 'person' which is used in Cl. (1), is not used in Cls. (2) and (2A) and the context does not warrant the interpretation that the protection is not to be available against acquisition of State property. See Coal Bearing Areas (Acquisition and Development) Act (1957), S. 4. A I R 1963 S C 1241.

● ——Art. 31—Article 31 protects every person whether such person is a citizen or not and it is wide enough to cover a natural person as well as an artificial person. Charanjit Lal Choudhury v. Union of India, 64 Mad L W 47 : 1951 S C J 29 : 1951 Mad W N 111 : 1950 S C R 869 : 53 Bom L R 499 : I L R (1951) Hyd 461 : AIR 1951 S C 41 (52) (Pr 42).

——Art. 31—Person—Whether includes deity.

A Hindu deity is juridical person capable of owning and possessing property and hence the deity will also come within the ambit of Art. 31. See Ibid, Art. 19. AIR 1960 Manipur 20.

4. "Eminent Domain".

● ——Art. 31 (2) and (4)—Legislation for acquisition of property — Limitations — Doctrine of eminent domain in American law—Applicability.

The State has no power to take possession of or to acquire property save for public purpose, and the limitation on the State's power is to be found in Art. 31 (2) and not elsewhere.

It is not to be found in Art. 19 (1) (f), for the right to property guaranteed by that clause ceases when the owner is deprived of his property by its compulsory acquisition under Art 31. AIR 1950 S C 88, Foll. The doctrine of 'eminent domain' in American law can find no place in States the Legislatures of which are either absolute in their powers, as is the British Parliament, or in which the legislatures, though limited in their powers, have been given express power to make laws on the subject of the acquisition of property.

Whether the restrictions placed by Art. 31 (2), on the State's power of acquisition are described as limitations or conditions, and whether they be express or implied, they are none the less provisions of Cl. (2) and are, therefore, in cases to which the Cl. (4) of Art. 31 applies, not to be called in question in any Court. 1950 S C R 869, Foll. Raja Surya Palsingh v. U. P. Government, I L R (1952) 2 All 46: 1951 All L J 365 : 1951 R D (HC) 122 : 1951 All W R (HC) 317 : A I R 1951 All 674 (680, 681) (Pt J) (Prs 27, 28, 29) (FB).

——Art. 31 (2)—Eminent domain — Requisition—Applicability of Art. 19 (1) (f) and (5) to requisition under Bombay Land Acquisition Act—Requisition is included within the term acquisition in Art. 31 (2) and the power that is exercised under the Bombay Land Acquisition Act is under the sphere of eminent domain and the Act does not provide for the exercise of this power without fulfilling the condition of Art. 31 (2). See Ibid, Art. 19 (1) (f). AIR 1955 Bom 271.

——Art. 31—Requisitioning of premises for Government servant—No choice of accommodation—Public purpose—Necessity of—Doctrine of eminent domain. See Houses and Rents—West Bengal Premises Requisition and Control (Temporary Provisions) Act (5 of 1947), S. 3 (1). ('61) 65 Cal W N 794.

——Art. 31—Power of eminent domain—Exercise of, under Land Acquisition Act. See Land Acquisition Act (1894), S. 4. ('64) 77 Mad L W 537.

——Arts. 31, 19—Khasmahal lease — Determination of lease by Government as per terms of lease—Lessor exercises rights under Art. 19, and Art. 31 has no application—AIR 1956 Cal 437, Rel. on. Clause providing for compulsory acquisition without compensation for extinction of leasehold interest held not unconstitutional — Government acting as a private lessor and not in exercise of powers of eminent domain—Fundamental rights not contravened.

Held, on facts that once in accordance with the terms of the lease the lessor determined the lease by a valid notice, the leasehold interest was extinguished and there could be no question of any subsisting interest remaining with the lessees so as to require Government to pay compensation for the acquisition of that interest. By determining the lease and thereby extinguishing the lease-hold interest of the lessees, Government were acting merely as the lessor in accordance with the terms of the lease and not as Government exercising their powers of eminent domain. Hence the question of contravening the fundamental rights did not arise. 28 Cut L T 209 : I L R (1962) Cut 27.

——Art. 31—Bihar Hindu Religious Trusts Act—Validity.

Under the Bihar Hindu Religious Trusts Act, the Board does not take possession of the endowed properties; it does not perform any act of management with reference to the endowed properties. The Board merely exercises the power of superintendence as provided in S. 28 (1) of the Act. There is no acquisition or requisition of property right within the meaning of Art. 31. In other words, the impugned Act is legislation made in exercise of the police power and not in exercise of the right of eminent domain. 32 Pat 1148 : A I R 1954 Pat 266 (272) (Pt F) (Pr 11) (DB).

5. Clause (2)—General.

(a) Authority of law.
See also Ibid, Note 3 (b).

(b) Constitutional validity of enactments.

(c) Comparison with S. 299 of Government of India Act (1935).

(d) Clause (2)—Before Fourth Amendment of 1955.

(e) Clauses (2) and (5) — Combined effect — See Ibid, Note 17.

5. Clause (2)—General.

● ——Art. 31—Shamilat deh and abadi deh in village—Transfer of shamilat deh to village panchayat—Conferment of proprietary rights on non-proprietors in respect of lands, in abadi deh — Such transfer and conferment are valid. See Ibid, Art. 19 (1) (f). AIR 1965 S C 632.

——Art. 31 (2) (as amended by Constitution Fourth Amendment Act)—Scope.

The amended Article has now made it clear that mere deprivation of property would not amount to acquisition within the meaning of the word as used in Art. 31 (2) unless the deprivation is accompanied or followed by acquisition of the property by the State. ILR (1958) 1 All 109 : AIR 1957 All 136 (141) (Pt C) (Pr 30) (DB).

——Art 31 (2) (as amended by Constitution Fourth Amendment Act)—Retrospective effect.

The Constitution Fourth Amendment Act has not been given retrospective operation and, that being the position, the right of the parties for the period before the amendment would be governed by the unamended Art. 31 (2) of the Constitution. ILR (1958) 1 All 109 : AIR 1957 All 136 (141) (Pt D) (Pr 30) (DB).

● ——Art. 31 (2), Sch. 7, List II, Entry 36—"Subject to provisions of Entry 42 of List III"—Meaning.

Reading the entries 33 in List I, 36 in List II and 42 in List III together, the words "subject to the provisions of entry 42 in List III" in Entry 36 of List II mean only that when a State acquires property then the principles on which compensation is to be determined may be fixed either by the State Legislature or by the Union. They have nothing to do wtth legislative competence. The provisions of Art. 31 (2) are not fetters to legislative competence but are conditions of legislative effectiveness. Raja Surya Palsingh v. U. P. Government, 1951 All L J 365 : 1951 R D

(HC) 122: 1951 All W R (HC) 317: ILR (1952) 2 All 46 : AIR 1951 All 674 (678) (Pt C) (Pr 12) (FB).

● —Art. 31 (2) and (4)—Limitations on acquisition of property—Calling in question in Court.

Article 31 (2) prescribes the limits within which the rights of the State should be exercised. Whether the restrictions placed by that clause on the State's power of acquisition are described as limitations or conditions, and whether they be express or implied they are none the less provisions of Cl. (2) and are therefore, in cases to which Cl. (4) of the Article applies, not to be called in question in any Court. Raja Suryapal Singh v. Government of Uttar Pradesh, 1951 A W R (H C) 317 : ILR (1952) 2 All 46 : 1951 ALJ 365 : A I R 1951 All 674 (680, 681) (Pt J) (Prs 27, 28, 29) (FB).

——Art. 31 (2)—Scope of.

Although Art. 31 (2) does not in terms state that acquisition or taking possession of, can only be for public purposes, reading that clause as a whole it is clear that it is implicit in the power conferred upon the Legislature to legislate for the purposes of acquisition or taking possession of property. It is also necessary that the property referred to in Art. 31 (2) must be property which is capable of being acquired or taken possession of. However wide the definition of "property" in general may be, in this particular context 'property" can only mean that kind of property which is capable of being acquired or taken possession of. Further, it also follows as a corollary that if the property is capable of being acquired or taken possession of, it is also property, the loss of which can be compensated for. 53 Bom L R 218 : ILR (1951) Bom 473 : AIR 1951 Bom 86 (90, 91) (Pt D) (Pr 6) (DB).

[Reversed on another point in AIR 1954 S C 119.]

——Art. 31 (2)—Scope—Right to enter forest and cut trees in future—Nature of —Grantee is intermediary—His interests vest in Government — Compensation not provided—Article 31A will apply and the Court will be powerless to intervene—Effect. See Tenancy Laws —West Bengal Estates Acquisition Act, 1953 (1 of 1954), S. 5 (aa). AIR 1959 Cal 316.

——Art. 31 (2)—Article covers cases of both requisition and acquisition. AIR 1953 Cal 223 (225) (Ft A) (Pr 6).

[Overruled on another point in AIR 1954 Cal 171].

——Arts. 31 (2) and 226—Proceedings for acquisition neither in conformity with provisions of Hyderabad Sanitary Powers A'in nor in accordance with Land Acquisition Act — Issue of writs of certiorari and prohibition—(Hyderabad Sanitary Powers A'in (5 of 1352-F), S. 150)—Land Acquisition Act (1894), Ss. 6 and 50)—(Hyderabad Land Acquisition Act, Ss. 5 and 35).

When statutory rights abridging the right of ownership to property have been conferred upon the Government, the conditions prescribed by the statute for the exercise of such rights must be strictly fulfilled. If this is not done Courts will afford relief to persons who are aggrieved by the non-compliance or nominal compliance with the provisions of the statute.

Where it is admitted that while the acquisition proceedings had been taken and some portion of the land was taken possession of, there was no "regional or town plan or local lay-out" sanctioned by the Government, the entire proceedings taken for the said acquisition are not in conformity with the A'in and suffer from a patent want of jurisdiction. If the land was not being acquired for the purposes of regional or town plan or local lay-out under the Hyderabad Sanitary Powers A'in a declaration under s. 5 would become necessary. If the land has to be acquired for the purpose of a company, the provisions of Chap. 7 should be followed. If this is not done, the proceedings for the acquisition are neither in conformity with the provisions of Hyderabad Sanitary Powers A'in, nor in accordance with the Land Acquisition Act and are hence invalid and of no effect and the Court will direct the issue of writs of certiorari and prohibition quashing the proceedings. ILR (1955) Hyd 494 : AIR 1955 Hyd 203 (207, 208) (Pt E) (Prs 21, 24, 25) (DB).

——Art. 31 (2)—Madras Aliyasanthana Act (9 of 1949), S. 35—Deprivation of property.

The Madras Aliyasanthana Act, 1949, though a pre-Constitution law is not saved from the operation of Art. 31 (2), because it was enacted not more than 18 months before 26th January, 1950 and it was not submitted to the President for certification under Cl. (6) of that Article. Consequently the enactment is subject to the provisions of Art. 31. For the applicability of Art. 31, there need be no acquisition by the State in order to constitute a 'taking' within Art. 31 (2); if the right to property or its enjoyment were substantially interfered with by legislation, there will be a 'deprivation' of property, and when this is compassed without provision for fair compensation for the interest 'taken', as thus understood, there will be a violation of Art. 31 (2). AIR 1954 S C 119 and A I R 1954 S C 92, Rel. on. ILR (1956) Mad 785 : AIR 1956 Mad 642 (653, 657, 658) (Pt H) (Prs 37, 55) (DB).

——Art. 31 (2)—Scope.

The relevancy of the provisions of Art. 31 (2) is confined to a consideration of the validity of the enactment itself. When the Act itself is declared valid by the decision of the Supreme Court, a non-compliance with any of the provisions of an Act which is a valid Act, cannot render the Act itself invalid. A I R 1955 N U C (Mad) 2432 (DB).

——Arts. 31 and 226—Applicability—Acquisition of property for public purposes — Provisions of Land Acquisition Act not followed — Effect — Writ of certiorari granted.

Under Art. 31 the deprivation of the property of the petitioner by mere executive action without applying the provisions of the Land Acquisition Act, 1894 or any other law relating to compensation had to be declared as in derogation of the fundamental right of the petitioner. The order of the Chief Comsioner had to be declared as passed without jurisdiction and the petittoner was entitled to a writ of certiorati quashing the said order. A I R 1960 Manipur 20 (24) (Pt A) (Prs 20, 21).

——Arts. 31, 245, Sch. 7, List 2 Entry 36 and List 3, Entry 42 — "Subject to the provisions of this Constitution" —Law referable essentially to Entry 36 —Law not satisfying provisions of Entry 42, List 3—Art. 31 (2) contravened — Legislature can still pass law — Where the law is referable essentially to entry No. 36 of List 2, a legislature has jurisdiction to pass a law even though it does not satisfy the provisions contained in entry No. 42 of List 3 and contravenes cl. (2) of Art. 31. A I R 1955 N U C (Nag) 1341.

——Arts. 31 (2), 19 (1) (f) and (5) — Restrictions placed on landlord's rights in sub-ss. (1) and (3) of S. 73-A of Berar Land Revenue Code —Reasonableness —Mere fact that by reason of the restrictions a landlord is precluded from exercising certain rights to property would not attract Art. 31 (2) — (Berar Land Revenue Code (1928), S. 73-A (1) and (3) (enacted by Berar Land Revenue Code (Amendment) Act (10 of 1948)) See Ibid, Art. 19 (1) (f). AIR 1953 Nag 40.

——Art. 31—Private recognized High School—Supersession of Managing Committee by appointment of

Ad Hoc Committee under R. 182, Bihar Education Code—No infringement of Art. 19 (1) (f) and Art. 31, Constitution of India. See Ibid, Art. 19 (1) (f). **A I R 1956 Pat 81.**

——**Arts. 31 (2) and 226 — Deprivation of fundamental rights to hold property—Laches in applying under Art. 226—Effect.**

The Constitution requires that property can be acquired only for a public purpose. Similarly the Land Acquisition Act lays down that land can be acquired only for a public purpose. If the land has not been acquired for a public purpose then obviously the petitioners whose property has been acquired have a valid grievance inasmuch as they would be deprived of their fundamental right to hold their property. If a party cannot waive his fundamental right by an agreement then obviously mere laches in applying under Art. 226 will not deprive him of this right. **61 Punj L R 609 : I L R (1959) Punj 1665 : A I R 1959 Punj 544 (547) (Pt A) (Pr 6) (DB).**

——**Art. 31 (2)—Acquisition of property—Legality.**

Where the law provides for outright acquisition of the property by the State and for the vesting of that property in the State, its legality has to be considered with reference to Art. 31 (2) of the Constitution. **A I R 1956 Sau 32 (34) (Pt B) (Pr 4) (DB).**

——**Art. 31 — Foreign Exchange Regulation Act (1947), Ss. 8 (1) and 23-A — Sea Customs Act (1878), S. 178 — Powers of Customs Officer to seize at air port goods believed to be smuggled — Such seizure does not infringe Art. 31.**

Section 23 A, Foreign Exchange Regulation Act, 1947, shows that the restrictions imposed regarding gold under S. 8 (1) of that Act are deemed to have been imposed under S. 19, Sea Customs Act, and the Customs Officers are competent to exercise all the powers which have been conferred on them by Ss. 169, 173, 178, 181-A, etc. So a Customs Officer can on reasonable suspicion for the purpose of prevention of smuggling, search a person at an Air Port, and he can also seize any goods which he believes to be smuggled. Such seizure will not legally be deemed to infringe the fundamental rights under Art. 31 of the Constitution of India as this seizure will be deemed to be during the course of the exercise of the police power and not of the power of eminent domain or of taxation. A I R 1950 S C 27 and A I R 1951 S C 41, Rel. on. **A I R 1956 Tripura 35 (39) (Pt A) (Pr 13).**

5 (a). Authority of law.

See also Ibid, Note 3 (b).

——**Art. 31 (2)—"Authority of Law"—Meaning.** See West Bengal Land (Requisition and Acquisition) Act (2 of 1948). **A I R 1963 Cal 373.**

——**Art. 31 (2)—Fixing of compensation.**

The 'Law' in a given case must be an Act read with the order promulgated under it. It cannot be said that the Essential Supplies (Temporary Powers) Act (1946) read with West Bengal Food Grains (Intensive Procurement) Order (1952) does not fix compensation. **I L R (1955) 1 Cal 401 : 57 C W N 397 : A I R 1953 Cal 548 (557, 558) (Pt J) (Pr 40).**

——**Art. 31 — The Word "Law in cls. (2) to (6) of Art. 31 means Statute Law." AIR 1954 Trav-Co 145.**

5 (b). Constitutional validity of enactments.

● ——**Art. 31 — Tibbia College Act (1952)—Validity of Act—Scope of the Act—Does not provide for compulsory acquisition of any property — Art. 31 (2) or Art. 31 (1) not applicable** See Tibbia College Act (5 of 1952), S. 1. **A I R 1962 S C 458.**

● ——**Art. 31 — Sugar Export Promotion Act (1958), Ss. 1, 6 — Validity of the Act — Does not infringe Arts. 19 (1) (f), 19 (1) (g) and 31 — Amounts to reasonable restriction.** See Sugar Export Promotion Act (1958), S. 1. **A I R 1959 S C 1124.**

● ——**Art. 31 (2) (as it stood prior to Fourth Amendment) — U. P. Act (5 of 1954), S. 29-B—S. 29-B, does not offend Art. 31 (2) of the Constitution.** See Tenancy Laws—U. P. Consolidation of Holdings Act (5 of 1954) (as amended by U. P. Act (16 of 1957), S. 6. **A I R 1959 S C 564.**

● ——**Art. 31 (1) — Effect of Ss. 3 (1), 3 (2), (b), 5 (1) of Bombay Labour Welfare Fund Act (1953)—Wages are transferred to Board — No substitution of creditors — Liability of employers continues — Provisions are invalid as they take away the property of the appellants in violation of either Art. 19 (1) (f) or Art. 31 (2)—(Limitation Act (1908), S. 28)—(Payment of Wages Act (1936), S. 15) — (Contract Act (1872), Ss. 56, 65).** See Bombay Labour Welfare Fund Act (40 of 1953), S. 3 (1). **A I R 1958 S C 328.**

● ——**Arts. 31 (1), 31 (2) and 19 (1) (f)—Ss. 3 (1) and 3 (2) (a) of Bombay Labour Welfare Fund Act (1953) —Validity—No contravention of Art. 31 (2) as it cannot be said that there is any such substantial deprivation of property as would offend Art. 31 (2) — (Payment of Wages Act (1936), S. 8).** See Bombay Labour Welfare Funds Act (40 of 1953), S. 3 (1). **A I R 1958 S C 328.**

● ——**Art. 31 (2) — C. P. and Berar Motor Vehicles (Amendment) Act—Constitutional validity cannot be challenged after Constitution (Fourth Amendment) Act, 1955—(C. P. and Berar Motor Vehicles (Amendment) Act, 1947 (3 of 1948)).** See Ibid, Art. 13. **AIR 1955 S C 781.**

[Held **overruled** by A I R 1959 S C 648 as interpreted in AIR 1961 Mys 3.]

——**Art. 31 (2) — S. 6 (1) and (3) of Land Acquisition Act (1894) — Validity—Provisions do not contravene Art. 31 (2).** See Land Acquisition Act (1894), S. 6. **AIR 1958 All 872.**

[Reversed on another point in AIR 1962 S C 764.]

——**Art. 31 (2) — Applicability to Employees' State Insurance Act (1948).**

To determine the validity of Chapter V-A, the provisions of the entire Act have to be considered and the question has not to be determined with reference only to the additional amount, equivalent to a small percentage of the wage bill which the employer would have to pay. His wage bill having been increased only by a small amount, it cannot be said that Chapter 5-A or Chapter 4 cause such an abridgement in the rights of the proprietor in his factory as to fall under Art. 31 (1) and (2). The whole Act including Chapter 5-A falls outside the purview of Art. 31 and cannot be said to be inconsistent with the Article. **I L R (1958) 1 All 109 : A I R 1957 All 130 (143) (Pt G) (Pr 43) (DB).**

——**Art. 31 (2) and (5) (a) — U. P. Land Acquisition (Rehabilitation of Refugees) Act, S. 11 (1) — Proviso — Validity — Act contravenes Art. 31 (2) and is not saved by Art. 31 (5) (a).** See U. P. Land Acquisition (Rehabilitation of Refugees) Act (26 of 1948), S. 11 (1). **AIR 1955 All 12 (DB).**

[Reversed on another point in AIR 1961 S C 14.]

——**Art. 31 (2) — U. P. Private Forest Protection Act (6 of 1949) — Act does not offend Art. 31 (2) of the Constitution — Provisions of the Act do not amount either to a dispossession of owners or to acquisitions of property of private owners by State.** See U. P. Private Forest Protection Act (6 of 1949). **AIR 1954 All 753.**

● ——**Art. 31—Applicability — U. P. Industrial Disputes Act, 1947, S. 3 does not offend Arts. 19 (1) (f)**

and 31 (2) of the Constitution. See U. P. Industrial Disputes Act (28 of 1947), S. 3. A I R 1954 All 538 (FB).

[Reversed on another point in AIR 1961 S C 420.]

——Art. 31 — Employees' State Insurance Act (1948), Ss. 1 (3), 73 A—Validity — Levy of special contribution under S. 73-A does not result in any acquisition by the Government—Provisions are beyond the scope of Art. 31 (2). See Ibid, Art. 14. AIR 1962 Assam 120 (DB).

——Arts. 31 (2), 31-A — Challenge on ground of public purpose—(Bombay Personal Income Abolition Act (42 of 1953)—Validity).

The two limitations upon the power of the State with regard to acquisition of property are to be found in Art. 31 (2) itself and the limitation of public purpose is not a limitation which is outside the article but is within the ambit of that article itself. Therefore it is a right conferred by a provision of Part 3 embodied in Art. 31 (2) that the property of a person cannot be acquired by the State unless it is for a public purpose and if that is a right guaranteed by Part 3, then it is open to the Legislature, if the legislation falls under Art. 31-A, to legislate with regard to acquisition of property and it is not open to the person affected by that legislation to challenge it on the ground that the acquisition is not for public purpose.

View of Patanjali Sastri C. J. and Das J. in A I R 1952 S C 252 and of Mukherjea J. in A I R 1951 S C 41, Foll. ILR (1955) Bom 127 : 56 Bom L R 1062 : AIR 1955 Bom 28 (32, 33) (Pt B) (Prs 7, 8) (DB).

——Arts. 31 (2), 31-A — Challenge on ground of compensation — (Bombay Personal Inams Abolition Act (42 of 1953)—Validity).

If it is not open to the petitioners to challenge Act (42 of 1953) on the ground that it does not subserve public interest it is even less open to them, if it falls under Art. 31-A, to challenge that the legislation does not provide for compensation. ILR (1955) Bom 127 : 56 Bom L R 1062 : A I R 1955 Bom 28 (33) (Pt C) (Pr 8) (DB).

——Art. 31 (2) — West Bengal Land (Requisition and Acquisition) Act (2 of 1948), S. 3 (1) — Validity of Act — Act deals with acquisition and requisition as contemplated in Art. 31 (2) — Cannot be challenged on ground of violation of Art. 19 (1) (f) — Where Art. 31 (2) applies, Art. 19 (1) (f) has no application. See West Bengal Land (Requisition and Acquisition) Act (2 of 1948), S. 3 (1). (1962) 66 Cal W N 423.

——Art. 31 (2) — Applicability — Tenancy Laws — West Bengal Estates Acquisition Act (1 of 1954), S. 5-A — Constitution of India, Arts. 31 (2), 31-A and 14—Sub-section (3) of S. 5-A is saved by Art. 31-A of Constitution — Provision cannot be struck down as introducing unreasonable classification or as not subserving the purpose of the Act. See Tenancy Laws — West Bengal Estates Acquisition Act (1 of 1954), S. 5-A. ('62) 66 Cal W N 405.

——Art. 31 (2)—Public purpose — Hindu Succession Act — Validity of — (Hindu Succession Act (1956), S. 14).

Article 31 (2) of the Constitution 'contemplates acquisition of property 'for public purposes'. There is nothing to indicate that the rights of the reversioner were taken away by the Hindu Succession Act for any public purpose. Hence, Cl. (2) of Art. 31 of the Constitution has not the application to the taking away the rights of a reversioner. AIR 1957 Cal 527 (528) (Pt E) (Pr 6) (DB).

——Art. 31 — Section 7, W. B. Act 21 of 1947 does not suffer from any Constitutional invalidity under Art. 31 (2). See West Bengal Land Development and Planning Act (21 of 1948), S. 7. A I R 1954 Cal 248 (DB).

[Reversed in AIR 1961 S C 16.]

——Arts. 31 (2), 14 and 19 (1) (f)—Land Acquisition Act (1894) (as amended by Act 31 of 1962), Ss. 40 (1) (aa), 41 (4-A), 44 A, 44-B — Effect of amendment — Amendments are not ultra vires. See Land Acquisition Act (1894) (as amended by Act 31 of 1962), S. 40 (1) (aa). AIR 1964 Guj 82.

——Art. 31 — Tenancy legislation in Cochin area of Kerala State — Kanam Tenancy Act (24 of 1955)—Act not violative of jenmies' fundamental rights under Arts. 14, 19 (1) (f) and 31 — Abridgment of property which does not bring about deprivation would not justify the complaint of the right under Art. 31 (2) having been infringed. See Ibid, Art. 14. A I R 1961 Ker 210 (FB).

——Art. 31 (2) — Law conferring ownership on individuals — Tanjore Tenants and Pannaiyal (Protection) Act (14 of 1950), S. 6 — There is no contravention of Art. 31 (2) of the Constitution — It is only Acquisition of title or taking possession by the State or Union that is dealt with under Art. 31 (2)—See Tenancy Laws — Tanjore Tenants and Pannaiyal (Protection) Act (14 of 1950), S. 6. A I R 1954 Mad 51 (DB).

——Art. 31 (2) — Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act (1 of 1951), S. 9 — Validity — See Tenancy Laws — Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act (1 of 1951), S. 9. AIR 1955 N U C (Nag) 1341.

——Art. 31 (2)— Tenancy Laws — Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act (1 of 1951), Sch. 1, Rr. 2 (b), 3 (b), 7 (b) — The provisions of the Act infringe on the equality rule guaranteed in Art. 14 with reference to the principle of determination of compensation as provided for in Cl. (2) of Art. 31. See Ibid, Art. 14. AIR 1955 N U C (Nag) 1341.

——Art. 31 (2) — Berar Land Revenue Code (Amendment) Act (10 of 1948) Preamble — Validity of Act—Contravention of Art. 31 (2) — The legislature has jurisdiction to pass a law even though it contravenes Art. 31 (2). Hence, the Amendment Act is not invalid because the right guaranteed by Art. 31 (2) is indirectly affected by its operation. See Berar Land Revenue Code (Amendment) Act (10 of 1948), Pre. AIR 1953 Nag 40.

——Art. 31 — (Orissa) Puri Shri Jagannatha Temple (Administration) Act (14 of 1952), S. 2 (a), Expl.—Private religious endowments to sevaks or Pandas—Control of, by S. 15 (5) of Orissa Act 11 of 1954—Validity—Does not contravene Arts. 19 (1) (f) or 31 (2). See Orissa Sri Jagannath Temple (Administration) Act (14 of 1952), S. 2 (1), Expl. AIR 1959 Orissa 17.

——Art. 31 (2) — Orissa Estates Abolition Act (1 of 1952), S. 1—Act is valid. See Tenancy Laws — Orissa Estates Abolition Act (1 of 1952), S. 1. AIR 1957 Orissa 185.

——Art. 31 (2) — Bihar Koshi Area (Restoration of Lands to Raiyats) Act (30 of 1951)—Act became constitutionality valid with effect from 27-4-1955 on which date, Constitution (Fourth Amendment) Act 1955 was passed. See Ibid, Art. 13. AIR 1957 Pat 47 (DB).

——Arts. 31 (2) and 31 (2-A)—Bihar Koshi Area (Restoration of Lands to Raiyats) Act (30 of 1951), S. 3—Proceedings taken before 27th April, 1955, are not validated.

Bihar Act (30 of 1951) is constitutionally valid and operative after 27-4-1955, after the cloud was removed.

by the Constitution (Fourth Amendment) Act, 1955. The Constitution (Fourth Amendment) Act, 1965 was not retrospective with regard to the amendment of Art. 31 (2) and the insertion of the new Art. 31 (2-A). It is manifest, therefore, that the proceedings taken by the Collector under S. 3 of the Bihar Koshi Area (Restoration of Lands to Raiyats) Act before 27-4-1955, were ab initio void, illegal and without jurisdiction. The effect of the Constitution (Fourth Amendment) Act is not to validate or legalise such proceedings. **1956 B L J R 760 : 1956 Pat L R 540 : ILR 35 Pat 847 : AIR 1957 Pat 44 (52) (Pt J) (Pr 21) (DB).**

——**Art. 31 (2)** — Bihar Sales Tax Act (19 of 1947), S. 14-A, Proviso — Amendment to, made by Bihar Finance Act (4 of 1955) is unconstitutional. See Constitution of India, Art. 20 (1). **AIR 1957 Pat 1 (DB).**

● ——**Arts. 31 (2), 31 A—Bihar Land Encroachment Act (31 of 1950), Ss. 2 (ii) (d), 5 6, 8 and 9—Validity —(Bihar Land Encroachment Act (31 of 1950), Ss. 2 (ii) (d), 5, 6, 8, 9).**

Art. 31 (2) hits the taking of possession of even those lands over which the possessor has not perfected his title by being in adverse possession for a period of twelve years. The Bihar Act provides for summary eviction from such lands and, therefore, Ss. 5, 6, 8 and 9 contravene the fundamental rights, inasmuch as they authorise action in interference against a person who is legitimately in possession of such lands as are specified in S. 2 (ii) (d). Art. 31 A cannot be invoked for the obvious reason that this being a law made by the legislature of a State has not received the assent of the President. AIR 1951 S C 41; AIR 1954 S C 119, Foll. Brij Bhukan v S. D. O. Siwan, **33 Pat 690 : 1954 B L J R 513 : AIR 1955 Pat 1 (18) (Pt K) (Pr 13) (SB).**

——**Art. 31**—Bihar Private Forests Act (9 of 1948)—Provisions of the Act do not amount to acquisition of property. See Bihar Private Forests Act (9 of 1948). **AIR 1953 Pat 65 (DB).**

——**Art. 31 (2)—Acquisition—(Patiala and East Punjab States Union Abolition of Biswedari Ordinance (36 of 2006), S. 6) — (Patiala and East Punjab States Union Abolition of Occupancy Tenants Tenure and Settlement of Land Dispute (Amendment) Act (IV of 2007), S. 6.**

Patiala and East Punjab States Union Abolition of Biswedari Ordinance (36 of 2006) and Patiala and East Punjab States Union Abolition of Occupancy Tenants Tenure and Settlement of Land Dispute (Amendment) Act (4 of 2007) do not come within the scope of Art. 31 (2) and are not hit by it. **ILR (1954) Patiala 433 : AIR 1953 Pepsu 161 (173) (Pt F) (Pr 37) (DB).**

[Overruled on another point in AIR 1963 S C 222.]

——**Art. 31 (2) and Sch. 7, List 2 Entry 36 and List 3, Entry 42** — "Subject to" in Entry 36, explained—Saurashtra Barkhali Abolition Act — Validity of — (Tenancy Laws—Saurashtra Barkhali Abolition Act (26 of 1951), S. 1).

Entry 36 in List 2 and Entry 42 in List 3 are merely heads of legislation and are neither interdependent nor complementary to one another. It is by force of the provision of Art. 31 (2) that it becomes obligatory to legislate providing for compensation under Entry 42 in order to give validity to a law enacted under Entry 36 and not by reason of the use of words "subject to', in the wording of the Entry. The only purpose of the words "subject to" occurring in Entry 36 is to indicate that legislation under Entry 36 would be subject to any law made by Parliament in exercise of its legislative power under Entry 42. AIR 1952 S C 252, Foll.

The validity of the Saurashtra Barkhali Abolition Act cannot therefore be challenged on the ground that there has been no valid exercise of the legislative power under Entry 42 in List 3. **8 Sau L R 70 : AIR 1955 Sau 80 (84, 85) (Pt D) (Pr 10) (DB).**

——**Arts. 31, 31-A and 31-B** — West Bengal Land Development and Planning Act (21 of 1948), S. 8—Section continues to be constitutional in view of Constitution (Fourth Amendment) Act, 1955. See West Bengal Land Development and Planning Act (21 of 1948), S. 8. **AIR 1962 Tripura 13.**

5 (c).—Comparison with S. 299 of Government of India Act (1935).

● ——**Art. 31 (2)** — Government of India Act (1935), S. 299 (2)—Principle governing validity of enactment for acquisition of land — Principles also directly govern the situation arising under S. 299, Government of India Act, 1935 — Land Acquisition Act (1894), S. 6—AIR 1954 S C 170, Rel. on. Jeejeebhoy v. Assistant Collector, Thana, Prant. **67 Bom L R 575 : (1965) 2 S C A 457 : 1965 M P L J 114 : 1965 Mah L J 115 : AIR 1965 S C 1096 (1099, 1100, 1101) (Pt B) (Pr 8).**

● ——**Art. 31 (2)—Acquisition—Scope of Art. 31 (2)—It is wider than Government of India Act (1935), S. 299.**

Clause (2) of Art. 31 is wider in scope. It requires public purpose as a justifying circumstance not only where property, movable or immovable is acquired but also where it is taken possession of, S. 299, Government of India Act, 1935, was limited to acquisition. Under Art. 31 (2) even the taking of possession is placed on the same level with acquisition.

It also applies to movable property of all description, while S. 299, Government of India Act was limited to commercial or industrial undertaking or any interests in them or in company's owning any commercial or industrial undertaking apart from land. Girijananda v. State of Assam, AIR **1956 Assam 33 (40) (Pt F) (Pr 20) (SB).**

——**Art. 31 (2)** — Art. 31 (2) and Government of India Act (1935), S. 299 (5).

In Art. 31 Constitution of India no express provision similar to sub-s. (5) of S. 299, Government of India Act, is made for the reason that Art. 31 (2) has been so worded as to include the substance of sub-s. (5) of S. 299 of the Government of India Act. **AIR 1953 Assam 84 (DB).**

——**Art. 31**—Government of India (1935)—S. 299 (2)—West Bengal Land (Requisition and Acquisition Act (2 of 1948), S. 7 (1) Second proviso—Validity—Provision though temporary in nature was hit by S. 299 (2), Government of India Act (1935)—Temporary statutes can be hit by the provisions of Art. 31 (2) of the Constitution or by S. 299 (2) of the Government of India Act, 1935. See Government of India Act (1935), S. 299. AIR 1961 Cal 112.

——**Art. 31 (1) and (2)** — Government of India Act (1935), S 299 (1) and (2)—Scope—Distinction.

Though Cls. (1) and (2) of Art. 31 of the Constitution of India have a similarity to sub-ss (1) and (2) of S. 299, Government of India Act, 1935, they are not expressed exactly in the same terms, for example, the scope of Cl. (2) of Art. 31 is much wider than the scope of sub-s. (2) of S. 299. **ILR 34 Pat 382 : AIR 1956 Pat 149 (153) (Pt C) (Pr 16) (DB).**

5 (d). Clause (2)—Before Fourth Amendment of 1955.

● ——**Art. 31 (2)** — (Before Constitution (Fourth Amendment) Act, 1955)—Deprivation of property—U. P. Road Transport Service (Development) Act (9 of 1955), Ss 5 and 11—Validity.

The U. P. Transport Service (Development) Act which in effect prohibits the stage carriage operators

from doing their motor transport business deprives them of their property or interest in a commercial undertaking within the meaning of Art. 31 (2) of the Constitution. It follows that, if the Act does not provide for compensation the Act would be invalid being in conflict with the provisions of Art. 31 (2) of the Constitution. A I R 1954 S C 728, Foll.

Having regard to the entire scheme of compensation provided by the Act, and S. 11 (5) in particular, it must be held that the Act provides for adequate compensation for the interest acquired within the meaning of Art. 31 (2) of the Constitution. Deep Chand v. State of U. P. (1959) S C J 1069 : 1959 S C A 377 : (1959) 2 S C R (Supp) 8 : I L R (1959) 1 All 293 : A I R 1959 S C 648 (669, 670, 673) (Pt H) (Prs 38, 41).

● ——Arts. 31, 13 (1) and 32 — Essential Supplies (Temporary Powers) Act (1946), S. 3 (4)—U. P. Industrial Disputes Act (28 of 1947), S. 3 (f) — Mill producing cotton yarn, closed—Thereafter orders handing over management of mill to authorised controller passed—Orders held were invalid — Deprivation of property. See Ibid Art. 13 (1). A I R 1955 S C 624.

● ——Art. 31 (2)—U. P. State Road Transport Act—Validity — Act infringes Art. 31 (2). The effect of prohibition of the trade or business of the appellants by the impugned legislation amounts to deprivation of their property or interest in a commercial undertaking within the meaning of Art. 31 (2). A I R 1954 All 257, Reversed. See U. P. State Road Transport Act (2 of 1951). A I R 1954 S C 728.

● ——Art. 31—Who can challenge constitutionality of statute offending Art. 31 — A I R 1951 Bom 86, Reversed.

The plaintiff who was the registered holder of a number of partly paid up preference shares of the Sholapur Spinning and Weaving Company filed a suit against the company its directors appointed by the Government and the Union of India in the Bombay High Court on behalf of himself and other preference share-holders praying for a declaration that the resolution of the directors appointed by the Government of Bombay under Ordinance II of 1950, making a call on them was illegal and ultra vires, as the law under which they were appointed was itself invalid. The plaintiff claimed relief in the form of a declaration regarding the invalidity of the Ordinance and prayed for injunction restraining the directors from giving effect to the resolution.

Held, that in the circumstances of the case, the plaintiff as a preference share-holder of the company was entitled to challenge the constitutionality of the Ordinance on the basis that it abridged the company's fundamental right under Art. 31 (2) of the Constitution. (1922) 262 U S 447, Applied ; A I R 1951 S C 41, Disting.; A I R 1951 Bom 86 Reversed. Dwarkadas Shrinivas v. Sholapur Spinning and Weaving Co., Ltd., 1954 S C J 175 : (1954) 1 Mad L J 355 : 67 Mad L W 176 : 56 Bom L R 681 : (1954) 24 Com Cas 103 : 1954 S C A 132 : 1954 S C R 674 : A I R 1954 S C 119 (122, 130, 131, 132, 134, 135, 138, 139) (Pt F) (Prs 1, 33, 34, 35, 36, 37, 46, 47, 72, 75).

——Art. 31 — U. P. Act 2 of 1951 — State does not acquire any property or interest in commercial undertaking. See Uttar Pradesh State Road Transport Act (1950) (2 of 1951), Preamble. A I R 1954 All 257 (DB).

Reversed in A I R 1954 S C 728.]

——Arts. 31 and 19 (1) (g)—Charitable Endowments Act (1890), Ss. 4, 5, 2, 10 — Educational purpose is charitable purpose — Property held by institution for educational purpose — Institution registered under Societies Registration Act, 1860 — Effect — Appointment of Treasurer in respect of such property under Charitable Endowments Act—Validity — Arts. 19 (1) (g) and 31 of Constitution not violated — (Societies Registration Act (1860), Ss. 3, 5, 6). See Charitable Endowments Act (1890), S. 4. A I R 1958 Andh Pra 773.

——Art. 31 — Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948, S. 20 — Acquisition of commercial venture—Section 20 of Madras Act does not enable Government to acquire commercial venture —Section is within legislative competence. See Tenancy Laws — Madras Estates (Abolition and Conversion into Ryotwari) Act (26 of 1948), S. 20. A I R 1958 Andh Pra 522 (DB).

● ——Art. 31 (2) — Scope — Madras Estates Land (Reduction of Rent) Act (30 of 1947), S. 3 — Validity —Taking over of management by Government — If infringes S. 299, Government of India Act, 1935.

The object of the Madras Estates Land Reduction of Rent Act, 1947, is to standardise rents in the State and to bring down the rents, payable by a royt in the estates to the level of rents obtaining in ryotwari tracts. And a law regulating the relation of a landlord with his tenant is not one which takes property within the meaning of Art. 31 (2) even though it has the effect of reducing his rights. A I R 1955 S C 795, Rel. on.

Further, the taking over of the management by the Government to collect rent does not bring the legislation within the mischief of S. 299, Government of India Act, 1935. The Act is neither confiscatory nor does it in substance amount to a deprivation of the property and as such it does not affect the title of the land-holder. Venkata Chalammayya v. The State of Madras, (1958) Andh L T 211 : I L R (1956) Andh Pra 888 : (1958) 1 Andh W R 88 : A I R 1958 Andh Pra 173 (182, 183, 192) (Pt D) (Prs 19, 20, 43) (FB).

[Reversed on another point in A I R 1962 S C 1687.]

● ——Art. 31 (2) (before 1955 Amendment) — "Possession"—Meaning—Possession of properties of non-evacuees by Custodian under S. 10, Administration of Evacuee Property Act.

(Per Palnitkar and Srinivasachari, JJ.)—The possession mentioned in Art. 31 (2) refers to the taking of possession of any property for public purpose thereby destroying the ownership. The possession of the properties of strangers or non-evacuees which the Custodian takes over under S. 10, Administration of Evacuee Property Act is not outright possession, nor does it destroy their ownership, but it is incidental for the purposes of the administration of the property belonging to the evacuees. Whether the Custodian has such a right under the Evacuee Property Act is a different question, but it has nothing to do with the compulsory acquisition of property for public purpose referred to in Art. 31 of the Constitution. Mohd. Fazlur Rahman v. Custodian Evacuee Property, A I R 1956 Hyd 91 (92) (Pt A) (Pr 5) (FB).

● ——Arts. 31 (2), Sch. 7, List 1, entry 33 and List 2, entry 36 — Taking possession — Meaning of —Bihar State Management of Estates and Tenures Act (21 of 1949), S. 1.

(Per Sinha J.) — Taking possession under Art. 31 has reference to the power of requisition under Item 33 of List 1 and Item 36 of List 2 of Sch. 7 to the Constitution. The Bihar State Management of Estates and Tenures Act does not contemplate requisitioning of property and hence is ultra vires on this ground. Kameshwar Singh v. Province of Bihar, I L R 29 Pat 790 : A I R 1950 Pat 392 (415, 416) (Pt L) (Pr 4) (SB).

——Art. 31 — East Punjab Movable Property (Requisitioning) Act (15 of 1947), S. 2—Order under, requisitioning brick lying in a brick kiln — Does not

amount to compulsory acquisition of commercial or industrial undertaking — S. 299 not applicable. See Government of India Act (1935), S. 299. AIR 1956 Punj 247 (DB).

——Art. 31—Legislation taking over administration of secular affairs of religious institution — Validity—Nathdwara Temple Act (13 of 1959), Ss. 2 (viii), 16, 28 (2) and (3), 30 (2) (a), 36 and 37 are ultra vires the Arts. 19 (1) (f), 22 (d), 14 and 26 (b) respectively, of the Constitution — Art. 31 is not infringed. All the property belonged to Shri Shrinathji and Shri Shrinathji has not been deprived of the property. Even if it is considered that there is deprivation it is by authority of law. See Ibid, Art. 14. AIR 1962 Raj 196 (DB).

——Art. 31 (2) — (Rajasthan) (Former) Ordinances (10 and 15 of 1949) — Provisions for State taking over management of collection of revenue are not void. See Rajasthan (Former) Ordinances (10 and 15 of 1949). AIR 1953 Raj 22.

——Art. 31 (2) — Scope — "Taking of possession or acquisition" — Meaning of — "Property" including any "interest" in—Interpretation—V. P. Fequisition of Buildings and Premises and Fixation of Rent Ordinance (3 of 1949)—Ultra vires.

The words "taking of possession and acquisition" in Art. 31 (2) is comprehensive enough to include both acquisition which is a complete deprivation of all interests in the property and requisition which is the taking possession for a limited period or a limited purpose.

"Property" in this article expressly includes in its definition "any interests" in it; even a temporary or a precarious interest such as that of a mortgagee, lessee or a tenant is also property for the purposes of this article.

Under Art. 31 the law authorising such taking of possession or acquisition of property should clearly lay down that it should be done for a public purpose or in the public interests. Another requirement is that the law should expressly provide for compensation. It is also necessary that the law itself should contain the principles upon which the compensation should be worked out.

Any law, pre-existing or made after the Constitution not conforming to the above principles under Art. 31 have to be declared invalid to that extent and the High Court has power under Art. 226 to issue directions to the acquiring or requisitioning authorities not to act upon the law.

V. P. Ordinance III of 1949, makes no mention of the purpose at all but straightway authorises any officer empowered in that behalf to requisition any premises for any purpose and to that extent it is ultra vires. Further it is silent on the question of compensation or the manner of fixing the amount by specifying the principles and how it should be determined and given, even in regard to the full owner of the property. The provision for fixing the reasonable rent to a full owner is not reasonable under Art. 31 (2) since it does not show how it is to be fixed and to be paid; as regards other interests, no compensation is provided at all.

The ordinance is ultra vires on the two grounds of non-mention of public purpose and the non-provision of compensation for the tenant in any case. AIR 1952 E. P. 70; AIR 1951 Nag 32, Ref. AIR 1952 Vindh Pra 78 (79, 80) (Pts A, B, C) (Prs 3, 3a, 4, 7, 10).

5 (e). Clauses (2) and (5)—Combined effect.

See Ibid, Note 17.

6. Clause (2A).

● **——Art. 31 (2-A) — Bombay Labour Welfare Fund Act (40 of 1953), Ss. 3 (1), 3 (2) (b)—Validity—Contravene Arts. 31 (1) and 31 (2) of the Constitution — Scope of Arts. 31 (1) and 31 (2)—Effect of enactment of Art. 31 (2-A) — (Quaere): — Whether the theory that acquisition in Art. 31 (2) is not confined to cases of transfer of ownership to the State, and that even deprivation of property would fall within it can be accepted as correct in view of the enactment of Art. 31 (2A). See Bombay Labour Welfare Fund Act (40 of 1953), S. 3 (1). AIR 1958 S C 328.**

——Art. 31 (2 A) — Applicability — U. P. Consolidation of Holdings Act (1954), S. 14 (ee)—Contribution of land under—Case does not fall under Art. 31 (2A). See Ibid, Art. 31 (2). AIR 1957 All 297 (DB).

——Art. 31 (2-A) (as added by Constitution (Fourth Amendment) Act, 1955)—Retrospective operation.

Clause (2-A) cannot be construed as being retrospective in operation. 1956 All W R (H C) 643 : 1956 All L J 878 : AIR 1957 All 297 (304) (Pt I) (Pr 26) (DB).

——Arts. 31 (2-A) and 31-A—Retrospective operation—(Madhya Pradesh Land Revenue Code (2 of 1955), S. 214)—If ultra vires.

Per Kotwal J. — Article 31, as it stood prior to the Fourth Amendment, would hit S. 214 of the Madhya Pradesh Land Revenue Code because no compensation has been provided therein for the abolition of the vatandari rights of the petitioners. But Art. 31 (2 A) is restrospective in its operation, and having regard to its provisions S. 214 of the Madhya Pradesh Land Revenue Code, 1955, cannot be declared unconstitutional though it deprives the petitioners of their property. By the use of the words "it shall not be deemed to provide for the compulsory acquisition or requisitioning of property" in Art. 31 (2-A) Parliament clearly intended to apply the fiction without reference to any point of time and to make clause (2-A) retrospective in its operation. AIR 1930 P C 54 and AIR 1957 S C 599, Rel. on.

Per Mudholkar J. —Though the Madhya Pradesh Land Revenue Code was enacted before the Fourth Amendment, that Amendment was clearly retrospective and S. 214 cannot be challenged as ultra vires. ILR (1958) Bom 645 : 1958 Nag L J 63 : 60 Bom L R 597 : AIR 1958 Bom 300 (303, 304, 305) (Pt B) (Prs 22, 26, 27, 34) (DB).

——Art. 31 (2A)—West Bengal Land Requisition and Acquisition Act (2 of 1948), S. 3 — Constitutionality — Act cannot be held to be ultra vires of Art. 19 (1) (f) of the Constitution — Art. 31 (2) read with Art. 31 (2A) excludes operation of Art. 19 (1) (f) — See West Bengal Land Requisition and Acquisition Act (2 of 1948). AIR 1962 Cal 269.

● **——Arts. 31 (2A), 19 (6), 31 (2) and 374 (2) —Government of India Act (1935), S. 299—Calcutta Police Act (1866), S. 61A — Calcutta Suburban Police Act (1866), S. 38A—Notifications in 1959 by Police Commissioner prohibiting use of cycle-carts in Calcutta and suburbs — Notifications are valid. See Ibid, Art. 19 (6). AIR 1961 Cal 125 (SB).**

——Art. 31 (2A) — Direction to sell to Government—Question of compensation — Justiciability of. See Essential Commodities Act (1955), S. 3 (2) (f). AIR 1958 Cal 257.

——Arts. 31 and 31 (2-A) — M. B. Zamindari Abolition Act, S. 38 (2)—Validity—Act is saved by Art. 31 (2A). See Tenancy Laws—Madhya Bharat Revenue Administration and Ryotwari Land Revenue and Tenancy Act (66 of 1950), S. 74. 1961 Jab L J 151.

——Art. 31 (2-A) — Bihar Koshi Area (Restoration of Lands to Raiyats) Act (30 of 1951)—Act became constitutionally valid with effect from 27th April, 1955 on which date Constitution (Fourth Amendment) Act

1955 was passed. See Ibid, Art. 13. AIR 1957 Pat 44 (DB).

——Arts. 31 (2) and 31 (2-A)—Tenancy Laws—Bihar Koshi Area (Restoration of Lands of Raiyats) Act (30 of 1951), S. 3 — Proceedings taken before 27-4-1955 are not validated. ILR 35 Pat 847 : 1956 B L J R 760 : AIR 1957 Pat 44 (52) (Pt J) (Pr 21) (DB).

—— Art. 31 (2A)—East Punjab Holdings (Consolidation and Prevention of Fragmentation Act (50 of 1948), S. 34—Village land taken from proprietors and set apart for common use—User of common land is compensation — Part of proprietary land reserved for the use of the village as a whole—Such action is exempted by sub-s. (2A) introduced by the Fourth Amendment to the Constitution. 57 Pun L R 479 : ILR (1956) Punj 47 : A I R 1956 Punj 88 (89) (Pt B) (Pr 6) (DB).

7. "Acquired."

● ——Art. 31 (2) — Under Art. 31 unless there is transfer of ownership or the right to possession of any property to the State or to a Corporation owned or controlled by the State, the law shall be deemed not to provide for compulsory acquisition or requisition of property and in such a case no compensation need be provided under Art. 31 (2)—Nationalisation of bus transport—Scheme not providing for compensation to existing permit holder—Constitutional validity. See Motor Vehicles Act (1939), (As amended by Act C of 1956), Chap IV-A. AIR 1959 S C 308.

● ——Art. 31 (1) and (2) — Scope—Clauses, if deal with same topic — 'Deprivation,' 'Acquisition' and 'taking possession'.

Art. 31 is a self-contained provision delimiting the field of eminent domain and Art. 31 (1) and (2) deal with the same topic of compulsory acquisition of property. The words 'acquisition' and 'taking possession' used in Art. 31 (2) have the same meaning as the word 'deprivation' in Art. 31 (1).

Art. 31 gives complete protection to private property as against executive action, no matter by what process a person is deprived of possession of it. In other words, Constitution declares that no person shall be deprived of possession of private property without payment of compensation and that too under the authority of law, provided there was a public purpose behind that law. It is immaterial to the person who is deprived of property as to what use the State makes of his property or what title it acquires in it. The protection is against loss of property to the owner and there is no protection given to the State by the Article. It has no fundamental right as against the individual citizen. Art. 31 states the limitations on the power of the State in the field of taking property and those limitations are in the interests of the person sought to be deprived of his property. The question whether acquisition has a larger concept than that conveyed by the expression "taking possession" is really of academic interest in view of the comprehensive phraseology employed by cl. (2) of Art. 31. Observations of Das J. in AIR 1951 S C 41 and AIR 1952 S C 252, Diss. from.

Per Bose, J.— The possession and acquisition referred to in cl. (2) mean the sort of 'possession' and 'acquisition' that amounts to 'deprivation' within the meaning of cl. (1). No hard and fast rule can be laid down. Each case must depend on its own facts. But if there is substantial deprivation, then cl. (2) is attracted. By substantial deprivation is meant the sort of deprivation that substantially robs a man of those attributes of enjoyment which normally accompany rights to, or an interest in, property. The form is unessential. It is the substance that one must seek."

Per Ghulam Hasan, J.—"Art. 31 (1) embodies a categorical declaration proclaiming the right of property and equally categorically prohibits the State from depriving the owner of that property by an executive act or without being backed by the authority of law. The intention underlying the Articles being the protection of property against invasion by the State, both Parts (1) and (2) of Art. 31 should be read together so as to harmonize with that intention.

"I am not prepared to subscribe to the proposition that Art. 31 (1) stands by itself and should be read separately from (2) and I cannot attribute an intention to our Parliament to deprive a person of his property merely by passing an Act. The two parts of the Article form an integral whole and cannot be dissociated from each other.

"Whether the facts in a given case amounts to deprivation of property within the meaning of Art. 31 will depend upon the circumstances of each case and it is not possible in the nature of things, to lay down any inflexible test which may be universally applicable. When it can be shown that the statute substantially interferes with the right of enjoyment of property, it will be hit by Art. 31 (2) and declared void, unless compensation is provided." Dwarkadas Shrinivas v. Sholapur Spinning and Weaving Co. Ltd. (1954) 1 Mad L J 355 : 1954 S C J 175 : 67 Mad L W 176 : (1954) 24 Com Cas 103 : 1954 S C A 132 : 1954 S C R 674 : 56 Bom L R 681 : AIR 1954 S C 119 (127, 128, 138, 139) (Pt D) (Prs 18, 23, 25, 60, 78, 79).

● ——Art. 31—'Aquisition'—Meaning of.

The word 'acquisition' has quite a wide concept, meaning the procuring of property or the taking of it permanently or temporarily. It does not necessarily imply the acquisition of legal title by the State in the property taken possession of. 68 Com W L R 261, Foll; AIR 1946 Bom 216 and Das J.'s observations in AIR 1951 S C 41, disapproved. Dwarkadas Shrinivas v. Sholapur Spinning and Weaving Co. Ltd. (1954) 1 Mad L J 355 : 67 Mad L W 176 : (1954) 24 Com Cas 103 : 1954 S C A 132 : 56 Bom L R 681 : 1954 S C R 674 : 1954 S C J 175 : AIR 1954 S C 119 (129) (Pt G) (Pr 27).

● ——Art. 31 (2)—Acquired or taken possession of.

Per Majority, S. R. Das, J. and Jagannadhadas, JJ., Contra — The words 'acquired or taken possession' used in Cl. (2) of Art. 31 cannot be construed in a narrow technical sense. It cannot be assumed that the ordinary word 'acquisition' was used in the Constitution in the same narrow sense in which it may have been used in pre-Constitution legislation relating to acquisition of land. These enactments related to land, whereas Art. 31 (2), refers to movable property also, as to which no formal transfer or vesting of title is necessary. Nor is there any warrant for the assumption that 'taking possession of property' was intended to mean the same thing as 'requisitioning property' referred to in the Entries of the Seventh Schedule. The word 'acquisition' and its grammatical variations should, in the context of Art. 31 and the Entries of 7th Schedule, be understood in their ordinary sense and the additional words 'taking possession of or 'requisitioning' are used in Art. 31 (2) and in the Entries respectively, not in contradistinction with, but in amplification of the term 'acquisition' so as to make it clear that the words taken together cover even those kinds of deprivation which do not involve the continued existence of the property after it is acquired. The expression 'taking possession' can only mean taking such possession as the property is susceptible of and not actual physical possession, as 'the interest in, or in any company owning, any commercial or industrial undertaking', which is expressly included in Cl. (2) of Art. 31, is not susceptible of any actual physical occupancy or seizure. The expression 'shall be taken possession of or acquired' in Cl. (2)

does not admit of being construed in the same wide sense as the word 'taken' used in the Fifth Amendment of the American Constitution, but implies such an appropriation of the property or abridgment of the incidents of its ownership as would amount to a deprivation of the owner. Any other interference with enjoyment of private property short of such appropriation or abridgment would not be compensable under Art. 31 (2).

Per S. R. Das, J.—The word 'acquired' used in Art. 31 (2) must be given the special meaning which that word has acquired and cannot be read as synonymous with 'taken' as used in the Fifth Amendment to the Constitution of the United States. The expression 'taken possession of or acquired' occurring in Cl. (2) has not the same meaning which the word 'deprived' used in Cl. (1) has. 'Taken possession of or acquired' should be read as indicative of the concept of 'requisition or acquisition'.

Per Jagannadhadas, J.—'Taking possession' and 'acquisition' are not to be construed as having reference to and meaning 'deprivation' or vice versa. Undoubtedly 'taking possession' and 'acquisition' amount to 'deprivation' but the converse may not follow in the particular context in which these words and phrases are used. While the framers of the Constitution laid down the requirement of the authority of law for 'deprivation of property' with a larger connotation, they limited the requirement of payment of compensation to what may reasonably be comprehended within the concept of 'acquisition' and 'taking possession'. To read these words and phrases in Art. 31 (2) as meaning the same thing as 'deprivation' used in Art. 31 (1) and to make the test of 'substantial abridgment' or 'deprivation' as the sine qua non for payment of compensation under Art. 31 (2) is to open the door for introduction of most, if not all the elements of wide uncertainly which have gathered round the word 'taken' used in the corresponding context in the American Constitution. State of West Bengal v. Subodh Gopal Bose. **1954 SCA 65 : 1954 SCR 587 : (1954) 1 Mad L J 314 : 67 Mad L W 206 : 1954 S C J 127 : AIR 1954 S C 92 (99, 113, 114, 115, 117, 118) (Pt E) (Prs 15, 51, 53, 58, 59, 66).**

●——Art. 31—'Acquisition' and 'possession' of property—Distinction—Test.

'Acquisition' means and implies the acquiring of the entire title of the expropriated owner, whatever the nature or extent of that title might be. The entire bundle of rights which were vested in the original holder would pass on an acquisition to the acquirer leaving nothing in the former. In taking possession on the other hand, the title to the property admittedly remains in the original holder, though he is excluded from possession or enjoyment of the property. Article 31 (2) of the Constitution itself makes a clear distinction between acquisition of property and taking possession of it for a public purpose, though it places both of them on the same footing in the sense that a legislation authorising either of these acts must make provision for payment of compensation to the displaced or expropriated holder of the property. In the context in which the word "acquisition" appears in Art. 31 (2), it can only mean and refer to acquisition of the entire interest of the previous holder by transfer of title.

The test is as to whether the owner has been dispossessed substantially from the rights held by him or the loss is only with regard to some minor ingredients of the proprietary right. Charanjit Lal Choudhury v. Union of India, **54 M L W 47 : 1951 S C J 29 : 1951 Mad W N 111 : (1951) 21 Comp Cas 33 : 1950 S C R 869 : 53 Bom L R 499 : ILR (1951) Hyd 461 : A I R 1951 S C 41 (54, 55, 56) (Pt G) (Prs 49, 54).**

——Arts. 31, 19, 366—Government of India Act (1935), S. 299—U. P. Tenancy (Amendment) Act (10 of 1947), S. 27—Provisions of S. 27 of U.P. Act are not void — Re-instatement of ejected tenant under S. 27 is not 'acquisition' within meaning of S. 299. Government of India Act and Art. 31 of the Constitution—U. P. Act is existing law and is saved—Rights under Art. 19 (1) (f) of new tenant are not infringed.

There is no jurisdiction for enlarging the scope of sub-s. (2) of S. 299, Government of India Act, 1935, on account of the interpretation of similar language in the Constitution. The expression 'acquisition' in sub-s. (2) of S. 299 should not be given the same interpretation as the Supreme Court gave to that expression in Art. 31 of the Constitution prior to its amendment by the Constitution (Fourth Amendment) Act 1955. A I R 1955 S C 781 and A I R 1954 S C 92, Rel. on.; AIR 1958 Andh Pra 173 (FB), Diss. from.

Even though the provisions of S. 27 of U. P. Ten. (Amend.) Act (10 of 1947), deprive the new tenant inducted in the place of the ejected tenant, of his tenancy rights, they will not be deemed to be law for the compulsory acquisition of his rights and consequently not be hit on account of their not providing for the payment of compensation to him for the deprivation of his rights.

The provisions of S. 27 of U. P. Act 10 of 1947 did not become void on the coming into force of the Constitution. U. P. Act 10 of 1947 comes within the expression 'existing law' as defined in cl. (10) of Art. 366 of the Constitution. U. P. Act 10 of 1947 came into force on the 14th June, 1947, more than eighteen months before the commencement of the Constitution, and therefore the provisions of cl. (5) of Art. 31 do not apply to it. It follows, therefore, that this Act being an existing law on the 26th January, 1950 is not affected by the provisions of Cl. (2) of Art. 31. Moreover the provisions of this Act do not provide for the compulsory acquisition of property in view of cl. (2-A) of Art. 31 of the Constitution and, therefore, they do not fall within the purview of cl. (2) of that Article. When the provisions of S. 27 of U. P. Act 10 of 1947 take away the right the new tenant possessed in the land no question of any restriction on his right to hold and dispose of property arises. The provisions of S. 27 of U. P. Act 10 of 1947 do not in any way infringe the new tenant's rights under Art. 19 (1) (f) of the Constitution. **1960 All L J 936 : 1961 All W R (H C) 24 : AIR 1961 All 191 (192, 193, 194, 195) (Prs 21, 22, 24, 27, 29, 30, 34) (DB).**

——Art. 31 (2)—Acquisition—Requirements of.

The necessary requirements of acquisition both under the clause as amended by the Fourth amendment and the unamended one are firstly that the acquisition should be for public purpose and secondly that it must provide for compensation or fix the principle on which the compensation is to be determined. **AIR 1958 All 126 (131) (Pt C) (Pr 11).**

——Arts. 31, 19 (1) (g), 19 (6) and 246 (as amended by 4th Amendment 1955)—Acquisition—Transfer of ownership or right to possession is essential — Mere deprivation of property is not acquisition—Colourable legislation, what is—Fraud on Constitution — Motor Vehicles Act (1939 as amended by Act 100 of 1956) Chap. IVA, S. 68G—Act is not unconstitutional or void. 1958-2 Andh W R 211 : I L R (1958) Andh Pra 437: AIR 1959 Andh Pra 292 (298) (Pt A) (Pr 8) (DB).

●——Art. 31 (1) and (2) — Government of India Act (1935), S. 299—'Acquisition'— Meaning of — Interpretation of Statutes—Acts in pari materia.

Per Subba Rao C. J.—There is no reason why conflicting or different meanings should be given to the word 'acquisition' found in S. 299 of the Government

of India Act and Art. 31 of the Constitution. Both the provisions are designed and intended to protect persons from being deprived of their property by the State without paying compensation. There is no justification for holding that the word 'acquisition' in Art. 31 (2) is used in a sense different from that given to it in S. 299 of the Government of India Act. Section 299 (1) was a guarantee against the deprivation of property by executive authority save by authority by law. This right created by S. 299 was similar in content and scope as that conferred by Art. 31 (1) of the Constitution. AIR 1955 S C 47, Rel. on.

Per Viswanatha Sastri J.—In the interpretation of S. 299 (2) of the Government of India Act, 1935 a reference to Art. 31 (1) and (5) of the Constitution and the manner in which they have been interpreted by the decisions of the Supreme Court is necessary because these two statutory provisions, in spite of some difference in form and expression, are in pari materia. Venkata Chalammayya v. The State of Madras. ILR (1956) Andh Pra 888 : 1958 Andh L T 211 : (1958) 1 Andh W R 88 : A I R 1958 Andh Pra 173 (178, 180, 181, 186, 187) (Pt B) (Prs 9, 13, 32) (FB).

[Reversed on another point in AIR 1962 S C 1687.]

● ——Art. 31 (2)—'Acquisition'—Meaning—Government of India Act (1935), S. 299.

Per Subba Rao C. J. — A comparative study of the two decisions of the Supreme Court in AIR 1954 S C 92 and AIR 1954 S C 119 indicates that except Das J., all the other learned Judges rejected the narrow meaning of the word 'acquisition,' i.e., transfer of the title from the owner and vesting the same in the State, and adopted the more comprehensive one viz., the procuring of property or the taking of it permanently or temporarily by the State. The word 'acquisition' in subs. (2) of S. 299, Government of India Act in view of the Supreme Court Judgment, must be held to mean any deprivation of the property of a citizen, and therefore, such deprivation cannot be affected by any act without conforming to the limitations laid down under that section.

Per Viswanatha Sastri J.— Substantial deprivation of proprietary rights is what is meant by the word 'acquisition' occurring in Art. 31 (2) of the Constitution and S. 299 (2) of the Government of India Act. AIR 1952 Mad 203, Overruled on this point.

Per Krishna Rao J. — There is nothing in the pronouncements of the Supreme Court which compels the Court to hold that the word 'acquisition' used in S. 299 (2) has the same extended meaning as it bears in the context of Art. 31 (2).

On the analogy of the rule of 'contemporanea expositio' when the meaning is not plain and unequivocal, but obscure or of doubtful import, the Court should incline to the interpretation authoritatively put upon the language by Courts at the time the statute was alive. Therefore, the correctness of the reasoning in A I R 1952 Mad 203, namely, that in S. 299 (2) acquisition imports the idea of transference of some of the owner's rights in property remains unaffected by the decision in AIR 1954 S C 119. Venkata Chalammayya v. The State of Madras, 1958 Andh L T 211 : (1958) 1 Andh W R 88 : ILR (1956) Andh Pra 888 : A I R 1958 Andh Pra 173 (180, 181, 190, 193, 194) (Pt C) (Prs 13, 41, 47) (FB).

[Reversed on another point in AIR 1962 S C 1687.]

● ——Arts. 31 (2) and 19 (1) (f)—Assam Assessment of Revenue Free Waste Land Grants Act (24 of 1948), S. 3— Land held free of land revenue — Such land assessed to land revenue — Right to enjoy interest in such land is not acquisition of property.

Per Special Bench. — There can be no acquisition of the right to enjoy landed property free of land revenue and there can, therefore, be no question of paying compensation when the land is assessed to land revenue, which is so long held free of land revenue. Hence the Assam Assessment of Revenue Free Waste Land Grants Act is not hit by the provisions of Art. 31 (2) or Art. 19 (1) (f) of the Constitution. AIR 1944 F C 62, Rel. on. I L R (1953) 5 Assam 200, Affirmed. Girijananda v. State of Assam. AIR 1956 Assam 33 (37, 38, 45, 46, 48) (Pt A) (Prs 9, 42, 54) (SB).

● ——Art. 31 (2)—Acquisition — Assessment of land revenue on land so far held free of land revenue.

Per Sarjoo Prosad C. J. — Although the interest to own land free from payment of land revenue is an interest in property, to assess such land to land revenue is not such a deprivation of interest in property as would fall within the ambit of Art. 31 (2) of the Constitution.

Per Deka J. — Assuming that the right to enjoy the landed property free from land revenue, is a property in itself, the assessment of land revenue does not amount to a substantial deprivation of the property, and is not barred under Art. 31 (2) of the Constitution under Art. 19 (1) (f). Girijananda v. State of Assam. A I R 1956 Assam 33 (37, 38, 48) (Pt C) (Prs 9, 55) (SB).

——Arts. 31 (2) and 31 (5)—Bombay Prohibition Act (25 of 1949), S. 129-A — Constitutionality — Section 129A is not ultra vires Art. 31 (2) on the ground that the collection of blood for the test under that section is acquisition of property without payment of compensation. See Prohibition—Bombay Prohibition Act (25 of 1949), S. 129-A. 1964 (2) Cri L J 523 : A I R 1964 Bom 253 (DB).

——Art. 31 (2)—Acquisition—Meaning of.

Acquisition in every case must mean transfer of ownership. ILR (1951) Bom 473 : 53 Bom L R 218 : AIR 1951 Bom 86 (91) (Pt F) (Pr 7) (DB).

[Reversed on another point in A I R 1954 S C 119.]

——Art. 31—Calcutta Police Act (4 of 1866), S. 61A — Calcutta Suburban Police Act (1866), S. 38-A — Notifications prohibiting use of cycle-carts within Calcutta and Suburban limits— It is not a case of "compulsory acquisition" under S. 229 of Government of India Act (1935) or under Art. 31 of Constitution of India. See Calcutta Police Act (4 of 1866), S. 61A. AIR 1961 Cal 125.

——Art. 31 (2)—Acquisition and requisition — Effect of—Distinction—Persons entitled to claim compensation. See Defence of India Rules (1939), R. 75-A. A I R 1954 Cal 212 (DB).

——Art. 31 — 'Acquisition' and 'deprivation' —Distinction between.

There is a distinction between the two concepts of 'deprivation' and 'acquisition.' By 'deprivation' it is meant to take away or seize the rights of another person whereas by 'acquisition' it is meant to acquire something from another person and to have it vested in him who acquires whether it is the ownership or the proprietary rights or other rights. The fact that the Aghat Tenure and Ijara Abolition Act provides for compensation, apart from the question whether such compensation is adequate or not demonstrates that the abolition is not by way of deprivation but that it amounts to acquisition. (1961) 2 Guj L R 454 : AIR 1962 Guj 297 (303) (Pt F) (Pr 16) (DB).

——Art. 31—Tenancy Laws—Bombay Land Tenures Abolition (Recovery of Records) Act (50 of 1953), Ss. 3 and 4 — Not violative of Art. 19 (1) (g) and Art. 31 of the Constitution— Possession and acquisition in Art. 31 (2)—Meaning of. See Tenancy Laws—

Bombay Land Tenures Abolition (Recovery of Records) Act (50 of 1953), S. 3. **AIR 1962 Guj 18.**

——Art. 31 (2)—Acquisition—Meaning of — (Words and Phrases).

The word 'acquisition' in Art. 31 should not be interpreted in a narrow sense but in the ordinary sense. The word has quite a wide concept meaning the procuring of property or the taking of it permanently or temporarily. It does not necessarily imply the acquisition of legal title by the State in the property taken possession of. **ILR (1955) Hyd 494 : AIR 1955 Hyd 203 (207) (Pt D) (Pr 18) (DB).**

——Art. 31—"Acquisition"—Meaning of—Ss. 33 and 40 of Bihar Private Forests Act (9 of 1948) do not amount to acquisition of property. See Government of India Act (1935), S. 299. **('57) I L R 36 Pat 69.**

——Art. 31 (2)—Acquisition—Meaning of.

The word "acquisition" in S. 299 of Government of India Act had the limited meaning of actual transference of ownership and cannot be given the wide meaning of deprivation of any kind or degree of proprietary right. **AIR 1956 Pat 493 (DB).**

● ——Art. 31 (2)—Acquisition—What amounts to. See Government of India Act (1935), S. 299 (2). **AIR 1950 Pat 392 (SB).**

——Art. 31 (2) — Acquisition — (Patiala and East Punjab States Union Abolition of Biswedri Ordinance (23 of 2006)).

The Ordinance 23 of 2006 cannot be called a law of acquisition and cannot be brought within the laws referred to in clause (2) of Article 31, because it did not make a provision for acquisition of the landlords' share by the State for the tenants but gave the tenants the right to purchase that share straightway without the intervention of the State. AIR 1953 Punj 20, Rel. on. **I L R (1954):Patiala 433 : AIR 1953 Pepsu 161 (170) (Pt D) (Pr 26) (DB).**

[Overruled on another point in A I R 1963 S C 222.]

● ——Art. 31 — Tenancy Laws — E. P. Holdings (Consolidation and Prevention of Fragmentation) Act (50 of 1948), S. 18 (c)—Consolidation scheme—Reservation of land for extension of abadi for non-proprietors' houses falls within Act—Reservation of land for village Panchayat, unconstitutionality. See Tenancy laws—E. P. Holdings (Consolidation and Prevention of Fragmentation) Act (50 of 1948), S. 18 (c). **AIR 1960 Punj 317 (FB).**

——Art. 31—Property taken under superintendence of Court of Wards — Property is not "acquired" — (Punjab Court of Wards Act (2 of 1903), S. 5 (2) (d)).

Government do not "acquire" within the meaning of Art. 31, the property of a ward whose estate is taken under the superintendence of the Court of Wards. They merely manage the property for and on behalf of the ward. Secondly, it is obvious that although the restrictions which are imposed on the right of a spendthrift to acquire, hold and dispose of property cause a certain amount of inconvenience to him these restrictious are imposed for the benefit of the public and the landholder must be deemed to have compensation in participating in the general advantage. **56 Punj L R 403 : I L R (1955) Punj 331 : AIR 1954 Punj 247 (250) (Pt C) (Pr 10) (DB).**

[Overruled on another point in A I R 1963 Punj 9.]

8. "Requisition."

——Art. 31 — Applicability — Houses and Rents — U. P. (Temporary) Accommodation Requisition Act (25 of 1947)—Validity.

Article 31 does not apply in the case of requisition of property. Requisition of property is quite different from acquisition. It does not deprive the owner of his proprietary right. The proprietorship rests in the real owner, while in case of acquisition he is deprived of that right. Requisition only temporarily deprives a party of his right to exercise his ownership over it. Hence, it cannot be said that the U. P. (Temporary) Accommodation Requisition Act (25 of 1947), infringes, Art. 31.

This view seems to be directly opposed to, the language of Cl. (2) of Art. 31 (as amended in 1955) which expressly covers both acquisition and requisitioning of property. **AIR 1956 All 232 (233) (Pt D) (Pr 10).**

——Art. 31 (2)—Taking possesssion.

The expression "taking possession of" is not synonymous with "requisitioning," but has a wider connotation than the former expression. But when possession is taken as contemplated by Art. 31 (2) the person taking possession of the property must take possession of the whole bundle of rights that goes to constitute "property." The distinction between "acquisition" and "possession" is that where as in the case of the former there is a transfer of ownership and a transfer of title, in the latter case there is no transfer of ownership or title. Just as in the case of acquisition undoubtedly the beneficial interest is transferred from the person from whom the property is acquired to the party in whose favour the acquisition is made, similarly in the case of possession the person in possession must have transferred to him the beneficial interest in the property although the title may not be divested. **I L R (1951) Bom 473 : 53 Bom L R 218 : AIR 1951 Bom 86 (91, 92) (Pt G) (Prs 7, 8) (DB).**

[Reversed on another point in AIR 1954 S C 119.]

——Art. 31—'Requisition'. See Words and Phrases—"Requisition." **AIR 1955 Nag 153 (DB).**

9. Regulating the relation between landlord and tenant.

——Arts. 31, 19 (1) (f), 26 and 31A—Tenancy Laws—Mysore Tenancy Act (13 of 1952), S. 6 and Preamble—Section is valid—Mysore Act passed with an object to regulate the law which governed the relation of the landlords and tenants of agricultural lands. See Tenancy Laws—Mysore Tenancy Act 13 of 1952), S. 6. **(1963) 2 S C J 246 : AIR 1966 S C 1172.**

● ——Arts. 31 (1) and 19 (1) (f)—Madras City Tenants' Protection Act (3 of 1922), S. 9 — Section does not infringe Articles and hence is not invalid. See Ibid, Art. 19 (1) (f). **AIR 1964 SC 1440.**

● ——Art. 31 (2)—'Taking property' within meaning of Art. 31 (2)—Regulation of relation between landlord and tenant.

A law which regulates the relation of landlord with his tenant is not one which 'takes property' within Art. 31 (2) even though it has the effect of reducing his rights. To regulate the relations of landlord and tenant and thereby diminish rights, hitherto exercised by the landlord in connection with his land, is different from compulsory acquisition of the land. Hence, S. 86, Marwar Land Revenue Act, 1949, is not repugnant to Art. 31 (2) of the Constitution. AIR 1946 P C 127, Foll. Kishan Singh v. Rajasthan State, **1956 S C J 14 : (1955) 2 S C R 531 : 1956 S C A 402 : AIR 1955 S C 795 (798) (Pt E) (Pr 8).**

——Arts. 31 and 19—Government of India Act (1935), S. 299 (2) — Madras Estates Land (Reduction of Rent) Act (30 of 1947), S. 3 — Provisions of Madras Estates Land (Reduction of Rent) Act only regulate the

relationship of the landlord and tenant and are not hit by S. 299 of the Government of India Act. See Ibid, Art. 19. AIR 1958 Andh Pra 173 (FB).

[Reversed on another point in AIR 1962 SC 1687.]

——Art. 31 - Tenancy Laws—Madras Estates Land (Reduction of Rent) Second Amendment Act (35 of 1951), S. 4—Provision is not confiscatory and unconstitutional — Provision pertains to relationship of landlord and tenant. 1952 Mad W N 980 : 1953-1 Mad L J 29 : AIR 1953 Mad 260 (261) (Pt B) (Pr 4) (DB).

——Art. 31—Violation of—Berar Alienated Villages Tenancy Law (1921), Ss. 47, (1-A) and 75-A (3) — Not repugnant to Art. 31.

The Berar Alienated Villages Tenancy Law, 1921, is not repugnant to the provisions of Art. 31 of the Constitution and is not invalid. It cannot be said that the law has authorized the taking possession or acquisition of property for public purposes. In essence the impugned provisions are regulatory, not confiscatory.

Because of the impugned provisions there is a rearrangement of the rights between the landlord and the tenant or the alienee and the occupant. The Rights of one are curtailed and that of the other are increased. But there is neither a complete annihilation of the right of the former nor the acquisition of such right by the State for public purposes. Even in the case of a permanent tenancy, the landlord's right of reversion is still present though under the limited conditions specified in sub-s. (2) of S. 48 and S. 57. I L R (1956) Nag 264 : 1955 Nag L J 668 : AIR 1956 Nag 50 (52, 53) (Pt D) (Pr 13) (DB).

——Art 31 (2) — Orissa Tenancy Act (3 of 1948), S. 6—Section is not confiscatory and does not offend Art 31 (2)—There is only diminution of rights of landlord which is inevitable in legislation of tenancy reform. I L R (1953) Cut 45 : AIR 1953 Orissa 171 (175) (Pt B) (Pr 13) (DB).

——Art. 31 (2) — Bihar Emergency Cultivation and Irrigation (Temporary Provisions) Act (2 of 1951), S. 8—Act only regulates rights of tenants—It does not abridge or take away rights in land Hence omission to obtain assent of President to the Act does not render section unconstitutional. ('62) I L R 41 Pat 581.

——Art. 31 — Chota Nagpur Tenancy (Amendment) Act (Bihar Act 25 of 1947), S. 9—Chota Nagpur Tenancy (Amendment) Act (Bihar Act (11 of 1950) — Acts are not confiscatory — True effect — Regulate relation of landlord and tenant in respect of occupancy holding. See Government of India Act (1935), S. 299. AIR 1956 Pat 149.

——Arts. 31, 14, 19 — Rajasthan Tenants Protection Ordinance, S. 7—Validity—It was promulgated with a view to put a check on the growing tendency of landholders to eject or dispossess tenant from holdings. See Ibid, Art. 14. AIR 1953 Raj 53.

10. Accommodation control.

——Art. 31—Houses and Rents—U. P. (Temporary) Accommodation Requisition Act (25 of 1947), S. 3—Validity—Provisions do not violate Arts. 19 (1) (f) and 31 of the Constitution. I L R (1963) 2 All 186 : AIR 1963 All 592 (594) (Pt A) (Pr 8) (DB).

——Art 31—Landlord intimating Deputy Commissioner that he needs house for his occupation—Allotment without enquiry — Validity — Constitutional guarantee, if violated. See Houses and Rents—C. P. and Berar Letting of Houses and Rent Control Order (1949), Cl. 23. 1959 Nag L J (Notes) 135.

——Art. 31—C. P. and Berar Regulation of Letting of Accommodation Act (11 of 1946) — Regulation of letting of premises and of specifying the class of persons to whom may be let. See Ibid, Sch, VII, List II, Entry 18. AIR 1955 Nag 153 (DB).

11. "Public purpose".

(a) Public purpose—If justiciable.

(b) Express mention of—Necessity.

(c) Illustrative cases.

11. "Public purpose."

● ——Art. 31—Land Acquisition Act (1894), Ss. 2 (f) and 6—Public purpose — Meaning of. See Land Acquisition Act (1894), s. 2 (f). AIR 1963 SC 151.

● ——Art. 31 (2)—Scope—Requirement as to 'public purpose.'

(Per Mahajan and Chandrasekhara Aiyar JJ.):—The existence of a 'public purpose' is an implied condition of the exercise of compulsory powers of acquisition by the State but the language of Art. 31 (2) does not expressly make it a condition precedent to acquisition. It assumes that compulsory acquisition can be for a 'public purpose' only, which is inherent in such acquisition.

(Per Patanjali Sastri C. J. and Das J.) : The existence of a public purpose as a prerequisite to the exercise of the power of compulsory acquisition is an essential and integral part of the "provisions" of Cl. (2). State of Bihar v. Kameshwar Singh, 65 Mad L W 527 : 1952 S C J 427 : I L R 31 Pat 565 : 1952 S C R 889 : 1953 S C A 53 : AIR 1952 SC 252 (263, 273, 288, 295) (Pt F) (Prs 11, 45, 102, 128).

● — Art. 31, Sch. 7, Entry 36, List III, Entry 42—"Public purpose"—Meaning of—Words and Phrases—Public purpose).

(Per Das J.) : —Whatever furthers the general interests of the community as opposed to the particular interest of the individual must be regarded as a public purpose.

The proper approach is to take the scheme as a whole and then examine whether the entire scheme of acquisition is for a public purpose. It is an entirely wrong approach to pick out an item out of a scheme and say that that item is not supported by a public purpose.

(Per Mahajan and Das JJ.) : —The phrase "public purpose" has to be construed according to the spirit of the times in which particular legislation is enacted. (Patanjali Sastri C. J., Mahajan, B. K Mukherjea, S. R. Das and Chandrasekhara Aiyar JJ.) State of Bihar v. Kameshwar Singh, 65 Mad L W 527 : 1952 S C J 427 : ILR 31 Pat 565 : 1952 S C R 889 : 1953 S C A 53 : AIR 1952 SC 252 (274, 289, 290, 291) (Pt N) (Prs 52, 105, 106, 107).

● ——Art. 31 (2)—"Public purpose," what is — U. P. Zamindari Abolition and Land Reforms Act, 1950 (1 of 1951)—Acquisition is for public purpose.

(Per Mahajan J.)—The expression "public purpose" is not capable of a precise definition and has not a rigid meaning. It can only be defined by a process of judicial inclusion and exclusion. In other words, the definition of the expression is elastic and takes its colour from the statute in which it occurs, the concept varying with the time and state of society and its needs. The point to be determined in each case is whether the acquisition is in the general interest of the community as distinguished from the private interest of an individual. Legislation (U. P. Act 1 of

1951) which aims at elevating the status of tenants by conferring upon them the bhumidari rights to which status the big zamindars have also been levelled down cannot be said as wanting in public purposes in a democratic State. It aims at destroying the inferiority complex in a large number of citizens of the State and giving them a status of equality with their former lords and prevents the accumulation of big tracts of land in the hands of a few individuals which is contrary to the expressed intention of the Constitution. Zamindaries are not being taken for the private benefit of any particular individual or individuals, but are being acquired by the State in the general interests of the community. Property acquired will be vested either in the State or in the body corporate, the gaon samaj which has to function under the supervision of the State. All that the Act achieves is the equality of the status of the different persons holding lands in the State. It is not correct to say that Government is acquiring the properties for the purpose of carrying on a business or trade. The moneys received from persons seeking bhumidari status or from the income of zamindari estates will be used for State purposes and for the benefit of the community at large. State of Bihar v. Kameshwar Singh, 65 Mad L W 527 : 1952 S C J 427 : I L R 31 Pat 565 : 1952 S C R 889 : 1953 S C A 53 : AIR 1952 SC 252 (311, 312) (Pt Z-C) (Prs 208, 209).

——Art. 31 (2)—Land Acquisition Act (1894), S. 6 (1) —Validity—If violates Art. 31 (2)—'Public purpose' —Meaning. See Land Acquisition Act (1894), S. 6 (1). AIR 1958 All 126.

——Art. 31—Public purpose, meaning of—Rehabilitation of refugees—(Words and Phrases).

The concept of public purpose is not fixed and unalterable, and is regarded at the present time as more nearly meaning of purpose useful to the public rather than use by the public. AIR 1952 SC 252 and AIR 1950 SC 222, Ref. to.

Acquisition of land for the rehabilitation of refugees is one for the public purpose. 1954 All L J 673 : AIR 1955 All 12 (19) (Pt H) (Prs 28, 29) (DB).

[Reversed on another point in AIR 1961 SC 14.]

● **——Art. 31 (2)—"Public purpose"—Meaning.**

A law made for the purpose of securing an aim declared in the Constitution to be a matter of State policy is for a public purpose.

The acquisition of property sought to be effected by the U. P. Zamindary Abolition and Land Reforms Act (1 of 1951) having for its objects the implementation of one or more of the directive principles of State policy, is for a public purpose within the meaning of the Constitution.

It is not for the Court to weigh in the balance relative merits of schemes designed to achieve a particular end. The Legislature in its wisdom has chosen one method and unless it can be shown that the judgment of the Legislature is absurd or manifestly unreasonable that judgment must be respected. 327 U S 546, Rel. on.

Even where the social undesirability of a law may be conveniently urged, invalidation of the law by a Court debilitates popular democratic Govt : 385 U S 538, Rel. on. Raja Surya Palsingh v U. P. Government. 1951 All L J 365 : 1951 R D (H C) 122 : 1951 All W R (H C) 317 : ILR (1952) 2 All 46 : AIR 1951 All 674 (683, 684, 685) (Pt K) (Prs 37, 38, 42, 43, 46, 47) (FB).

——Art. 31 (2)—Assam Act 1 of 1957—Validity—Not repugnant to Art. 31—'Public purpose'— Meaning of. See Tenancy Laws — Assam Fixation of Ceiling on Land Holdings Act (1 of 1957). A I R 1959 Assam 147 (DB).

——Art. 31 (2)—Public purpose—Meaning of.

Acquisition or requisition of property for public purpose includes whatever results in an advantage to the public. It is not necessary that it should be available for public use as such. Where in order to give effect to a part of a development scheme, some land is acquired or requisitioned for an individual, such acquisition or requisition may still be regarded as for public purpose. But where the whole purpose of the requisition is to provide accommodation to an individual concern, howsoever beneficial that concern may be, it cannot be said to be for a public purpose. ILR (1959) 11 Assam 1 : AIR 1958 Assam 140 (152) (Pt G) (Pr 39) (DB).

——Art. 31—'Public purpose', meaning of. See Land Acquisition Act (1894), S. 3 (f). AIR 1956 Assam 190 (DB).

——Art. 31—Land Acquisition Act (1894) (as amended by Bombay Act 8 of 1958), Ss. 3 (f) (2), 6 — Public purpose — Criteria to determine — Land acquired from public revenue for development into industrial area — Acquisition is for public purpose— Development of land — Meaning of — S. 3 (f) (2) is intra vires of Art. 31 and S. 6 of Land Acquisition Act.

The important criteria to determine a public purpose are : firstly that it is not necessary in order that there should be a public purpose that the land which is taken must always be made available to the public at large. It may be that it may benefit only a small section of the community. Secondly, it must be for an object or aim in which the general interest of the community as opposed to the particular interest of individuals is directly and vitally concerned. The expression 'public purpose' has been used in the Land Acquisition Act in its generic sense of including any purpose in which even a fraction of the community may be interested or by which it may be benefited. AIR 1914 P. C. 20 and A I R 1960 S C 1203, Rel. on. Further, the question whether there is a public purpose or not must be gathered from the facts and circumstances before the Court. Thus where the notifications under Ss. 4 and 6 read with S. 3 (f) (2) of the Land Acquisition Act as amended by the Bombay Act 8 of 1958 stated the public purpose as 'for the development and utilisation of land as an industrial area' and it was further pointed out that the object of Government was that these areas which were being acquired would be properly laid out and planned with some deliberation so that their development as an industrial area would be a proper development and space would be reserved for social services, recreational facilities there could be no doubt that the purpose mentioned therein was a public purpose. It would thus appear that in so far as these activities are undertaken by the State by the very use of the word 'development' a public purpose is implicit, for it means 'the realisation of the potentialities of land or territory by building or mining'. Therefore, even though by the addition of sub-clause (2) of S. 3 (f) the connotation of the expression 'public purpose' has been considerably enlarged by the local amendment, still the new definition has implicit in it the idea of a public purpose. To that extent, therefore, the definition does not conflict with either S. 6 or Article 31 which lays it down as a condition to the acquisition of a citizen's property that there should be a public purpose. In that view, the amended definition of 'public purpose' is intra vires of Article 31 as well as S. 6 of the Land Acquisition Act. 67 Bom L R 101 : 1965 Mah L J 290 : ILR (1965) Bom 394 : AIR 1965 Bom 224 (241, 242) (Pt E) (Pr 44, 45, 47, 48, 50) (DB).

——Art. 31 — 'Public purpose' — Connotation of — Broad general considerations which determine public

purpose indicated — Saving of foreign exchange by production of chemicals in India by a private company held to be public purpose. See Land Acquisition Act (1894), S. 6. AIR 1961 Guj 93 (DB).

——Art. 31—'Public purpose'—Meaning of—Acquisition of land for housing accommodation for Harijans—Notification— Validity — Discrimination — If involved—Art. 15 (4).

The definition of 'public purpose' might arise even when the scheme be in favour of individuals provided thereby public prosperity, public welfare or public convenience is served. A I R 1960 Ker 321 and A I R 1959 Punj 544, Rel. on.

A notification purporting to acquire land for providing housing accommodation for Harijans cannot be challenged on the ground that it is not for a public purpose. Such notification cannot also be challenged on the ground of discrimination in view of Art. 15 (4) of the Constitution. AIR 1952 Bom 461, Diss from; AIR 1960 Ker 98, Affirmed. (1960) 2 Ker L R 547 : 1960 Ker L T 630 : 1960 Ker L J 1185 : A I R 1960 Ker 355 (356) (Pt B) (Pr 2) (DB).

——Art. 31 (2) — Acquisition for public purpose — What is — Individuals benefited by acquisition — Public purpose not affected.

Acquisition of property for public purpose under Art. 31 (2) of the Constitution includes whatever results in advantage to the public. It might be in favour of individuals in furtherance of a scheme of public utility. Schemes for construction of houses for clearing slum areas, relieving congestion and housing poor people are for public purpose as they tend to promote social welfare and prosperity. It follows, therefore, that the mere effect of the Government Order is to enable it to acquire a particular house site for a particular individual is not in any way fatal. AIR 1952 Mad 756; AIR 1953 Mad 537 and AIR 1930 Mad 798, Rel. on; AIR 1956 Assam 190 and AIR 1914 P C 20, Disting. 1959 Ker L J 820 : 1959 Ker L T 844 : AIR 1960 Ker 96 (97) (Pr 5).

——Art. 31 (2) - "Public purpose." meaning of —AIR 1958 Orissa 187, Not Foll.

An acquisition can be for a public purpose, even though all the members of the public do not take the benefit, but only a section of it takes the benefit. Public purpose in an acquisition may be served even though the acquisition is for the benefit of particular members of the public, provided the object of acquisition advances a public purpose. In this category may be included advancement of public prosperity, public welfare and the convenience of the public. 1959-2 Mad L J 469 : 72 Mad L W 781 : I L R (1959) Mad 997 : A I R 1960 Mad 108 (113) (Pt B) (Pr 17).

——Art. 31 (2) Public purpose - Meaning explained —(Land Acquisition Act (1894), S. 6)—(Words and Phrases —Public Purpose).

Acquisition of property for public purpose under Art. 31 (2) includes whatever results in advantage to the public. It is not necessary that it should be available to the public as such. It might be in favour of individuals provided they are benefited not as individuals but in furtherance of a scheme of public utility. Schemes for construction of houses for clearing slum areas, relieving congestion and housing poor people are for a public purpose as they tend to promote social welfare and prosperity. 164 U. S. 112; 270 N. Y. P. 333 ; A I R 1914 P C 20 ; A I R 1925 Mad 837 ; AIR 1930 Mad 798, Rel on.

A society was formed and registered under the Madras Co-operative Societies Act, 1932 with the object of enabling its members to construct houses. This society considered that certain block of lands within the municipal limits of the city of T. would serve as suitable building sites and moved the Government for its acquisition. The Government gave its consent to the scheme and issued a notification declaring that the lands were needed for public purpose, to wit, construction of houses and in pursuance of this notification proceeded to acquire lands. The petitioner filed an application attacking the validity of the acquisition proceedings, contending that the public as such had no interest in the land or buildings, that neither the public nor even a considerable portion thereof would be benefited by the scheme and in effect the acquisition would amount to taking property of one individual and transferring it to another.

Held, (1) that the society could be regarded as constituted for the benefit of the public.

(2) that in general, building schemes were to be considered as advantageous to the public.

(3) that even though the direct and immediate beneficiaries under the scheme might be individuals it was a public purpose as it benefited the public generally.

(4) that therefore the acquisition was valid. 65 Mad L W 747 : (1952) 2 Mad L J 298: 1952 Mad W N 677: I L R (1952) Mad 982 : A I R 1952 Mad 756 (758, 760, 761, 762) (Pt A) (Prs 6, 12, 14, 16, 19) (DB).

——Art. 31 (2), Sch. 7, List 2, Entry 36, List 3, Entry 42— Public purpose —"Purposes of Union" or "purposes of State" are public purposes—Purpose of M. P. Act 1 of 1951 is public — (Tenancy Laws — Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act (1 of 1951), Ss. 3, 4). AIR 1955 NUC (Nag) 1341.

——Art. 31 (2)—"Public purpose"—Act of requisitioning accommodation for— C. P. and Berar Accommodation (Requisition) Act, 63 of 1948, S. 3 (1).

A public office, whether of the Central or the Provincial Government or of a local authority exists for the benefit of the public and requisitioning accommodation for locating such office is a "public purpose." Similarly, a person holding an office of profit under the Government is charged with the performance of public duties. Such a person must, for enabling him to discharge his duties, be housed and requisitioning accommodation for him is as much a public purpose as is the location of a public office. 1951 Nag L J 346 : ILR (1951) Nag 791 : A I R 1951 Nag 33 (36) (Pt F) (Pr 14) (DB).

——Art. 31 (2) and (6)—Orissa Act 18 of 1948—Validity —Public purpose —What constitutes—Notification under S. 2 (c) of Orissa Act whether infringes Art 31 (2)—(Orisssa Development of Industries, Irrigation, Agriculture, Capital Construction and Resettlement of Displaced Persons (Land Acquisition) Act (18 of 1948), S. 2 (c)).

Orissa Act 18 of 1948, though passed within 18 months before the commencement of the Constitution was not submitted to the President for his certification as required by clause (6) of Art. 31 of the Constitution and consequently the Courts are entitled to examine whether there is 'public purpose' behind the proposed acquisition.

What constitutes a public purpose would vary according to the prevailing theories with regard to the functions of a Government. It is not intended to apply where the land is required for an industrial concern working purely for its own gain, even though the goods produced by the concern may be of use to the general public.

Where, in pursuance of S. 2 (c) of the Orissa Act, 18 of 1948 the Governor of Orissa was pleased to specify that the project of establishment of a paper mill at a place in Cuttack district shall be included within

the meaning of the expression 'development of industries' as defined in the said section.

Held, that there was no 'public purpose' in the proposed acquisition and as such the impugned notification infringed the fundamental right guaranteed under Art. 31 (2) of the Constitution. **ILR (1958) Cut 269 : 24 Cut L T 191 : AIR 1958 Orissa 187 (192, 193) (Pt E) (Pr 14, 16, 20) (DB).**

——Art. 31 (2)—Requirements of public purpose and proper compensation.

The requirements of public purpose or of proper compensation are not to be considered with reference to each item of the property comprised in the estate, but in respect of the acquisition of the estate taken as a whole. The proper approach is to take the scheme as a whole and then examine whether the entire scheme of acquisition is for a public purpose. The same purpose which supports the acquisition of the estate taken as a whole will support the acquisition of every item involved in the abolition scheme, which is an integral part of the estate, or, which is reasonably incidental to, or is the natural consequence of the main scheme of the acquisition itself. **ILR (1953) Cut 71 : AIR 1953 Orissa 185 (196) (Pt I) (Pr 22) (DB).**

● **——Art. 31 (2)—"Public purposes"— Absence of.**

Per Reuben J.—If the Court is satisfied that there is no public purpose in the acquisition of property forming the subject matter of an Act, the assent of the President cannot save the legislation. Kameswar Singh v. State of Bihar, **I L R 30 Pat 454 : A I R 1951 Pat 91 (106) (Pt E) (Pr 33) (SB).**

● **——Art. 31 (2)— "Public purpose" —Meaning of.**

Per Reuben and Das JJ.—Taking into consideration Entries 33 of the Union List, 36 of the State List and 42 of the Concurrent List, the intention of the Constitution appears to be to give the term "public purpose" a wide and comprehensive meaning. Therefore, acquisition for a purpose of the Union or for a purpose of a State is acquisition for a public purpose. So also is the nationalisation of land. Kameshwar Singh v. State of Bihar, **ILR 30 Pat 454 : A I R 1951 Pat 91 (107, 122) (Pt F) (Prs 37, 40, 89) (SB).**

——Art. 31 (2)— Public purpose — (Farman-i-Shahi 11 of 11-3-1947) — Patiala and East Punjab States Union Abolition of Biswedari Ordinance 23 of 2006.)

The existence of a public purpose is not a condition precedent for the validity of a legislation under clause (2) of the Articte but the clause assumes that when a legislation authorises acquisition or requisition it does so only for a public purpose. If it is shown that there was no public purpose for the acquisition or requisition authorised by the law, it will have to be held that the law is inconsistent with Clause (2) of Article 31 and is hence void under Article 13. Farman-i Shahi, dated 11-3-1947 and the Ordinance 23 of 2006 were made for a public purpose. A I R 1951 All 674 (F B), Rel. on. **I L R (1954) Patiala 433 : AIR 1953 Pepsu 161 (171, 172) (Pt E) (Prs 29, 33) (DB)**

[Overruled on another point in AIR 1963 S C 222.]

——Art. 31 (2)—'Public purpose' — Agency selected for achieving public purpose not able to achieve same —Effect —(Land Acquisition Act (1894), S. 6).

When Courts are considering whether or not a particular piece of land has been acquired for a public purpose it is incumbent upon them to consider the agency selected for achieving that purpose. The agency selected for achieving a public purpose is an integral part of the public purpose. In any case such an agency is an important and relevant factor which cannot be ignored when the purpose of an acquisition is under consideration. If the selected agency cannot achieve the public object of the acquisition then it cannot be said that the land has been acquired for a public purpose. **61 Punj L R 609 : ILR (1959) Punj 1665 : AIR 1959 Punj 544 (549) (Pt G) (Pr 19) (DB).**

——Art. 31 — Public purpose — Benefit to public — (Land Acquisition Act (1894), S. 6).

A public purpose does not cease to be so simply because incidental benefit will enure to private individuals. Nor does it cease to be so on the ground that private persons are being paid out of the public revenues. It is always open to the Government to spend money out of public revenues in aid of general welfare and for public purpose even when money is to be paid to private individuals or to a private body as long as it promotes public welfare.

Hence a notification under S. 6 (1) acquiring land for the purpose of the use by a private body for establishing a school of technology and stating that the compensation will be paid by the Government is a valid and constitutional notification. **ILR (1958) Punj 1451 : A I R 1959 Punj 538 (542, 543) (Pt C) (Prs 12, 13).**

● **——Art. 31 (2)—Public purpose—What is—Rajasthan Act 6 of 1952 effects acquisition for public purpose—(Rajasthan Land Reforms and Resumption of Jagirs Act (6 of 1952), S. 1).**

The phrase 'public purpose' has to be construed according to the spirit of the times in which particular legislation is enacted. Whatever furthers the general interests of the community as opposed to the particular interest of the individual must be regarded as a public purpose.

The proper approach is to take the scheme provided by the legislation as a whole, and then to examine whether the entire scheme of acquisition is for a public purpose.

Held, that the acquisitions effected by the Rajasthan Land Reforms and Resumption of Jagirs Act, 1952 were for public purpose. A I R 1952 S C 252, Rel. on. Amar Singh v. State of Rajasthan, **1955 Raj L W 212 : ILR (1955) 5 Raj 149 : AIR 1954 Raj 291 (300) (Pt J) (Pr 27) (FB).**

11 (a). Public purpose—If justiciable.

——Art. 31 (2)—'Public purpose' – Assam Land (Requisition and Acquisition) Act (25 of 1948) — Scope and validity of.

In order to sustain a legislation, it is essential that the requisition or acquisition must be for a public purpose. The question whether it purports to authorise acquisition or requisition for public purpose is justiciable. It is clear that the Act contemplates a purpose which is a public purpose. The legislation cannot be held as being contrary to the provisions of Art. 31 (2). **ILR (1959) 11 Assam 1: A I R 1958 Assam 140 (149) (Pt C) (Pr 30) (DB).**

——Art. 31 (2)—Public purpose — Assam Land (Requisition and Acquisition) Act (25 of 1948), S. 3 — Order for requisition—Legality.

When the State Government passes an order for requisition, it is open to the Courts to examine and see whether the purposes for which the requisition has been made constitutes a public purpose or not and if it is so, the order of requisition will be upheld as being not contrary to the provisions of Art. 31 (2). If it is held contrary, it will be invalid because it contravenes Art. 31 (2). **I L R (1959) 11 Assam 1 : A I R 1958 Assam 140 (150) (Pt D) (Pr 30) (DB).**

——Art. 31 (2) — Acquisition and requisition for public purpose—Public purposes include purposes of the union and purposes of a State. Whether acquisition or requisition has been permitted for a public

purpose, is a justiciable matter. See Assam Land (Requisition and Acquisition) Act (25 of 1948), S. 3. **A I R 1953 Assam 177 (DB).**

[**Note** : — This was a petition under Art. 226 of Constitution for enforcement of fundamental rights by a Corporation. It was assumed by the High Court that Corporation could enforce rights under Art. 19 (1) (f). But it was held in A I R 1963 S C 1811 that a Corporation not being a citizen cannot claim fundamental rights. In this view the Assam High Court should not have entertained the Corporation's petition—Ed.]

——Art. 31 (2) — 'Public purpose' — If justiciable— (W. B Premises Requisition and Control (Temporary Provisions) Act (5 of 1947), S 3 (1)).

If the Act under which the requisition order is made is governed by Art. 31 (2) of the Constitution, the question whether the Act at all purports to authorize acquisition or requisition for a public purpose or wnether the purpose it mentions or contemplates is a purpose of a public character and the question whether a particular order made under it is actually supported by a public purpose as contemplated by the Act, are both justiciable.

Where therefore Art. 31 (2) applies to an Act, a provision contained in it, which makes the subjective satisfaction of the Government the sole condition precedent to the exercise of the power of acquisition or requisition, will be of no avail against Courts and in spite of such a provision the Courts will have jurisdiction to judge both the existence or otherwise of a purpose and its character. A I R 1954 S C 170, Rel. on.

It is immaterial that the only condition precedent to a requisition order under S. 3 (1) of the West Bengal Act (5 of 1947) is that it should appear to the State Government that any premises in any locality are likely to be needed for any purpose. In spite of that provision, the jurisdiction of the Court to enquire whether an order of requisition is supported by a public purpose remains. A I R 1954 Cal 171, Commented upon. ILR (1958) 2 Cal 1 : 61 Cal W N 420 : **99 Cal L J 39 : A I R 1957 Cal 310 (314, 315) (Pt D) (Prs 14, 16) (DB).**

——Art. 31 (2) — On true construction of S. 3 of W. B. Act 5 of 1947, the factual existence of public purpose depends entirely on subjective satisfaction of State Government and is not justiciable. A I R 1953 Cal 223, **Overruled.** See Houses and Rents — West Bengal Premises Requisition and Control (Temporary Provisions) Act (5 of 1947), S. 3 (1). **A I R 1954 Cal 171 (DB).**

——Art. 31 (2)—Public purpose — Whether requisition is for public purpose, is justiciable in Court of law — (Houses and Rents — West Bengal Premises Requisition and Control (Temporary Provisions) Act (5 of 1947), S. 3 (1)). **89 Cal L J 268 : A I R 1953 Cal 223 (225) (Pt B) (Pr 6).**

[**Overruled** in A I R 1954 Cal 171.]

——Art. 31 (2), Sch. VII, List I, item 33, List II, item 36 and List III, item 42 — Compulsory acquisition of land for private purposes — Act authorising such acquisition Validity—Court's power to scrutinise Acts going beyond powers of Legislature.

The effect of Art. 31, Cl. (2) together with item 33 of List I, item 36 of List II, and item 42 of List III of the Seventh Schedule is that neither the Central Legislature nor the State Legislature have any power to legislate in respect of compulsory acquisition for private purposes. That being so, compulsory acquisition of property for private purposes by a State is not permitted by the Constitution, and any Act which authorises the Central Government or a State Government compulsorily to acquire land for private purposes would be ultra vires the Constitution.

Further it is clear from Art. 31 (2) and the three items in the three lists that it is open to the Courts to scrutinise Acts empowering Government to acquire property compulsorily and to consider whether or not such Acts go beyond the powers given to the various legislatures by the Constitution. No Act can be passed which permits compulsory acquisition of a citizen's property for purposes other than public and the Courts must see that no Act allows acquisition beyond that permitted by the Constitution. AIR 1952 Cal 554 (555, 556) (Pt A) (Prs 11, 13) (DB).

——Art. 31 — 'Public purpose' — Decision as to, if conclusive — West Bengal Land Development and Planning Act (21 of 1948), S. 4.

The decision of the Government as to the "public purpose" is conclusive and cannot be questioned in a Court of law. The use of the words, 'if it is satisfied' in S. 4 of West Bengal Act 21 of 1948 makes the decision unchallengeable. A I R 1951 Cal 294; 54 Cal W N 855 and A I R 1950 S C 222, Rel. on. **55 Cal W N 463 : A I R 1951 Cal 97 (99) (Pt D) (Pr 14).**

——Arts. 31 and 226 — Declaration by Government that land is required for public purpose — If justiciable.

The declaration made by a Government that a land is required for 'public purpose' is justiciable under Art. 226 of the Constitution. Courts have not only jurisdiction, but it is also their duty, to consider the matter and determine whether a public purpose has been established, because the Constitution authorises requisition or acquisition only for a public purpose. A I R 1958 S C 294 Rel. on **1960 Ker L J 170 : 1960 Ker L T 232 : ILR (1960) Ker 351 (1960) 1 Ker L R 520 : A I R 1962 Ker 321 (324) (Pt 4) (Pr 25).**

——Art 31 (4)—Existence of public purpose whether justiciable — Madhya Bharat Zamindari Abolition Act (13 of 1951), S. 38.

The existence of a public purpose is not a justiciable issue in case of an enactment which having fulfilled the requirement of Cl. (4) of Art. 31 of the Constitution enjoys the protection afforded by it. The Madhya Bharat Zamindari Abolition Act is an Act which has fulfilled the requirements of Cl. (4) of Art. 31, and therefore, S. 38 cannot be challenged on ground that there was no existence of a public purpose behind the provision. A I R 1954 S C 257 and AIR 1953 S C 375, Rel. on. **Madh B L J (1955) H C R 954 : I L R (1955) Madh-B 441 : A I R 1955 Madh B 146 (147, 148) (Pt B) (Pr 4) (DB).**

● ——Art. 31 (4)—Public purpose is not justiciable issue.

Per Dixit and Chaturvedi JJ (Shinde C. J. dissenting)—The existence of a public purpose as a condition precedent to the exercise of the power of compulsory acquisition being a provision of Art. 31 (2), an infringement of such a provision cannot, under Art. 31 (4), be put forward as a ground for questioning the validity of the Act. AIR 1952 S C 252, Rel.on.

(Note : Shinde C J., has held that Mukherjea, J. has agreed with Mahajan and Aiyar, JJ., in AIR 1952 S C 252), Malojirao v. State of M. B., **M B L J 1952 H C R 467 : A I R 1953 Madh B 97 (99, 110, 128) (Pt B) (Prs 2, 44, 98) (FB).**

● ——Art. 31(2)—Public purpose—Question of, whether justiciable.

The validity of a requisition order can be questioned on the ground of non-existence of a public purpose, notwithstanding that the relevant statute (M. P. Accommodation (Requisition) Act (63 of 1948), S. 3 in the instant case) makes it final.

The provisions of the Constitution must prevail over legislation and if an enactment violates constitutional provisions, no finality can be attached to the

opinion of an authority even though the express words of the statute make it so. Article 31 (2) of the Constitution makes the existence of a public purpose a condition precedent to every acquisition or requisition of property. Unless the necessary pre-requisites exist, the acquisition or requisition would be unconstitutional irrespective of anything contained in the relevant statute. AIR 1950 S C 222; AIR 1952 S C 252 and AIR 1956 S C 294, Rel. on., Jagdish Narain Babulal Jaiswal v. Collector, Damoh, 1962 Jab L J 533 : 1962 M P C 355: 1962 M P L J 363: AIR 1962 Madh Pra 146 (168, 169) (Pt C) (Prs 131, 133) (FB).

——Art. 31—Public purpose—Issue of, is justiciable. See Land Acquisition Act (1894), S. 4. A I R 1961 Madh Pra 140 (DB).

——Art. 31 (2) — Orissa Hereditary Village Offices (Abolition) Act (12 of 1962), Pre—Validity of the Act —Compulsory acquisition of property for a 'public purpose', as contemplated by Art. 31 (2) of the Constitution is a justiciable issue to a limited extent — Orissa Act (12 of 1962) abolishing Hereditary Village Offices being a piece of legislation aiming at economy in expenditure and seeking to bring about uniformity in revenue administration cannot be said to be not for a public purpose. I L R (1964) Cut 289 : 30 Cut L T 359 : A I R 1964 Orissa 235 (236) (Pt B) (Pr 2) (DB).

——Art. 31 (2)—'Public purpose'—Court's power to examine—Decision of State Government as to public purpose—Presumption—Land Acquisition Act (1894), S. 6.

Public purpose may be achieved through public agency or through private enterprise. If the acquisition benefits a private person alone or only individuals then it is not public purpose. If the acquisition furthers the general interests of the community though incidentally it benefits individuals also then it does not cease to be a public purpose. Under the Land Acquisition Act the State Government must initially determine whether a particular purpose is or is not a public purpose and if acquisition of a particular piece of land would serve that public purpose. When the question is raised before Courts of law then it is their duty to determine the nature of the purpose for which the particular piece of land has been acquired. There is, however, a presumption that the decision of the State Government on this question is correct though this presumption is rebuttable. AIR 1952 S C 252, Foll. 62 Punj L R 609 : I L R (1959) Punj 1665 : AIR 1959 Punj 544 (548, 549) (Pt E) (Pr 17) (DB).

——Art. 31 (2)—Public purpose—Legislature declaring particular purpose to be public purpose—Court, if bound to accept — (Land Acquisition Act (1894), S. 6).

If the legislature by a statute declares a particular purpose to be a public purpose then out of respect to the legislature the Courts of law should accept it as such unless it involves violation of constitutional guarantee under Art. 31 of the Constitution. 61 Punj L R 609: I L R (1959) Punj 1665: AIR 1959 Punj 544 (549) (Pt F) (Pr 18) (DB).

11(b). Express mention of—Necessity.

● ——Art. 31(2)—Notification under S. 4 of the Land Acquisition Act — Non-mention of public purpose — Not fatal. See Land Acquisition Act (1894), S. 4. AIR 1960 S C 1203.

● ——Art. 31 (2)—'Public purpose' — Notification—Express mention of public purpose—Necessity.

It is not absolutely necessary to the validity of the land acquisition proceedings that the statement that the land sought to be acquired was needed for a public purpose should find a place in the notification actually issued. The requirements of the law will be satisfied if, in substance, it is found on investigation, and the appropriate Government is satisfied as a result of the investigation that the land was needed for the purposes of a Company, which would amount to a public purpose under Part 7 of the Land Acquisition Act. A I R 1955 S C 41, Rel. on. Babu Barkya Thakur v. State of Bombay, (1961) 1 S C R 128 : (1961) 2 S C J 392: (1961) 2 S C A 425: AIR 1960 S C 1203 (1207, 1208) (Pt C) (Pr 11).

● ——Art. 31—Purpose for which property is taken not expressly stated — Act is not invalid. See Bombay Land Requisition Act (33 of 1948 as amended by Bombay Act (39 of 1950), S. 5. AIR 1955 S C 41.

● ——Art. 31—Purpose of requisition need not be set out in the order. See Bombay Land Requisition Act (33 of 1948 as amended by Bombay Act (39 of 1952), S. 5 (1). AIR 1955 S C 41.

——Art. 31—Requisition order—Purpose not stated—Effect. See West Bengal Premises Requisition and Control (Temporary Provisions) Act (5 of 1947), S. 3 (1). AIR 1957 Cal 310 (DB).

——Art. 31—West Bengal Land Development and Planning (Amendment) Act (29 of 1951), S. 1—Necessity of declaration of public purpose while enacting amending Act.

It is enough if a public purpose can be ascertained from the whole tenor and intendment of the Act for acquisition of property. If to an Act providing for the acquisition of private property an amending Act adds certain provisions, providing for the acquisition of properties of certain further classes and giving such provisions effect from the commencement of the former Act, the public purposes declared by the original Act, will attach themselves automatically to the amending Act as also the amendments made thereby and there will be no absence of any declaration of a public purpose or purposes in regard to the latter. ('56) 60 Cal W N 962.

——Art. 31 (2)—Necessity to specify public purpose. See Houses and Rents—West Bengal Premises Requisition and Control (Temporary Provisions) Act (5 of 1947), S. 3 (1). AIR 1954 Cal 171 (DB).

——Art 31—Order of requisition under S. 3 of West Bengal Premises Requisition and Control (Temporary Provisions) Act (5 of 1947) not specifying public purpose—Invalid—See Houses and Rents — West Bengal Premises Requisition and Control (Temporary Provisions) Act (5 of 1947), S. 3 (1). 91 Cal L J 347: AIR 1954 Cal 98.

——Art. 31 (2)—Omission to specify public purpose. See Houses and Rents—West Bengal Premises Requisition and Control (Temporary Provisions) Act (5 of 1947), S. 3 (1). AIR 1953 Cal 579.

● ——Arts. 31(2), 39 (b), 39(c)—Public purpose—Test—M B. Act, 28 of 1951 is for public purpose – (M. B. Act 28 of 1951, S. 1).

It is not necessary to specify public purpose in the Act itself; it can be ascertained from the tenor and intendment of the Act. When the object of the Act is to benefit the community at large, it can be said to be for public purpose.

Public purpose is essentially a product of time and circumstances. Time moves on and circumstances change rapidly, and so does the concept of a public purpose. It has to be construed according to the spirit of the times in which the particular legistation is enacted. The concept is not a rigid concept and it has no settled meaning. AIR 1952 S C 252, Rel. on.

Although the purpose of the M. B. Act 28 of 1951 is not specified, there is no doubt, that it is inspired and dominated by a public purpose. It is obvious that the

object of the Act is to extinguish the interests of the intermediary and bring the actual cultivators into direct relations with the State Government and thereby to avoid concentration of wealth and means of production to the common detriment as laid down in Art. 39 (b) and (c) of the Constitution. It cannot be denied, therefore, that there is a public purpose for the acquisition of Jagir lands.

From the whole tenor and intendment of the Act, it can fairly be inferred that the amelioration of the peasantry living in Jagir areas and the emancipation of this class of sub-human serfs from the medieval and archaic bondage which is non-conducive to the general interests of the community is the main purpose behind the impugned Act. Malojirao v. State of M. B., M B L J 1952 H C R 467 : AIR 1953 Madh B 97 (99, 100, 110, 129) (Pt C) (Prs 4, 45, 99) (FB).

——**Art. 31 (2) –Public purpose**—East Punjab Utilization of Land Act (38 of 1949)—Validity.

If a reading of the Act makes it manifest that the sole object of enacting it was to achieve a public purpose, then even though the words 'public purpose' are not used in the Act, the Act will be within the competence of the Legislature and will not be repugnant to Constitution. It is sufficiently clear from the wording of the various sections of the East Punjab Utilization of Lands Act that it was enacted for a public purpose, namely, the growing of more food for the country and that being so the Act must be held to be valid. AIR 1955 S C 41, Rel. on. ILR (1955) Punj 1357 : 57 Punj L R 506 : AIR 1956 Punj 92 (93, 94) (Pt A) (Prs 4, 8) (DB).

11(c). Illustrative cases.

● ——Art. 31—Public purpose—Acquisition for construction of works for manufacture of textile machinery parts – Acquisition is for public purpose. See Land Acquisition Act (1894), Ss. 4, 6. AIR 1964 S C 1230.

● ——**Arts. 31 (2), 19 (1) (f) — Ss. 40 (1) (aa), 41, Land Acquisition Act (1894) as amended by Act 31 of 1962—Validity—Provisions do not contravene Art. 31 (2) and Art. 19 (1) (f) of the Constitution.**

Per Majority, Ayyanger, J., Contra.—If the language used is capable of only one construction and fails to carry out the intention of Parliament when making the amendment, the amendment may have to be struck down if it contravenes a constitutional provision. It is permissible to control the wide language used in a statute if that is possible by the setting, in which the words are used and the intention of the law-making body which may be apparent from the circumstances in which the particular provision came to be made. AIR 1963 S C 1128, Rel. on.

It may be conceded that on a literal construction of S. 40 (1) (aa) of the Land Acquisition Act the adjectival clause, namely, 'which is engaged or is taking steps for engaging itself in any industry or work which is for a public purpose,' qualifies the word 'company' and not the words 'building or work' for the construction of which the land is needed. The clause however bears another construction also. The words 'building or work' used in Cl. (aa) take their colour from the adjectival clause which governs the company for which the building or work is being constructed and acquisition under this clause can only be made where the company is engaged or is taking steps to engage itself in any industry or work which is for a public purpose, and the building or work which the company is intending to construct is of the same nature, namely, that it is a building or work which is meant to subserve the public purpose of the industry or work for which it is being constructed. It is only in these cases where the company is engaged in an industry or purpose of that kind, which is a public purpose, that acquisition can be made under Cl. (aa). It is well settled that if certain provisions of law construed in one way will be consistent with the Constitution, and if another interpretation would render them unconstitutional, the Court would lean in favour of the former construction. The second is the better construction of Cl. (aa) taking into account the setting in which it appears and the circumstances in which it came to be enacted and the words used therein. If that is the true construction of Cl. (aa) it cannot be said to contravene Art. 31 (1), for the public purpose required therein is present where land is required for the construction of a building or work which must subserve the public purpose of the industry or work in which a company is engaged or is about to be engaged. Nor can it be said that the provision is hit by Art. 19 (1) (f), for it would be reasonable restriction on the right to hold property. The clause so interpreted is not unconstitutional. The amendments in S. 41 are only consequential to the insertion of Cl. (aa) in S 40 (1) and would therefore be equally valid and constitutional. AIR 1962 S C 955, Rel. on.

Per Ayyangar, J.—Cl. (aa) of S. 40 (1) introduced by the Amending Act 31 of 1962 is unconstitutional and violative of Art. 31 (2). R. L. Arora v. State of U. P., (1964) 6 S C R 784 : (1964) 34 Com Cas 487 : (1964) 2 S C J 652 : (1964) 2 Mad L J (S C) 148 : (1964) 2 Andh W R (S C) 148 : (1964) 2 Andh L T 385 : (1964) 2 Com L J 309 : AIR 1964 S C 1230 (1236, 1238) (Pt A) (Prs 8,9).

● ——**Arts. 31 (2), 14 — Land Acquisition (Amendment) Act (31 of 1962), S. 7—Validity—Section does not contravene Art. 31 (2) or 14.**

Per Majority. — Before S. 7 of Land Acquisition (Amendment) Act (31 of 1962) can validate an acquisition made before July 20, 1962, it must first be shown that the acquisition is complete and the land acquired has vested in Government. This means that the land acquired has vested in Government either under S. 16 or 17 (1) of the Land Acquisition Act. Thus, S. 7 of the Amendment Act validates such acquisitions in which property has vested absolutely in Government either under S. 16 or S. 17 (1). Secondly, S. 7 of the Amendment Act provides that where acquisition has been made for a company before July 20, 1962, or purported to have been made under Cl. (a) or Cl. (b) of S. 40 (1) of Land Acquisition Act and those clauses do not apply in view of the interpretation put thereon in AIR 1962 S C 764 it shall be deemed that the acquisition was for the purpose mentioned in Cl. (aa) as inserted in S. 40 (1) of the Act by the Amendment Act. Thirdly, S. 7 of the Amendment Act provides that every such acquisition and any proceeding, order, agreement or action in connection with such acquisition shall be, and shall be deemed always to have been, as valid as if the provisions of Ss. 40 and 41 of the Land Acquisition Act as amended by the Amendment Act were in force at all material times when any action was taken for such acquisition. Finally, this validity is given to such acquisitions and to all actions taken in connection therewith notwithstanding any judgment, decree or order of any Court. It cannot be said that S. 7 makes an irrebuttable presumption that the acquisition was a public purpose, though it may not be actually so and therefore contravenes Art. 31 (2) inasmuch as the result of this irrebuttable presumption is that acquisition which may not have been for a public purpose is validated. The first fiction goes no further than this and does not provide that even though the purpose of acquisition does not fall within Cl. (aa) it will still be deemed to be a public purpose. In this view of the matter, the attack on S. 7 on the basis of Art. 31 (2) of the Constitution must fail.

All that the second fiction in S. 7 of the Amendment Act says is that when the first fiction is satisfied, the second fiction will come into force and every such acquisition and any proceeding, order, agreement or action in connection with such acquisition shall be and shall be deemed always to have been, as valid as if the provisions of Ss. 40 and 41 of the Act, as amended by the Amendment Act, were in force at all material times. In effect therefore S. 7 provides that even though acquisitions made before 20-7-1962 do not satisfy the conditions of Cl. (a) and Cl. (b) of S. 40 (1), they will be valid if they satisfy the conditions of Cl. (aa) as introduced by the Amendment Act, as if that clause was in existence when the acquisition was made before 20-7-1962. In this view there is no discrimination in the matter of acquisition for a company before 20-7-1962 and after that date because in either case the conditions of Cl. (aa) have to be actually satisfied whether the acquisition was before July 20, 1962 or thereafter, as the validation by S. 7 of the Amendment Act is only of such acquisition before 20-7-1962 which actually satisfy the provisions in Cl. (aa). What the second fiction provides is that an acquisition made before that date shall be as valid as if the provisions of Ss. 40 and 41 of the Act as amended by the Amendment Act were in force at all material times. The force of the words 'as valid as if' clearly is that the validity of acquisition made before 20-7-1962, has to be judged on the basis that the Cl. (aa) was in force at the material time and in accordance therewith. The validity therefore is not absolute; it is conditioned by the fact that it will be as valid as if Cl. (aa) was in force so that if it could not be valid even if Cl. (aa) was in force and could not be justified under the terms of that clause, the validity conferred by S. 7 of the Amendment Act will not attach to it. In this view the attack under Art. 14 as well as Art. 31 (2) fails, for in neither case can acquisition be valid whether made before 20-7-1962 or thereafter, unless the conditions of Cl. (aa) are satisfied. R L. Arora v. State of U. P., **(1964) 34 Com Cas 487 : (1964) 6 S C R 784 : (1964) 2 S C J 652 : (1964) 2 Mad L J (S C) 148 : (1964) 2 Andh W R (S C) 148 : (1964) 2 Andh L T 385 : (1964) 2 Com L J 309 : A I R 1964 S C 1230 (1238, 1239, 1240) (Pt B) (Prs 10, 11, 12, 13).**

● ——**Art. 31** - Scope – Canalisation of Imports through special or specialised agencies or channels—Refusal of import licences to applicants outside agencies or channels whether contravention of Art. 19 (f) and (g) or Art. 31 — Restriction on right to carry on trade, if can be attacked as not in the interests of general public. See Ibid, Art. 19 (1) (f). **A I R 1961 S C 1514.**

● ——**Art. 31 (2)—Acquisition for company for public purpose—Compliance with requirements of Part 7 not necessary** — Building of residential quarters for industrial labour is public purpose—Land Acquisition Act is immune from attack based on Art. 31 (2) of Constitution. See Land Acquisition Act (1894), S. 6. (as Amended in Punjab). **AIR 1961 S C 343.**

● ——**Art. 31 (2)—'Public purpose'— Acquisition for companies under Land Acquisition Act.**

Held that the acquisition of land for a Company was in substance for a public purpose inasmuch as constructing dwelling houses and providing amenities for the benefit of the workmen employed by it and construction of some work of public utility served a public purpose. AIR 1955 SC 41, Rel. on. Babu Barkya Thakur v. State of Bombay, **(1961) 1 S C R 128 : (1961) 2 S C J 392 : (1961) 2 S C A 425 : A I R 1960 S C 1203 (1207) (Pt B) (Pr 10).**

● —**Arts. 31 and 19 — Sugar Export Promotion Act (1958), Ss. 5 and 6—Validity—Do not infringe Art. 19 or 31—Deferred payment is not deprivation of property—Object and purpose of Act is valid and also in the public interest.** See Sugar Export Promotion Act (1958), S. 5. **AIR 1959 S C 1124.**

● —**Art. 31 – Public purpose — Requisition of accommodation for an employee of Road Transport Corporation—Validity.** See Bombay Land Requisition Act (33 of 1948), S. 5 (1). **AIR 1956 S C 294.**

● ——**Art. 31 (2)—Public purpose — Rajasthan Land Reforms and Resumption of Jagirs Act (6 of 1952) — Validity.**

The Act is supported by public purpose. AIR 1952 S C 252, Foll. Amarsinghji v. State of Rajasthan, **(1955) 2 S C R 303 : 1955 S C J 523 : 1955 S C A 765 : AIR 1955 S C 504 (536) (Pt W) (Pr 85)**

● ——**Art. 31** - Requisition order — Public purpose—Housing the homeless is a public purpose — Requisition for purpose of housing the informants of 'suppressed vacancies' and Government servants. See Bombay Land Requisition Act (33 of 1948 as Amended by Bombay Act 39 of 1950), S. 5. **A I R 1955 S C 41.**

——**Art 31** - Decision of District Magistrate regarding "public purpose"— Finality of District Magistrate's decision See Houses and Rents—U. P. (Temporary) Accommodation Requisition Act (25 of 1947, as extended to Ajmer), S. 3. **AIR 1954 Ajmer 1.**

● ——**Arts. 31 (2) and 31-A** — Extinguishment of bhumidhari rights followed by their vesting in State —Art. 31 (2) not violated — Even if it amounted to acquisition the object was to settle the land with persons who were in possession or were entitled to take possession as adhivasis and this may be said to be a public purpose. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 18. **AIR 1964 All 213 (FB).**

——**Art. 31 (2)** — Land Acquisition Act (1894 (as amended by Madras Act 21 of 1948), Ss. 6, 17 – "Public Purpose"—Acquisition for providing houses for landless labourers is for public purpose. See Land Acquisition Act (1894, as amended by Madras Act 2 of 1948), S. 6. **1960 Andh L T 566.**

——**Art. 31 — Requisition order of 20-2-57 — Held invalid.**

The requisition could by reason of Art. 31 of the Constitution as also the Bombay Act (33 of 1948) be made only for public purpose. If the shops in suit were requisitioned not for any public purpose, the directions given under S. 7 of the Bombay Act and the requisition order must also be held to be without jurisdiction and void. See Bombay Land Requisition Act (33 of 1948), S. 7. **AIR 1965 Bom 64.**

Arts. 31 (2) and 19 (5) — Sholapur Spinning and Weaving Company (Emergency Provisions) Ordinance (1950), S. 4 (d) — The object of Ordinance was a public purpose. **53 Bom L R 218 : I L R (1951) Bom 473 : A I R 1951 Bom 86 (92, 94) (Pt I) (Prs 10, 12, 13) (DB).**

——**Art. 31** — West Bengal Estates Acquisition Act (1954), Ss. 2 (i) and 4 — Provision for acquisition of rights of lessees or sub-lessees in mines and minerals —Provision does not contravene Art. 31 — Abolition of middlemen in respect of surface right to land is a public purpose - Similarly abolition of middlemen in respect of rights in minerals lying under the surface can also be said to be a public purpose. See Tenancy Laws — West Bengal Estates Acquisition Act (1 of 1954) (as amended by W. B. Act 4 of 1957), S. 2 (1). **AIR 1960 Cal 646.**

——**Art. 31** — 'Public purpose' — Providing accommodation to Government servant. See W. B. Premises Requisition and Control (Temporary Provi-

sions) Act (5 of 1947), S. 3 (1). A I R 1957 Cal 310 (DB).

——Art. 31 (2) — Public purpose — Requisition for employee of State Government, whether refugee or otherwise is for public purpose (Houses and Rents — West Bengal Premises Requisition and Control (Temporary Provisions) Act (5 of 1947), S. 3 (1). 89 Cal L J 268 : AIR 1953 Cal 223 (225) (Pt C) (Pr 7).

[Overruled on another point in AIR 1954 Cal 171.]

——Art. 31 — Public purpose — Settlement of immigrants.

The settlement of immigrants should be considered as public purpose. Therefore the West Bengal Land Development and Planning Act is not ultra vires in so far as it purported to acquire lands for settlement of immigrants. A I R 1950 S C 222; AIR 1951 Cal 97, Foll. 89 Cal L J 301 : A I R 1952 Cal 679 (681, 682) (Pt D) (Pr 4).

—— Art. 31 (2) — Land Acquisition Act (1894), Ss. 6, 40, 41, Part VII—Acquisition for Company for public purpose — Costs need not come out of public funds. See Land Acquisition Act (1894), S. 6. A I R 1964 Guj 82.

——Art. 31 (2) and Sch. VII, List III, Item 27 — 'Public purpose' — West Bengal Land Development and Planning Act (21 of 1948)—Validity.

The acquisition of land for settlement of refugees as provided in the West Bengal Act 21 of 1948 is acquisition for a public purpose and is within the competence of the Government of the State of West Bengal. There can be no doubt that the public or the inhabitants of the State of West Bengal are benefited by accommodating the refugees and confining their activities in a suitable locality. AIR 1922 P C 333 and AIR 1951 Cal 346 Rel on. 55 Cal W N 463 : AIR 1951 Cal 97 (99) (Pt E) (Pr 15).

——Art 31 — Tenancy Laws — Bombay (Saurashtra Area) Aghat Tenure and Ijaras Aboli ion Act (Bom. 65 of 1959), S. 4 Abolition of Ijara— The Abolition Act, 1959 is not discriminatory - Acquisition of ijara lands is for public purpose. See Ibid, Art. 14. AIR 1962 Guj 297 (DB).

——Art. 31 (2) and Sch. 7, List 2, Item 36 — East Punjab Requisitioning of Immovable Property (Temporary Powers) Act (48 of 1948) (as amended in 1951) — Validity — Words "for a public purpose" were inserted by Amending Act — (Punjab Requisitioning of Immovable Property (Amendment and Validation) Act (2 of 1951), Ss. 3, 6). See East Punjab Requisitioning of Immovable Property (Temporary Powers) Act (48 of 1948). AIR 1953 Him Pra 5.

——Art. 31 (2) — Public purpose — Declaration for acquisition of land for expansion of Company manufacturing tyres — Acquisition is for public purpose. See Travancore Land Acquisition Act (11 of 1914), S. 6. 1964 Ker L J 85.

——Art. 31 (2)—Public purpose—Acquisition of land by Government at instance of Corporation for widening lane.

The acquisition of land by the State of Kerala at the instance of the Corporation of Trivandrum for the purpose of widening a lane to provide greater convenience to the public is one for public purpose even though the persons who may be immediately benefited are those living near the lane. 1960 Ker L J 170 : 1960 Ker L T 232 : I L R (1960) Ker 351 : (1960) 1 Ker L R 520 : AIR 1960 Ker 321 (326, 327) (Pt B) (Pr 35).

— Art. 31—Public purpose.

An acquisition for carrying out a scheme of land reforms is certainly an acquisition for a public purpose and the fact that the scheme may ultimately benefit individual sub-tenants would not make the acquisition any the less an acquisition for a public purpose. I L R (1955) Madh B 441 : Madh B L J (1955) H C R 954 : A I R 1955 Madh B 146 (148) (Pt C) (Pr 4) (DB).

●——Art. 31 — Tenancy Laws — M. B. Abolition of Jagirs Act (28 of 1951), S. 4 (1) (g)—Provision is bad both for want of public purpose and for perpetrating a fraud on Constitution. See M. B. Abolition of Jagirs Act (28 of 1951), S. 4 (1) (g). AIR 1953 Madh B 97 (FB).

●——Art. 31 — Public purpose — Purposes of the State.

(Per Dixit J.) — Purposes of the State or purposes of the Union are public purposes. Taking into consideration section 3 of the Madhya Bharat Zamindari Abolition Act which vests proprietary rights in the State and other provisions of the Act, it cannot be seriously disputed that the Act is for the purposes of the State. Ram Dubey v. Government of the State of Madh B., I L R (1952) Madh B 178 : A I R 1952 Madh B 57 (73) (Pt Q) (Pr 82) (FB).

——Art. 31 (2) — M. P. Abolition of Cash Grants Act (16 of 1963) —Validity — Act, if can be supported on ground of a "public purpose" within Art. 31 (2). See Ibid, Art. 31 (1). AIR 1965 Madh Pra 77 (DB).

●——Arts 31 (2), 19 (1) (f) — Public purpose — Requisition of godowns for storing Government foodgrains collected for distribution in deficit areas — No profit motive—Requisition is for public purpose —Proper approach by Courts in such cases — M. P. Accommodation (Requisition) Act (63 of 1948), Ss. 3, 2 (d)—Requisition order under — Validity

Per Majority (Shrivastava and Nevaskar JJ.; Naik J., contra) — An order passed in exercise of the powers conferred under S. 3 of the M. P. Accommodation (Requisition) Act (63 of 1948) requisitioning certain godowns for storage of Government foodgrains collected under its scheme of fair distribution of foodgrains to deficit areas without any profit motive does not contravene Art. 31 (2) of the Constitution, and is valid. Jagdish Narain Babulal Jaiswal v. Collector, Damoh, 1962 Jab L J 533 : 1962 M P C 355 : 1962 M P L J 363 : AIR 1962 Madh Pra 146 (168, 170, 172) (Pt B) (Prs 124, 126, 127, 128, 137, 141, 142, 143, 152, 153 (FB).

——Art. 31 (2) — Acquisition of land for housing scheme for public or section thereof—Public purpose —Validity cannot be challenged because the land proposed to be acquired contains two or three houses. See Land Acquisition Act (1894), S. 4. ('64) 77 Mad L W 537.

——Art. 31 (2)—Madras Cultivating Tenants' Protection Act (25 of 1955), Ss. 3, 9 and 12 — Constitutional validity—Having regard to history and object of the Act, the legislation is intended to advance public benefit and convenience and it does not offend against Art. 31 (2). See Tenancy Laws — Madras Cultivating Tenants' Protection Act (1955), Ss. 3, 9, 12. A I R 1960 Mad 108.

——Arts. 31 (2), 19 (1) (f) and Sch. 7, List 2, Item 36 —Public purpose — Requisition for housing Government servant is a public purpose for the interests of the Government and that of the public would necessarily suffer if their officers are not properly housed —(Houses and Rents — Madras Buildings (Lease and Rent) Control Act (25 of 1949) (as amended by Mad. Act 8 of 1951), S. 3 (3)). See Ibid, Art. 19 (1) (f). A I R 1953 Mad 252.

——Art. 31—Provision of house sites for Adi-Andhra —If a public purpose.

From several provisions of the Constitution it is clear that making provision for the advancement and development of the Harijan community is one of the avowed objects of the Government both of the State and the Union. It follows that acquisition of land for making provision for house sites for the Adi-Andhra, a houseless section of the community, would be a public purpose within the meaning of Art. 31 of the Constitution. 65 Mad L W 136 (1) : (1952) 1 Mad L J 41 : A I R 1952 Mad 252 (252) (Pr 2) (DB).

——Art. 31 (2)—Public purpose.

(Obiter): — If the Administration of Evacuee Property Ordinance (1949) and Act 31 of 1950 which replaces it involve acquisition, the acquisition is for a public purpose. The enactments were undertaken in the general interest of large sections of the community. A I R 1950 Pat 372, Ref. 1951 Mad W N 477 : 1951-2 Mad L J 1 : A I R 1951 Mad 930 (933, 934) (Pt D) (Pr 15) (DB).

——Art. 31—Essential Commodities Act (10 of 1955), S. 3 (2) (f) — Mysore Rice Procurement (Levy) Order (1959), S. 3 -Provisions of Act and Order are not hit either by Art. 19 or by Art. 31 — Provisions are in interest of general public and are saved by Art. 19 (5) and (6) and Art. 31 (2) — Order has no independent existence apart from Act and did not require assent of the President separately — Order is not hit by Art 31 (3) See Essential Commodities Act (1955), S. 3 (2) (f). **A I R 1960 Mys 192.**

——Art. 31 — Evacuee Interest (Separation) Act (1951), S. 9 -Public purpose.

The object of S. 9, Evacuee Interest (Separation) Act is to extinguish usufructuary mortgages of evacuee agricultural land which had been in existence for 20 or more years so that evacuee interest can be completely separated and to benefit displaced persons who form a considerable section of the community. That evidently is a public purpose. **I L R (1956) Patiala 205 : A I R 1955 Pepsu 148 (152) (Pt C) (Pr 13) (DB).**

——Art. 31—E. P. Holdings (Consolidation and Prevention of Fragmentation) Act (50 of 1948), S. 14 (1) —Validity — Does not contravene Arts. 19 and 31 of the Constitution — Act is designed as a measure of agricultural reform and confers many benefits on agricultural economy. See Tenancy Laws — East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (50 of 1948), S. 14 (1). **A I R 1964 Punj 90 (DB).**

——Art. 31 (2)—'Public purpose' — Construction of dwelling houses—(Land Acquisition Act (1894), S. 6.)

The purpose of construction of dwelling houses cannot be considered necessarily or per se to be a public purpose. In an area where there is shortage of dwelling accommodation and there is suitable land available for constructing houses the public purpose will be served by facilitating their construction. It, therefore, depends on the circumstances of each case whether construction of houses will further a public purpose or not.

Held, considering the acute shortage of dwelling accommodation and of building sites available in Delhi and considering also the locality of the area in dispute, that the acquisition of the land for construction of houses would serve public purpose. **61 Punj L R 609 : I L R (1959) Punj 1665 : A I R 1959 Punj 544 (549, 550) (Pt H) (Prs 21, 28) (DB).**

——Art. 31 (2) — 'Public purpose' — Acquisition of land for co-operative society—(Land Acquisition Act (1894), S. 6).

It cannot be argued that building societies registered under the Co-operative Societies Act are presumably for public purpose, and therefore, acquisition of land for such society is necessarily for a public purpose. It is necessary in each case to examine all the relevant circumstances even when a public purpose of construction of houses is intended to be served through a private agency of a co-operative society. **61 Punj L R 609 : I L R (1959) Punj 1665 : A I R 1959 Punj 544 (549) (Pt I) (Pr 22) (DB).**

——Art. 31—Public purpose.

Establishing a technical institute to give technical education is a public purpose in view of the urgent requirement for qualified engineers and technicians in the country and the shortage of such persons at present. See Land Acquisition Act (1894), S. 6. **A I R 1959 Punj 538.**

——Art. 31—Public purpose.

It is perfectly legitimate policy on the part of the Government, in view of the extraordinary shortage of house accommodation at Delhi, to encourage the development of Co-operative House Building Societies on a non-profit basis, and it amounted to a public purpose if the Government helped such societies by acquiring land for them. A I R 1959 Punj 478, Foll. **60 Punj L R 302 : I L R (1958) Punj 1104 : A I R 1959 Punj 479 (480) (Pt A) (Pr 5).**

——Art. 31 — East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (50 of 1948), S. 18 — Conversion of common land for extension of village abadi — No contravention of provisions of Art 31. See East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (50 of 1948), S. 18. **A I R 1956 Punj 88.**

——Art. 31—Public purpose—Acquisition of land for rehabilitation of thousands of persons whose lands were acquired for public purpose—Acquisition is for public purpose. **57 Punj L R 493 : I L R (1956) Punj 61 : A I R 1956 Punj 83 (84, 85) (Prs 4, 5, 7) (DB).**

——Art. 31—Resettlement of Displaced Persons (Land Acquisition) Act (60 of 1948), S. 3 — "Necessary and expedient" in S. 3, does not mean that Government is enabled to take unjust and politic action—Words are used as abundant caution — Act authorises acquiring land when it is necessary for the resettlement of displaced persons and hence is not ultra vires. See Resettlement of Displaced Persons (Land Acquisition) Act (60 of 1948), S. 3. **A I R 1955 Punj 55 (DB).**

——Art. 31 (2) — Gram (Rajasthan) Price Control Order—Validity—If violates Art. 31 (2).

Gram (Rajasthan) Price Control Order is not violative of any of the provisions of Art. 31 (2) of the Constitution. The public purpose for which the ceiling whole-sale price has been fixed in accordance with the legislative purpose of the Act, namely the maintenance, supply and distribution of an essential commodity like gram. Nor can it be argued that the law does not fix the amount of compensation or specify the principles and the manner in which the compensation is to be determined and given. **I L R (1959) 9 Raj 740 : 1959 Raj L W 702 : A I R 1959 Raj 206 (212) (Pt D) (Pr 14) (DB).**

——Art. 31—Marwar Land Revenue Act (40 of 1949), S. 231—State takes possession of surface of land and there is no question of imposing restrictions — Case falls under Art. 31 and not under Art. 19 (5)—Section does not offend against Art. 31 (2) — Taking over possession for working mines is for public purpose. **I L R (1953) 3 Raj 162 : 1953 Raj L W 75 : A I R 1953 Raj 173 (176, 177) (Pt D) (Prs 15, 19) (DB).**

——Art. 31 (2)—Public purpose — Purpose in which Devaswam is interested. See Cochin Land Acquisition Act (2 of 1070), S. 5 (1). **A I R 1955 Trav-Co 46.**

—Art. 31 (2)—Acquisition of Mahua trees in V. P. State—Validity.

In the Vindhya Pradesh State a Mahua tree is not merely just a piece of private property but one of general public utility, especially in times of famine. So the acquisition of Mahua groves is one for public purpose and cannot be questioned as being constitutionally improper. AIR 1954 Vin Pra 24 (29) (Pt F) (Pr 30).

12. "Compensation."

(a) Adequacy of compensation — Justiciability.

(b) Constitutional validity of enactments.

(c) Miscellaneous.

12. "Compensation."

● —Art. 31 (2) (as amended fourthly in 1955)—'Compensation' and 'principles'—Meaning of—Consideration of adequacy of compensation is excluded from jurisdiction of Court — But matter whether compensation itself is illusory or principles are irrelevant to value of property is justiciable by Court.

A. I. R. 1954 S C 170 lays down three points, namely, (i) the compensation under Art. 31 (2) shall be a 'just equivalent' of what the owner has been deprived of, (ii) the principles which the Legislature can prescribe are only principles for ascertaining a 'just equivalent' of what the owner has been deprived of, and (iii) if the compensation fixed was not a 'just equivalent' of what the owner has been deprived of or if the principles did not take into account all relevant elements or took into account irrelevant elements for arriving at the just equivalent; the question in regard thereto is a justiciable issue. Thus it was a settled law that under Art. 31 (2) of the Constitution before the Constitution (Fourth Amendment) Act, 1955, a person whose land was acquired was entitled to compensation, i. e., a 'just equivalent' of the land of which he was deprived.

Article 31 (2) is amended by the Constitution (Fourth Amendment) Act, 1955. A scrutiny of the amended Article discloses that it accepted the meaning of the expression 'compensation' and 'principles' as defined in the case mentioned above. Under the amended Article, the law fixing the amount of compensation or laying down the principles governing the said fixation cannot be questioned in any Court on the ground that the compensation provided by that law was inadequate. The definition of 'compensation' and the question of justiciability are to be kept distinct. Even after the amendment, provision for compensation or laying down of the principles for determining the compensation is a condition for the making of a law of acquisition or requisition. A Legislature, if it intends to make a law for compulsory acquisition or requisition, must provide for compensation or specify the principles for ascertaining the compensation. It follows that a Legislature in making a law of acquisition or requisition shall provide for a just equivalent of what the owner has been deprived of or specify the principles for the purpose of ascertaining the just equivalent of what the owner has been deprived of.

However, the law of acquisition or requisition is not wholly immune from scrutiny by the Court. What is excluded from the Court's jurisdiction is that the said law cannot be questioned on the ground that the compensation provided by that law is not adequate. It will further be noticed that the clause excluding the jurisdiction of the Court also uses the word 'compensation' indicating thereby that what is excluded from the Court's jurisdiction is the adequacy of the compensation fixed by the Legislature. Neither the principles prescribing the 'just equivalent' nor the 'just equivalent' can be questioned by the Court on the ground of the inadequacy of the compensation fixed or arrived at by the working of the principles. But if a law lays down principles which are not relevant to the property acquired or to the value of the property at or about the time it is acquired, it may be said that they are not principles contemplated by Art. 31 (2) of the Constitution. If a law says that though a house is acquired, it shall be valued as a land or that though a house site is acquired, it shall be valued as an agricultural land or that though it is acquired in 1950 its value in 1930 should be given or though 100 acres are acquired compensation shall be given only for 50 acres, the principles do not pertain to the domain of adequacy but are principles unconnected to the value of the property acquired. In such cases the validity of the principles can be scrutinised. The law may also prescribe a compensation which is illusory; it may provide for the acquisition of a property worth lakhs of rupees for a paltry sum of Rs. 100. The question in that context does not relate to the adequacy of the compensation, for it is no compensation at all. If the compensation is illusory or if the principles prescribed are irrelevant to the value of the property at or about the time of its acquisition, it can be said that the Legislature committed a fraud on power and, therefore, the law is bad. It is a use of the protection of Art. 31 in a manner which the Article hardly intended.

Applying the doctrine of fraud on power, the Legislature cannot make a law in derogation of Art. 31 (2) of the Constitution. It can, therefore, only make a law of acquisition or requisition by providing for 'compensation' in the manner prescribed in Art. 31 (2) of the Constitution. Briefly stated the legal position is as follows: If the question pertains to the adequacy of compensation, it is not justiciable; if the compensation fixed or the principles evolved for fixing it disclose that the Legislature made the law in fraud of powers the question is within the jurisdiction of the Court. P. Vajravelu Mudaliar v. Special Deputy Collector for Land Acquisition, W. Madras, (1965) 2 S C A 396 : (1964) 2 S C J 703 : (1964) 2 Mad L J (SC) 173 : (1964) 2 Andh W R (S C) 173 : A I R 1965 S C 1017 (1022, 1023, 1024, 1025) (Pt C) (Prs 14, 15, 16).

● —Arts. 31 (2), 31-A — Rajasthan Land Reforms and Resumption of Jagirs Act (VI of 1952)—Validity.

An objection to the validity of an Act relating to acquisition of property on the ground that it did not provide for payment of compensations is an objection based on Article 31 (2) and it is barred when the impugned legislation fell within Art 31-A. When the acquisition is of the whole estate, it is not a valid objection to it that the compensation was awarded on the basis of the income actually received, and that nothing was paid on account of properties which did not yield an income. The fact that the compensation provided under an Act is inadequate, if that is calculated on the basis of the market value of the properties is not a ground on which an Act protected by Article 31-A could be impugned. Before such an Act could be struck down, it must be shown that the true intention of the law was to take properties without making any payment, that the provisions relating to compensation are merely veils concealing that intention, and that the compensation payable is so illusory as to be no compensation at all.

This cannot be said of the provisions of the impugned Act, and the contention that it is a fraud on the Constitution must, in consequence, fail. The fact that the impugned Act suffered from a fundamental defect in that it treated all the 41 tenures classed as jagirs in the schedule as of the same cha-

racter, and on that basis laid down the same principles of compensation for all of them, is an objection to the quantum of compensation and that is not justiciable under Article 31-A. That there was no public purpose invoked in the resumption, and that therefore Article 31 (2) had been contravened again is an objection which is barred by Article 31-A. Amarsingh v. State of Rajasthan, 1955 S C A 766 : 1955 S C J 523 : (1955) 2 S C R 303 : A I R 1955 S C 504 (536) (Pt V) (Prs 82, 83, 84, 85).

● ——**Art. 31 and Sch. VII, List 3, Entry 42—Principle of giving compensation for property acquired—This principle cannot be invoked in respect of Madras Estates (Abolition and Conversion into Ryotwari) Act — [Madras Estates (Abolition and Conversion into Ryotwari) Act (26 of 1948), S. 24].**

List 3 of Sch. VII, Entry 42 is undoubtedly the description of a legislative head and in deciding the competency of a legislation under this entry, the Court is not concerned with the justice or propriety of the principles upon which the determination of the compensation is to be made or the form or manner in which it is to be given. But even then, the legislation must rest upon some principle of giving compensation and not of denying or withholding it, and a legislation cannot be supported which is based upon something which is non-existent or is unrelated to facts and consequently cannot have a conceivable bearing on any principle of compensation. AIR 1952 S C 252, Expl.

The doctrine cannot be invoked in respect of the Madras Estates (Abolition and Conversion into Ryotwari) Act (26 of 1948) which is passed by the Madras Provincial Legislature functioning under the Government of India Act, 1935. For there was no entry in any of the lists attached to that Act corresponding to Sch. VII, List 3, Entry 42 of the Constitution of India. The only entry relevant to this point in the Act of 1935 was Item 9 of List 2 which spoke merely of 'compulsory acquisition of land'; and it is clear that a duty to pay compensation or of laying down any principle regarding it was not inherent in the language of that entry. Jagave ra Rama v. State of Madras, 1954 S C J 282 : (1954) 1 Mad L J 486 : 1954 S C R 761 : 1954 S C A 217 : Madh B L J 1954 S C D 18 : A I R 1954 S C 257 (259) (Pt B) (Pr 9).

● ——**Art. 31 (2)—Measure of compensation—Scope for legislative discretion — Principle which determines compensation which denies increment in value —West Bengal Land Development and Planning Act (21 of 1948), S. 8, Proviso (b)—Validity.**

While it is true that the legislature is given the discretionary power of laying down the principles which should govern the determination of the amount to be given to the owner for the property appropriated such principles must ensure that what is determined as payable must be compensation, that is a just equivalent of what the owner has been deprived of. Within the limits of this basic requirement of full indemnification of the expropriated owner, the Constitution allows free play to the legislative judgment as to what principles should guide the determination of the amount payable. Whether such principles take into account all the elements which make up the true value of the property appropriated and exclude matters which are to be neglected, is a justiciable issue to be adjudicated by the Court. Considering that the West Bengal Act 21 of 1948 is a permanent enactment and lands may be acquired under it many years after it came into force the fixing of the market-value on 31st December 1946, as the ceiling on compensation under the latter part of the proviso to S. 8, without reference to the value of the land at the time of the acquisition is arbitrary and cannot be regarded as due compliance in letter and spirit with the requirement of Art. 31 (2). For, the fixing of an anterior date for the ascertainment of value may not, in certain circumstances, be a violation of the constitutional requirements as, for instance when the proposed scheme of acquisition becomes known before it is launched and prices rise sharply in anticipation of the benefits to be derived under it but the fixing of an anterior date, which might have no relation to the value of the land when it is acquired, may be, many years later, cannot but be regarded as arbitrary. Any principle for determining compensation which denies to the owner any increment in value cannot result in the ascertainment of the true equivalent of the land appropriated. State of Bengal v. Mrs. Bela Banerjee, 1954 S C J 95 (1954) 1 Mad L J 162 : 1954 S C A 41 : 93 C L J 264 : 1954 S C R 558 : A I R 1954 S C 170 (172, 173) (Pt B) (Prs 6, 8).

——**Art. 31 (2)—Scope of—Payment of compensation —U. P Imposition of Ceiling on Land Holdings Act (1 of 1961) - Validity —Compensation under Art. 31(2) does not mean money equivalent of right taken away —U. P Act is valid. 1963 All L J 793 : 1963 All W R (HC) 669 : I L R (1964) 1 All 211 : A I R 1965 All 175 (178, 179) (Pt A) (Prs 17, 19 (DB).**

—Art 31 — 'Compensation' — Meaning — Benefit which may be conferred on a person deprived of land along with other members of public.

The benefit which may be conferred upon those from whom land is taken away along with other members of the public cannot be considered to be compensation within the meaning of Art. 31. Such benefit which the persons deprived of their property derive being a benefit which they derive not in their private capacity but as members of the public is not the sort of compensation contemplated by Art. 31. 1956 All W R (HC) 643 : 1956 All L J 878 : A I R 1957 All 297 (303) (Pt G) (Pr 23) DB).

● **— Art. 31 (2) and (4) - Compensation—Meaning —U. P. Act 1 of 1951 if can be challenged on question of adequacy of compensation — U. P. Act (1 of 1951), S. 27.**

The word "compensation" in Art. 31 (2) was intended to have the same meaning in the Article as in S. 299, Government of India Act.

'Compensation' in Art. 31 (2) means the equivalent in value of the property taken or acquired subject only to this qualification that such equivalent need not be paid in money.

Any provision for giving by way of compensation less than the equivalent will not amount to compensation in law and will constitute a contravention of that clause Whether the law provides for an inadequate payment, or for discriminatory payments to different owners, the result is the same—failure to provide for compensation in law. In either instance there is a contravention of the provisions of Cl. (2).

The U. P. Zamindari Abolition and Land Reforms Act, 1950 (1 of 1951) cannot be challenged in any Court on the ground that it fails to provide for compensation in law, as it is law which is covered by Art. 31 (4).

In view of the provisions of Cl. (4) of Art. 31 inadequacy of the compensation is not a matter which is open to challenge, and there is no other ground from which the Court can infer that the provisions of the Act with regard to compensation constitute a fraud on the Constitution. Raja Surya Palsingh v. U. P Government, 1951 All L J 365 : 1951 R D (HC) 122 1951 All W R (HC) 317 : I L R (1952) 2 All 46 : A I R 1951 All 674 (685, 686, 689) (Pt M) (Prs 51, 52, 53, 77) (FB).

● —Arts. 31 (2), 14—Legislation for acquisition of property— Provision for compensation contravening Art. 14 -Art. 31 (2), if also contravened.

If a provision in any Act providing for the acquisition of property with regard to the payment of compensation contravenes the provisions of Art. 14 because it is discriminatory then it also contravenes Art 31 (2). Raja Surya Palsingh v U. P Government, 1951 All L J 365 : 1951 R D (H C) 122 : 1951 All W R (HC) 317 : ILR (1952) 2 All 46 : AIR 1951 All 674 (686) (Pt N) (Pr 54) (FB).

——Art. 31 (2) (before amendment) -'Compensation' —Meaning of.

Under the unamended Art. 31 (2), the word 'compensation' meant a full and fair money equivalent of the property taken. AIR 1954 S C 170, Foll.

In the case of the abolition of cash grants in the former Hyderabad State some of the cash grants were commutable but no uniform rule existed for fixing the amount. The earlier Rules cannot furni h any guidance; for what may be fair compensation when privileges are particularly cherished may not be regarded as such in a Republic. In these circumstances there is bound to be divergence of views between the mansabdars and an average citizen as to what would be the fair equivalent of the property The legislature, in these circumstances, was authorised under Art. 31 before its amendment to specify the principle on which the compensation is to be determined.

The Hyderabad Abolition of Cash Grants Act, as amended by Act (23 of 1954) has provided compensation at six times the annual amount of grant and it is not so low as to render the compensation arbitrary. (1957) 2 Andh W R 321 : ILR (1959) Andh Pra 108) : 1957 Andh L T 903 : AIR 1957 Andh Pra 1034 (1037) (Pt C) (Prs 14, 15, 16) (DB).

— Art. 31—It is for the legislature to lay down any principle for determination of the compensation But the principle must be such as may result in payment of compensation that is just equivalent to what the owner has been deprived of. See Assam Acquisition of Land for Flood Control and Prevention of Erosion (Validation) Act, 1959 (21 of 1960), S. 2. A I R 1963 Assam 141 (DB).

——Art. 31—Bombay Act (4 of 1948)—Validity.

Provided the compensation is real and not illusory and is intended reasonably to indemnify the owner for loss of his property, in the larger interest's of the community for whose benefit the property is acquired compulsorily, the legislation which awards compensation which is less than the market value at the date of expropriation is not inconsistent with S. 299 of the Government of India Act See Government of India Act (1935), S. 299. A I R 1960 Bom 35 (38, 39) (Pt A) (Prs 4, 6) (DB).

——Arts. 31, 31-A and Sch 7, List 2, Entry 36; List 3, Entry 42—Acquisition without compensation —Validity.

If the State Act provided for some compensation which was merely colourable and a fraud on the statute, then of course it could have been struck down. But it cannot be struck down on the ground that it does not provide for compensation and, therefore contravenes Item No. 42 in List 3 — The provisions as to compensation are not dealt with in the items in the seventh schedule, but in the Articles themselves, and the Courts must inevitably come to Arts. 31 and 31-A for finding out as to what the position is in law. 63 Cal W N 751 : I L R (1959) 2 Cal 495.

——Art. 31 (2)—Compensation.

Compensation in Art. 31 (2) means a just compensation, that is to say, a just equivalent in value. AIR 1951 Cal 111, A I R 1951 All 674, (1893) 148 U S 312, Rel. on. I L R (1955) 1 Cal 401 : 57 Cal W N 397 : AIR 1953 Cal 548 (557) (Pt H) (Pr 39).

——Art. 31 (2)—Object of — West Bengal Act 21 of 1948—Validity—Act does not contravene Art. 31 (2) —(West Bengal Land Development and Planning Act (21 of 1948), Ss. 1, 8).

What Art. 31 (2) requires is that just compensation has to be paid to persons, whose properties are being compulsorily acquired. The manner or the time of payment may be such as is determined by the Legislature. So long as there are provisions for payment of the just compensation, the requirements of the Article of the Constitution are fully complied with.

All the provisions of the Land Acquisition Act 1894 relating to compensation in so far as they are not in any way inconsistent with the W.B.L.D. Act are available for determination of the amount of compensation payable for acquisitions made under the latter Act. It is true that the Collector is not bound to offer any compensation before the sudden dispossession takes place, because no such offer is contemplated by the W. B. L. D. Act, but that does not make the W. B. L. D. Act bad or ultra vires as contravening Art. 31 (2) of the Constitution. A I R 1952 Cal 870 (872) (Pt C) (Prs 5, 6).

——Art. 31 (2)—Compensation—Meaning of — West Bengal Land Development and Planning Act (21 of 1948), S. 8, Proviso (b).

Art. 31, Cl. (2) requires a just amount to be given for any property acquired and if the amount which a law gives be not just reasonable then it cannot be regarded as compensation within that clause. The amount fixed as compensation must be just equivalent and if the amount is not fixed then the principles on which and the manner in which compensation is to be determined must be principles upon which just equivalent can be arrived at and the provision for the manner in which the compensation is to be determined must ensure that a just and reasonable amount is given. Compensation assessed in accordance with the latter portion of proviso (b) of S. 8, West Bengal Land Development and Planning Act is not determined according to a principle and in a manner which would result in a just or reasonable equivalent being paid for the land. The principles on which and the manner in which compensation is to be determined as laid down in the latter portion of proviso (b) to S. 8 are no better than if it has been stated that whatever the market value of the land might be it could be acquired at the rate of 'X' rupees per bigha or per acre. The provisions as to compensation in S. 8 clearly offend against the provisions of Cl. (2) of Art 31 and are therefore void. 55 Cal W N 778 : AIR 1951 Cal 111 (115) (Pt C) (Prs 33, 34, 37) (DB).

——Art. 31 (2) — S. 218 (5), C. P. Land Revenue Act does not contravene Art. 31 (2).

Art. 31 (2) does not mean that unless the compensation is first paid, the right of a person to possession of the property cannot be infringed. If the law provides a machinery whereby the amount of compensation can be determined and paid which is the ultimate object of Art. 31 (2), then there is no contravention of the Constitution. 1955 Nag L J 507 : ILR (1955) Nag 525 : AIR 1956 Nag 101 (103) (Pt C) (Pr 10) (DB).

——Art. 31 (2) — Compensation — (Words and Phrases).

Compensation as understood under the law of Eminent Domain, necessarily involves the idea of "just compensation", carrying with it the following attributes : (1) Market-value payable on the footing of

compulsory sale ; (2) determination of compensation by a judicial tribunal; (3) payment of compensation (a) in cash and (b) on the date when possession is taken unless any other method and manner of payment is consented to by the dispossessed proprietor. **ILR (1953) Cut 71 : AIR 1953 Orissa 185 (190) (Pt A) (Pr 8) (DB).**

——Art. 31 (2)—Compulsory acquisition — Compensation.

The requirements of a valid law relating to compulsory acquisition must be found with reference to the terms of Art. 31 (2) of the Constitution itself. The word "compensation" as used in Art. 31 (2) must be taken to mean such compensation which fulfils the constitutional requirements prescribed therein that is, either (1) the amount thereof is fixed, or (2) the principles on which or the manner in which the compensation is to be determined and given, are specified. With respect to Zamindari abolition cases, the word "compensation" cannot be understood as involving the attributes of "just compensation" as known in the American system of Law in those cases to which the terms of Arts. 31 (4) and 31 A as interpreted by the decision of the Supreme Court apply. AIR 1952 S C 252, Foll. **ILR (1953) Cut 71 : AIR 1953 Orissa 185 (190, 191, 192) (Pt B) (Prs 9, 11) (DB).**

——Art. 31—Guarantee when becomes satisfied.

The guarantee contained the fundamental right embodied in Art. 31 may be taken to have been satisfied so long as the law authorising the acquisition provides for the amount of the compensation or specifies the principles on which and the manner in which the compensation is to be determined and given, and so long as the scheme of compensation which emerges therefrom results in compensation, and not negation thereof, having regard to all the circumstances of the contemplated compulsory acquisition. **ILR (1953) Cut 71 : AIR 1953 Orissa 185 (192) (Pt D) (Pr 11) (DB).**

——Art. 31 (2)—Compensation paid in instalments—(Government of India Act (1935), S. 299 (2))—(Orissa Estates Abolition Act (1 of 1952), Ss. 37 and 38).

Section 299 (2), Government of India Act 1935, required the law authorising compulsory acquisition of land to provide for payment of compensation of the property acquired and to either fix the amount of compensation or specify the principles on which and the manner in which it is to be determined, while Art. 31 (2), Constitution of India, requires only that the law must provide for compensation for the property and must either fix the amount of compensation or specify the principles on which the compensation is to be determined and given. Therefore while under S. 299 (2) compensation must be assessed and paid which may well imply cash payment and payment at the time of making possession, the requirement of Art. 31 (2) is that there must be principles enacted for determination and giving of compensation. This shows very clearly that merely because the compensation assessed is not paid at once, but in instalments, it cannot be said to violate Art. 31 (2) or to be otherwise illegal. **ILR (1953) Cut 71 : AIR 1953 Orissa 185 (193) (Pt E) (Pr 12) (DB).**

● **——Art. 31 (2) — Government of India Act, 1935, S. 299 (2)—"For compensation" and "for the payment of compensation."**

Per Shearer J.—Clause (2) of Art. 31 of the Constitution of India, substantially reproduces sub-s. (2) of S. 299 of the Government of India Act, 1935. However, the substitution of the words "for compensation" in cl. (2) for the words "for the payment of compensation" in sub-s. (2) indicates that compensation may now be given not in money, but in bonds or possibly in land the reason being that when large numbers of individuals are to be expropriated under a scheme of land reform it may be impossible to compensate them in money and that when large numbers of cultivators are to be expropriated in order that land may be taken for such a public purpose as the construction of a dam it may be in their own interest to receive land elsewhere rather than money. Maharajadhiraj Kameshwar Singh v. State of Bihar, **ILR 30 Pat 454 : AIR 1951 Pat 91 (94, 95) (Pt G) (Pr 4) (SB).**

● **——Art. 31 (2)—Compensation—What it should be.**

Per Shearer J.—Although, under the Constitution compensation need not necessarily be in money, nevertheless, whatever compensation is made it should be something which could fairly be said to be equivalent in value to the property taken over by the State.

Per Reuben J.—Compensation represents the money value of the property acquired. It is usual to give the owner something more than the value of the property by way of a solatium for the compulsory nature of the acquisition. The use of the word "compensation" is to be taken in the accepted sense as representing the money value of the property. The giving of compensation for property compulsorily acquired was considered to be of sufficient importance to be guaranteed by a provision in the Part of the Constitution dealing with Fundamental Rights. It does not appear likely that the Constituent Assembly would by that very provision empower the Legislature to give as compensation such amount as it thinks proper without any reference to the real value of the property acquired. Maharajadhiraj Kameshwar Singh v. State of Bihar, **ILR 30 Pat 454 : AIR 1951 Pat 91 (97, 110) (Pt H) (Prs 9. 50) (SB).**

● **——Art. 31 (2) and (4), Sch. VII, List II, Entry 36 and List III, Entry 42.**

Power of Legislature to legislate for acquisition without legislating for compensation — Clause (2) whether "provision" within meaning of Clause (4), Art. 31.

Per Reuben J.—The legislative heads contained in Entry 36 of the State List and Entry 42 of the Concurrent List empower the Legislature to pass laws relating to the subject-matter contained therein without placing any restrictions on the powers of the Legislature within the limits of those heads. As these entries stand, it would be open to the Legislature to legislate for acquisition without at the same time legislating about compensation. The limitation which makes provision about compensation essential is imposed by Cl. (2) of Art. 31 read with Cl. (2) of Art. 13. This requirement is, therefore, a "provision" of cl. (2). Art. 31 coming within the meaning of that word used in Art. 31 (4) and (6). Maharajadhiraj Kameshwar Singh v. State of Bihar, **ILR 30 Pat 454 : A I R 1951 Pat 91 (105) (Pt I) (Pr 29) (SB).**

——Art. 31 — Just compensation for damaged property—All that is required under Art. 31 is that compensation should not be illusory. See Punjab Development of Damaged Areas Act (10 of 1951), S. 12. AIR 1954 Punj 110 (DB).

——Art. 31—"Compensation," meaning of—(Words and Phrases).

Under Art. 31 of the Constitution of India the compensation to be provided by law, when property is taken away, should be fair compensation, which means equivalent in value of property taken or acquired, subject only to this qualification that such equivalent need not be paid in money. A I R 1951 All 674, Rel. on. **1952 Cri L J 732 : 1951 Raj L W 467 : ILR (1951) 1 Raj 674 : A I R 1952 Raj 74 (78) (Pt D) (Pr 14) (DB).**

——Art. 31 (2)—Acquisition of entire proprietary interest — Measure of compensation—Market price or quid pro quo.

It is a trite proposition of economics that the market price can be ascertained and exists in fact, only where a small fraction of the total property in existence comes up for sale. It is just as if a small quantity of water is taken out of a big stream without lowering the level perceptibly. But when, by a fiat of law, which the State Legislature is no doubt competent to pass, most of the proprietary interest is being acquired, then there cannot be a proper market price in the true sense of the term. It is just as if the entire stream is lifted out of its bed; there is no level which can be the norm. Looked at that way any discussion of market price or a quid pro quo as the measure of adequate or reasonable compensation is bound to be futile when there is an acquisition of entire proprietary interest. **A I R 1954 Vind Pra 24 (27) (Pt D) (Pr 18).**

12 (a). Adequacy of compensation—Justiciability.

● **——Art. 31 (2) —** Kerala Agrarian Relations Act (4 of 1961) Validity — Act is not a colourable piece of legislation on the ground of being a device to take money from Landowners—The adequacy of the compensation cannot be challenged in view of Art. 31 (2). See Ibid, Art. 245. **A I R 1962 S C 723.**

——Art. 31 (2)—U. P. Nagar Mahapalika Adhiniyam (2 of 1959), Sch. II Para. 10, Cl. (3) — Provision does not violate Art. 31 (2) of Constitution — Word 'compensation' in Art 31 (2) — Meaning — Inadequacy of compensation is no justiciable issue. See Municipalities—U. P. Nagar Mahapalika Adhiniyam (2 of 1959), Sch. II. A I R 1965 All 599.

——Art. 31 (4)—U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), saved by cl. (4) from operation of cl. (2)—Question of adequacy or otherwise of compensation contemplated by the Act cannot be decided by Court. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951). A I R 1953 All 92 (DB).

——Art. 31 — Essential Commodities Act, S. 3 (3A)—Scope and validity — Does not infringe Art. 31 (2) as there is provision for payment of compensation—Sub-s. (3) embodies the principles on which and the manner in which the compensation is to be determined — Further, by force of the Constitution 4th Amendment Act, 1955 the quantum of compensation fixed by any law is not justiciable. **A I R 1960 Andh Pra 431 (436, 437) (Pt D) (Prs 26, 27, 29) (DB).**

——Art. 31 (2)—Provision for compensation — Question of its adequacy not justiciable — Art. 31 (2) not infringed. See Assam Land (Requisition and Acquisition) Act (25 of 1948), S. 3. A I R 1953 Assam 177 (DB).

[**Note:**—This was a petition under Art. 226 of Constitution for enforcement of fundamental rights by a Corporation. It was assumed by the High Court that Corporation could enforce rights under Art. 19 (1) (f). But it was held in A I R 1963 S C 1811 that a Corporation not being a citizen cannot claim fundamental rights. In this view the Assam High Court should not have entertained the Corporation's petition—Ed.].

——Art. 31 (2) (as amended in 1955)—Court's power to go into question of compensation — Extent of — Compensation must be fair equivalent — Madras Act 11 of 1953, if, repugnant to Art. 31 (2) — (Madras Lignite (Acquisition of Land) Act (11 of 1953).)

The questions whether the compensation was adequate or not, and, whether the principles were just and reasonable or not, remained justiciable till the amendment made to the Constitution in 1955. The effect of the amendment made to the Constitution in 1955 is to preclude the Courts from going into the adequacy of the compensation provided.

The original requirements (1) that compensation should be paid for the property, and (2) that the Statute should specify the amount of the compensation or the principles in accordance with which the compensation could be ascertained, were not taken away. They still remain in the Constitution in the same sense in which they stood before 1955. The Constitution continued to retain its insistence that a citizen should be paid a just equivalent of the property which may be in money or other form of property.

It is competent to the legislature to specify the principles in accordance with which the compensation is to be ascertained. But they must be principles, that is to say, rational rules appropriate to the subject-matter. Besides, these principles must be truly designed to ascertain the proper amount of compensation. The principles must be applicable to the time at which the property is being acquired. The principles must deal with or cover the whole property that is being acquired and not merely a portion of it.

The provisions made in the Madras Lignite (Acquisition of Land) Act (11 of 1953) that compensation for the land need be paid only on the basis of its value on 28th April, 1947 and that no compensation need be paid for improvements other than agricultural improvements made thereafter are repugnant to Art. 31 (2) They are more in the nature of devices to refuse compensation.

It is not competent to the legislature to direct that the value of property acquired for public purpose shall be ascertained with reference to anterior and irrelevant date. **1959 Mad W N 387 : 72 Mad L W 434 : ILR (1959) Mad 770 : (1959) 2 Mad L J 402 : A I R 1959 Mad 548 (553, 554, 555) (Pt C) (Prs 37, 40, 41, 42, 44, 47, 48, 49, 50, 51) (DB).**

——Art. 31 (2) — Scope — Orissa Hereditary Village Offices (Abolition) Act (12 of 1962), S. 5 (2)—Validity — Compensation to Hereditary Village Officers in consequence of abolition of their posts—Adequacy of compensation — Not justiciable in view of the bar imposed by Art. 31 (2) of the Constitution — Hence validity of the section is beyond dispute. **ILR (1964) Cut 269 : 30 Cut L T 359 : A I R 1964 Orissa 235 (236) (Pt A) (Pr 1) (DB).**

——Art. 31 (2) (as amended in 1955)—Retrospective operation—Date for determining whether amendment applies—Orissa (Development of Industries, Irrigation, Agriculture, Capital Construction, Resettlement of Displaced Persons) Land Acquisition Act (18 of 1948), S. 7 (1) (e), Proviso 1.

Where a petition challenging the legality of the acquisition under S. 7 of the Orissa Act was filed by the aggrieved owners before the Arbitrator long before the Fourth Amendment to the Constitution came into force the question as to the constitutional validity of Proviso 1 to S. 7 (1), Cl. (e) must be examined with reference to Art 31 (2) as it existed prior to the amendment and on that question the previous decision of the Division Bench of the Orissa High Court in A I R 1955 Orissa 97 (which held the Proviso to be unconstitutional as offending Art. 31 (2) as it stood then) would still continue to be good law. But in those cases where the petitions before the Arbitrator challenging the adequacy of compensation were filed after the said Amendment had come into force, the constitutional validity of Proviso 1 to Cl. (e) of S. 7 (1) of the Act cannot be challenged merely on the ground that it offends Art. 31 (2) (as amended) inasmuch as that very clause

of the Constitution expressly bars the jurisdiction of the Court to examine the adequacy or otherwise of the amount of compensation payable. AIR 1955 SC 781 and AIR 1958 SC 328, Rel. on. (1960) 2 Orissa J D 218 : ILR (1960) Cut 487 : AIR 1961 Orissa 196 (199) (Pt A) (Pr 5) (DB).

——Art. 31 (2); (4)—Tenancy Laws—Orissa Estates Abolition Act (1 of 1952), S. 28—Validity.

If the Legislature thought that minor zamindars should get compensation at a higher rate whereas big zamindars should get compensation at a lower rate for high slabs of income it is difficult to say that such a principle is not inextricably bound up with the broader question of adequacy of compensation. Art. 31 (4) expressly prohibits a Court from questioning the adequacy of compensation. Even if it be assumed that Orissa Act 1 of 1952 as it now stands is not a 'law' as referred to in Cl. (4) of Art. 31 it is undoubtedly a 'law' as described in Cl. (2) of that Article (as amended in 1955) and would get the protection of that clause. AIR 1951 All 674 (FB) Rel. on. I L R (1957) Cut 299 : AIR 1957 Orissa 247 (253) (Pt E) (Pr 16) (DB).

——Arts. 31 (4), 31-A and 31-B—Ground on which law of compulsory acquisition cannot be challenged.

So far as the cases which fall within the scope of Art. 31 (4), 31-A or 31-B are concerned, the law relating to compulsory acquisition is not open to challenge on the ground that the scheme of compensation provided by it, does not conform to what are said to be the accepted attributes of compensation which in this behalf is alleged to mean 'just compensation' and, in that sense only, produces no compensation. I L R (1953) Cut 71 : AIR 1953 Orissa 185 (190, 191) (Pt C) (Pr 9) (DB).

● ——Art. 31 (4) -Scope and effect of—Power of Court to go into question of compensation to decide whether an Act which is challenged contravenes. Art. 14. See Bihar Land Reforms Act (1950). AIR 1951 Pat 91 (SB).

● —Art. 31 (2) — Provision in enactment laying down principles of compensation whether justiciable by Court.

Per Reuben J.—The power given to the Legislature to legislate with regard to the principles on which compensation for the property acquired is to be determined does not make the matter of compensation non-justiciable. The fact that this matter has been included in Part III of the Constitution and that it has been thought necessary to provide protection to such legislation under Cls. 4 and 6 of Art. 31 shows that the matter was intended to be justiciable. What Cl. 2 requires is provision for compensation and Courts are entitled to enquire, subject to Cl. (4) whether the payment for which the impugned legislation provides is "compensation" within the meaning of this clause.

But an investigation of the question whether the sums determined by the principles laid down in the Bihar Land Reforms Act are compensation or not is an investigation which the Court is precluded from making by reason of the assent under Cl. (4) of Art. 31 of the Constitution. Kameshwar Singh v. State of Bihar, ILR 30 Pat 454 : AIR 1951 Pat 91 (110, 111, 113) (Pt J) (Prs 51, 60) (SB).

——Arts. 31 (2) and 31-A — Adequacy of compensation, if justiciable—Validity of Saurashtra Barkhali Abolition Act, if can be challenged on ground of inadequacy of compensation—Compensation, if illusory—(Tenancy Laws — Saurashtra Barkhali Abolition Act (26 of 1951), S. 18).

However repugnant the impugned law may be to its sense of justice, it is not possible for the Court to examine the contents of the law on the question of the quantum of compensation; the question of the adequacy of the compensation; is not justiciable by the Court and the constitutionality of the Act cannot be challenged on that ground. A I R 1952 S C 252, Foll.

The validity of the Saurashtra Barkhali Abolition Act cannot be challenged on the ground of inadequacy of compensation.

Payment made under S. 18 is necessarily by way of compensation, even though that expression may not have been used No doubt the payment is spread over a number of years and the sum paid to the Barkhalidar every year is equivalent to one assessment of the land. The cumulative compensation paid is a sizeable sum and the only difference is that it is paid as an annuity instead of in a lump sum Ther fore it is not correct to call the cash annuity under S. 18 as the Barkhalidar's own money paid to him and the payment is not illusory. 8 Sau L R 70 : AIR 1955 Sau 80 (83, 84) (Pt C) (Prs 7, 8) (DB).

12 (b). Constitutional validity of enactments.

Legislative provisions declared valid.

● —Art. 31 (2) (as amended fourthly in 1955)—Inadequacy of compensation — Land Acquisition (Madras Amendment) Act (23 of 1961), S 3—Madras Amending Act does not offend Art. 31 (2).

The Land Acquisition (Madras Amendment) Act (23 of 1961) prescribes the principles for ascertaining the value of the property acquired. It was passed to amend the Land Acquisition Act, 1894, in the State of Madras for the purpose of enabling the State to acquire lands for housing schemes In fixing the compensation to be paid to claimants for lands acquired for housing schemes the Amending Act excludes what is described by Courts as the potential value of the land acquired. In awarding compensation if the potential value of the land is excluded, it cannot be said that the compensation awarded is the just equivalent of what the owner has been deprived of. But such an exclusion only pertains to the method of ascertaining the compensation. One of the elements that should properly be taken into account in fixing the compensation is omitted; it results in the inadequacy of the compensation, but that in itself does not constitute fraud on power of Legislature. The Madras Amending Act does not offend Art 31 (2) of the Constitution. P. Vajravelu Mudaliar v. Special Deputy Collector for Land Acquisition, W. Madras, (1965) 2 S C A 396 : (1964) 2 S C J 703 : (1964) 2 Mad L J (S C) 173 : (1964) 2 Andh W R (S C) 173 : AIR 1965 SC 1017 (1025, 1026) (Pr E) (Pr 17)

● ——Art. 31 (2) (before its amendment in 1956) — Acquisition of property — Adequate compensation—Madras Electricity Supply Undertakings (Acquisition) Act (29 of 1954), S 5 — Basis of compensation to be paid on acquisition — Amount equivalent of the undertaking taken over — Without necessary material placed before Court, it will not be able to hold compensation offered under S. 5 is inadequate.

Section 5 of the Madras Electricity Supply Undertakings (Acquisition) Act (29 of 1954), provides the the compensation payable to a licencee on whom an order has been served under S. 4 or whose undertaking has been taken over before the commencement of the Act, shall be determined under any one of the Bases A, B and C specified by the section. The failure of the Legislature to refer to the fair market-value cannot be regarded as conclusive or even presumptive evidence of the fact that what is intended to be paid under S. 5 does not amount to a just

equivalent of the undertaking taken over. In the absence of any material the Court is unable to hold that on looking at the scheme adopted by S. 5 itself, the petitioner's argument that what is offered by way of compensation is not a just equivalent, can be accepted. It may be that in some cases Basis B may work hardship and conceivably even Basis A or Basis C may not be as satisfactory as it should be; but when a party challenges the validity of a statutory provision like S. 5 it is necessary that the party must adduce satisfactory and sufficient material before the Court on which it wants the Court to hold that the compensation which would be paid under every one of the three Basis under the impugned statutory provision does not amount to a just equivalent. Looking merely at the scheme of the section itself it is impossible to arrive at such a conclusion. West Ramnad Electric Distribution Co., Ltd. v. State of Madras, (1964) 1 S C J 484 : (1964) 1 Mad L J (SC) 126 : (1964) 1 Andh W R (SC) 126 : (1963) 2 S C R 747 : (1963) 2 S C A 422 : AIR 1962 S C 1753 (1763, 1764) (Pt D) (Prs 25, 27).

● —Art. 31 (2) — Assam Land (Requisition and Acquisition Act) (25 of 1948) — Provisions of Act provide for the payment of agreed compensation — Therefore the Act is not constitutionally void as offending Art. 31 (2) of the Constitution. See Assam Land Requisition Act (25 of 1948). A I R 1962 S C 167.

● —Art. 31 (2) — Coal Bearing Areas (Acquisition and Development) Act 1957, Ss. 13 and 14 specify principles and manner of compensation – Validity of Act cannot be challenged on the ground of inadequacy of compensation. Burrakur Coal Co. v. Union of India, 1961 S C D 432 : (1961) 2 S C A 523 : (1962) 2 S C J 216 : (1962) 1 S C R 44 : A I R 1961 S C 954 (962, 963) (Pt G) (Prs 24 25. 26).

● —Arts. 31 (2), 31-A (1) (e) — Coal Bearing Areas (Acquisition and Development) Act (51 of 1957), Ss. 13 (4), 4, 5 — No provision for compensation for suspension of mine owners' rights Validity of Ss 4 and 5 cannot be challenged See Coal Bearing Areas (Acquisition and Development) Act (1957), S. 13 (4). AIR 1961 S C 954.

● —Arts. 31 and 31-A — Bombay Personal Inams Abolition Act, 1953 (42 of 1953), S. 17 (5) — Compensation not payable for loss to inamdar — Still Bombay Act is saved from attack under Art. 31.

Even though by virtue of sub s (5) of S. 17 of the Bombay Personal Inams Abolition Act, 1953, no compensation is to be paid for the loss to the inamdar of what he used to get because of the difference between the quit-rent and the full assessment, yet Art. 31-A of the Constitution saves the Bombay Personal Inams Abolition Act, 1953, from any attack under Art. 31 which is the only article providing for compensation. Gangadharrao Narayanrao Mujumdar v. State of Bombay, 63 Bom L R 511 : (1961) 1 S C R 943 : (1961) 1 S C J 398 : A I R 1961 S C 288 (290, 291) (Pt B) (Pr 8).

● —Art. 31—Vindhya Pradesh Abolition of Jagirs and Land Reforms Act (11 of 1952) (Schedule Cl 4 (e) and 8 (b) (i)—Cl 4 e) is valid—Schedule provides for the method of computing compensation. See Tenancy Laws—Vindhya Pradesh Abolition of Jagirs and Land Reforms Act (11 of 1952) Schedule, Cl. 4 (e). AIR 1960 S C 796.

● —Art. 31 (2) J & K. Big Landed Estates Abolition) Act (17 of 2007 , S. 26 Payment of compensation to the expropriated proprietors - Constitu nt Assembly deciding not to pay Act is not invalid. See Tenancy Laws J and K. Big Landed Estates (Abolition) Act (17 of 2007), S. 26 AIR 1959 S C 749.

● —Art. 31 (2) — Before Constitution (Fourth Amendment) Act (1955) — U. P. Transport Service (Development) Act (9 of 1955), Ss. 5 and 11 — Validity of — The Act provides for adequate compensation for the interest acquired within the meaning of Art. 31 (2). See Ibid, Art. 13. AIR 1959 S C 648.

—Art. 31 — U. P. Town Improvement Act (8 of 1919), S. 23 — Kanpur Urban Area Development Act (6 of 1945), S. 71 — U. P. Nagar Mahapalika Adhiniyam (2 of 1951), S. 365 (2) — Sections are not violative of either Art. 14 or Art. 31 of the Constitution as there is rational basis for fixing compensation. See Municipalities — U. P. Town Improvement Act (8 of 1919), S. 23. 1965 All L J 1203.

—Art. 31 (as amended by Fourth Amendment) — Provision for compensation and validity of an enactment — U. P. Acts 15 and 31 of 1952 — Validity — (Tenancy Laws — U. P. Land Tenures (Regulation of Transfers) Act (15 of 1952), S. 1— Tenancy Laws — U. P. Land Reforms (Supplementary) Act (31 of 1952), S. 1).

Under the law as interpreted before the Fourth Amendment to the Constitution, no distinction was made between a law which resulted in deprivation of property or by means of which acquisition or requisitioning could be made and in both these cases provision had to be made for payment of compensation. As a necessary corollary any law which did not provide for compensation but deprived a subject of his property, whether it was for the purposes of the State or for the purposes of anybody else was void. But now the effect of the Fourth Amendment of the Constitution by which Art. 31 is amended is that while a law for acquiring or requisitioning property for the State has to provide for compensation, it need not make it obligatory for the State to provide for compensation in case of deprivation of property in favour of somebody else.

As in the U. P. Acts (15 of 1952 and 31 of 1952) the deprivation of property involved is not in favour of the State nor do they deal with the requisitioning or acquisition of property, no provision for compensation is, therefore, necessary under the Constitution and the validity of any law which has brought about such deprivation of property cannot be hit by the provisions of Art. 31. 1957 All L J 698 : 1957 (II W R HC) 703 : I L R (1957) 2 All 320 : AIR 1957 All 549 (551) (Pt A) (Prs 6, 7, 8) (DB).

[Overruled in AIR 1963 S C 1019.]

—Art. 31—Andhra Inams (Abolition of Conversion into Ryotwari) Act (37 of 1956) — Constitutional validity—No violation of Art. 31.

The vires of the Andhra Inams (Abolition and Conversion into Ryotwari) Act, 1956, cannot be challenged under Art. 31 of the Constitution on the ground that it does not provide for compensation to the inamdar; S. 4 (3) contains a provision for the payment of compensation in the form of a ryotwari patta for one-third of the inam. It is true that the inamdar is not paid compensation in terms of cash. But the assignment of a share in the inam abolished or allotment of a definite extent of land is as good a compensation as payment, in cash. In fact S. 4 (3) speaks of the grant of patta to the inamdar as compensation payable to him in lieu of the extinguishment of his rights in the two-thirds share of such land. ILR (1961) 1 Andh Pra 524 : AIR 1963 Andh Pra 105 (106) (Prs 2, 7) (DB).

Art. 31(2)—Compensation—Assam Land (Requisition and Acquisition) Act (25 of 1948), S. 7 (3) and (4)—Validity.

Section 7 (3) of the Assam Land (Requisition and Acquisition) Act, 1948, clearly provides for the pay-

ment of compensation. It further provides the method for the determination of the amount and embodies the principles on which the compensation is to be paid. The amount of compensation to be awarded is controlled by sub-s. (4). The reasonable compensation which has to be awarded by the Collector, in the absence of any agreement is subject to the scrutiny by a Court on reference, and such a Court is to be guided by the provisions of the Land Acquisition Act. Sub-sections (3) and (4) have got to be read together. The element of arbitration is ruled out by the use of the words 'reasonable compensation' in sub-s. (2). It cannot be said that the Act is hit by Art. 31 (2). The decision in A I R 1954 S C 170 does not affect the validity of S. 7 (3) and (4) of the Assam Act. The provisions impugned in the Supreme Court case were regarding the payment of compensation for the acquisition of property, while the provisions of S. 7 (3) and (4) only deal with the payment of compensation for requisitioning certain land. There is bound to be difference in the market value of the property in these two cases. **I L R (1959) 11 Assam 1: AIR 1958 Assam 140 (143, 144, 145) (Pt A) (Prs 4, 5, 7) (DB).**

——Art. 31 (2) — Acquisition or taking possession of property — West Bengal Estates Acquisition Act — Validity — (Tenancy Laws — West Bengal Estates Acquisition Act (1 of 1954)—Construction and scope).

There are ample provisions in the West Bengal Act (1 of 1954) and Rules for the payment of compensation by the State acquiring the properties under the Act, and the payment is enforceable in Courts of law. The adequacy of such payment is, however, beyond the cognisance of the Courts. There can be no bar to the maintainability of a suit to enforce payment of compensation. Sections 17 and 18 of the Limitation Act, although that Act does not provide a cause of action, also indicate that the view that a suit lies under such circumstances is the proper view to take. The fact that the compensation has not been charged by the Act on the consolidated fund, and, as such, is votable; cannot in any way affect the right to receive compensation which does not depend on the voting of the grant. The State having acquired the property is bound to pay compensation. Therefore on that ground also the validity of the Act is not affected. **62 Cal W N 14 : A I R 1958 Cal 96 (102, 130) (Pt E) (Prs 17, 18, 19).**

——Art. 31 (2) — Sufficient compliance — Essential Supplies (Temporary Powers) Act (1946) — W. B. Foodgrains (Intensive Procurement) Order, 1952—Notifications Nos. 10365 F. D. to 10368 F. D.).

The Essential Supplies (Temporary Powers) Act and the West Bengal Foodgrains (Intensive Procurement) Order read with the specification of prices, etc Notification No. 10365 F. D. fixes the amount of compensation and the manner and principle of its determination and therefore is a sufficient compliance with Art. 31 (2) of the Constitution A I R 1953 Cal 548; A I R 1953 S C 252; A I R 1951 Cal 111, Foll. 57 Cal W N 913 : **AIR 1954 Cal 56 (58) (Pt A) (Prs 12, 13).**

——Art. 31 (2), Sch. 7, List I, Entries 33, 43, 44 and 52 and Sch 7, List 2, Entry 36 — Powers of Union Legislature —(Iron and Steel Companies Amalgamation Ordinance (8 of 1952)) — (Iron and Steel Companies Amalgamation Act (89 of 1953) — Companies Act (1913), Ss. 153-A and 153-B).

Sections 153-A and 153-B, Companies Act, indicate that amalgamation or merger of companies or Corporations is a matter which relates to incorporation or regulation of companies. The effect of the Ordinance 8 of 1952 and the Act 89 of 1953 is to combine the Bengal Steel Corporation and the Iron and Steel Company and make their share-holders the co-owners of the combined assets and not to deprive them of their entire interest or ownership, which is essential for acquisition. The effect of the legislation is amalgamation.

Since particular industry has been brought under control of the Union of India by Industries Development and Regulation Act, 1951 and as the legislations in question show that the Central Government has retained control in the amalgamated companies and that they have been passed in the interests of the general public and Union their pith and substance is that they legislate with regard to matters relating to Entries 43 and 44 of List 1 read with Entry 52 of the same list and not relating to matter which fall under Art. 31 (2) and Entry 33 of List 1 or 36 of List 2. For the same reasons the subject-matter of the legislation is also not within the exclusive jurisdiction of the Provincial Legislature. Case-law discussed.

Even on the assumption that the impugned legislation relates to acquisition of property they fall within Entry 33 of List 1 and were validly enacted by the Union Parliament by reason of the declaration it has made under Entry 52 of List 1 and because they were made in the interests of the Union and the general public.

Article 31(2) is also not offended because the shareholders of Bengal Steel Corporation are compensated by shares in the Iron and Steel Company and the Corporation itself acquires interests in the undertakings and assets of the latter company in addition to its own undertakings and assets. **AIR 1953 Cal 695 (699, 700) (Pt D) (Prs 12, 15, 18, 19, 20).**

——Art. 31(2)—West Bengal Land Development and Planning Act (21 of 1948), S. 4—Validity.

Article 31 (2) of the Constitution speaks of compensation for the acquisition of the property itself but the proviso to S. 4 of the Act 21 of 1948 does not relate to payment of compensation in this sense but it deals with question of payment of damages that may be caused during temporary occupation of the lands by reason of acts done as contemplated by the section itself. Section 4 of the Act cannot be held to be invalid on the ground that the proviso is an unreasonable provision inasmuch as the damage can be arbitrarily assessed by the Collector or persons mentioned in the proviso. **89 Cal L J 301 : A I R 1952 Cal 679 (683) (Pt I) (Pr 8).**

——Art. 31 (2) — Bengal Foodgrains (Disposal and Acquisition) Order 1947—Validity.

Clause 3 (2) of the Bengal Foodgrains (Disposal and Acquisition) Order (1947) complies with Art. 31 (2) of the Constitution and hence the Order is not void. The question of adequacy of compensation must depend on various factors. The economic conditions prevailing in the Country and the food situation of the Country require that ceiling prices fixed by the Government should be treated or accepted as the measure of just compensation. Just compensation cannot mean that the Government must compensate the owner of the paddy for potential profits lost because of Economic distress in the Country and consequent price control. (1950) 339 U S R 121, Rel. on. **56 Cal W N 137: AIR 1952 Cal 100 (101, 102)(Pt C) (Prs 24, 26, 28).**

—Art. 31 — Defence of Hyderabad Regulation — Rules under—R. 66 A - Validity—Provision has been made for compensation being awarded to the person whose property is acquired in the same way as compensation is awarded when land is acquired under the Land Acquisition Act. See Defence of Hyderabad Regulation (1352-F) Rules under. AIR 1954 Hyd 121 (DB).

● ——**Art. 31—Madhya Bharat Zamindari Abolition Act (13 of 1951)—Validity.**

The Madhya Bharat Zamindari Abolition Act cannot be held to be confiscatory as not providing for compensation being given to Chakdars and Blockdars and as not providing for compensation for forest lands, pastures, stray trees and similar other items pertaining to Zamindari. AIR 1951 All 674 (FB), Rel. on. Ram Dubey v. Government of the State of Madhya Bharat, I L R (1952) Madh B 178 : AIR 1952 Madh B 57 (67, 68) (Pt I) (Prs 40, 42) (FB).

——**Arts. 31 (2) and 14—Land Acquisition (M. P. Amendment) Act, 1959 (M. P. Act 5 of 1959), S. 3—Validity—If discriminatory.**

The Land Acquisition (M. P. Amendment) Act, 1959 is a valid piece of legislation and is not hit by Art. 31 (2) of the Constitution. Article 31 (2), as it stands now, makes the Legislature the sole judge for determining a just equivalent of the acquired property. The amendments made by the said Act do not deny any compensation for the property acquired and the date with reference to which compensation is to be ascertained cannot be said to be an irrelevant or remote one giving only an illusory compensation.

It cannot be said that there has been a discrimination in the matter of compensation between land acquired in Bhopal area and other areas in the State. The classification between land in Bhopal area and other parts of the State is reasonable, and is for the purpose of enabling the State to acquire land at a reasonable price in Bhopal for the construction of the capital. The amendments by the M. P. Act (5 of 1959), therefore, are not hit by Art. 14 of the Constitution. I L R (1961) Madh Pra 1 : 1961 M P C 405 : 1961 M P L J 881 : 1961 Jab L J 991 : A I R 1961 Madh Pra 280 (281, 282) (Prs 3, 4, 5, 6).

——**Art. 31—Scope—Governor-General in Council's Order No 179 of 1836—If ultra vires.**

The Governor-General in Council's Order No. 179 of 1836 empowering the Government of India to retain the power of resumption of land within the cantonment area granted for building purposes cannot be declared invalid on the ground that no compensation has been determined and paid. **1960 M P L J (Notes) 199.**

——**Art. 31 (2)**—Section 218 (4), C. P. Land Revenue Act does not contravene Art. 31 (2) of the Constitution of India - Provision is made for payment of compensation. See C. P. Land Revenue Act (2 of 1917), S. 218 (4). **AIR 1956 Nag 101.**

——**Art. 31 — Bihar Land Reforms Act (30 of 1950), S. 4 (h)—Validity — (Bihar Land Reforms Act (30 of 1950), S. 4 (h)).**

It is fallacious to argue that S. 4 (h), Bihar Land Reforms Act, affects the right of compensation payable by the Government to the proprietor or to the transferee If the transfer is set aside by the Collector, the result is that the parent estate is increased in extent and a liability is thrown upon the Government to pay increased compensation pro tanto to the proprietor of the estate. The question at issue therefore is not the question of non-payment of compensation; the question is merely as to how the compensation is to be apportioned between the transferor and the transferee.

The power of enquiry under S. 4 (h) is also protected by ample safeguards. The Collector is required to give reasonable notice to the parties and to pass order only after hearing the parties concerned. The Collector is not given final authority to annul the transfer or take possession of the property. The Collector must take the previous sanction of the State Government before he makes order of annulment of the transfer or before he enters into possession of the property. The requirements of S. 4 (h) are reasonable both from procedural and substantive aspect, and there is no violation of the guarantee under Art. 31 of the Constitution. **A I R 1954 Pat 550 (544) (Pt D) (Pr 6) (DB).**

——**Art. 31 (2)**—Bihar Land Reforms Act (30 of 1950), Ss. 32 (2) and 24 (3) — Principles and manners in which compensation is to be determined and given specified in the sections — No violation of Art. 31 (2). See Tenancy Laws — Bihar Land Reforms Act (30 of 1950), S. 32 (2). **AIR 1953 Pat 121.**

——Art. 31—Tenancy Laws—E. P. Holding (Consolidation and Prevention of Fragmentation) Act (50 of 1948), S. 1—Validity of Act — The provisions of the Act as a whole do not violate the Constitution and the Act makes provisions for the payment of adequate compensation in every case. **57 Pun L R 479 : I L R (1956) Punj 47 : AIR 1956 Punj 88 (89) (Pt A) (Pr 4) (DB).**

——**Art. 31 (2) — Tenancy Laws — East Punjab Holding (Consolidation and Prevention of Fragmentation) Act (50 of 1948) does not contravene Art. 31 (2)—Tenancy Laws — East Punjab Holdings (Consolidation and Prevention of Fragmentation Act (50 of 1948), Ss. 15 and 34).**

Section 15 (1), East Punjab Holding (Consolidation and Prevention of Fragmentation) Act does make a provision for the payment of compensation to any owner who is allowed a holding of lesser market value than that of his original holding and also provides that the scheme should have a provision for the recovery of compensation from one owner for payment to another. Although the amount of compensation is not fixed—as indeed it could not be—the principles on which and the manner in which the compensation is to be determined and given has been provided for in S. 34 (1) of the Act. It cannot be said therefore that this Act in any way contravenes the provisions of Art. 31 (2). **I L R (1955) Punj 459 : 57 Punj L R 63 : AIR 1955 Punj 161 (162) (Pt A) (Pr 4) (DB).**

——Art. 31—Punjab Development of Damaged Areas Act (10 of 1951), Ss. 1, 11, 12—There is nothing in S. 12 (1) to say that the execution of the Scheme must come before the award or computation of compensation. In fact under S. 11 the compensation has to be computed by the Collector before the demolition of the building takes place and before the Scheme is put into effect. There is therefore nothing in the Act which contravenes Art. 31 or Art. 14. **55 Pun L R 488 : AIR 1954 Punj 110 (112) (Pt D) (Prs 8, 9) (DB).**

● ——**Art. 31 (2) — Validity of Rajasthan Act (6 of 1952)—Does not effect confiscation without compensation.** See Tenancy Laws — Rajasthan Land Reforms and Resumption of Jagirs Act 6 of 1952, S. 22 (1) (g). **AIR 1954 Raj 291 (FB).**

● ——**Art. 31 (2) — Just and fair compensation—Compensation provided by Rajasthan Act 6 of 1952 held proper—Tenancy Laws — Rajasthan Land Reforms and Resumption of Jagirs Act (6 of 1952), S. 23 and Sch. II.**

In Rajasthan, Jagirs are generally not alienable, and therefore they cannot be sold. A jagirdar generally is not a full proprietor having a right to sell away his property. His rights are, therefore, something less than that of a full proprietor and are not marketable either. In these circumstances, compensation at the rate of 9 to 18 times the net income provided by the Rajasthan Act cannot be said to be inadequate particularly in view of the fact that certain properties are exempted from acquisition as mentioned in S. 23. It cannot, therefore, be said that the Rajasthan Act (6 of

1952) does not provide for just and fair compensation and thereby contravenes Art. 31 (2) of the Constitution. Amar Singh v. State of Rajasthan. **1955 Raj L W 212 : ILR (1955) 5 Raj 149 : AIR 1954 Raj 291 (298) (Pt F) (Pr 19) (FB).**

——Art. 31 (2) — Marwar Land Revenue Act (40 of 1949), S. 231 (4)—Sub-section complies with requirements of Art. 31 (2) in the matter of granting compenation upon acquisition—It also lays down the manner in which compensation is to be given — Section 231 is intra vires. **1953 Raj L W 75 : ILR (1953) 3 Raj 162 : A I R 1953 Raj 173 (177) (Pt E) (Prs 18, 19) (DB).**

Legislative provisions declared invalid.

● ——Art. 31 (2)—Provisions of S. 299 (2) and Art. 31 (2) are pari materia Both lay down necessary conditions for valid acquisition No provision for compensation—Legislative competency to enact is affected —Same principles apply to temporary Acts—Bombay Amending Act (4 of 1948) held invalid and non-existent—Land Acquisition (Bombay Amendment) Act (4 of 1948), S. 3. See Government of India Act (1935), S. 299 (2). **AIR 1965 SC 1096.**

● ——**Art. 31—Madras Lignite (Acquisition of Land) Act (11 of 1953) - Validity — Compensation for acquisition for value on some prior date anterior to acquisition—Provision ultra vires Art. 31.**

The provisions which require the Land Acquisition Officer and the Court to assess compensation of the land compulsorily acquired only on the market value of the land of April 28, 1947; together with the value of agricultural improvements on the land commenced, made or effected after that date, and before the date of the publication of the notification under S. 4 (1), without taking into consideration the value of non-agricultural improvements made after that date, must be regarded as invalid—Fixation of compensation for compulsory acquisition of lands notified many years after the date, on the market value prevailing on the date on which lignite was discovered in those areas is wholly arbitrary and inconsistent with the letter and spirit of Art. 31 (2) as it stood before it was amended by the Constitution (Fourth Amendment) Act, 1956. If the owner is by a constitutional guarantee protected against expropriation of his property otherwise than for a just monetary equivalent it would be impossible to hold that a law which authorises acquisition of land not for its true value, but for value frozen on some date anterior to the acquisition, on the assumption that all appreciation in its value since that date is attributable to purposes for which the State may use the land at some future date, must be regarded as infringing the fundamental right. The right which is guaranteed is undoubtedly the right to a just indemnification for loss, and appreciation in the market value of the land because of the proposed acquisition may in assessing compensation be ignored. Even the Land Aquisition Act provides for assessment of compensation on the basis of market value of the land not on the date on which interest of the owner of the land is extinguished under S. 16, but on the basis of market value prevailing on the date on which the notification under S. 4 (1) is issued. Any principle for determination of compensation denying to the owner all increments in value of between a fixed date and the date of issue of the notification under S. 4 (1), must prima facie, be regarded as denying to him the true equivalent of the land which is expropriated and it is for the State to show that fixation of compensation on the market value on an anterior date does not amount to a violation of the constitutional guarantee. The statement of objects and reasons for the Act clearly discloses that initially mining operations were started by the Government on a small area Assuming that in appropriate cases, fixation of a date anterior to the publication of the notification under S. 4 (1) for ascertainment of market value of the land to be acquired, may not always be regarded as a violation of the constitutional guarantee, in the absence of evidence that compensation assessed on the basis of market value on such anterior date, awards to the expropriated owner a just monetary value of his property at the date on which his interest is extinguished, the provisions of the Act arbitrarily fixing compensation based on the market value at a date many years before the notification under S. 4 (1) was issued, cannot be regarded as valid. To deny to the owner of the land compensation at rates which justly indemnify him for his loss by awarding him compensation at rates prevailing ten years before the date on which the notification under S. 4 (1) was issued amounts in the circumstances to a flagrant infringement of the fundamental right of the owner of the land under Art. 31 (2) as it stood when the Act was enacted. State of Madras v. Namasivaya Mudaliar, **(1965) 2 Andh W R (S C) 82 : (1965) 2 Mad L J (S C) 82 : (1965) 2 S C J 563 : (1964) 6 S C R 936 : AIR 1965 S C 190 (192, 193, 194) (Prs 4, 5, 6).**

● ——**Art. 31 (2) (as it stood before the 4th Amendment)**—Bhopal Reclamation & Development of Lands (Eradication of Kans) Act (13 of 1954), Ss. 4 (1) and 6 (1) (b)—Provisions are violative of Art. 31 (2)—There is 'taking of possession' by State and no provision for payment of compensation. See Bhopal Reclamation and Development of Lands (Eradication of Kans) Act (13 of 1954), S. 4 (1). **AIR 1965 S C 124.**

● ——**Art. 31** (before Constitution Fourth Amendment Act)—Scope—'Void'—Meaning—Post-Constitution law not providing for payment of compensation and thus violating Art. 31 (2)—Point of time at which its constitutionality has to be judged—Doctrine of eclipse— Applicability — Doctrine does not apply to Post-Constitution legislation — Such legislation does not revive on amendment of Constitution—U. P. Land Tenures (Regulation of Transfers) Act (15 of 1962). Held, void. See Ibid, Preamble. **AIR 1963 S C 1019.**

● ——Art. 31 (2)—Validity of Cl. 25, Rajasthan Foodgrains Control Order, 1949—Clause leaves the fixation of compensation entirely to the discretion of executive authority to fix any compensation it likes—It offends Art. 31 (2). See Rajasthan Foodgrains Control Order (1949), Cl. 25. **AIR 1954 S C 307.**

● ——Art. 31—Sholapur Spinning and Weaving Company (Emergency Provisions) Ordinance offends Art. 31. as it authorises deprivation of property without compensation. See Sholapur Spinning and Weaving Company (Emergency Provisions) Ordinance (2 of 1950). **AIR 1954 S C 119.**

——**Art. 31 (2) and (2-A)—Tenancy Laws—U. P. Consolidation of Holdings Act, 1953 (4 of 1954), S. 14 (ee) —Validity — Words 'common utility' in S. 14 (ee)— Meaning.**

The phrase 'common utility' in cl. (ee) of S. 14 of the U. P. Consolidation of Holdings Act was intended to mean 'public utility' and not merely the utility of those tenure-holders who contributed their land for such purposes or even of the villagers merely.

No compensation is paid to the tenure-holder and therefore cl. (ee) of S. 14 of the Act and the rules thereunder, under which a tenure-holder is deprived of his land for public purposes are invalid as they contravene the provisions of Art. 31. As the other provisions of the Act and the rules are severable, they are not necessarily struck down and are valid. **1956 All W R (H C) 643 : 1956 All L J 878 : AIR 1957 All 297 (303, 305) (Pt F) (Prs 22, 33) (DB).**

——**Art. 31—Scope—Tenancy Laws — U. P. Consolidation of Holdings Act (8 of 1939), S 14 (1) (ee) Land taken away from tenure-holders without payment of compensation — First part of Cl. (ee) is invalid.**

In so far as the U. P. Consolidation of Holdings Act and the Rules made under it, authorise the taking away from the tenure-holders of land for purposes of common utility or public purposes without payment of compensation, they contravene the provisions of Art. 31, Constitution of India, as it stood when cl. (ee) of S. 14 (1) of the said Act was enacted. 1956 All L J 924 · 1956 All W R (HC) 864 : AIR 1957 All 153 (154, 155) (Pt A) (Prs 3, 11) (DB).

——**Art. 31** — Madras Estates (Abolition and Conversion into Ryotwari) Act (26 of 1948), S. 20, Proviso 2 —Rights created after 1st July 1945 are voidable without paying compensation— (Contract Act (1872), S. 2 (i))—Interpretation of Statutes—Proviso) — (Civil P. C. (1908), Preamble)— (Interpretation of Statutes—Proviso. See Tenancy Law—Madras Estate (Abolition and Conversion into Ryotwari) Act (26 of 1948), S. 20. Proviso 2. **AIR 1958 Andh Pra 522.**

——**Arts. 31 and 13 (2)—Abolition of cash grants without compensation held void—Subsequent amendment of Art. 31—Effect of — (Hyderabad (Abolition of Cash Grants) Act (33 of 1952), S. 3 (2) (b))—(Constitution (Fourth Amendment) Act (1955), S. 2).**

Expropriation of properties of all kinds has under the Constitution been made subject to the payment of compensation, and it is immaterial whether the property be moveable or immovable. AIR 1955 Hyd 44; AIR 1954 SC 92 and AIR 1954 S C 119, Rel. on. Sub-section (2) (b) added by Hyderabad Act 23 of 1954 to S. 3 of the Hyderabad Act 33 of 1952, provides for abolishing cash grants mentioned in Part C of the Schedule without providing for compensation to the grant holders. Section 3 (2) (b), therefore, contravened the provisions of Art. 31, as it stood before the Constitution (Fourth Amendment) Act of 1955. It was, therefore, void under Art. 13 (2).

Section 3 (2) (b), Hyderabad (Abolition of Cash Grants) Act, is not revived because the bar was removed under the Constitution (Fourth Amendment) Act, 1955.

In S. 3 (2) words 'and part C' make the direction of stoppage from a particular date contained in the sub-section applicable to these grants. These words alone are of no constitutional validity. Their invalidity does not affect the other provisions of the sub-s. (2) of S. 3, which would be valid and legally operative. AIR 1957 Pat 44, Dissented from. **ILR (1959) Andh Pra 1089 : (1957) 2 Andh W R 324 : 1957 Andh L T 903 : AIR 1957 Andh Pra 1034 (1037, 1039) (Pt B) (Prs 12, 22) (DB).**

——**Art. 31**—Requisitioning and Acquisition of Immovable Property Act (33 of 1952), S. 8 (3) (b)—Constitutional validity — Award of compensation—Modes of assessment — Preference for lesser payment —Compensation not just — Section ultra vires Art. 31. (Before amendment of 1955). See Requisitioning and Acquisition of Immoveable Property Act (33 of 1952), S. 8 (3) (b). **('65) 67 Bom L R 85: 1965 Mah L J 271: AIR 1966 Bom 36 (DB).**

——**Art. 31 (2)** — Orissa Development of Industries, Irrigation, Agriculture, Capital Construction and Resettlement of Displaced Persons Land Acquisition Act (18 of 1948), S. 7 (1) (e), Proviso 1 — Proviso offends S. 299 (2) of Government of India Act as compensation provided is grossly inadequate and is invalid from its inception — Principles for determining compensation—Principles laid down in A I R 1955 Orissa 97 if applicable—Estimate of yield on basis of Hamid Settlement Report—Liability for payment of interest prior to date of filing of petition before arbitrator. See Government of India Act (1935), S. 299 (2). **AIR 1961 Orissa 196 (DB).**

——**Art. 31 (2), (6)** — Orissa Development of Industries, Irrigation, Agriculture, Capital Construction and Resettlement of Displaced Persons (Land Acquisition) Act (18 of 1948), S. 7 (1) (e), First Proviso — Validity.

The Orissa Act 18 of 1948 comes within the language of Cl. (6) of Art. 31 as the first proviso to S. 7 (1) (e) of the Act was enacted not more than 18 months before the commencement of the Constitution. The Act did not receive the certificate of the President as contemplated under Cl. (6). The fixation at the rate prevailing in the year 1939 with an addition of fifty per cent. is manifestly an arbitrary one and can never be taken to be a fair, just and equivalent price of the land which may be acquired at any time. Compensation must always necessarily mean "a just, reasonable and equivalent price" of the land acquired.

Far from conforming to the above standard the principles laid down by the State Legislature entitled the Government to acquire lands at a merely nominal value. Hence the first proviso to S. 1 (e) of the Act is ultra vires as contravening Art. 31 (2) of the Constitution. The compensation therefore is to be fixed on the principles laid down under S. 23, Land Acquisition Act of 1894, that is to say, according to the market value of the acquired land on the date of acquisition. AIR 1954 S C 170 Foll. **I L R (1956) Cut 113 : AIR 1955 Orissa 97 (98, 99) (Pt A) (Prs 3, 4, 5, 6, 7) (DB).**

——**Art. 31 (2)**—Bihar Act (2 of 1948)—Is ultra vires as provisions with regard to compensation cannot be regarded as true compliance of S. 299 of Government of India Act, 1935. See Ranchi District Aboriginal Raiyats Agricultural Lands Restoration Act (2 of 1948), Art. 4 (as it stood before Bihar Act, 15 of 1951). **AIR 1958 Pat 519 (DB).**

——**Art. 31** — East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (50 of 1948) Section 18 (c) — Taking possession of land without payment of compensation is unconstitutional — Conflict between administrative convenience and constitutional mandates — Courts bound to uphold constitutional mandates. See Tenancy Laws— East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (50 of 1948), S. 18 (c). **AIR 1964 Punj 117.**

——**Art. 31** — Resettlement of Displaced Persons (Land Acquisition) Act (60 of 1948), S. 7 (E) Provisos —The provisos whittle down the amount of fair compensation due to the owner and the provisions of Art. 31 have been violated. **AIR 1955 Punj 55 (DB).**

——**Art. 31 (2)** — Rajasthan Tenancy Act (3 of 1955), Ss. 15, 15-A — Acquisition of khatedari rights under S. 15—Subsequent enactment of S. 15-A, taking away these rights — No provision for compensation — S. 15-A offends Art. 31 (2). **ILR (1962) 12 Raj 900 : AIR 1963 Raj 72 (75, 76, 77) (Pt B) (Prs 16, 17, 18, 21, 22, 25) (DB).**

12 (c). Miscellaneous.

——**Art. 31**—Unit of acquisition is mahal — Minus assets cannot be adjusted against compensation payable in respect of other estate of same person. See Tenancy Laws—U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 4. **ILR (1959) 2 All 671.**

——**Art. 31 (2)**—Premature cancellation of permits of stage carriage permit holders—Right to compensation. See Ibid, Art. 19 (1) (g). **AIR 1957 All 320 (DB).**

——**Arts. 31 (2), 31-A— Right of Inamdar to compensation under S. 17 of Bombay Personal Inams Abolition Act.**

Quaere : Whether with regard to reversionary rights of inamdar he can get compensation under S. 17 of the Bombay Personal Inams Abolition Act (42 of 1953). **56 Bom L R 1062 : ILR 1955 Bom 127: AIR 1955 Bom 28 (33) (Pt D) (Pr 9) (DB).**

——Art. 31—Applicability — Petitioner alleging that Oriental Gas Company Act (15 of 1960), violated Art. 31 inasmuch as no compensation was paid to him —Held that the petitioner's right under the contract with the Company was not touched and therefore the petitioner was not entitled to any compensation. 65 Cal W N 545: AIR 1961 Cal 267 (284) (Pt H) (Pr 41).

[Reversed on another point in AIR 1962 S C 1044.]

——Art. 31 (2)—West Bengal Land Development and Planning Act (21 of 1948) — Validity—West Bengal Land Development and Planning Act (21 of 1948).

Although Section 8, proviso (b) of the Act has been held to be ultra vires, the proviso is severable from the other provisions of the Act and the rest of the Act therefore can stand as a valid piece of legislation. The expression "so far as may apply" in Section 8 makes it clear that the provisions as to compensation are applicable to acquisition under the Act. Now that the proviso (b) to section 8 is out of the way, there is no difficulty in getting compensation under the general provisions of the Land Acquisition Act. AIR 1951 Cal 111, Rel. on. 89 Cal L J 301: AIR 1952 Cal 679 (682, 683) (Pt H) (Prs 7, 8).

——Art. 31 (2)— Land Acquisition Act (1874), S. 6— Acquisition proceedings taken after 14th May, 1954 —Procedure under Act not followed— Art. 31 (2) is contravened.

It is only after a proper award is made under the Land Acquisition Act and possession is taken that the title vests in the Government. But when the owner of land had acquired his fundamental rights under the Constitution as early as 14th May, 1954 and all proceedings under the Land Acquisition Act taken thereafter which specify the principles as well as the provisions which prescribe the manner in which compensation is to be determined and given appear to have been violated, the owner's right under Art. 31 (2) must be held to have been infringed. AIR 1960 J & K 78 (80) (Pt C) (Pr 12) (DB).

——Art. 31—Acquisition without compensation—The principle of compensation cannot be invoked in support of the contention that what is not compensated for is not acquired by Government. 1959 Mad W N 688 : 72 Mad L W 770 : (1960) 1 Mad L J 276.

——Art. 31 (2)—Houses and Rents — Madras Buildings (Lease and Rent) Control Act (25 of 1949), S. 3 (8) (as amended by Madras Act, 8 of 1951)—Tenant's possession under void lease — Right to compensate. See Houses and Rents —Madras Buildings (Lease and Rent) Control Act (25 of 1949), S. 3 (8). AIR 1953 Mad 257.

——Art. 31—Taking property of subject during war —Payment of compensation — Government has no power during war to take the property of a subject for administrative purposes without paying compensation. See Government of India Act (1935), S. 299. AIR 1956 Manipur 4.

——Art. 31 (1)—Lease for carrying on teak operation in forest—Termination of lease— Deprivation of property without compensation—Infringement of fundamental rights—Issue of writ of mandamus—No other remedy open. See Constitution of India Art. 19 (1) (f). AIR 1955 Manipur 49 (54, 55, 56) (Pt A) (Prs 17, 18, 19, 20, 26, 27).

●——Art. 31 (2)—Acquisition of property—Payment of compensation.

If a person has on account of the effiux of time acquired title by adverse possession to a property which was at one time a public property that property cannot be taken by the State even according to the continental doctrine of eminent domain subsequently adopted in America, without payment of compensation. AIR 1952 S C 252, Foll. Brij Bhukan v. S. D. O. Siwan, 1954 B L J R 513 : ILR 33 Pat 690 : AIR 1955 Pat 1 (11) (Pt B) (Pr 6) (SB).

13. "Property."

●——Arts. 31 (2) and 19 (1) (f) — Shri Jagannath Temple Act, 1954 (Orissa Act 11 of 1955), S. 6 — Act is not unconstitutional on the ground that it takes away the sole management of the Temple which was vested in the Raja of Puri and his ancestors — Held, that the right of Superintendence was not property in the case for it carried no beneficial enjoyment of any property with it and that that right had not been acquired by the State which Art. 31 (2) requires. See Shri Jagannath Temple Act, 1954 (Orissa Act 11 of 1955), S. 6. AIR 1964 S C 1501.

●——Arts. 31 (2), 14, 19 (1) (f), 25 (1) and 26 — Legislature taking over secular affairs of religious institution—Validity of Nathdwara Temple Act — Act does not contravene Articles — Provisions of the Act except first part of S. 30 (2) (a) are valid— The right to have the custody of the property such as the custodian has, or the right to manage the property such as the Manager possesses or the right to administer the trust property for the benefit of the beneficiary which the trustee can do, cannot be regarded as a right to property under Art. 19 (1) (f) and for the same reason, it does not constitute property under Art. 31 (2). See Rajasthan Nathdwara Temple Act (13 of 1959), S. 2 (vii). AIR 1962 Raj 196, Reversed in part. AIR 1963 S C 1638.

●——Art. 31 (2) — It is only a person who has some interest in property that can complain that the impugned legislation invades that right under Art. 19 (1) (f) or Art. 31 (2) and if it is abandoned property, ex hypothesi there is no one who has any interest in it. See Bombay Labour Welfare Fund Act (40 of 1953), S. 3 (1). AIR 1958 S C 328.

●——Art. 31 (1) and (2)—Rights of quasi-permanent allottee do not constitute property within Article— See Ibid, Art. 19 (1) (f). AIR 1957 S C 599.

●——Art. 31 — Property—Right to use public highway for trade — Nature of —(Easements Act (1882), S. 4).

The right to use a public highway for purposes of trade is not in the nature of an easement and as such cannot be reckoned as property in law. Saghir Ahmad v. State of U. P. 1954 S C J 819 : (1954) 2 Mad L J 622 : 1954 S C A 1218 : 1955 All W R 23 : 68 Mad L W 8 : 1955 All L J 38 : 1955 S C R 767 : AIR 1954 S C 728 (733) (Pt A) (Pr 7).

●——Art. 31—'Property', meaning of.

The mills, machineries, stock, etc., of the respondent company are 'property' within the meaning of Arts. 19 and 31. A contract or agreement which a person may have with the company and which may be cancelled by the directors in exercise of powers under the Sholapur Spinning and Weaving Company (Emergency Provisions) Ordinance (2 of 1950) will undoubtedly be 'property' within the meaning of the two Articles.

The rights of the shareholders, e. g., the right of voting, the right to elect directors and the right to apply for the winding up of the company are no doubt valuable rights but it is doubtful if any of these rights can be called 'property' within the meaning of Art. 31 (2) for, by itself and apart from the shares, none of them can be acquired or disposed.

Property includes 'any interest' in 'any commercial or industrial undertaking'. It also includes any interest in 'any company owning' any interest in any commercial or industrial undertaking.

The word 'property' used in the Article must be construed in the widest sense as connoting a bundle of rights exercisable by the owner in respect thereof and embracing within its purview both corporeal and incorporeal rights. The word 'property' is not defined in the Constitution and there is no good reason to restrict its meaning. Dwarkadas Shrinivas v. Sholapur Spinning and Weaving Co., Ltd. **1954 S C J 175: (1954) 1 Mad L J 355 : 67 Mad L W 176 : (1954) 24 Com Cas 103 : 1954 S C A 132 : 56 Bom L R 681: 1954 S C R 674 : AIR 1954 S C 119 (135, 136, 138, 139) (Pt E) (Prs 48, 50, 59, 78).**

● **—Art. 31 (2)—Acquisition of proprietary rights apart from land—(Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act, 1950 (1 of 1951)).**

It is open to Government to acquire the whole of the rights of an owner or a part of that right. Leasehold and other similar rights can always be acquired and if a person owns the totality of rights, it is not necessary to acquire the whole interest of that person if it is not needed for public purposes—State can acquire proprietary rights in land and leave bhumidari rights with landlord. Per Mahajan J. State of Bihar v. Kameshwar Singh, **1952 S C J 427 : I L R 31 Pat 565 : 1952 S C R 889 : 1953 S C A 53 : 65 Mad L W 527 : AIR 1952 S C 252 (313) (Pt ZI) (Pr 218).**

● **——Art. 31—Property—Meaning — Right to "property" — If infringed by the Sholapur Spinning and Weaving Co. (Emergency Provisions) Act (28 of 1950). See Ibid, Art. 14. AIR 1951 S C 41.**

——Art. 31 — 'Property' — Cash grants held 'property.'

The word 'property' occurring in Art. 31 is not confined to immovable property, and the elements of hereditability and enjoyment of the benefit without any rendition of services are sufficient insignia of property to invest the cash grants with the characteristic of property as used in that Article. Restriction against alienation cannot be sufficient to exclude the grants from being property.

Held, that all the grants covered by the Writ Petitions were properties. AIR 1955 Hyd 44, Foll.; AIR 1954 S C 728, Rel. on. **I L R (1959) Andh Pra 1089 : (1957) 2 Andh W R 324 : 1957 Andh L T 903: AIR 1957 Andh Pra 1034 (1036, 1037) (Pt A) (Pr 10) (DB).**

● **——Arts. 31 (2) and 19 (1) (f)—Right to enjoy land held free of land revenue whether is 'property'.**

Per Ram Labhaya and Deka, JJ. — Enjoyment of a landed property without paying land revenue does not amount to a property in the eye of law.

Per Sarjoo Prosad, C. J. (Contra): — The word property as used in Arts. 19 (1) (f) and 31 (2) of the Constitution includes generally speaking, the interest to hold land free from payment of revenue. The fact that by virtue of the transfers the petitioner's ancestors acquired a right to hold the estates free from payment of the Government revenue for ever constitutes an important attribute of ownership and is a property right. Girijananda v. State of Assam, **AIR 1956 Assam 33 (37, 45, 48) (Pt B) (Prs 8, 41, 53) (SB).**

● **——Art. 31 (2)—Incidents of ownership — Applicability of Art. 31 (2).**

Per Ram Labhaya, J. — The right of ownership is essentially heritable. It survives its owner for the time being. It is not extinguished by death. It follows that the right of ownership in a material thing should be general, permanent, heritable and transferable. The owner should have the right to conceivable uses of it. The rights in land or property, namely, incorporeal rights, should possess all the attributes of property before they can attract the application of Art. 31 (2). They have to be capable of possession or acquisition, otherwise Art. 31 (2) cannot apply. The right in property to which Art. 31 (2) of the Constitution or S. 299, Government of India Act, 1935, may be applied should possess all the attributes of proprietary rights in corporeal property. AIR 1951 S C 41; AIR 1954 S C 119; AIR 1954 S C 282 and AIR 1951 Bom 86, Rel. on. Girijananda v. State of Assam, **AIR 1956 Assam 33 (45) (Pt I) (Pr 40) (SB).**

——Art. 31 (1)—Property—Right to hold and possess land is itself the property of the occupant—Deprivation of right, by ultra vires order under S. 38, Bhopal Land Revenue Act is hit by Art. 31 (1)—(Bhopal Land Revenue Act (4 of 1932), S. 38). AIR 1955 N U C (Bhopal) 1784.

——Art. 31 — Land Acquisition Act (1894), S. 23 — 'Property' — Statutory right to receive an additional solatium on compulsory acquisition cannot be regarded as a right to property. See Government of India Act (1935) S. 299. AIR 1960 Bom 35 (DB).

——Art. 31—Berar Patels and Patwaris Law (1900), S. 9—'Property' — Rights of Watandari Patels and Patwari, if property — See Ibid, Art. 19 (1) (f). AIR 1958 Bom 300 (DB).

——Arts. 31, 363 — Hyderabad (Abolition of Cash Grants) Act (33 of 1952), S. 3 (1) — Validity — [Hyderabad (Abolition of Cash Grants) Act (33 of 1952), S. 3 (1).]

The rusums mentioned in the schedule to the Hyderabad Act were Crown Grants, and they were subject to resumption at the pleasure of the Crown. If the Crown prerogatives disappeared with the introduction of the Constitution the right to resume the cash grants disappeared with them. The earlier rule which governed the resumption of the grants and which was closely associated with the personal prerogative of the Nizam is no longer available to the State and as the 'rusums' constitute 'property' within the meaning of Art. 31 of the Constitution their resumption by the State must be held to be unwarranted. A I R 1954 S C 447, Foll. **ILR (1955) Hyd 269 : AIR 1955 Hyd 44 (46, 47) (Pt A) (Prs 8, 9) (DB).**

——Art. 31, Sch. 7, List II, Item 42 — Hyderabad (Abolition of Cash Grants) Act (33 of 1952), S. 3 (1)—Validity — [Hyderabad (Abolition of Cash Grants) Act (33 of 1952), S. 3 (1).]

The word 'property' occurring in Art. 31 is not confined to immovable property and resumption of land as well as cash grants without compensation would be equally hit by it. Expropriation of properties of all kinds has under the Constitution been made subject to the payment of compensation and it is immaterial whether the property is movable or immovable. The mere disability to get redress from a Court of Law would not by itself justify excluding cash grants from the ambit of 'property'. The elements of hereditability and enjoyment of the benefit without any rendition of services is sufficient insignia of property to invest the cash grants with the characteristics of 'property' as used in Art. 31. The fact that the impugned Act was passed in exercise of powers under Item 42 of List 2 of the Seventh Schedule is immaterial as the legislative competency under Item 42 is of course subject to guarantee contained in Part 3 of the Constitution and the deprivation of property must, therefore, be subject to the payment of compensation under Art. 31. Case-law discussed. **I L R (1955) Hyd 269 : A I R 1955 Hyd 44 (46, 47, 48) (Pt B) (Prs 9, 10, 13, 14, 15) (DB).**

——Art. 31 (2) —'Property' —[Hyderabad (Abolition of Jagirs) Regulation (69 of 1359-F), S. 6 (4) — Vali-

dity]—Hyderabad Jagir (Commutation) Regulation (25 of 1359-F), S. 4 (1) (c) (2) —Validity.

The Jagirdars of the Hyderabad State had during their lives rights of managing their estates, enjoying the incomes from the revenue, cess and excise duties arising therefrom and other important privileges which conferred considerable monetary benefits on them. Had it not been for the fact that the impugned provisions of the two Regulations were passed prior to the inauguration of the Constitution it is clear that these rights would have been covered by the word 'property' in Art. 31 (2) of the Constitution. AIR 1954 S C 119, Foll. ILR (1954) Hyd 783 : AIR 1954 Hyd 227 (229) (Pt G) (Pr 5) (DB).

——Art. 31—States Reorganisation Act (1956), S. 91(a) —Family grant by Travancore State continued by United State of Travancore Cochin—Crant not repudiated by successive states till Constitution came into force—Upon the Constitution coming into force this right became a right to property, and entitled to protection under Art. 31 (1)—Kerala State held was bound to pay the grant. See States Reorganisation Act (1956), S. 91 (a). 1960 Ker L J 1461.

● ——Arts. 31, 19 and 223— "Property" —Payments made to irregular forces (Shiledars etc.) by Scindias, are not property —Nature of payment —Government of Madhya Bharat can stop these payments — No infringement of fundamental right —No writ can issue —(Interpretation of Statutes - Orders having force of law and merely administrative orders — Distinction) (Civil P. C. (1908), Preamble).

Held, after considering the scheme of the Shiledari Service (Irregular forces of the Scindia State), and the Orders of the Maharaja of Scindia, namely "Kalambandi Intijam Mahaleme Irregular Behede Shiledari, Smt. 1969 (1912 A. D.) and the subsequent similar Kalambandi of Smt. 1991 (1934 A. D.) issued by the last ruler, and the Notification, dated 31 3-1929 issued by Army Head Quarters, in pursuance of the resolution by the Council of Regency, that the payments made to the Shiledars were made for service only and they were no hereditary grants as such. The mere hereditary character exhibited in the enlistment of the new cadets could not mean that it was property belonging to the particular Shiledar of Ekkan. Provision for payment of the maintenance allowance to widow or minor children of the deceased Shiledar did not necessarily mean that there was any proprietary interest in the deceased Shiledar as regards the payments which he used to receive. This could only be regarded as compassionate allowance. Consequently the payments made to these Shiledars did not constitute property belonging to them whether the same be, as Bachat holders, head quarters Shiledars or Ekkans. The provisions in the two kalambandi were in the nature of reorganization schemes of administrative nature and did not involve conferment of or recognition of a statutory right. These payments could not also be classed as hereditary grants burdened with services. The stoppage of these payments or some of them by the executive order did not involve infringement of their fundamental right and the Head Quarters Shiledars, the Shiledars and Ekkans were not entitled to seek redress through any of the writs provided for by Art. 226 of the Constitution.

Per Dixit, J.: One test which may usefully be adopted to differentiate between orders and rules made by a Ruler of a State in his capacity as the supreme executive authority from those made in his capacity as the supreme legislative authority is to see whether the order or rule was enforceable in a Court of law by the person or persons affected thereby and whether the construction or interpretation of the rule or order was a matter for the Court or for the administrative or executive authorities. If the rule is not enforceable in a Court of law and if its construction is a matter for the administrative authority and not for the Court, then clearly the rule cannot be called a statute or a rule having the force of a statute.

The Kalambandi of 1991 was not a statute according to the law-making machinery or custom of Gwalior State and according to the forms and solemnities required in that State for authorisation of a Statute. There is nothing in the Kalambandi to lend any colour to the suggestion that the Kalambandi conferred on Shiledars or their heirs a right enforceable in a Court of law, with regard to their appointment or their conditions of Shiledari service. Madhaorao Ramrao v. State of Madhya Bharat, ILR (1954) Madh B 211 : AIR 1953 Madh B 257 (260, 261, 262) (Pt B) (Prs 36, 38, 39, 42, 45) (FB).

[Reversed in A I R 1961 S C 298.]

——Art. 31— Property — Cash grants by Rulers of erstwhile Princely State are property within the meaning of Art. 31. 1961 M P L J 549 : 1961 Jab L J 820 : 1961 MPC 605 : AIR 1962 Madh Pra 257 (261) (Pt C) (Pr 19) (DB).

[Reversed on another point in A I R 1966 S C 704.]

——Arts. 31 and 19—Right to vote is not property — Amendment of S. 18 of C. P. and Berar Municipalities Act by M. P. Act 14 of 1958 is not ultra vires — (Municipalities—C P. and Berar Municipalities Act (2 of 1922, as amended by Act 14 of 1958), S. 18). See Ibid, Art. 19. AIR 1959 Madh Pra 353.

——Art. 31 (1)—Right to property — Infringement — Hereditary—Managing agency rights — Nature of — It cannot be called "property". See Ibid, Art. 19 (1) (f). AIR 1957 Mad 309 (DB).

——Arts. 31 and 19 — Madras Aliyasanthana Act (9 of 1949), S. 35 — Partition of Kutumba property — Ejaman's right—S. 35 does not violate Art. 31— Right to manage Kutumba property is not property within the meaning of Art. 19 or Art. 31.

The termination of the ejaman's right to manage family property belonging to an Aliyasanthana Kutumba and to regulate its internal economy by the provision for the disruption of the family by a demand for partition as enacted in S. 35, Madras Aliyasanthana Act is not in violation of Art. 31 (2) of the Constitution. And further the right of the ejaman to manage the family property is not a right to property within the meaning either of Art. 19 or Art. 31 of the Constitution. ILR (1956) Mad 785 : AIR 1956 Mad 642 (656) (Pt L) (Pr 52) (DB).

——Arts. 31 and 19 — Madras Aliyasanthana Act (9 of 1949), S. 36—Validity.

Neither the termination of the managership, nor the provision for the mode of division prescribed by S. 36, Madras Aliyasanthana Act is in violation of Arts. 19 and 31 of the Constitution. ILR (1956) Mad 785 : AIR 1956 Mad 642 (656) (Pt M) (Pr 53) (DB).

——Art. 31 (1) — "Property" as used in Art. 31 connotes the totality of rights which ownership connotes (obiter). AIR 1951 S C 41, Rel. on. 64 Mad L W 851 : (1951) 2 F J R 229 : 1951-2 Mad L J 382 : AIR 1951 Mad 974 (977) (Pt F)(Pr 10) (DB).

——Art. 31—Manipur State Hill Peoples Regulation (1947), Sections 60 to 64—Validity.

Sections 60 to 64 of the Manipur State Hill Peoples Regulation, 1947, indicate that ownership of land and right to cultivation are recognized in the Hill villages of the Union territory of Manipur. This ownership in land has been recognized by the Government. This is true in respect of land in the Lambui village in the Ukhrul sub-division of Manipur. Hence the Government cannot claim that the villagers are in possession of the land only during

the pleasure of the Government. Such rights in land amount to "property" within the meaning of Art. 31 of the Constitution and the Government cannot deprive the villagers of their rights in the property in question save by authority of law.

If the Government desires to take over the land for a public purpose, namely, the construction of a motorable road, such taking over of land admittedly in the possession of the villagers has to be treated as compulsory acquisition. It follows that except by following the procedure laid down in the Land Acquisition Act, the Government have no authority to deprive the villagers of their land by making an ex-gratia payment. AIR 1961 Manipur 31 (33, 34) (Prs 8, 9).

——Art. 31 (1)—Mysore Villge Offices Abolition Act (14 of 1961), S. 2 (1) (n) — Act does not contravene Constitution of India—Abolition of village offices, is within competence of State Legislature. The abolished village offices are not 'property' and no fundamental right to hold them is claimable under Art. 19 (1) (f) of the Constitution. So, the Act does not also invade any fundamental right created by Art. 31 (1) and (2) of the Constitution. See Mysore Village Offices Abolition Act (14 of 1961), S. 2 (1) (n). AIR 1964 Mys 84 (DB).

——Art. 31 — Reading cls. 22 and 23 (1) of the Land Tenure Order together, it is apparent that the right intended to be conferred was not an unqualified one but a qualified one. The effect of the Constitution is not to enlarge a proprietary right or any orher right in property or in a holding of a citizen before the commencement of the Constitution. Where the right itself is of a limited character, it would remain so despite the coming into force of the Constitution. 1953 Nag L J 44 : ILR (1952) Nag 808 : AIR 1953 Nag 51 (55) (Pt E) (Pr 17) (DB).

——Art. 31—Sri Jagannath Temple Act 1954 (11 of 1955), S. 1 — Validity of Act — Rights of Raja of Puri — Right as Adya Sebak and of Superintendence — Distinction — Latter rights not property — Act does not offend Arts. 19 (1) (f) and 31 (2). See Sri Jagannath Temple Act (11 of 1955), S. 1. AIR 1959 Orissa 5.

——Art. 31 (2) — 'Property' — Life membership of the Senate of a University is not 'property' within the Article — Amendment of S. 17 (ii) of Bihar Act 14 of 1960 by S. 12 (ii) of Bihar Act 2 of 1962 is not unconstitutional and invalid.

The Office of Life membership of the Senate of a University does not come within the conception of 'property' under Art. 31. Though the said office carries with it certain powers and duties and superintendence over the affairs of the University, there is no blending of any right of property with the office of life membership of the Senate. The property of the University is vested in the University which is a corporate body though the members of the Senate have the entire management and superintendence over it. But the mere right of management of the affairs cannot be said to be 'property' within Art. 31 (2). Consequently the amendment made by Sec. 12 (ii) of the Bihar Act (2 of 1962) to S. 17 (ii) of the Bihar Act (14 of 1962) is not ultra vires and unconstitutional. AIR 1954 S C 119 and AIR 1957 Pat 617, Rel. on. 1964 B L J R 10 : AIR 1963 Pat 373 (374, 375) (Pr 3) (DB).

——Art. 31 — 'Property' — Meaning of — 'Passage benefit' provided to member of Indian Civil Service — (T. P. Act (1882), Ss. 3 and 6) — (General Clauses Act (1897), S. 3 (26) and (36)).

(Obiter). — Passage benefit is not property. It is at best a right which a member of Indian Civil Service may be entitled to so long as he is in service and on terms as stated in the Superior Civil Services (Revision of Pay and Pension) Rules. 1957 B L J R 299 (2) : ILR 36 Pat 557 : AIR 1957 Pat 515 (528) (Pt J) (Pr 18) (DB).

——Art. 31 (1) — Pension granted to a public servant on his retirement is property within the meaning of Art. 31 (1) and he can only be deprived of it by authority of law. ILR (1965) 2 Punj 1.

——Art. 31 — Property — Meaning of — Right to recognition as a Ruler under Art. 366 (22) and the rights that accrue by virtue of such recognition — Not rights to property within Art. 19 (1) (f) — Rights guaranteed by the Covenant of the United States of of Rajasthan are merely political rights—Not justiciable—Recognition as Ruler under Art. 366 (22) of a person who is not a legal heir to his predecessor — No infringement of Arts. 19 (1) (f) and 31. See Ibid, Art. 19 (1) (f). AIR 1963 Punj 461.

——Arts. 31 (1), 226, 311 — Grant of life disability pension to petitioner serving as clerk in Army, on recommendation of medical board — Pension cancelled subsequently after many years as a result of further medical examination—Right of petitioner to relief against cancellation under Art. 226—Right to pension, if right of "property" within Art. 31.

Held, on facts that (i) there had been a very serious interference with and grave violation of a right which must, in the context, be regarded as a property right within the meaning of Art. 31.

The grant of a pension to the petitioner for life was given in accordance with rules and must be regarded as something to which the petitioner had a right. Such a right constituted 'property' within the meaning of Art. 31, which, according to the army instructions as stood before 28-7-1948, could not even be modified. The revised Army Instruction of 1950 did not apply to the case. There could, therefore, be no escape from the conclusion that the petitioner had been deprived of his fundamental right under Art. 31 in the most arbitrary manner and the petitioner became entitled to the protection of the right, under Art. 226. (1882) 21 Ch. D. 85, Rel. on. (ii) The petition under Art. 226 could not be dismissed on ground of delay. A I R 1959 S C 149. Foll. (iii) The petitioner's right of life pension had not merely been curtailed but abolished altogether by the fiat of the executive Government for which there was no prima facie justification and of which the petitioner was not even given a notice. The action of the executive could not be defended on the vague formula of administrative grounds. A I R 1931 P C 248 and A I R 1960 Andh Pra 420, Rel. on. (1962) 2 Lab L J 611 : 64 Punj L R 804 : A I R 1962 Punj 503 (504, 505) (Prs 2 to 5, 6, 7).

——Art. 31 (1) — 'Property' — Right under lease to work mine on Government property does not constitute property. See Ibid, Art. 19 (1) (g). A I R 1959 Punj 510 (DB).

——Art. 31 (2)—'Property'—Meaning of.

The term "property" in Art. 31 (2) means "proprietary rights in rem" and that being so, the benefit of a contract would not come within the meaning of the term "property" as used in Art. 31 (2). 1952-22 Com Cas (Ins) 33 : ILR (1952) Punj 11 : A I R 1952 Punj 9 (16) (Pt D) (Pr 36) (DB).

● ——Arts. 31, 19 (1), 14 and 226:— Notifications by Rajasthan State withdrawing privileges granted by Ruler of Udaipur to Zamindars, to manufacture liquor for private consumption — Privilege held not right to property—No infringement of fundamental right — Cash grants made by ruler for taking away Zamindar's right to manufacture liquor for general

consumption — Question, whether cessation of grant amounts to deprivation of property, not possible to decide in writ application—Remedy of suit available — Fact that suit would be tried in High Court is immaterial — Suit would not be barred by S. 73 (2) of Rajasthan Excise Act — (Constitution of India, Art. 229 — Other remedy) [Rajasthan Excise Act (2 of 1950), Ss. 16 (1) (g), 16 (2) and 73 (2)].

The Ruler of former Udaipur had allowed the petitioners who were the Jagirdars in the State of Udaipur, before its integration in Rajasthan, to manufacture liquor for private and domestic consumption. They were also granted certain monetary compensations in lieu of the privileges they had enjoyed from time immemorial in respect of manufacturing liquor for general consumption and sale, which privileges were withdrawn by the Ruler. Both amenities were granted under the executive orders. These privileges were granted only to the petitioners-jagirdars and not to all the jagirdars. These privileges rested on the pleasure of the Ruler and could be withdrawn at any time. The so-called right, was not an incidence which could be considered to form part and parcel of the jagirdari tenure held and enjoyed by the petitioners. When the State was integrated into the present Rajasthan State, the Government of Rajasthan by executive notifications withdrew the privileges. It was contended on behalf of the petitioners that in so far as the Rajasthan Excise Act by S. 16 (1) (g) and (2) deprived the petitioners of their right to continue to distil liquor for their private or domestic consumption and of their cash grants it infringed a right of property of the petitioners and, therefore, fell within the mischief of Art. 31 of the Constitution and was therefore void and inoperative :

Held, (i) that the so called right of private distillation was not a right at all in any strict or legal sense of the term but a privilege enjoyed during the good pleasure of the Ruler. In this view, it was not necessary to consider in any great detail the further question whether it was a right of property.

(ii) So far as the property from which liquor might be distilled was concerned, there had been no taking away of it from the petitioners. It was only the purpose of distillation to which these articles might be put which had been taken away. This purpose or privilege of distillation, was by itself not property within the meaning of Art. 31 of the Constitution. Even if it were conceded that such a right flowed from or was appurtenant to the holding of their jagirs by the petitioners which, it was not, such a right would still be not a proprietary right but a personal right. In other words, it was a matter which pertained more to the status of the parties as jagirdars than to their property as such.

(iii) The so-called right to distil liquor in so far as it might have any money value as claimed by the petitioners was based upon the indirect immunity from taxation and could not be countenanced at all, as such an immunity could not be claimed in law and would be hit by Art. 14 of the Constitution and come into conflict with the principle of equality and equal protection enshrined in that article.

(iv) The privilege of private distillation allowed to the petitioners under the order of the Ruler of Udaipur was not a licence granted to the petitioners within the meaning of S. 16 of the Rajasthan Excise Act, or such as would be preserved under the saving S. 2 of that Act. The scheme of the Act did not and, could not contemplate the grant of any permanent licences such as were claimed by the petitioners to have been granted to them by the Maharana of Udaipur. The privilege of private distillation of liquor or even the possession of any materials for the purposes of manufacturing liquor by the petitioners was directly hit by S. 16 of the Rajasthan Excise Act and could not be exercised or enjoyed after the commencement of the Act.

(v) The cases of those jagirdars who were granted the privilege of not only manufacturing liquor for private and domestic consumption but also for general sale, did not stand on higher footing and could not be differentiated from the cases of those jagirdars who were granted the privilege of manufacturing liquor for domestic and private consumption only. The circumstance that these jagirdars made some money out of the exercise of such private distillation would not be sufficient to raise the privilege of private distillation in their case to the status of a right of property. In these circumstances it could not be said that the Act was illegal or inoperative in so far as it took away the income of these petitioners or of those who enjoyed a like immunity.

On the question of the deprivation of the petitioners' cash grants, which were enjoyed by the petitioners but which were discontinued by the Rajasthan State :

Held, that the question was beset with various considerations and that the arguments of the parties did not enable the Court to any definite findings on the question whether it constituted infringement of fundamental right or whether it was right to property and that in view of the fact that the petitioners had an alternative remedy by way of a suit which was in the circumstances of the case, equally convenient, beneficial and efficacious, it was not proper to give any finding on the arguments. A I R 1952 S C 12, Rel. on.

Held, further that in view of the fact that order of the Government withdrawing the cash allowances was not passed in pursuance of the Rajasthan Excise Act but was an administrative order superseding a similar previous order, S. 73 (2) could not and ought not to operate as a bar to any suit which might be brought by the petitioners in this regard. Manohar Singh v. State of Rajasthan, **1955 Raj L W 98 : ILR (1954) 4 Raj 113 : A I R 1954 Raj 85** (91, 92, 95, 96) (Pt B) (Prs 16, 18, 19, 21, 22, 33, 34) (FB).

——Art. 31—Municipalities—Bombay District Municipal Act (3 of 1901) (as adapted and applied to Saurashtra) S. 50 (2)—Notification No. 84 dated 29-8-1950—Constitution of India, Arts. 19 and 31—Municipality farming out monopoly to take away hides to Ijardars—Monopoly, in so far as it purports to divest private ownership of carcases and vest it in Ijardars is void — Notification No. 84 does not vest such ownership of hides in Municipality and cannot be assailed under Art. 19 or 31. See Municipalities — Bombay District Municipal Act (3 of 1901) (as adapted and applied to Saurashtra S. 50 (2). **(1956) 9 Sau L R 184.**

——Arts. 31, 226 — Right to property — Contractual rights and obligations—No right of property involved —Remedy open. **AIR 1955 N U C (Trav-Co) 1384.**

——Arts. 31, 226 — Petitioner granted India-Pakistan pass-port by Government of India — District Magistrate illegally cancelling and seizing same—Cancellation confirmed by Government of India - Confirmation cannot make unauthorised action of District Magistrate, an authorised one — Matter would be different if District Magistrate had been delegated the authority of cancellation — Confirmation by Government of India had only effect of revocation and impounding the pass-port—This right held could not be questioned, being one of the terms on which pass-port was issued — Even if pass-port was 'property' within meaning of Art. 31, the revocation and impounding would be one by authority of law within meaning of Art. 31—Granting and revoking and cancelling of pass-port was within discretion of Government of India—It was not a fundamental right to have pass-port issued —Writ would not therefore be granted against the

order of the District Magistrate since it would not be carried into effect. A:I R 1962 Tripura 7 (12) (Pt B) (Prs 31, 32).

——Art. 31— Right to salary already earned—The salary already earned by a Government servant is his property, and a deduction not made in accordance with statutory rules infringes his fundamental right to property both under Arts. 19 and 31 and relief must be granted under Art. 226. A I R 1955 Vind Pra 21 (24) (Pt B) (Pr 14).

14. Property of Rulers of merged States.

● —Arts. 31, 226, 363 and 372 — Government of India Act (1935), S. 299 (1) - Act of State — Integration of former Indian State —. Rights in property created prior to integration Necessity of their recognition by new Sovereign—Right in forest created by Ruler of Indian State by Tharao — Right not recognised by Government after merger of State — Right cannot be enforced in municipal Court—Right held was not protected by S. 299 (1) of G. I. Act—Tharao held was not law. A I R 1954 S C 447, Overruled and AIR 1961 Guj 151, Reversed.

Held on facts, (1) that the integration of Indian States with the Dominion of India was an Act of State: (2) that the Government of Bombay and the Central Government could refuse to recognise the rights created on the eve of merger by the Tharao of the Ruler of Sant State and say it was not acceptable to them and therefore not binding on them; (3) that the respondents to the appeal (contractors) who were not parties to the Merger Agreement or to the Letter dated 1-10-1948 written by the Secretary in the Ministry of State which was made expressly a part of the Agreement could not take advantage of Cl. 7 of the Letter; had they been parties, Art. 363 of the Constitution would bar a plea of relinquishment or waiver of the act of State in their favour; (4) that even though the forests were allowed to be worked, an undertaking was obtained from each contractor which showed that the Officers of the Forest Department did not attempt to bind the Government; (5) that the order made and the resolutions passed by the Government showed that the Government had declined to accept the Tharao; (6) that as the right created by the Tharao was not recognised by the Government, S. 299 (1) of the Government of India Act, 1935 (Art. 31 of the Constitution) was not attracted; (7) Per Majority B. P. Sinha C. J., (Rajagopala Ayyangar and Subba Rao JJ., Dissenting): that the Tharao could not be treated as a law; it was a grant and as a grant it was open to the new Sovereign not to recognise it; (8) Per Majority (B. P. Sinha, C. J., Rajagopala Ayyangar and Subba Rao JJ. Dissenting) that the appeal preferred by the State Government must be allowed and the suits filed by the contractors should be dismissed. A I R 1954 S C 447. Overruled and AIR 1961 Guj 151, Reversed State of Gujarat v. Vora Fiddali Badruddin Mithiborwala, (1964) 2 S C A 563 : (1964) 6 S C R 461 : AIR 1964 S C 1043 (1056, 1058, 1065, 1072, 1075, 1076, 1077, 1082, 1084, 1085, 1086, 1089, 1091, 1092, 1093 1094, 1095) (Pt A) (Prs 29, 36, 62, 63, 64, 82, 93, 94, 95, 97, 98, 112, 114, 121, 122, 124, 127, 136, 145, 150, 151, 153, 154, 158, 160, 161).

● ——Art. 31—Scope—Provision protected only such rights as a new citizen had at time of his becoming citizen of Indian Dominion—Grantees from the former Rulers of Native State — Rights not recognized by new sovereign after merger — Position of Municipal Courts. See Government of India Act (1935), S. 299 (1). AIR 1962 S C 1288.

● ——Art. 31 (2) and Sch. 7, List 2, Entry 18 —U. P. Act (10 of 1954), is within legislative competence of U. P. legislature—It abolishes leases granted by Ruler of erstwhile Rampur State to Thekedars and Pattedars. See U. P. (Rampur Thekedari and Pattedari) Abolition Act (10 of 1954), S. 2 (6): AIR 1959 S C 909.

● ——Art. 31 (1) — Arts. 363, 131, Proviso, 31 (1), 32 (2)—Rulers of acceding State making absolute muafi grants before accession—Government of India cannot after Constitution revoke the grants, as act of State—(Government of India Act (1935), Ss. 6, 290A). See Ibid, Art. 363. AIR 1954 S C 447.

[Overruled in AIR 1964 S C 1043.]

——Arts. 31 (1), 19 (1) (f) and 226 — Grant of land by former Indian Ruler—Revocation of—Legality of.

A person in whose favour a grant of land is validly made by the former Ruler of Jubbal cannot, by an executive order, be deprived by the State Government after the merger of the State in the Union. On such revocation of the grant, Arts. 19 (1) (f) and 31 (1) of the Constitution come into play. And an appropriate writ will be issued to the State Government restraining it from taking any action against the petitioner in pursuance of the orders passed by its officer. A I R 1954 S C 447, Foll. A I R 1954 Him Pra 84 (86) (Pr 9).

[The case must be considered not to be law in view of A I R 1964 S C 1043 which overruled A I R 1954 S C 447—Ed.]

——Art. 31— Orissa Private Lands of Rulers (Assessment of Rent) Act (13 of 1958)—Validity—Assurance given to Ruler at the time of merger not implemented—Act not invalid on that ground. See Ibid, Art. 14. AIR 1961 Orissa 131 (DB).

——Arts. 31 and 362 — Orissa Merged States' Laws Act (4 of 1950), S. 7 (h) — Order under — Violation of Art. 362 or restriction of right to hold property.

Where the Revenue authority has adopted the same rate as fixed by the Durbar Government for the disputed lands, the order under S. 7 (h) of the Act cannot be held to be unfair or inequitable. Hence, the rent so fixed by the competent authority, does not violate the principles of Art. 362 of the Constitution nor does it amount to any reduction, diminution or restriction of the petitioner's right to hold property contrary to Art. 31 of the Constitution. Nor does it offend the principles of natural justice. Hence the order cannot be held to be capricious or arbitrary in any way. ILR (1957) Cut 169 : AIR 1957 Orissa 24 (26) (Pt B) (Pr 10) (DB).

● ——Art. 31 (2) — Acquisition of ancient rights or protected rights—Validity of.

The mere fact that the rights are ancient in some cases or that they were granted by the Rulers or protected by any covenant cannot take away the right of the legislature to legislate for a public purpose in the interest of the people of the State and acquire these rights, so long as the legislature acts within the field reserved for it and there is nothing in the law which violates the provisions of Part III. Amar Singh v. State of Rajasthan, 1955 Raj L W 212 : I L R (1955) 5 Raj 149: AIR 1954 Raj 291 (300, 301) (Pt K) (Pr 29) (FB).

15. Clause (3).

● ——Arts. 31 (3) and 200 — Law passed by State Legislature—Assent of both Governor and President, necessity of.

Article 200 does not contemplate the Governor giving his assent and thereafter, when the bill has become full-fledged law, reserving it for the consideration of the President. Indeed, the Governor is prohibited from giving his assent where such reservation by him is made compulsory. The constitution would thus seem to contemplate only "bills" passed by the House or Houses of Legislature being reserved for the consideration of the President and not "laws" to which the Governor has already given his assent. Article 31 (3) must therefore be under-

stood as having reference to what in historical sequence, having been passed by the House or Houses of the State Legislature and reserved by the Governor for the consideration of the President and assented to by the latter, has thus become a law. It is not intended that such a law should have the assent of both the Governor and the President. State of Bihar v. Kameshwar Singh, 65 Mad L W 527 : 1952 S C J 427 : I L R 31 Pat 565 : 1952 S C R 889 : 1953 S C A 53 : AIR 1952 S C 252 (265) (Pt Q) (Pr 17).

8 —— Arts. 31 (3) and (4) and 200—Duties entrusted to President by Articles—Performance of, at one and same time.

(Per Mahajan J.) :— It cannot be said that the President cannot perform both the duties entrusted to him by Articles 200 and 31 (3) and (4) at one and the same time. He is not disabled under the Constitution from applying his mind to a Bill once and for all and to see whether it has to be passed into law and whether it fulfils the requirements of Art. 31 (2). State of Bihar v. Kameshwar Singh, 65 Mad L W 527 : 1952 S C J 354 : I L R 31 Pat 565 : 1952 S C R 889 : 1953 S C A 53 : A I R 1952 S C 252 (300) (Pt V) (Pr 153).

—— Arts. 31 (2) and (3) and 200, Proviso—Scope of —Hyderabad Tenancy and Agricultural Lands Act (21 of 1950)—Validity.

Art. 31 (2) of the Constitution imposes certain restrictions on the exercise of the power of eminent domain. That Article does not confer this power on the Government but it contains some safeguards in regard to the exercise of that power.

Art. 31 (3) of the Constitution describes the mode in which the law that is to govern the acquisition or requisition of a property is to be made. The language of Art. 31, Cl. (3) makes it abundantly clear that where a Bill is required to be reserved for the consideration of the President the Bill will not become an Act unless the President declares his assent to it. This clause does not enact a restriction similar to the one under Art. 31 (2). Art. 31 (2) lays down the two conditions which have to be satisfied before the power of eminent domain could be exercised. The purpose of clause (3) is not to impose another limitation upon that power but is only to prescribe the procedure for promulgating the laws. The Bill becomes an Act if it receives assent of the President.

Article 31 (3) of the Constitution is on a par with the Proviso to Art. 200. What follows from Art. 200 is that the Governor can either assent to or withhold his assent in cases which need not be reserved for the consideration of the President. Article 200 equally governs the procedure laid down by Art. 31 (3). Therefore, the failure to conform to the procedure envisaged by Art. 31 (3) has the same results as those that follow from the violation of Proviso to Art. 200.

Cl. (3) of Art. 31 is not a limitation on the power of the State to acquire or requisition the property within the purview of Art. 31 (2). If the procedure indicated in Art. 31 (3) is not adopted, no part of the Bill becomes law because it becomes effective only after it receives the assent of the President.

Held on facts.—It is not disputed that the provisions of Chapter VI of the Hyderabad Tenancy and Agricultural Lands Act, which deal with the management or acquisition of uncultivated, improperly cultivated or surplus lands, beginning with S. 51, bring the Act within the range of Art. 31 of the Constitution, because that Chapter makes a provision for acquisition and requisition of lands. It is also conceded that there are other provisions in the Act which bear on the acquisition and requisition of land. Therefore, the Act not having been reserved for the consideration of the President and assented to by him, is inoperative. S. 38-E which was assented to by the President cannot live apart from the rest of the Act. If the rest of the Act is dead, this section can have no independent life because this is bound up with the other provisions of the Act. The scheme of the Act is spread over the whole of it and S. 38-E which is a part of the scheme, cannot stand by itself. The Hyderabad Tenancy and Agricultural Lands Act is ineffective and inoperative and the proceedings initiated under this enactment are null and void. AIR 1954 Trav-Co 145, dissented from. (1961) 2 Andh W R 60 : 1961 Andh L T 580 : ILR (1962) Andh Pra 576 : A I R 1961 Andh Pra 523 (526, 527, 528) (Prs 18, 21, 28, 29) (DB).

——Art. 31 (3) — Jadavpur University Act—If ultra vires — (Jadhavpur University Act (33 of 1955), S. 12).

The Jadavpur University Act is not bad under Art. 31 (3) of the Constitution for not having received the assent of the President because sub-Art. (3) of Art. 31 only applies to such law as is referred to in Cl. (2) of Art. 31, namely, of compulsory acquisition or requisition of property which is not the case here within the meaning of the amended Art. 31 (2 A) of the Constitution. 63 Cal W N 914 : ILR (1960) 2 Cal 311 : AIR 1960 Cal 120 (122) (Pt B) (Pr 7).

——Art. 31 (3)—Bombay Land Revenue Rules (1921), R. 17 (as introduced by Bombay Government Notification D/- 20-5-1959)—R. 17 must be presumed to have received President's assent and hence valid provision. See Tenancy Laws—Saurashtra Barkhali Abolition Act (28 of 1951), S. 18. ILR (1965) Guj 1039 : AIR 1966 Guj 200.

——Art. 31 (3)—President's assent obtained— Effect on powers of — Court to consider if Act offends Constitution.

The fact that an Act had been reserved for the consideration of the President and had received his assent under Art. 31 (3) of the Constitution does not preclude the Court from considering whether the Act offends against any of the provisions of the Constitution. Unless the President gives his assent no part of the law can take effect at all. But a subsequent scrutiny before the courts to determine whether any particular provision or set of provisions offends against any particular Article of the Constitution is not barred. 1959 Mad W N 387 : 72 Mad L W 434 : I L R (1959) Mad 770 : (1959) 2 Mad L J 402 : AIR 1959 Mad 548 (553) (Pt A) (Pr 33) (DB).

——Art. 31 (3) — Tenancy Laws — Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Bill — Bill reserved for consideration of President — The President having given his assent, Bill must be deemed to have been passed into law. AIR 1955 N U C (Nag) 1341.

——Arts. 31 (3) and 31-A — Assent of President— 'Law', meaning of.

The expression 'law' is used in cl. (3) of Art. 31 and in Art. 31-A, somewhat loosely to include even a Bill which has not yet become law by being assented to by the President or Governor, as the case may be. It does not mean a Bill that has been first assented to by the Governor and thus made into a law, before being reserved for the consideration of the President. AIR 1952 S C 252, Foll. ILR (1957) Cut 1 : A I R 1957 Orissa 96 (98, 99) (Pt B) (Pr 7) (DB).

——Arts. 31 (3) and (4), 31-A and 210—Assent of President to Bill — Scrutiny — Effect of assent on validity of State Act—(Tenancy Laws—Orissa Estate Abolition Act, 1951 (1 of 1952), S. 1).

The only provision empowering the President to assent to a Bill passed by a State Legislature is con-

tained in Art. 201 of the Constitution. There can be no question of the President assenting to a piece of State legislation which has previously been assented to by the Governor or himself. Clauses (3) and (4) of Art. 31 and the Proviso to Art. 31-A deal with the consequences flowing from the President's giving his assent to a Bill passed by a State Legislature relating to acquisition of estates. But these clauses do not by themselves empower the President to give his assent to any Bill. Consequently, there can be no further scrutiny of the assent, already given by the President, to a Bill relating to such acquisition with a view to find out whether such assent was given either under cl. (3) or clause (4) of Art. 31 or under the Proviso to Art. 31-A. AIR 1952 S C 252, Foll. ILR (1957) Cut 1 : A I R 1957 Orissa 96 (98, 99) (Pt C) (Pr 7) (DB).

——Art. 31 (3) — Land Acquisition (Bihar Amendment) Act (Bihar Act 21 of 1956), S. 4 — Amendment of S. 35 of Land Acquisition Act — Act not reserved for consideration of President—His assent not received —Amendment of S 35 has no legal effect. See Land Acquisition (Bihar Amendment) Act (Bihar Act 21 of 1956), S. 4. **A I R 1959 Pat 488.**

——Art. 31 (3)—Patiala Land Acquisition Act (4 of 2006 Smt.) — Act not reserved for consideration of President — Acquisitions made under Act — Acquisitions however validated by S. 4 of Pepsu Reclamation Act (5 of 1953). See Patiala Land Acquisition Act (4 of 2006 Smt.). **A I R 1955 N U C (Pepsu) 1873.**

——Art. 31 (3) — Pepsu Land Acquisition Act (4 of 2006 Bk.)—Validity — (Interpretation of Statutes—Repeal)—(General Clauses Act (1897), S. 6) — (Civil P. C. (1908), Preamble).

The words 'such law' in Art. 31 (3) refer to the law relating to acquisition and requisition as referred to in sub-Art. (2) of Art. 31. The Pepsu Land Acquisition Act, 2006 Bk., was a law falling within the scope of sub-Art. (2) It not having been reserved for the consideration of the President and thus not having received his assent was ineffective and inoperative law. That being so, it follows that it also failed to repeal the previous Act, namely, the Patiala Land Acquisition Act, 1995 Bk., but there is no doubt that apparently the repealing section in Act No. 4 of 2006 Bk. was not law relating to acquisition or requisition of property and would not fall within the ambit of Art. 31 (2) of the Constitution. But in the present case the intention of the Legislature was clear from consideration of S. 2 of Act No. 4 of 2006 Bk., that the intention of the Legislature could not have been to repeal the former statute, except upon the supposition that the subsequent statute would take the place of the former, and so the repealing clause in the subsequent statute fell within unconstitutional statute to which it was attached. Therefore, the repealing section in Act No. 4 of 2006 Bk. would also be ineffective and inoperative as that Act itself. The consequence was that the Patiala Land Acquisition Act, 1995 Bk., still held the field. Thus before the Pepsu Land Acquisition Act, 1953, the Patiala Land Acquisition Act, 1995 Bk., held the field. **I L R (1954) Patiala 507 : A I R 1954 Pepsu 174 (177, 178) (Pt A) (Pr 5).**

● ——Arts. 31 (3) and 31-A (1)—Law — Meaning of —Does not mean Act passed by Legislature.

Article 31 (3) and the proviso to Art. 31-A (1) speak of the law being reserved for the assent of the President and not of the bill or the Act. The word 'law' is used in the context as meaning the measure which later becomes the Act. It is not used in the sense of a law passed by the Legislature. There would be no sense in the Rajpramukh or the Governor assenting to a bill and then reserving it for the assent of the President. Amar Singh v. State of Rajasthan, 1955 Raj L W 212 : I L R (1955) 5 Raj 149 : A I R 1954 Raj 291 (300) (Pt I) (Pr 26) (FB).

● ——Art. 31 (3)—'Legislature of a State'.

The term 'Legislature of a State' in Art. 31 (3) does not include within its meaning the Government of a State or some other authority while making rules, regulations or orders under authority given to it under a Central Act of the Parliament. The meaning of the words 'the State' in Art. 12 has no bearing on the meaning of the words Legislature of a State' appearing in Art. 31(3). Ramjidas v State of Rajasthan, 1954 Raj L W 357 : I L R (1953) 3 Raj 921 : A I R 1954 Raj 97 (99) (Pt B) (Prs 9, 10) (FB).

——Art. 31 (3) — Travancore-Cochin Public Safety Measures Act (5 of 1950), Ss. 4, 5, 6 14 (part relating to S. 4) and 15 — Part of the Act relating to requisitioning of property—Not valid — Under Cl. (3) there should be reservation for the consideration of the President and there must be his assent. See Public Safety — Travancore-Cochin Public Safety Measures Act (5 of 1950), S. 4. **A I R 1954 Trav.Co 145.**

16. Clause (4).

● ——Art. 31 (4) and Sch 7, List 3, Entry 42 — Public purpose—Justiciability of.

The existence of a public purpose behind the acquisition of the items of property mentioned in any Zamindari Abolition Act is not a justiciable issue in case of an enactment which having fulfilled the requirements of Cl (4) of Art. 31 of the Constitution enjoys the protection afforded by it. A I R 1953 S C 375, Foll. Jagaveera Rama v. State of Madras, 1954 S C J 282 : (1954) 1 Mad L J 486 : 1954 S C A 317 : 1954 S C R 761 : Madh B L J 1954 S C D 18 : A I R 1954 S C 257 (258) (Pt A) (Pr 7).

● ——Art. 31 — Bengal Land Revenue Sales (West Bengal Amendment) Act (7 of 1950)—Validity.

It does not appear that the Bill which eventually became the Act was reserved for the consideration of the President or received his assent. Therefore, the impugned law cannot claim the protection of Art. 31 (4) and what is more, if it is such a law as is referred to in clause (2) of Art. 31, then, by virtue of clause (3), it cannot have any effect at all. State of West Bengal v. Subodh Gopal Bose, (1954) 1 Mad L J 314 : 1954 S C A 65 : 1954 S C R 587 : 67 Mad L W 206 : 1954 S C J 127 : A I R 1954 S C 92 (105) (Pt H) (Pr 38).

● ——Art. 31 (4)—Scope.

It is the law to which the assent of the President is given that is protected from any attack on the ground of non-compliance with the provisions of Cl. (2) of Art. 31. There is no warrant for assumption that the Bill has got to be passed in its original shape without any change whatsoever, before the provision of Cl. (4) of Art. 31, could be attracted. The expression 'passed by such Legislature" must mean "passed with or without amendments" in accordance with the normal procedure contemplated by Art. 107 of the Constitution. Gajapati Narayan Deo v. State of Orissa, (1953) S C J 592 : 20 Cut L T 1 : 1954 S C A 1 : 1954 S C R 1 : I L R (1954) Cut 351 : A I R 1953 S C 375 (384) (Pt E) (Pr 27).

● ——Art. 31 — No objection to the validity of a law on the ground that its provisions relating to compensation are not just and fair can at all be raised under Cl. (4) of Art 31. See Tenancy Laws—Orissa Estates Abolition Act (1 of 1952), S. 5. **1953 S C J 592 : A I R 1953 S C 375.**

● ——Arts. 31 (4) and 31-A — Scope of Art. 31 (4) compared with scope of Art. 31-A.

(Per Patanjali Sastri, C. J.): — The scope of Art. 31 (4) is at once narrower and wider than that of Art. 31-A ; the former has application only to statutes which were pending in the Legislature at the commencement of the Constitution, whereas the latter is subject to no such restriction. Again Art. 31 (4) excludes attack only on the ground of contravention of Art. 31 (2), while Art. 31-A bars objections based on contravention of other provisions of Part III as well, such as Arts. 14 and 19. This indeed was the reason for the enactment of Arts. 31-A and 31-B, as the words of exclusion in Art. 31 (4) were found inapt to cover objections based on contravention of Art. 14. On the other hand, the law referred to in Art. 31 (4) covers acquisition of any kind of property, while Art. 31-A relates only to the acquisition of a particular kind of property, viz., estates and rights therein, and, what is more important, the 'non obstante' clause in Art. 31 (4) overrides all other provisions in the Constitution including the Lists of the Seventh Schedule, whereas a law which falls within the purview of Art. 31-A could only prevail over "the foregoing provisions of this Part." State of Bihar v. Kameshwar Singh, 65 Mad L W 527 : 1952 S C J 427 : I L R 31 Pat 565 : 1952 S C R 889 : 1953 S C A 53 : A I R 1952 S C 252 (263) (Pt E) (Pr 11).

● ——Art. 31 (4) — Bill introduced — Assembly prorogued on 21st January 1950 — Bill is still pending and does not lapse—Coming in of Constitution meanwhile on 26th January 1950 — Bill held was pending when Constitution came into force — Reintroduction of Bill afterwards does not mean introduction of new bill—Article 31 (4) applies : Per Mahajan, J.—(Constitution of India, Art. 196) — (Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act, 1950 (1 of 1951). State of Bihar v. Kameshwar Singh, 65 Mad L W 527 : 1952 S C J 427 : I L R 31 Pat 565 : 1952 S C R 889 : 1953 S C A 53 : A I R 1952 S C 252 (310) (Pt Za) (Pr 205).

——Art. 31, (4) and (5) (a) — Distinction between — Existing law coming under Art. 31 (5) (a) if can be challenged on ground that it denies equality before law. See Ibid, Art. 14. AIR 1955 All 12 (DB).

[Reversed on another point in AIR 1961 S C 14.]

——Art. 31 (2) and (4) — Contravention of Cl. (2) is cured by provision in Cl. (4). AIR 1951 All 674 (FB). Foll. 1952 All L J 52 : AIR 1952 All 88 (89) (Pt E) (Pr 7) (DB).

● ——Art. 31 (4) — Bill in process of transmission from one House to the other—Bill if pending.

After a Bill has been amended and passed by the Legislative Council it has necessarily to go again before the Legislative Assembly and must therefore, be a Bill "pending in a Legislature of a State." within the ambit of Art. 31 Cl (4). Raja Surya Palsingh v. U. P. Government, 1951 All L J 365 : 1951 R D (HC) 122 : 1951 All W R (HC) 317 : ILR (1952) 2 All 46 : AIR 1951 All 674 (680) (Pt F) (Pr 22) (FB).

● ——Art. 31 (4)—Scope.

A law is valid and enforceable unless and until it can be shown to be contrary to some provision of the Constitution. If the Constitution says that a certain law shall not be challenged on a particular ground, the result is that the Act cannot be challenged on that ground and has to be treated as valid and enforceable. Raja Surya Palsingh v. U. P. Government, 1951 All L J 365 : 1951 R D (HC) 122 : 1951 All W R (HC) 317 : ILR (1952) 2 All 46 : AIR 1951 All 674 (680) (Pt H) (Pr 23) (FB).

● ——Art. 31 (4)—"Law so assented to"—Meaning.

No doubt "law" ordinarily means a valid law, as an invalid law is a contradiction in terms. But this is not the sense in which the word is used in cl. (4). The phrase "the law so assented to" in cl. (4) of Art. 31 has reference to Bills pending at the commencement of the Constitution in the legislature of a State and which, after having been passed by the Legislature, have been reserved for the consent of the President. Raja Surya Palsingh v. U. P. Government, 1951 All L J 365 : 1951 R D (HC) 122 : 1951 All W R (HC) 317 : ILR (1952) 2 All 46 : AIR 1951 All 674 (680) (Pt I) (Pr 24) (FB).

● ——Art. 31 (4) and U. P. Zamindari Abolition and Land Reforms Act (1 of 1951). S. 27—Inadequacy of compensation—If open to challenge — Provision for compensation—If a fraud on the Constitution.

In view of the provisions of Cl. (4) of Art. 31, it is clear that inadequacy of the compensation is not a matter which it is open to challenge and there is no other ground from which the Court can infer that the provisions of the U. P. Act 1 of 1951, with regard to compensation constitute a fraud on the Constitution. Suryapal Singh v. Government of Uttar Pradesh, 1951 All W R (HC) 317 : ILR (1952) 2 All 46 : 1951 All L J 365 : AIR 1951 All 674 (685, 686, 689) (Pt M) (Pr 77) (FB).

● ——Art. 31 (4)—'Pending before the Legislature —Meaning—Includes Bill before the Governor.

There does not seem to be any justification for reading in Art. 31 (4) that the Bill must be in the House or Houses of the Legislature and should not have reached the Governor. If it was in the hands of the Governor who was an integral part of the Legislature, it would still be deemed to be in the Legislature of a State. It is only after the Governor has dealt with it finally under Art. 200 that it may be said to have gone out of the hands of the Legislature of the State. Raja Bhairabendra Narayan Bhup v. The State of Assam, ILR (1956) 8 Assam 379 (FB).

● ——Art. 31 (4)—'Legislature'—Meaning—Includes Governor. See Ibid, Art. 389. ILR (1956) 8 Assam 379 (FB).

● ——Arts. 31 (4) and 31-A—Assam State Acquisition of Zamindaries Act (18 of 1951)—Validity—Protected by Arts. 31 (4) and 31A. See Tenancy Laws—Assam State Acquisition of Zamindaries Act (18 of 1951), S. 1. ILR (1956) 8 Assam 379 (FB).

● ——Art. 31 (4)—"Bill"—Meaning of.

The requirement of the clause is that a Bill must be pending on the date of the commencement of the Constitution and not that the Act ultimately passed must in every respect follow the Bill. It cannot be held that if a Bill as originally introduced in a Legislative Assembly, is during its passage through the house, so materially altered as to become unrecognisable as the same Bill, the resulting Act can be impugned on this ground Misc. Petn. 29 of 1951 (Nag), Rel. on Ram Dubey v. Govt. of the State of M. B., ILR (1952) Madh B 178 : AIR 1952 Madh B 57 (67) (Pt H) (Prs 35, 36) (FB).

● ——Art. 31 (4)—Extent of protection.

(Per Dixit J.) — It would appear from the words "Notwithstanding anything in this Constitution" which occur in cl. (4) that it is not permissible to object to an Act on the ground that the compensation fixed or to be determined is no compensation in law as being contrary to other provision of the Constitution. The protection given by the cl. (4) is not confined to one ground only, namely, the ground arising out of the provisions of cl. 2 of Art. 31 AIR 1951 All 674 (FB) and Misc. Petn. 29 of 1951 (Nag), Rel on. AIR 1951 Pat 91 (SB), Dissented from. Ram Dubey v. Govt. of the State of M. B., ILR (1952) Madh B 178 : AIR 1952 Madh B 57 (72) (Pt P) (Prs 77, 78) (FB).

——Art. 31 (4)—Requirements of—Bill must be pending on date of commencement of Constitution—Act

ultimately passed need not follow Bill in every respect. AIR 1955 N U C (Nag) 1341.

——Art. 31 (4) — Tenancy Laws—Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act (1 of 1951) — Act valid. See Tenancy Laws — Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals Alienated Land) Act (1 of 1951). AIR 1955 N U C (Nag) 1341.

——Art. 31 (4) — "Notwithstanding anything in this Constitution"—Expression is not used 'ex abundanti cautela' or by way of mere embelishment — Interpretation of Statutes — Redundancy — (Civil P. C. (1908), Pre.). AIR 1955 N U C (Nag) 1341.

——Art. 31 (4) — Court cannot question adequacy of compensation. AIR 1957 Orissa 247 (253) (Pt E) (Pr 16) (DB).

——Art. 31 (4) — Protection of Bill.

The protection of Art. 31 (4) is not limited only to the Bill as it stood; that Article is not to be construed so as to exclude any normal amendments which a Bill will ordinarily undergo in the course of its passage through the Legislature. It may be different if in the course of that passage the structure of the Bill itself in any of its essential features has been totally altered. ILR (1953) Cut 71 : AIR 1953 Orissa 185 (201) (Pt M) (Pr 30) (DB).

● ——Art. 31 (4) — "Reserved for the consideration of the President"—Object of reservation of bill.

Per Shearer J. — The reservation of Bills for the assent of a higher authority is not a mere matter of procedure. It is an essential and important part of the law-making machinery set up by the Constitution. When bill is reserved for the consideration of the President it is the duty of the Law Officers to examine it with a view to ascertaining whether in the first place it is unconstitutional in whole or in part and secondly, whether if assent is given to the bill the differences between the law obtaining in the State to which the bill applies and the law obtaining in other provinces will be merely differences in point of detail rather than in principle. Maharajadhiraj Kameshwar Singh v State of Bihar, ILR 30 Pat 454 : AIR 1951 Pat 91 (100, 101) (Pt K) (Pr 14) (SB).

● ——Art. 31 (4) — Assent of President to reserved bill—Propriety of, if can be questioned.

Per Shearer J — The broad principles on which assent is intended to be given to or withheld from a reserved bill are not specifically laid down in the Constitution. The result of this is that it is not open to the Courts to question the propriety of the President's action. (Shearer, Reuben and Dass JJ.) Maharajadhiraj Kameshwar Singh v. State of Bihar, ILR 30 Pat 454 : AIR 1951 Pat 91 (101) (Pt L) (Pr 15) (SB).

● ——Art. 31 (4)—Construction of.

Per Das J.—Clause (4) of Art. 31 seeks to cut down a fundamental right and must be construed strictly. The words "notwithstanding anything in this Constitution" occurring in that Clause cannot have the effect of enlarging the operative portion of the clause which, in clear terms, mentions one and one ground only, namely the ground arising out of the contravention of the provisions of Cl. (2), Art. 31. Kameshwar Singh v. State of Bihar, I L R 30 Pat 454 : AIR 1951 Pat 91 (127) (Pt M) (Pr 107) (SB).

● ——Art. 31 (4) — "Bill pending at the commencement"—Identity between Bill and Act.

Per Reuben J. — Clause (4), Art. 31 does not require that the Act as passed by State Legislature must be identical in every detail with the Bill that was pending at the commencement of the Constitution. There may be alterations during the passage of the Bill; but these alterations should not be such as to make the Act distinguishable from the bill which was pending. Kameshwar Singh v. State of Bihar, I L R 30 Pat 454 : AIR 1951 Pat 91 (103, 104) (Pt N) (Pr 22) (SB).

● ——Art. 31 (4)—"Law" meaning of.

Per Reuben J. — The word "Law" in Art. 31 (4) seems to have been used as a compendious way of describing legislation which has passed through the Legislature of a State and has not yet received assent. The protection given by Art. 31 (4) assumes that the "law" is open to attack and therefore is not law in the strict sense.

Per Das J. — The word 'law' in Art. 31 does not appear to have been used exactly in the same sense in all the clauses; the context makes that quite clear. In Cl. (1), Art. 31, the expression 'law' means a valid law. Kameshwar Singh v. State of Bihar, I L R 30 Pat 454 : AIR 1951 Pat 91 (106, 123) (Pt O) (Prs 34, 97) (SB).

17. Clause (5).

● ——Arts. 31 (5) (a), 31 (6), 31-A (1) (a), 366 (10) — Land Acquisition (Bombay Amendment) Act (4 of 1948), S. 3 — Existing law—Meaning of — Does not include an Act void at its inception — Bombay Act 4 of 1948 held not saved by Art. 31 (5) (a) or by Art. 31-A (1) (a)

Before Cl. (5) of Art. 31 can be invoked there must be an existing law. To have the status of an existing law, the law should have been made by a Legislature having power to make such law. The Bombay Act 4 of 1948 was still born and was void at the inception. Therefore, it was not an existing law within the meaning of Art. 31 (5) of the Constitution. Further, a comparison of the provisions of Cls. (5) and (6) shows that in the latter the non-compliance of the provisions of S. 299 of the Government of India Act, 1935, was expressly saved, if the conditions laid down therein were satisfied, while in the former no such express protection was given and therefore no resuscitation of a dead law was possible thereunder. It must therefore be held that Art. 31 (5) (a) of the Constitution does not save the Bombay Amending Act of 1948.

If a particular statute attracts Art. 31-A (1) (a), it cannot be invalidated on the ground that it does not comply with the provisions of Art. 31 (2) of the Constitution, namely that the Act has not fixed the amount of compensation. But Art. 31-A cannot have any bearing in the context of an Act which had no legal existence at the time the Constitution came into force. It does not purport to revive laws which were void at the time they were made. The analogy drawn between a fundamental right under Art. 31 (2) and the conditions laid down in S. 299 of the Government of India Act, 1935, if it has any justification, is irrelevant in the context of a pre-Constitution void law like Bombay Amendment Act of 1948. Jeejeebhoy v. Assistant Collector, Thana Prant, 67 Bom L R 575 : (1965) 2 S C A 457 : 1965 M P L J 114 : 1965 Mah L J 115 : AIR 1965 S C 1096 (1101, 1102, 1103) (Pt C) (Prs 11, 12, 13)

● ——Art. 31 — Law—Existing law—Distinction between agreement and law—Agreement entered into on 17-4-51 by Ruler of Jodhpur State with a Company exempting excise duty and income tax in respect of goods produced by the Company — Held, agreement could not be considered law within Art. 372 — Agreement not affirmed by United State of Rajasthan — Company had no enforceable right against Union Government — Parliament not prohibited under Art. 295 from altering terms of contract under which liability of Government arose — Liability of Government of India was subject to agreement entered into by Government of India and Government of the State

—Such agreement entered into on 25-2-50—Company could not invoke Art. 19 or Art. 31 to its aid having no enforceable rights on 26-1-1950. See Ibid, Art. 372. **AIR 1963 S C 953.**

● ——**Art. 31** — Land Acquisition Act (1894), S. 6 — Constitutionality. Per Majority. — Since the Land Acquisition Act provides that the declaration made by the State that a particular land is needed for a public purpose shall be conclusive evidence of the fact that it is so needed the Constitution is not thereby infringed. The Act being a pre-Constitution law is protected from the operation of Art. 31 (2) by the provisions of Art. 31 (5) (a) also. Art. 19 (1) (f) is not attracted to such a case. **(1963) 2 S C J 35 : (1963) 2 Mad L J (SC) 18 : (1963) 2 Andh W R (SC) 18 : A I R 1963 S C 151 (160, 161) (Pt C) (Prs 21, 22 and 23).**

● ——**Art. 31 (5)** — Land Acquisition Act (1894) — Acquisition for company for public purpose — Compliance with requirements of Part VII not necessary — Building of residential quarters for industrial labour is public purpose—Act is immune from attack based on Art. 31 (2) of Constitution in view of provisions of Cl. 5 (a) of that Article, which saved an existing law of the nature of the Act in question. See Land Acquisition Act (1894), S. 6 (as Amended in Punjab). **AIR 1961 S C 343.**

● ——**Art. 31**—Land Acquisition Act (1894) — Acquisition of land for companies- Validity — Even if the Act contemplated acquisition for a company which may or may not be for a public purpose, it would be saved by Art. 31 (5) (a) as an existing law. AIR 1957 S C 521, Foll. Babu Barkya Thakur v. State of Bombay, **(1961) 1 S C R 128 : (1961) 2 S C J 392 : (1961) 2 S C A 425 : A I R 1960 S C 1203 (1206) (Pt A) (Pr 10).**

● ——**Art. 31 (5)** — Bombay Land Requisition Act, 1948 as amended by Bombay Acts 2 of 1950 and 39 of 1950 is not ultra vires. See Ibid, Art. 13. **A I R 1957 S C 521.**

● ——**Art. 31 (5) and (6)** — Scope and object indicated. See West Bengal Land Development and Planning Act (21 of 1948), S. 8. **AIR 1954 S C 170.**

● ——**Art. 31 (2) and (5)—Scope.**

Per Mahajan J. — The argument that the saving Cl. (5) in Art 31 has been inserted in the article by way of abundant caution cannot be accepted.

The saving Cl. (5) comprehensively includes within the ambit all the powers of the State in exercise of which it could deprive a person of property without payment of compensation. All forms of deprivation of property by the State without payment of compensation have been included within the ambit of the exception clause, while other forms of deprivation which are outside the ambit of the exception clause are inevitably within the mischief of Cl. (2) of the Article. The Constitution while defining and delimiting fundamental rights would not introduce in the articles dealing with those rights some matter merely by way of abundant caution. It was essential while delimiting and defining fundamental rights to fully define the field of the right and to say what was not included within that right. The Article read as a whole comprehensively defines the State's power of eminent domain as distinguished from all its other powers the exercise of which may amount to the taking of private property The argument that exceptions in Cl (5) were incorporated in Art. 31 by way of abundant caution further stands negatived by the contents of sub-cl. (5) (b) (ii) of the Article Dwarkadas Shrinivas v. Sholapur Spinning and Weaving Co., Ltd., **(1954) 1 Mad L J 355 : 1954 S C J 175 : 67 Mad L W 176 : (1954) 24 Com Cas 103 : 1954 S C A 132 : 56 Bom L R 681 : 1954 S C R 674 : AIR 1954 S C 119 (127) (Pt I) (Pr 18).**

● ——**Art. 31** — Bengal Land Revenue Sales (West Bengal Amendment) Act (7 of 1950), S. 7— Validity— Abridgement sought to be effected retrospectively of the rights of purchaser at a revenue sale is not so substantial as to amount to a deprivation of his property within the meaning of Art. 31 (1) and (2) — Clause (5) (b) (ii) of the Article held not applicable. See Bengal Land Revenue Sales (West Bengal Amendment) Act (7 of 1950), S. 7. **AIR 1954 S C 92.**

——**Art. 31 (5) (a)** — U. P. Town Improvement Act (8 of 1919), Ss. 36, 42—Improvement scheme not providing for compensation to tenants of houses sought to be acquired—Validity of scheme and proceedings under Land Acquisition Act (1894)—Both Acts being pre-constitutional are protected from operation of Art. 31 (2) - Effect. See Ibid, Art. 31 (2). **A I R 1965 All 356.**

——**Arts. 31 (2) and 31 (5) (a)**—U. P. Town Improvement Act (8 of 1919), Ss. 36 and 42 — Improvement scheme not providing for compensation to tenants of houses sought to be acquired — Validity of scheme and proceedings under Land Acquisition Act (1894) cannot be challenged under Art. 31 - Both Acts being pre-constitutional are protected from operation of Art. 31 (2) by Art. 31 (5) (a) — Land Acquisition Act (1894), S. 11. **AIR 1965 All 356 (364) (Pt G) (Pr 25).**

——**Art. 31 (2) and (5)—Existing law—Land Acquisition Act—If hit by Art. 31 (2)—Art. 366 (10)—Scope —(Land Acquisition Act (1894) S. 1).**

The Land Acquisition Act is an existing law within the meaning of Art. 366, sub-clause (10). It is therefore saved by the provisions of Art. 31 of the Constitution and even if it does provide for the acquisition for non-public purposes or does not provide for payment of compensation it is not hit by the provisions of Art. 31 (2). **AIR 1958 All 126 (131) (Pt D) (Pr 11).**

——**Art. 31 (2) and (5)—Relative scope of.**

The inhibition on the power of the legislature is contained in Art. 31 (2) and if Art. 31 (2) does not affect the legislation covered by Art. 31 (5) it cannot be contended that it is affected by the provisions of legislative list. Moreover the validity of the Act passed prior to the Constitution cannot be tested with regard to the legislative list under the Constitution. **AIR 1958 All 126 (131) (Pt E) (Pr 11).**

——**Arts. 31 (2), (5) (a) and (6) and 366 (10)—Scope—'Existing law' in Art. 31 (5) (a), meaning of.**

Article 31 (2) lays down the broad principle that no property can be taken possession of or acquired by the State unless it be for a public purpose and under a law which makes provision for compensation, but this general rule is subject inter alia to the provisions of Cls. (5) (a) and (6). The effect of these provisions is that Art. 31 (2) has no application to a law made more than 18 months before the Constitution, provided it is an existing law, whereas a law enacted within that period, provided it is certified by the President, cannot be called in question if either (i) it contravenes the provisions of Art. 31 (2) or (ii) it has contravened the provisions of S. 299 (2) of the 1935 Act. Clause (6) therefore embraces two categories of law, namely, certain laws which upon being certified by the President cannot be challenged on the ground that they contravene the provisions of Art. 31 (2), and also certain other laws which upon certification cannot be challenged on the ground that they contravene the provisions of S. 299 (2). There is nothing in Cl. (6) to show that both categories must be 'existing law'. The phrase used in Cl. (5) (a) — 'existing law other than a law to which

the provisions of Cl. (6) apply' does not mean that the law to which Cl. (6) applies must be existing law. The phrase should, and can, without any straining of the language be construed to mean any of those laws for which provision is made in Cl. (6) which come into the category of existing laws. There is, therefore, no reason to hold that the context requires a special meaning to be given to the expression 'existing law' as used in Art. 31 (5) (a). That expression must be given the meaning assigned to it in Art. 366 (10). **1954 All L J 673 : A I R 1955 All 12 (16) (Pt B) (Prs 8, 9) (DB).**

[Reversed on another point in AIR 1961 S C 14.]

——Art. 31 (2) and (5)—Land Acquisition Act (1894), S. 6 (3)— Validity — Act saved by cl. (5) from Art. 31 (2), Constitution of India — It is an existing law as defined in Art. 363. See Land Acquisition Act (1894), S. 6. **AIR 1953 All 182.**

——Art. 31 (2) and (5) — Scope — Powers of State Legislature.

Article 31 (2) gives only certain rights to the citizens and those rights are subject to Art. 31 (5). The effect of a combined reading of these two is that the rights guaranteed to a citizen under Art. 31 (2) are subject to the provisions of any 'existing law' governing the acquisition and payment of compensation therefor. There is no scope for putting the interpretation that Art. 31 (5) disables the State legislature to enact laws inconsistent with the 'existing law' as defined in Art. 366 (10). The State legislature can make its own laws providing for payment of compensation. All that Art. 31 contemplates is that there should be no compulsory acquisition unless it be for a public purpose. **(1959) I Andh W R 408 : I L R (1959) Andh Pra 276 : AIR 1959 Andh Pra 328 (329) (Pt B) (Pr 4) (DB).**

——Art. 31 (5)—Existing law.

In terms Cl. (5) of Art. 31 protects only 'existing laws' even if they conflict with Cl. (2); and if the Legislature was incompetent to pass an Act by reason of the restriction placed upon its authority, it would be difficult to call that Act an 'existing law.' A law which would become invalid on the enactment of the Constitution as being inconsistent with Cl. (2) is protected by C. (5). If however such a law was inconsistent with S. 299 of the Government of India Act, there is nothing in Cl. (5) which protects it. **60 Bom L R 1125 : ILR (1959) Bom 98 : AIR 1960 Bom 35 (42) (Pt D) (Pr 16) (DB).**

——Art. 31 (5) (a) — Bombay Land Requisition Act (33 of 1948) as amended by Bombay Land Requisition (Amendment) Act (2 of 1950) whether is "existing law."

In order that a law should be an "existing law" the only qualification laid down by the Constitution is that it should have been passed before the commencement of the Constitution. Inasmuch as the Provincial Legislature in 1948 not only passed the Bombay Act 33 of 1948 fixing its duration till 31-3-1950 but also passed constitutional legislation extending its duration up to 31-3-1952, on a plain reading of the definition of "existing law" as given in Art. 366 (10) the provisions of an existing law for the purposes of Art. 31 (5) (a) included both the actual operation of Bom Act 33 of 1948 and its potential operation in the sense that the Act had within itself the potentiality of being extended up to 31-3 1952. Hence Bombay Act 33 of 1948 as amended by Bombay Act 2 of 1950 to the extent that it merely extended its duration up to March 31, 1952, was an existing law. **53 Bom L R 837: AIR 1952 Bom 16 (23) (Pt F) (Pr 16) (DB).**

[Reversed on another point in AIR 1955 S C 41]

——Arts. 31 (2) and 31 (5) (a)—Scope—Bombay Land Requisition Act, Ss. 5 and 6 — Saved by Art. 31 (5) (a) as it is an existing law. See Bombay Land Requisition Act, S. 5. **AIR 1951 Bom 121 (DB).**

——Art. 31—Scope — West Bengal Premises Requisition and Control (Temporary Provisions) Act (5 of 1947), S. 3 (1)—Existence of public purpose if justiciable — Act, in spite of post-Constitution amendment is existing law covered by Cl 5 (a) of Art 31— Requisitioning of land is subject to constitutional guarantee embodied in S. 299 (2) Government of India Act. AIR 1957 Cal 310 held not good law in view of AIR 1957 S C 521. See Houses and Rents – West Bengal Premises Requisition and Control (Temporary Provisions) Act (5 of 1947), S. 3 (1). **AIR 1964 Cal 428 (DB).**

——Art. 31 — West Bengal Land (Requisition and Acquisition) Act (2 of 1948), S. 7 (1), Second Proviso —Validity – Provision offended S. 299 (2) of Government of India Act and was ultra vires—Provision not saved by Art. 31 (5) of the Constitution or by any thing contained in the Fourth Amendment to the Constitution. See Government of India Act (1935), S. 299 (2). **AIR 1961 Cal 112 (DB).**

——Art. 31 (5), (2) — Applicability — Existing Act—Extension after Constitution – W. B. Act (5 of 1947) extended by W. B. Act 15 of 1950 – Art. 31 (2) applies — W B Premises Requisition and Control (Temporary Provisions) Act (5 of 1947) (as amended by W. B. Act 15 of 1950, S. 1 (4)).

As the life of the West Bengal Premises Requisition and Control (Temporary Provisions) Act, 1947, has been extended after the Constitution by W. B Act 15 of 1950 which was enacted after the commencement of the Constitution, it is not an existing Act within the meaning of Art. 31 (5) but an Act to which the provisions of Art. 31 (2) applied. A I R 1955 S C 41, Rel. on; AIR 1954 Cal 171, Diss. from : AIR 1952 Bom 16 held not approved by S. C. **I L R (1958) 2 Cal 1 : 99 Cal L J 39 : 61 Cal W N 420 : A I R 1957 Cal 310 (314) (Pt C) (Pr 13) (DB).**

——Art. 31 (2) and (5)—Existing law — As the West Bengal Act 5 of 1947 was passed beyond 18 months of the Constitution and as such was an existing law within the meaning of Art. 31 (5) the constitutionality of this Act cannot be canvassed. See Houses and Rents — West Bengal Premises Requisition and Control (Temporary Provisions) Act (5 of 1947), S. 3 (1). **AIR 1954 Cal 171 (DB).**

—Art. 31 (5) — Existing law — Interpretation of Statutes—Existing laws — (Essential Supplies (Temporary Powers) Act (1946)).

Where the existing law is merely an enabling statute, conferring power to enact a law or promulgate an order having the force of law, and such an enactment is passed or an order made, after the Constitution, it cannot be said that the enactment or the order is exempt from the operation of Art. 31 (2), because the enabling statute is an 'existing law'. An 'existing law' to be so exempt, must be complete in itself.

Held, that the provisions of Art. 31 (2) have not been infringed by the Essential Supplies (Temporary Powers) Act, 1946. AIR 1950 S C 163 and AIR 1952 S C 115, Distinguished. **57 Cal W N 913 : AIR 1954 Cal 56 (59) (Pt B) (Prs 18, 19).**

——Arts. 31 (2) (5), 366 (10)—Existing law.

The Essential Supplies (Temporary Powers) Act (24 of 1946) was existing law and was in force at the commencement of the Constitution. The Act 52 of 1950 merely extended the life or operation of this existing law The character of the law remained unaltered. The resolution had not the effect of transforming the existing law into a new Law. Consequently the Bengal Food Grains (Disposal and Acquisition) Order (1947)

is also an existing law and consideration whether it provides for compensation or principles and manner of compensation is unnecessary. 56 Cal WN 137: AIR 1952 Cal 100 (101) (Pt B) (Prs 20, 22).

——Art. 31 (5) (a) and (6) — Applicability — Bombay District Municipal Act (3 of 1901) — Act as adapted extended to Surendranagar Municipality on 1st July, 1949—Neither Cl. (6) nor Cl. (5)(a) of Art. 31 applies. (1961) 2 Guj L R 518 : A I R 1962 Guj 25 (32) (Pt D) (Pr 13) (DB).

—— Art. 31 (2) — Validity of Hyderabad Act 35 of 1951 — The Act is not covered by Cl. (5) (b) (ii) of Art. 31 but is governed by Cl. (2) of Art. 31. It follows that the assent of the President is necessary to make it a law and as no such assent has been admittedly received, the authorisation to the collector to determine questions of compensation is without legal force. See Hyderabad City Improvement Board (Land Acquisition) Act (35 of 1951), S. 1. AIR 1955 Hyd 41.

——Art. 31 (5) (a)—Travancore Act 11 of 1914—Procedure for acquisition—Not discriminatory—Act not invalid—Act is an "existing law" within protection of Art. 31 (5) (a) of Constitution. See Travancore Land Acquisition Act (11 of 1914), S. 4. 1964 Ker L J 85.

——Art. 31 (2), (5) — Acquisition of land for companies under Land Acquisition Act (1894)—Validity.

Under Art. 31 (5)(a) the acquisition of land for Companies under the provisions of the Land Acquisition Act (1894), is not subject to any attack under Art. 31(2). 1961 M P L J 1449 : 1962 Jab L J 1 : AIR 1962 Madh Pra 80 (83, 84) (Pt A) (Pr 8) (DB).

[Reversed on another point in AIR 1965 S C 427.]

——Art. 31—Cantonments Act (1924), S. 126 — Validity—Whether infringes Art. 31—The Act is an existing law and falls under sub-cl. (a) of Cl. (5) of Art. 31 and is therefore not open to attack on the ground either that there was no public purpose or that no compensation was provided. See Cantonments Act (1924), S. 126. AIR 1958 Pat 71 (DB).

——Art. 31—Employees' Provident Funds Act (1952), S. 14-B — Validity—Provision does not infringe the provisions of Art. 31 (2) as it is saved by Cl. (5). ('58) I L R 37 Pat 47.

——Art. 31 (5) (b) (iii)—"Otherwise", connotation of.

The word 'otherwise' in Art. 31 (5) (b) (iii) connotes that the law need not always be made with its origin in an agreement with a foreign country. It can be made unilaterally by the Government of India, the only prerequisite being that it must be concerning property declared by law to be evacuee property. I L R (1956) Patiala 205 : AIR 1955 Pepsu 148 (153) (Pt K) (Pr 16) (DB).

——Art. 31 (2), (5) and (6)—Punjab Pre-emption Act —Constitutionality. Clause (5) of Art. 31 is very wide in its scope and nothing in Cl. (2) provided expressly or impliedly can affect the provisions of any existing law. The Punjab Pre-emption Act does not fall under Cl. (6) and as such is an existing law within the meaning of Cl. (5) and therefore does not offend the provisions of Cl. (2). I L R (1954) Patiala 545 : AIR 1954 Pepsu 180 (184) (Pt D) (Pr 10) (DB).

——Arts. 31 (5) (a) and 366 (10) — Land Acquisition Act (1894), S. 6, sub-s. (3)—Validity of—Article 31 (6) of the Constitution has no application to the Land Acquisition Act as it was passed long before the Constitution came into force. Therefore Cl. (2) will also not apply to the Act if it is an existing law. The Act must be held to be an existing law according to the definition in Art. 366(10) and therefore Art. 31 (5) is applicable to it. See Land Acquisition Act (1894), S. 6. AIR 1959 Punj 538.

——Arts. 31 (5) and 13—Notifications issued by the Travancore-Cochin Government under (Travancore) Salt Act (3 of 1088, M. E.) acquiring salt factory and establishing new one in its place—Provision contemplated by Art. 31(2) absent—If the Salt Act confers on Government the powers they claim even if it contains no provisions as contemplated by Art. 31 (2) they are saved by Cl. (5)(a) of Art. 31 and Art. 13 cannot be invoked. See Ibid, Art. 13 (2). AIR 1952 Trav-Co 14.

18. Taxation.

●——Art. 31—Suit of civil nature—Such suit barred expressly or impliedly by statute—Sales tax recovered from dealer under mistake of fact and law — Suit to recover tax so recovered—Section 20 of Bombay Sales Tax Act (5 of 1946), contended was not bar to such suit and if a bar was constitutionally invalid—Held, S. 20 was bar to such suit—Section 20 was also held constitutionally valid. See Ibid, Art. 19. A I R 1965 S C 1942.

● ——Art. 31—Applicability — Orissa Private Lands of Rulers (Assessment of Rent) Act (13 of 1958), S. 1 —Validity of Act — Act simply levies tax on land—Art. 31 not applicable to it.

What the Orissa Act has purported to do is to authorise the levy of assessment in respect of lands which till then had been exempted from the said levy, and as Art. 31 (5) (b) (i) provides, nothing contained in Cl. (2) affects the provisions of any law which the State may make for the purpose of imposing or levying any tax or penalty. If the Orissa Legislature has imposed a tax in the form of the assessment of the private lands of Rulers, clearly it has not purported either to deprive the Rulers of their property, or to acquire or requisition the said property, it is a simple measure authorising the levy of a tax in respect of agricultural lands and as such, it is entirely outside the purview of Art. 31. A I R 1961 Orissa 131, Approved. Rani Ratnaprova Devi v. State of Orissa, (1964) 6 S C R 301 : 1964 S C D 892 : 30 Cut L T 525 : AIR 1964 S C 1195 (1200) (Pt C) (Pr 14).

● ——Arts. 31 and 14 — Central Excises and Salt Act (1944) Sch. I, Item 17—Levy of excise duty on footwears under Item 17 is not discriminatory — It is valid and cannot be attacked under Arts. 19 and 31 of Constitution. See Ibid, Art. 14. AIR 1963 S C 104.

● ——Art. 31—Taxing statute when can be challenged as violating Arts. 14, 19 and 31. See Ibid, Part 3 (Gen). AIR 1962 S C 1563.

● ——Art. 31 (2)—U. P. Large Land Holdings Tax Act (31 of 1957), S. 5 (1) and Schedule—Constitutional validity — Not void on ground of contravention of Arts. 14, 19 (1) (f) and 31 (2) of the Constitution. See U. P. Large Land Holdings Tax Act (31 of 1957), S. 5 (1) and Schedule. AIR 1962 SC 1563.

● ——Art. 31 — Bombay Agricultural Produce Markets Act (1939), S. 29-B — Validity — Legislature has power to legislate retrospectively even with respect to taxation. See Bombay Agricultural Produce Markets Act (1939), S. 29-B. AIR 1962 SC 1517.

● ——Art. 31—Finance Act (1951), S. 7 (2)—Levy of excise duty with retrospective effect — Not an unreasonable restraint on right to hold property. See Finance Act (1951), S. 7 (2). AIR 1962 SC 1006.

● ——Art. 31 — Travancore-Cochin Land Tax Act (15 of 1955) (as amended by Act (10 of 1957), Ss. 4, 5A and 7—Constitutionality—Act is confiscatory, discriminatory and imposes unreasonable restrictions on holding property — Ss. 4 and 7 offend Art. 14 and Ss. 4, 5A and 7 offend Art. 19 (1) (f) — Whole Act is invalid as its main provisions are unconstitutional. See Travancore-Cochin Land Tax Act (15 of 1955)

as amended by Act (10 of 1957), S. 4. AIR 1961 SC 552.

● ——Art. 31 — Bihar Sales-tax Act (19 of 1947) — Validity—(Per S. R. Das, Ag. C. J., Bose, Bhagwati and Imam, JJ.)

Article 31 which protects citizens and non-citizens alike deals with deprivation of property otherwise than by way of levying or collecting taxes, and therefore. the Act does not constitute an infringement of the fundamental right to property under that Article. AIR 1951 SC 97, Foll. Bengal Immunity Co., Ltd. v. State of Bihar, (1955) S C J 672 : 1955 S C A 1140 : (1955) 2 Mad L J (S C) 168 : 1955 Andh W R (S C) 168 : (1955) 6 S T C 446 : (1955) 2 S C R 603 : AIR 1955 SC 661 (669) (Pt A) (Pr 6).

● ——Arts. 31 (1), 32, 265—Deprivation of property for recovery of tax—Art. 31 (1) does not apply—No remedy under Art. 32.

As there is a special provision in Art. 265 of the Constitution that no tax shall be levied or collected except by authority of law, Cl. (1) of Art. 31 must therefore be regarded as concerned with deprivation of property otherwise than by the imposition or collection of tax and inasmuch as the right conferred by Art. 265 is not a right conferred by Part III of the Constitution, it cannot be enforced under Art. 32. AIR 1951 SC 97, Rel. on.

Where therefore the proceedings taken against the petitioners under the Act 30 of 1947 had concluded so far as the Investigation Commission was concerned more than two years before the petition, under Art. 32 was presented in the Supreme Court and the property of the petitioners was sold by public auction for the recovery of income-tax under the assessment orders made under the Income-tax Act itself :

Held, on facts of the case, that the petition was not maintainable and that even otherwise in the peculiar circumstances that had arisen, it would not be just and proper to direct the issue of any of the writs, the issue of which was discretionary with the Court. Laxmanappa v. Union of India, (1954) 26 I T R 754 : 1954 S C A 1313 : 1955 S C J 590 : (1955) 2 Mad L J (SC) 94 : 1955 S C R 769 : AIR 1955 SC 3 (4) (Pr 5).

● ——Arts. 31 (1), 32 and 265—Imposition of taxes.

Clause (1) of Article 31 must be regarded as concerned with deprivation of property otherwise than by the imposition or collection of tax, for otherwise Art. 265 becomes wholly redundant. The protection against imposition and collection of taxes save by authority of law directly comes from Art. 265 and is not secured by Cl. (1) of Art. 31. Article 265 not being in Chapter 3, its protection is not a fundamental right which can be enforced by an application to the Supreme Court under Art. 32. Ramji Lal v. I.-T. Officer Mohindar Garh, (1951) 19 I T R 174 : 1951 S C J 203 : (1951) 1 Mad L J 384 : 1951 All L J (SC) 16 : 64 Mad L W 402 : 1951 S C R 127 : (1952) S C A 107 : AIR 1951 SC 97 (100) (Pt B) (Pr 12).

——Art. 31—Deprivation of property without authority of law — Income-tax recovery proceedings — Confirmation of sale while stay order is in operation —Confirmation is without jurisdiction and infringes rights guaranteed under Art. 31 — Income-tax Act (1922), S. 45. (1965) 2 I T J 85 : AIR 1966 All 176 (180) (Pt C) (Pr 23).

——Arts. 31 (5) (b) (i), 366 (28) — Levy under Ch. V-A of Employees' State Insurance Act—Nature and incidents of.

The nature of the special contribution payable by an employer under Ch. V-A of the Act, is a tax. The employee's special contribution under the Employees' State Insurance Act is a compulsory exaction, recoverable in the event of non-payment as if it were an arrear of land revenue. It is levied by public authority and it is not payment for services rendered. It is not an essential ingredient of a tax, that the moneys recovered by the levy must form part of the general revenues of the State.

The fact that an enactment falls within Art. 31 (5) (b) (i) does not necessarily mean that it falls within Art. 31 (2) also. If the levy is a tax under Art. 31 (5) (b) (i) it would be exempt from the applicability of Art. 31 (2). But if the enactment takes away an insignificant right or amount of money, it may fall under Art. 31 (5) (b) (i) though not under Art. 31 (2). The impugned Act does not fall under Art. 31 (2) at all. I L R (1958) 1 All 109 : AIR 1957 All 136 (139, 141, 142) (Pt E) (Prs 13, 16, 32, 35) (DB).

——Art. 31 (2)—Scope—Taxation—Right to exemption.

There is no fundamental right to exemption from payment of taxes. (1901) 46 Law Ed. 713 and AIR 1939 F C 1, Rel. on. 1956 All L J 820 : AIR 1957 All 84 (87) (Pt C) (Pr 12) (DB).

——Art. 31—Andhra Land Revenue (Surcharge) Act (2 of 1956), S. 3 — Constitutionality of Act—Levy of surcharge does not amount to acquisition of property —Art. 31 of the Constitution is not applicable—That apart, in view of the specific provision of Art. 31 (5) (b) (i) of the Constitution, no complaint can be made that the levy of tax would amount to acquisition of the property. I L R (1962) Andh Pra 853 : (1962) 1 Andh W R 56 : AIR 1962 Andh Pra 415 (416, 417) (Pt C) (Prs 16, 17) (DB).

——Arts. 31, 265—Protection against imposition and collection of taxes arises directly from Art. 265 and is not secured by clause (1) of Art. 31—Income-tax Act (1922), S. 46 (5A)). See Ibid, Art. 19 (1) (f). AIR 1960 Assam 76.

——Art. 31—Income-tax Act (1922), S. 49EE—Validity—S. 49-EE, does not infringe fundamental rights guaranteed under Arts. 14, 19 (1) (f) and 31. See Income-tax Act (1922), S. 49-EE. AIR 1960 Bom 353 (DB).

——Arts. 31, 14, 19 (1) (f) and (5), Sch. 7, List 2, Entry 49—Tax law—Tax on land—Classification of lands ultimately resulting in uniform levy per acre without any relation to income—Absence of quasi-judicial approach in matter of assessment, levy and collection of tax — Constitutional validity — Kerala Land Tax Act (13 of 1961), Ss. 5, 6, 7, 9, 10, 11, 17 and 19 — Kerala Land Tax Rules (1961)—Entire Act and Rules framed thereunder declared unconstitutional. See Ibid, Art. 14. AIR 1963 Ker 155.

——Art. 31—Clause (1) of Art. 31 must be regarded as concerned with deprivation of property otherwise than by imposing or collection of tax—Trav-Co. Entertainment Tax (Validation of Levy and Collection) Act, 1955 — Validity. See Travancore-Cochin Entertainment Tax (Validation of Levy and Collection) Act (26 of 1955), S. 3. AIR 1959 Ker 43 (DB).

——Art. 31—Income-tax Act (1922), S. 23A — Section does not offend Arts. 31, 19 (1) (f) and 14. A I R 1957 Mad 133, Foll. (1961) 41 ITR 21 (Mad).

[Overruled on another point in A I R 1964 S C 1804].

——Art. 31 (5) (b) (i)—Scope—Bihar Sales Tax Act (19 of 1947), S. 14-A, Proviso—Amendment made by Bihar Finance Act (4 of 1955) is unconstitutional. The legislation would not be saved by Art. 31 (5) (b) (i). See Ibid, Art. 20 (1). AIR 1957 Pat 1 (DB).

——Art. 31—Income-tax Act (1922), Ss. 22 (4) and 23 (2)—Failure to follow procedure under. See Income-tax Act (1922), S. 22 (4). AIR 1954 Punj 296 (DB).

19. Evacuee property.

● ——Art. 31 — Decision of Custodian-General that property is evacuee property and that petitioner's husband who transferred the same to petitioner was evacuee, becoming final— Petitioner cannot complain of any infringement of her fundamental right. See Ibid, Art. 19 (1) (f). AIR 1962 S C 1616.

● ——Art. 31 (5) (b) (iii)—Administration of Evacuee Property Act (1950), Ss 2 (d), 40 (4)—Validity — Provisions protected by Art. 31 (5) (b) (iii) — Hence not affected by Art. 31 (2) of the Constitution — See Administration of Evacuee Property Act (1950), S. 2. AIR 1961 S C 1257.

● ——Arts. 31 and 19 (5) — East Punjab Evacuees' (Administration of Property) Act (14 of 1947) as amended by Act (26 of 1948), S. 5-A—Validity.

Section 5A of the East Punjab Evacuees' (Administration of Property) Act (14 of 1947) cannot be read as a legislative provision depriving the owner of his property. There can be no doubt that so far as transactions subsequent to the date of amendment of the Act are concerned, it is nothing more than a restriction on the transfer of property by the owner thereof. The case would, then, be one which falls under Art. 19 of the Constitution and not under Art. 31. There can be no doubt that having regard to the purpose and policy underlying the law relating to Evacuee Property and the abnormal conditions which arose from and after the 15th August, 1947, the requirement of confirmation with reference to transactions affecting Evacuee Property cannot but be considered a reasonable restriction. If this requirement was in essence not a deprivation but a restriction in respect of future transactions, there is no reason for treating it as deprivation by virtue of its having been given retrospective effect, such retrospectivity being within the competence of the appropriate legislature. Sadhu Ram v. Custodian-General of Evacuee Property, 1956 S C A 70 : 1956 S C J 99 : (1955) 2 S C R 1113 : AIR 1956 S C 43 (44) (Pt A) (Pr 3).

——Art. 31 (2) and (5) (b) (iii) — Scope — S. 12, Displaced Persons (Compensation and Rehabilitation) Act (1954) — Validity of (Displaced Persons (Compensation and Rehabilitation) Act (1954), S. 12).

The Displaced Persons (Compensation and Rehabilitation) Act contemplates vesting in the Central Government of the interest of the evacuee and of no one else, and there is a provision made for payment of compensation and to the extent to which it contemplates acquisition of the interest of the evacuee it cannot be regarded as inconsistent with Art. 31 (2) of the Constitution. Undoubtedly by virtue of the notification under S. 12 the Central Government acquired the properties of the evacuee free from the encumbrance in favour of the person. But the notification has not the effect of extinguishing the contract. The contract remains outstanding but it cannot be enforced against the property vested in the Central Government by the operation of the notification. Section 12 merely imposes a restriction upon the right of the person entitled to the benefit of the encumbrance to get the property in enforcement of the agreement by specific performance.

Even assuming that there has been deprivation of property of such person by the Act, it is saved by clause 5 (b) (iii) of Art. 31 of the Constitution. ILR 1957 Bom 668 : 59 Bom L R 309 : A I R 1957 Bom 119 (128, 129) (Pt G) (Prs 20, 21) (DB).

——Art. 31 (5) — Property 'declared by law to be evacuee property'—Property declared by notification under Administration of Evacaee Property Act — (Administration of Evacuee Property Act (1950), S. 12).

The expression 'law' used in clause (5) of Art. 31 does not mean merely the direct expression of the will of the Legislature ; in its context the expression 'law' must include the lawful expression of the will of some authority to whom power is delegated by the Legislature. The expression 'property declared by law to be evacuee property' includes property which is declared by notification issued by the Custodian under the Administration of Evacuee Property Act to be evacuee property. Once that notification is issued the property becomes by operation of law evacuee property and it must be regarded as declared by law to be evacuee property. ILR (1958) Bom 668 : 59 Bom L R 309 : AIR 1957 Bom 119 (129) (Pt H) (Pr 22) (DB).

——Art. 31 (5)— Applicability — State law making provision in respect of evacuee property — If saved from operation of Art. 31 (2).

The expression 'evacuee property' has not been defined in the Constitution. If by law validly enacted certain property is declared to be evacuee property it must fall within the exception contained in clause (5) of Art. 31. The provision of any law which the State may after the date of the Constitution make with respect to such evacuee property is saved from the operation of cl. (2) of Art 31. I L R 1957 Bom 668 : 59 Bom L R 309 : A I R 1957 Bom 119 (129) (Pt I) (Pr 23) (DB).

——Art. 31 (2), (5)—Taking possession—Administration of Evacuee Property Ordinance (1949).

The mere fact that under the Ordinance no one has the beneficial use of the property of the evacuee and the property merely remains vested in the Custodian should not deter the High Court from coming to the conclusion that the property is taken possession of within the meaning of Art. 31 (2) and by reason of Cl. (5) no obligation attaches to the State to pay compensation for taking possession of that property. A I R 1951 Bom 86, Dist. 53 Bom L R 621 : ILR (1952) Bom 378 : AIR 1951 Bom 440 (449, 450) (Pt I) (Pr 14) (DB).

——Art. 31 — S. 40 of Administration of Evacuee Property Act (1950) is not contrary to Art. 31. See Administration of Evacuee Property Act (31 of 1950), S. 40. AIR 1953 Hyd 157 (DB).

——Art. 31 (1)—Administration of Evacuee Property Act (1950), S. 7 (1)—Leasehold of shop declared to be evacuee property—Provisions of S. 7 (1) ignored —Violation of fundamental right. See Administration of Evacuee Property Act (1950), S. 7 (1). AIR 1954 Madh B 173 (DB).

——Art. 31 (5) (iii) — Validity of S. 40, Administration of Evacuee Property Act (1950). See Administration of Evacuee Property Act (1950), S. 40. AIR 1955 Mad 75 (DB).

——Art. 31 — Administration of Evacuee Property Ordinance (1949)—Validity.

The entire scheme of the Administration of Evacuee Property Ordinance (1949) in respect of "evacuee property" is a provision for the custody and administration of such property and not for confiscation. The evacuee's title as such is never affected. Even the rights of a heir are recognised. Restoration of the property is contemplated. The Custodian acts practically as a statutory agent with large powers, but under a duty to keep accounts. There is no deprivation of the property of the evacuee within the meaning of Art. 31 (1). Nor is there any taking possession or acquisition falling under Art. 31 (2). No compensation can be given to the evacuee when

the Custodian keeps accounts of all receipts and disbursements relating to his property and there is provision for restoration at a subsequent date. Thus provisions of Art. 31 are not infringed by any of the provisions of the Ordinance relating to evacuees. **1951 Mad W N 497 : 1951-2 Mad L J 1 : AIR 1951 Mad 930 (933) (Pt C) (Pr 14) (DB).**

——**Art. 31**—Administration of Evacuee Property Act (1950), S. 17 (as amended by Act 22 of 1951) — Validity — Section held does not involve deprivation of property in relation to mortgage rights. See Administration of Evacuee Property Act (1950) (as amended by Act 22 of 1951), S. 17. **AIR 1958 Pat 266.**

——**Arts. 31, 226 — Deprivation of possession by Custodian of Evacuee Property — Right to writ of mandamus — Administration of Evacuee Property Act, 1950, S. 28.**

A lady executed and registered a deed of wakfnama on 4-5-1946 in respect of her property which provided that she was to be the mutwalli and that on her death or her relinquishing the office her three sons were to be joint mutwallis. She resigned her office as well as her right to receive a share of the income by a letter on 2-5-1949. The Deputy Custodian of Evacuee Property holding her to be an evacuee and that her letter of 2-5-1949 amounted to a transfer of property took possession of the property. The sons who were admittedly citizens of India applied for a writ of mandamus. It being also found that the lady who was born in India and married to an Indian citizen was herself a citizen of India :

Held, (1) that there was an infringement of fundamental right of the petitioners to hold and enjoy property;

(2) that there was no transfer of the property subsequent to 14-8-1947 so as to bring it within the meaning of the expression "evacuee property" in the Administration of Evacuee Property Act, 1950, and that the question was of no consequence since the lady was found to be a citizen of India;

(3) that Art. 226 gave the High Court original jurisdiction in all such matters to issue a mandatory injunction and that the special remedy of an appeal provided by the Act was no bar to the exercise of the jurisdiction. **ILR 30 Pat 21 : AIR 1951 Pat 434 (436) (Pt B) (Prs 6, 7) (DB).**

[*Reversed on another point in AIR 1955 S C 282.*]

——**Art. 31 (1), (2) and (5) (b) (iii)—Scope—Administration of Evacuee Property Act (1950), S. 17 (2) —Does not infringe guarantee under Art. 31 and is saved by Art. 31 (5) (b) (iii).**

The Administration of Evacuee Property Act, including S. 17 (2) is a law made by the Government of India, in pursuance of some agreement or unilaterally with respect to property declared by law to be evacuee property. Undoubtedly, therefore it falls under the exception in Art. 31 (5) (b) (iii). The result of setting aside a Court sale of evacuee property under S. 17 (2) is to enable the State to take possession of the property. The provisions of the section are in consonance with the object of the Act and there is nothing unconstitutional about them. Clause (2) of Art. 31 provides for both the conditions, namely the existence of a public purpose and obligation to pay just compensation. The exemptions in cl. (5) (b) therefore, will apply to the element of public purpose as well. S. 17 (2) of the Act cannot be regarded as contravening the provisions of Art. 31. **AIR 1956 Pepsu 58 (63, 64) (Pt G) (Prs 21, 26, 27) (DB).**

——**Art. 31 — Evacuee Interest (Separation) Act (1951), S. 9—There is no acquisition under S. 9.**

With the extinguishment of the mortgage charge contemplated by S. 9, Evacuee Interest (Separation) Act, the property which was the subject of the charge reverts to its owner and hence the State cannot be said to have acquired the mortgagee rights. There is thus no acquisition or deprivation without compensation of any non-evacuee interest.

The fact that the land vests in the Custodian unencumbered, does not make the Custodian, who represents the State for the purpose of administration of evacuee property, owner of the land. AIR 1954 Punj 261; AIR 1953 Pepsu 161 and AIR 1954 Mad 51, Rel. on. **ILR (1956) Patiala 205 : AIR 1955 Pepsu 148 (152, 153) (Pt H) (Pr 13) (DB).**

——**Art. 31 — Evacuee Interest (Separation) Act (1951), S. 9 — Profits received by mortgagee — Reasonable basis of compensation.**

Assuming that S. 9, Evacuee Interest (Separation) Act contemplates acquisition in the sense it is used in Art. 31, then the profits received from the land for a specific number of years can afford a reasonable basis for assuming that the mortgagee has been amply compensated both with regard to the prinpal he advanced and interest thereon at a reasonable rate.

What is a reasonable compensation depends upon the circumstances present at the time the question of compensation is to be decided. Section 9 (2) lays down a uniform rule for determining compensation to usufructuary mortgagees which the Legislature has power to do. The rule thus saves the section from being hit by the provisions of cl. (2) of Art. 31. **ILR (1956) Patiala 205 : AIR 1955 Pepsu 148 (153) (Pt I) (Pr 15) (DB).**

——**Art. 31 (5) (b) (iii) — Evacuee Interest (Separation) Act (1951), S. 9 — Provisions of S. 9 of Act are covered by Art. 31 (5) (b) (iii) of Constitution.**

The provisions of S. 9 (2), Evacuee Interest (Separation) Act do not come into conflict with the provisions of cl. (2) of Art. 31 of the Constitution as those provisions come within the ambit of cl. (5) (b) (iii) of Art. 31, which provides that the State may make any law "otherwise with respect to property declared by law to be evacuee property". **ILR (1956) Patiala 205 : AIR 1955 Pepsu 148 (153) (Pt J) (Pr 16) (DB).**

——**Art. 31 — Evacuee Interest (Separation) Act (1951), S. 9 — Validity — (Evacuee Interest (Separation) Act (1951), S. 9.**

The provisions of Art. 31 cannot possibly be attracted in the case of S. 9, Evacuee Interest (Separation) Act. The petitioner has not been deprived of his property; all that the Legislature has done is to reduce the rate of interest on the monies advanced by him. AIR 1947 P C 72; (1947) 2 M L J 1; 1947 F L J 28, Foll. 56 **Punj L R 443 : ILR (1955) Punj 509 : AIR 1954 Punj 261 (264) (Pt F) (Pr 12) (DB).**

——**Arts. 31, 19 and 14**—Administration of Evacuee Property Act (1950), Ss. 8 to 12—Sections are not inconsistent with the fundamental rights guaranteed under Articles. **4 Sau L R 268 : AIR 1953 Sau 73 (74) (Pt D) (Pr 5) (DB).**

20. Public health, etc.

——**Art. 31 (5) (b) (ii)—Scope—Levy under Chapter V-A of Employees' State Insurance Act (1948).**

The Act does not fall under Art. 31 (5) (b) (ii). Section 46 of the Act enumerates the benefits which are to be granted to the employees and only some of these can be said to be for the promotion of health of the employees.

It is really a measure of insurance providing for relief to the employees at times when they are not able to earn their wages due to sickness, disability or

other reasons though medical treatment is also to be provided to injured persons and the relief might be extended to the family also of an insured person. This Act cannot be said to be a measure providing for pubilc health within the meaning of the expression as used in Art. 31 (5) (b) (ii) of the Constitution. ILR (1958) 1 All 109 : AIR 1957 All 136 (142) (Pt F) (Pr 36) (DB).

——Art. 31 (5) (b) (ii)—Distinction between exercise of police power and that of eminent domain—Hyderabad Act 35 of 1951 does not relate to police power. See Hyderabad City Improvement Board (Land Acquisition) Act (35 of 1951), S. 1. AIR 1955 Hyd 41 (DB).

——Art. 31 (5) (b) (ii)— Applicability — Hyderabad Act 35 of 1951—Objects of —Act not covered by the Clause—Hyderabad City Improvement Board (Land Acquisition) Act (35 of 1951), S. 1.

Clause 5 (b) (ii) of Art. 31 covers only laws for the promotion of public health or the prevention of danger to life or property, and the purposes of the Board under the Hyderabad Act are wider.

It would be straining the language of the Hyderabad Act, to hold that it authorises acquisition of the lands only for promoting public health or preventing danger to life or property. By mere inclusion of public health as one of the purposes, it cannot be said that the new Act is for acquiring lands for only that purpose. The Act is not therefore covered by Cl. (5) (b) (ii) of the Constitution. ILR (1954) Hyd 640 : AIR 1955 Hyd 41 (42, 44) (Pt B) (Prs 5, 11) (DB).

——Art. 31 (5)—Bihar Maintenance of Public Order Act, 1949 (3 of 1950), S. 8 — Bihar Act 3 of 1950 infringes Art. 31 (2) of the Constitution.

Bihar Maintenance of Public Order Act, 1949 is not saved by the provision contained in Art. 31 (5) of the Constitution. There is no certificate of the President under Art. 31 (6) and, therefore the Act infringes the provisions of Art. 31 (2) of the Constitution. ILR 35 Pat 102 : 1956 B L J R 210 : 1956 Cri L J 640 : AIR 1956 Pat 137 (141, 142) (Pt E) (Pr 19) (DB).

● ——Art. 31 (2), (5), Sch. 7, List 2, Items 18, 64, 65 — Bihar Land Encroachment Act (31 of 1950) is not an Act for alleviation of public nuisance.

The expression 'public nuisance' is most inappropriate in respect of Bihar Land Encroachment Act and even if this is an Act covered by items 18, 64 and 65 of List 2, the question of public nuisance does not arise. As a matter of fact, if it is an enactment with regard to land, it comes solely within item 18, and only the penal portions of the statute can come within item 64. The jurisdiction and the powers conferred upon the Collector may be covered by item 65, but after reading and considering these three items one cannot say that this is an Act for the alleviation of public nuisance. The Act does not come within any of the exceptions provided in Art. 31 (5) of the Constitution of India. The Act cannot be saved under Cl. (5) (b) (ii) of Art. 31. It is not meant for the promotion of public health, nor is it meant for the prevention of danger to life and property; on the other hand, it interferes with fundamental rights, inasmuch as it deprives persons of their property without compensation. Brij Bhukan v. S. D. O. Siwan, 33 Pat 690: 1954 B L J R 513 : AIR 1955 Pat 1 (11 to 14) (Pt C) (Prs 6, 7) (SB).

——Art. 31 (5) (b) (ii)—Promotion of social welfare—Employees' Provident Funds Act (1952), S. 5—S. 5 is not ultra vires. See Ibid, Art. 14. AIR 1964 Punj 85 (DB).

21. Clause (6).

● ——Art. 31 (6) — Madras Act (28 of 1948) cannot be challenged on ground that it offended S. 299, Government of India Act (1935). See Tenancy Laws—Madras Estates (Abolition and Conversion into Ryotwari) Act (26 of 1948). AIR 1960 S C 32.

● ——Art. 31 (6)—Bombay Land Requisition Act 1948 as amended by Bombay Acts 2 of 1950 and 39 of 1950 is not ultra vires. See Ibid, Art. 13. AIR 1957 S C 521.

● ——Art. 31 and Sch. VII, List 3, Entry 42—Principle of giving compensation for property acquired cannot be invoked in respect of Madras Act 26 of 1948—(Madras Estates (Abolition and Conversion into Ryotwari) Act (26 of 1948), S. 24).

It is not open to a holder of zamindari estate in the State of Madras to raise the contention that the provisions relating to compensation as contained in the Madras Act 26 of 1948 are invalid on the ground that they are colourable exercise of legislative powers under the Government of India Act, 1935. The reason is that there is no entry in any of the legislative lists in the Government of India Act, 1935 corresponding to Entry 42 of List 3, Sch. 7 in the present Constitution and the guarantee given by S. 299 (2) of the Act of 1935 is not available to the appellant by reason of Art. 31 (6) of the Constitution. This is so even with respect to the contention that absolutely no compensation has been allowed in respect of a large number of under-tenures: AIR 1954 S C 257, Verappa v. State of Madras, AIR 1954 S C 605 (606) (Pr 2).

● ——Art. 31 (6) — Scope and object — West Bengal Land Development and Planning Act (21 of 1948), S, 8—Constitutionality. See West Bengal Land Development and Planning Act (21 of 1948), S. 8. AIR 1954 S C 170.

——Art. 31 (2) and Art. 31-A—U. P. Acquisition of Property (Flood Relief) Temporary Powers Act (39 of 1948), S. 9 (1), Proviso 1— Validity — Acquisition of land—Compensation — No provision for full market-value of property acquired—First proviso to S. 9 (1) is invalid—The Act cannot be saved by cl. (2) of Art. 31 as it is not covered by cl. (6) of the Article — The Act was passed in 1948 — Therefore it could not be a law which had been enacted not more than 18 months, before the commencement of the Constitution. See U. P. Acquisition of Property (Flood Relief) Temporary Powers Act (39 of 1948), S. 9 (1), Proviso. AIR 1962 All 606 (DB).

——Art. 31 (6)—Scope.

Clause (6) of Art. 31 embraces two categories of laws namely certain laws which upon being certified by the President cannot be challenged on the ground that they contravene the provisions of Article 31 (2) and also certain other laws which upon certification cannot be challenged on the ground that they contravene the provisions of S. 299 of Government of India Act. 1954 All L J 673 : A I R 1955 All 12 (16) (Pt B) (Prs 8, 9).

[Reversed on another point in AIR 1961 S C 14.]

——Art. 31 (6) and 31-B — Madras Estates (Abolition and Conversion into Ryotwari) Act, S. 20, Proviso 2—Validity of —Constitutional validity of S. 20 Proviso 2 cannot be challenged in view of Arts. 31 (6) and 31.B of the Constitution substituted by the Constitution (Fourth Amendment) Act 1955. (Government of India Act (1935), S. 299 (1)). (1958) 1 Andh W R 459: ILR (1958) Andh Pra 289 : AIR 1958 Andh Pra 522 (530, 531) (Pt F) (Prs 20, 21, 23) (DB).

——Art. 31 (2) and (6)—Requisitioned Lands (Continuance of Powers) Act—Not ultra vires — Held, Article 31 (2) did not affect the provisions of any law enacted more than 18 months before the commencement of the Constitution—The Requisitioned Lands

(Continuance of Powers) Act 1947 was such an enactment. See Requisitioned Lands (Continuance of Powers) Act (1947), S. 6 (2). 1960 Nag L J (Notes) 77 (Bom).

—Art. 31 (5) — West Bengal Premises Requisition and Control (Temporary Provisions) Act (5 of 1947) —Validily.

Clause (6) applies to West Bengal Premises Requisition and Control (Temporary Provisions) Act (5 of 1947). Therefore the provisions of Cl. (2) requiring compensation would not make the Act ultra vires even if no compensation was provided for. I L R (1951) 2 Cal 86 : 87 Cal L J 140 : AIR 1952 Cal 65 (67) (Pt E) (Pr 23) (DB).

——Art. 31 (6) — Statutes passed within eighteen months but not submitted for certification—Effect.

It is not correct to say that Art. 31 (6) will not apply to statutes passed within eighteen months of the Constitution coming into force but not submitted for the certification of the President. Article 31 (6) will clearly apply to such a statute and the result is that the Statute is open to challenge on the ground that it does not comply with the provisions of Art. 31 (2). 55 Cal W N 778 : AIR 1951 Cal 111 (114) (Pt B) (Pr 31) (DB).

——Art. 31 (6)—Scope.

The certification under Cl. (6) of Art. 31 of the Constitution is no better than the assent of the President to a measure under Cl. (4) of Art. 31. The certification under Cl. (6) should also only bar the Courts from enquiring into questions of compensation which are guaranteed by Cl. (2) of Art. 31. Thus the enquiry about the provisions being bad for absence of public purpose or in excess of authority given by any of the Entries in Lists II and III in Schedule VII of the Constitution should be open to Court in case of a measure certified under Cl. (6) of Art. 31, like the Act assented to under Cl. (4) of the aforesaid Article. AIR 1952 S C 252, Foll.; AIR 1943 Madh B 97 (FB), Rel. on. I L R (1954) Hyd 783 : AIR 1954 Hyd 227 (232) (Pt H) (Pr 18) (DB).

——Art. 31 (6) — "Any law of the State"—Meaning.

The words "any law of the State" mean any Act, Ordinance or Order, enacted by the State without any reference to its validity. Opinion of Das J. in AIR 1950 Pat 392 (SB), approved and observations of Sinha J., Dissent from. 65 Mad L W 226 : 1952 Mad W N 241 : 1952-1 Mad L J 456 : I L R (1953) Mad 543 : AIR 1952 Mad 835 (835, 836) (Pt A) (Pr 2) (DB).

——Arts. 31 (6) and 226 — Writ of certiorari — Issue of, to declare Act invalid.

When Art. 31 (6) declares that an Act shall not be called in question on the particular ground mentioned, it is not open to the Court to issue a writ of certiorari or other appropriate writ practically achieving the same result. L R 5 P C 417, Ref. to. 65 Mad L W 226 : 1952 Mad W N 241 : 1952-1 Mad L J 456 : I L R (1953) Mad 543 : AIR 1952 Mad 835 (836) (Pt B) (Pr 5) (DB).

——Art. 31 (6)—Certificate under—Effect. See Madras Electricity Supply Undertakings (Acquisition) Act (43 of 1949). AIR 1951 Mad 979 (DB).

[Reversed on another point in AIR 1954 S C 251.]

——Art. 31 (6) — Orissa Act 18 of 1948 — Validity—Act though passed within 18 months before the commencement of the Constitution was not submitted to the President for his certification. Consequently Courts are entitled to examine the existence of "public purpose". See Ibid, Art. 31 (2). AIR 1958 Orissa 187 (DB).

——Art. 31 (6) — Validity of Orissa Development of Industries, Irrigation, Agriculture. Capital Construction and Resettlement of Displaced Persons (Land Acquisition) Act (18 of 1948), S. 7 (1) (e).

Orissa Act (18 of 1948), comes within the language of Cl. (6) of Art. 31 as the first proviso to S. 7 (1) (e) of the Act was enacted not more than 18 months before the commencement of the Constitution. The Act did not receive the certificate. It is, therefore, open for a person to object to the constitutionality of the provision of the Act. I L R (1956) Cut 113 : AIR 1955 Orissa 97 (98, 99) (Pt A) (Prs 3, 4, 5, 6, 7) (DB).

● ——Art. 31 (6) — Terms of the clause are not wide enough to cover each and every contravention of the Constitution but only of Cl. (2). See Ibid, Art. 19 (1) (f). AIR 1950 Pat 392 (SB).

● ——Art. 31 (6)—Exercise of powers under — Restriction.

(Per Shearer J.)—The restriction, on the exercise of the power under Art. 31 (6), that the President should refrain from certifying any law unless that law provided for compensation is not a legal but rather a moral or political restriction. Kameshwar Singh v. Province of Bihar, I L R 29 Pat 790 : AIR 1950 Pat 392 (398) (Pt B) (Pr 5) (SB).

● ——Art. 31 (6)—"It shall not be called in question" —Meaning of—Institution of suit prior to Constitution.

The intention of the Constituent Assembly was that certain rights in land should be or be liable to be extinguished with effect from the date of enactment purporting to extinguish them and it cannot be said that words "it shall not be called in question" being words of futurity the certificate of the President is of no avail to the defendant where a suit for a declaration that the Bihar State Management of Estates and Tenures Act (21 of 1949) is an unconstitutional law is instituted prior to the enactment of the Constitution. Kameshwar Singh v. Province of Bihar, I L R 29 Pat 790 : AIR 1950 Pat 392 (398, 399, 417) (Pt C) (Prs 5, 37, 38) (SB).

● ——Art. 31 (6) — Certificate of President—Effect.

(Per Shearer J.)—The Constitution of India merely debarred the Courts from entering into the question of compensation or the propriety of the acquisition. The intention was not to compel the Courts to obey implicitly any enactment passed by the Legislature where a certificate was granted by the President. Kameshwar Singh v. Province of Bihar, I L R 29 Pat 790: AIR 1950 Pat 392 (401, 402) (Pt G) (Pr 8) (SB).

● ——Art. 31 (6)—Effect of—Civil P. C. (1908), S. 9.

(Per Sinha J.) — A Court must have jurisdiction throughout the proceedings until termination of those proceedings by the judgment of the Court. If the Court had jurisdiction to go into the question at the date of the institution of the suit, the jurisdiction will continue until something has happened to take away that jurisdiction. Article 31 (6) has not the effect of taking away the pre-existing jurisdiction of the Court to go into a matter. Kameshwar Singh v. Province of Bihar, I L R 29 Pat 790 : AIR 1950 Pat 392 (417) (Pt N) (Pr 37) (SB).

● ——Art. 31 (6)—Any law of the State—Meaning of — Bihar State Management of Estates and Tenures Act (21 of 1949), S. 1.

(Per Sinha J.)—In order to attract the operation of Art. 31 (6) there must be a valid law of the State. The certification by the President may cure an irregularity or an illegality in some details of the law in a valid piece of legislation but cannot cure a law which is void ab initio. The Bihar State Management of Estates and Tenures Act (21 of 1949) being void ab initio cannot be cured by the certificate under

Art. 31 (6). Kameshwar Singh v. Province of Bihar, ILR 29 Pat 790: AIR 1950 Pat 392 (417) (Pt O) (Pr 38) (SB).

——Art. 31 (6) — Saurashtra Grants (Resumption) Ordinance (84 of 1949) and Amending Ordinance (6 of 1950)—Validity.

The Saurashtra Grants (Resumption) Ordinance (84 of 1949) and the Amending Ordinance 6 of 1950 were certified by the President under Art. 31 (6) of the Constitution of India and their validity cannot be called in question on the ground that they contravene Art. 31 (2). AIR 1956 Sau 32 (34) (Pt C) (Pr 4) (DB).

——Art. 31 (6) — Saurashtra Grants (Resumption) Ordinance (84 of 1949) — Saurashtra Government Notification No. PD IN V 55, dated 16th July, 1951 —Validity.

The Saurashtra Grants (Resumption) Ordinance (84 of 1949) and the Amending Ordinance (6 of 1950) cannot be called in question by virtue of Art. 31 (6) of the Constitution of India and there is nothing in the Constitution or the Ordinance which would justify the Court to consider the merits of the Saurashtra Government Notification, dated 16th July, 1951. AIR 1956 Sau 32 (34) (Pt E) (Pr 5) (DB).

22. Article 31-A—Scope.

(a) Arts. 31-A and 31-B.

(b) Art. 31 (4) compared.

(c) Rights conferred by this Part — Before Fourth Amendment of 1955.

22. Article 31-A—Scope.

■ ——Art. 31-A — Mysore Tenancy Act (13 of 1952), S 6—Section is valid—The primary object of the Act is to afford much needed relief to the agricultural tenants by regulating their relations with their landlords. See Tenancy Laws — Mysore Tenancy Act (13 of 1952), S. 6. (1963) 2 S C J 246 : A I R 1966 S C 1172.

■ ——Art. 31-A (2) (as amended 17thly in 1964)—Scope—Art. 31-A is enacted to implement agrarian reform—Land Acquisition (Madras Amendment) Act (23 of 1961) is not confined to any agrarian reform —Provisions of that Act do not attract Art. 31A.

Article 31-A of the Constitution is enacted only to implement agrarian reform which expression has to be given a comprehensive meaning so as to include provisions made for the development of rural economy. Under Art. 31 (2) and Art. 31 (2-A) of the Constitution a State is prohibited from making a law for acquirtng land unless it is for a public purpose and unless it fixes the amount of compensation or specifies the principles for determining the amount of compensation. But Art 31-A lifts the ban to enable the State to implement the pressing agrarian reforms. The said object of the Constitution is implicit in Art. 31-A. It does not, however, enable the State to acquire the lands of citizens without reference to any agrarian reform in derogation of their fundamental rights without payment of compensation, for, to allow the State to do so will deprive Art. 31 2) practically of its content. Therefore, Art. 31 A will apply only to a law made for acquisition by the State of any 'estate' or any rights therein or for extinguishment or modification of such rights if such acquisition, extinguishment or modification is connected with agrarian reform. A I R 1960 S C 1080 and A 1 R 1985 S C 632, Rel. on,

Assuming that the Land Acquisition (Madras Amendment) Act (23 of 1961) is conceived and enacted only for the purpose of slum clearance which became an urgent problem for the City of Madras even then such a slum clearance cannot be held to relate to an agrarian reform in its limited or wider sense. That apart, the Amending Act in its comprehensive phraseology takes in acquisition for any housing scheme whether for slum clearance or for creating modern suburbs or for any other public purpose. The provisions of the Amending Act are not confined to any agrarian reform and therefore do not attract Art. 31-A of the Constitution. Vajravelu Mudaliar v. Special Deputy Collector for Land Acquisition, W. Madras, (1965) 2 S C A.396: (1964) 2 S C J 703: (1964) 2 Mad L J (S C) 173 : (1964) 2 Andh W R (S C) 173 : A I R 1965 S C 1017 (1022) (Pt B) (Prs 11, 12).

■ ——Art. 31-A—Assam Fixation of Ceiling on Land Holdings Act (1 of 1957)—Act conforms to the pattern usually followed by the several States in the country for giving effect to agrarian reform and the attack against its validity on the ground that it is a colourable piece of legislation must fail. See Tenancy Laws—Assam Fixation of Ceiling on Land Holdings Act (1 of 1957). AIR 1962 S C 137.

■ —Art. 31 A — Bombay Personal Inams Abolition Act (42 of 1953)— Compensation not payable for loss to inamdar — Still Bombay Act is saved from attack under Art. 31. AIR 1961 S C 288.

■ ——Art. 31-A — Interpretation of — Article 31A deprives citizens of their fundamental rights. Such an Article cannot be extended by interpretation to overreach the object implicit in the Article. Kochuni v. States of Madras and Kerala, 1960 Ker L J 1077 : 1960 Ker L T (S C) 31 : (1960) 2 S C A 412 : A I R 1960 S C 1080 (1087) (Pt E) (Pr 16).

■ ——Arts. 31-A and 14 — Vindhya Pradesh Abolition of Jagirs and Land Reforms Act (11 of 1952), Ss. 22, 7 and 28 (1)— S. 22 is constitutional—S. 22 does not violate Art. 14 — Even it be held that there is discrimination under S. 22 (1) as compared to S. 28 (1) it cannot be a ground for striking down S. 22 (1) in view of Art. 31-A. See Tenancy Laws — Vindhya Pradesh Abolition of Jagirs and Land Reforms Act (11 of 1952), S. 22. AIR 1960 S C 798.

■ ——Art. 31-A— Tenancy Laws—Vindhya Pradesh Abolition of Jagirs and Land Reforms Act (11 of 1952) —Constitutionality of Act as a whole cannot be challenged in view of Art. 31A. State of Vindhya Pradesh (Now M P.) v. Moredhwaj Singh, 1960 M P C 447 : 1960 S C J 754 : 1960 Jab L J 793 : 1960 Nag L J 678 : 1960 M P L J 1118 : (1960)3 S C R 106 : A I R 1960 S C 798 (798) (Pt A) (Pr 3).

■ ——Art. 31-A and Art. 14— Act offending Art. 14 —Effect of.

Article 31 A renders the objection that an Act offends Art. 14 of the Constitution inadmissible. Amarsinghji v. State of Rajasthan, (1955) 2 S C R 303 : 1955 S C A 766 : 1958 S C J 523 : A I R 1955 S C 504 (536, 537) (Pt X) (Pr 86).

——Arts. 31A, 31 (2) and 14 —Scope—U.P. Abolition of Zamindari and Land Reforms Act (1 of 1951)— Legislature dissolved—Act does not cease to be operative. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951). AIR 1953 All 92.

—— Art. 31-A—Madras Estates (Abolition and Conversion into Ryotwari) Act (26 of 1948) as amended by A. P. Act (20 of 1960), Ss. 28 (1), Expl. 32 (1), Explanation —Explanation added by the amending Act not merely declaratory—They affect vested rights—Cannot be given retrospective effect — Interpretation of Statutes—Use of objects and reasons—Art. 13 A of the Constitution does not apply. See Tenancy Laws—Madras Estates (Abolition and Conversion into Ryotwari) Act (26 of 1948) (as amended by A. P. Act (20 of 1960), S. 28 (1), Explanation. (1965) 1 Andh W R 98.

—— Arts. 31-A, 31, 19 and 13— Assam Acquisition of Land for Flood Control and Prevention of Erosion

(Validation) Act 1959 (21 of 1960), Ss. 2, 3—Intention — Validity of Assam Act 6 of 1955 — Acquisition of land prior to Act of 1955 — Validation by Act 21 of 1960 — Effect — As the Act of 1955 deals with the acquisition of property and not with the law relating to agrarian reforms, Art. 31-A is attracted. See Assam Acquisition of Land for Flood Control and Prevention of Erosion (Validation) Act 1959 (21 of 1960), S. 2. **A I R 1963 Assam 141.**

——Art. 31-A (1) (a)—Bombay Tenancy and Agricultural Lands Act (67 of 1948) as amended by Act (13 of 1956), Ss. 31-A to 31-D — Validity — Restrictions imposed on landlord's right to property are consistent with Constitution. 59 Bom L R 616 : A I R 1957 Bom 252 (263) (Pt E) (Pr 31) (DB).

[Overruled on another point in A I R 1959 S C 459.]

——Art. 31-A—Validity.

It cannot be held that the amendment to the Constitution embodied in Art. 31-A, was enacted by the provisional Parliament constituted under Art. 379, and that the Constitution was not amended as provided by Art. 368, and that either the amendment is bad or such an amendment could only endure till the proper Parliament was elected under the Constitution and once such Parliament was elected it was for that Parliament to confirm the amendment enacted by the provisional Parliament. A I R 1953 Pat 388, Rel. on. ILR (1955) Bom 127: 56 Bom L R 1062 : AIR 1955 Bom 28 (34) (Pt G) (Pr 11) (DB).

——Art. 31-A and Sch. 7, List 2, Entry 36, List 3, Entry 42 — Acquisition without compensation—Validity. See Ibid, Art. 31. ('59) 63 Cal W N 751.

——Arts. 31-A, 14 and 31—Aghat Tenure and Ijaras Abolition Act (Bom. 65 of 1959), S. 4 — Validity of Act—It falls within scope of Art. 31-A—It cannot be challenged on grounds covered by Arts. 14 and 31 — The Act deals with land tenures called 'estate' within the meaning of the definition under Art. 31-A (2) and is valid. (1961) 2 Guj L R 454 : A I R 1962 Guj 297 (303, 304) (Pt A) (Prs 16, 17, 18) (DB).

——Art. 31-A—Scope.

Article 31-A protects the taking away of the fundamental rights as to property. The High Court, therefore, has to strictly consider that the interpretation of that article is not such as to extend beyond its object. In every case under consideration, therefore, it would have to consider whether the rights which are sought to be taken away or extinguished fall within the scope of that article. In other words, the object for which such rights are sought to be taken away must have relation with the estate as defined in Art. 31-A (2). (1961) 2 Guj L R 454 : AIR 1962 Guj 297 (303, 304) (Pt G) (Pr 17) (DB).

——Art. 31-A—Scope.

Art. 31-A protects not only that portion of the Estates Abolition Act which contains provisions relating to the Tenancy Law of the State but also the other provisions thereof which are integrally connected with the scheme of acquisition. What is protected under Art. 31-A is 'the law relating to the acquisition of the estates' that is every part of that law which is reasonably connected with it is as part of the same scheme of acquisition. ILR (1953) Cut 71 : AIR 1953 Orissa 185 (203) (Pt O) (Pr 40) (DB).

——Art. 31-A — Punjab Security of Land Tenures Act (10 of 1953) — Section 19-E — Added by Punjab Act 14 of 1962 — Pepsu Tenancy and Agricultural Lands Act (13 of 1955), Section 32KK — Added by Pepsu Act 16 of 1962—Constitutional validity — Impugned sections are a measure of agrarian reform within ambit of Art. 31A and are saved from attack for violation of Arts. 14, 19 and 31. See Tenancy Laws —Punjab Security of Land Tenures Act (10 of 1953), S. 19E. AIR 1963 Punj 319.

●——Art. 31-A — Punjab Security of Land Tenures Act (10 of 1953), S. 11—In the Act the rights of the landlord are not suspended, nor is there any penalty imposed upon him, as a result of a subjective or arbitrary determination, See Ibid, Art. 19 (1) (f) and (5). AIR 1954 Punj 167 (FB).

——Art. 31-A—Saurastra Barkhali Abolition Act (26 of 1951), S. 18 — Validity of the Act cannot be challenged on the ground of inadequacy of compensation. See Ibid, Art. 31 (2). A I R 1955 Sau 80 (DB).

——Art. 31-A — Tripura Land Revenue and Land Reforms Act (43 of 1960), Ss. 123 and 167—Cannot be challenged on ground that they are made retrospective so as to operate from date of Bill. See Tenancy laws—Tripura Land Revenue and Land Reforms Act (43 of 1960), S. 123. AIR 1963 Tripura 1.

——Art. 31-A — Tripura Land Revenue and Land Reforms Act (43 of 1960), Chap. 11 and S. 134 (1) — Violation of Arts. 14, 19 and 31 of Constitution cannot be urged in view of Art. 31-A. See Tenancy laws —Tripura Land Revenue and Land Reforms Act (43 of 1960), Ch. 11 and S. 134 (1). AIR 1963 Tripura 1.

——Art. 31-A—West Bengal Land Development and Planning Act (21 of 1948), S. 8 — Section continues to be constitutional in view of Constitution (Fourth Amendment) Act, 1955. See West Bengal Land Development and Planning Act (21 of 1948), S. 8. AIR 1962 Tripura 13.

Law—Meaning of.

——Art. 31-A — 'Law' meaning of — Law includes Bill which has not yet become law by being assented to by President or Governor as the case may be. See Ibid, Art. 31 (3). AIR 1957 Orissa 96 (DB).

——Art. 31-A (1) — Scope—Orissa Estates Abolition (Amendment) Act, 1954 (17 of 1954), S. 1—'Law providing for acquisition'—Meaning of.

As a matter of construction it must be held that the words 'law providing for acquisition' occurring in Art 31-A (1) would include not only the Parent Act providing for acquisition but also the amending Act which should be deemed to have been incorporated in the Parent Act even though the amending Act in express terms provides only for textual amendment of certain clauses. The amending Act cannot stand isolated and must be held to have been read by the President, as forming part of the Parent Act, when he gave his assent to it. ILR (1957) Cut 1 : AIR 1957 Orissa 96 (99) (Pt D) (Pr 11) (DB).

●——Art. 31-A (1) — Law — Meaning of—Does not mean Act passed by Legislature. See Ibid, Art. 31 (3). AIR 1954 Raj 291 (FB).

22 (a). Arts. 31-A and 31-B.

●——Arts. 31-A (1) (a), 31-B — Land Acquisition (Bombay Amendment) Act (4 of 1948), S. 3—Scope of Art. 31-B—Art. 31-B not governed by Art. 31-A—Bombay Act 4 of 1948 being void from its inception, not saved by Art. 31-A.

The words, 'without prejudice to the generality of of the provisions' in Art. 31-B indicate that Acts and regulations specified in the Ninth Schedule would have the immunity even if they did not attract Art. 31-A of the Constitution. If every Act in the Ninth Schedule would be covered by Art. 31-A, this Article would become redundant. Indeed some of the Acts mentioned therein, namely, items 14 to 20 and many other Acts added to the Ninth Schedule, do not appear to relate to estates as defined in Art. 31-A (2)

of the Constitution. It must therefore be held that Art. 31-B is not governed by Art. 31-A and that Art. 31-B is a constitutional device to place the specified statutes beyond any attack on the ground that they infringe Part III of the Constitution. As the Bombay Amending Act was void from its inception Art. 31-A could not save it. Jeejeebhoy v. Assistant Collector, Thana Prant. 67 Bom L R 575 : (1965) 2 S C A 457 : 1965 M P L J 114 : 1965 Mah L J 115 : AIR 1965 S C 1096 (1101, 1102, 1103) (Pt D) (Pr 13).

● ——Arts. 31-A and 31-B—Constitution (17th Amendment) Act (1964)—Act is constitutionally valid. See Ibid, Art. 368. AIR 1965 S C 845.

● ——Arts. 31-A, 31-B—Validity of.

Articles 31A and 31B inserted in the Constitution do not either in terms or in effect seek to make any change in Art. 226 or in Arts. 132 and 136. Art. 31A aims at saving laws providing for the compulsory acquisition by the State of a certain kind of property from the operation of Art. 13 read with other relevant articles in Part III, while Art. 31B purports to validate certain specified Acts and Regulations already passed, which, but for such a provision, would be liable to be impugned under Art. 13. The new articles being essentially amendments of the Constitution, Parliament alone had the power of enacting them. That the laws thus saved relate to matters covered by List II does not in any way affect the position. To make a law which contravenes the Constitution constitutionally valid is a matter of constitutional amendment, and as such it falls within the exclusive power of Parliament.

Quaere—Whether the latter part of Art. 31B is too widely expressed. Shankari Prasad v. Union of India, 1951 R D (SC) 219 : 64 Mad L W 1005 : 1951 All L J 740 : 1951-2 Mad L J 683 : 88 Cal L J 281 : 1951 S C J 775 : 30 Pat 1179 : 1952 S C R 89 : AIR 1951 S C 458 (463, 464) (Pt G) (Prs 14, 15).

——Arts. 31-A and 31-B — Applicability — Acquisition of land under U. P. Act (26 of 1948)—Art. 31B applies by its own force irrespective of provisions of Art. 31A—U. P. Land Acquisition (Rehabilitation of Refugees) Act (26 of 1948), S. 11. ILR (1957) 2 All 88 : AIR 1958 All 154 (158) (Pt F) (Pr 15) (DB).

——Arts. 31-A, 31-B and 368 — Scope — Acts mentioned in ninth schedule — Power of subordinate legislature to amend—Limitation — (Tenancy Laws —Bombay Tenancy and Agricultural Lands Act (47 of 1948), S. 34 (2-A)).

Art. 31-B has been enacted with a view to protect from challenge the provisions of the specified Acts. But the protection can only apply to the Acts as they stood at the date when the Constitution (First Amendment) Act, 1952. was enacted. The effect of Art. 31-B and the Ninth Schedule is to incorporate the diverse provisions of the Acts in the Constitution and the provisions of the Acts are rendered free from challenge as inconsistent with or taking away or abridging any rights conferred by the Third Part of the Constitution. If the Acts specified in the Ninth Schedule have to be amended the amendments must either be consistent with the provisions of the Constitution or be saved under Art. 31-A of the Constitution. The Constitution can be amended only by Parliament and in the manner provided by Art. 368 of the Constitution, and any attempt to amend any of the Acts mentioned in the Ninth Schedule so as to take away or abridge any of the rights conferred by the Third Part of the Constitution by a Legislature other than the Parliament of India and in a manner different from that provided in Art. 368 is void and ineffective. Therefore, Art. 31-B does not assist in maintaining that S. 34 (2-A) (1) of the Bombay Tenancy and Agricultural Lands Act, 1948 is intra vires. 59 Bom L R 579 : AIR 1958 Bom 94 (97, 98) (Pt B) (Pr 13) (DB).

——Arts. 31-A and 31-B—Validity.

Articles 31-A and 31-B which were added by the Constitution (First Amendment) Act of 1951 are constitutional. AIR 1951 S C 458, Foll. ILR (1954) Hyd 783 : AIR 1954 Hyd 227 (231) (Pt A) (Pr 11) (DB).

22 (b). Article 31 (4) compared.

● ——Art. 31-A and 31 (4)—Relative scope.

Art. 31-A gives greater and wider protection than does Art. 31 (4). Raja Bhairchandra Bhup v. State of Assam. I L R (1956) 8 Assam 469 : 1956 S C A 536 : 1956 S C J 543 : AIR 1956 S C 503 (511) (Pt E) (Pr 18).

22 (c). Rights conferred by this Part — Before Fourth Amendment of 1955.

● ——Art. 31A — Part III does not stand repealed qua the estates of Zamindars and is not 'non est.'

(Mahajan and Das JJ.) : Qua the estates of the zamindars, Part III of the Constitution does not stand repealed and is not 'non est' by Constitution (First Amendment) Act, 1951. The truth is that Part III of the Constitution is an important and integral part of it and has not been repealed or abrogated by anything contained in Article 31-A of the Constitution; on the other hand, Article 31-A, while providing that no law providing for the acquisition by the State of any estate, shall be deemed to be void on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by any of the provisions of Part III clearly provides that where such law is made by the legislature of a State, the provisions of this article shall not apply thereto unless such law having been reserved for the consideration of the President has received his assent. This proviso in express terms keeps alive the alternative provisions of Part III of the Constitution in Art. 31 (3) for judging whether the State law has or has not complied with the provisions of Art. 31 (2). The provisions of Art. 31 (2), therefore, do not stand repealed by Art. 31-A. On the other hand, they are kept alive. The difference is that persons whose properties fall within the definition of the expression "estate" in Art. 31-A are deprived of their remedy under Art. 32 of the Constitution and the President has been constituted the sole judge of deciding whether a State law acquiring estates under compulsory powers has or has not complied with the provisions of Art. 31 (2). The validity of the law in those cases depends on the subjective opinion of the President and is not justiciable. Once the assent is given the law is taken to have complied with the provisions of Art. 31 (2). State of Bihar v. Kameshwar Singh. 1952 S C J 354 : I L R 31 Pat 565 : 1952 S C R 889 : 1953 S C A 53 : 65 Mad L W 527 : A I R 1952 S C 252 (309, 310, 315, 316) (Pt Y) (Prs 202, 231).

● ——Art. 31A — Natural rights—Rights recognised and rights conferred by Constitution — Madhya Bharat Zamindari Abolition Act — Applicability of Art. 31A.

It is too late in the day to base an argument in an Indian Court on the theory of the natural rights of man, particularly in relation to property. Whatever rights can now be claimed by any citizen in India must be on the basis of the Constitution. If relief is sought in respect of any infringement of an alleged right, the person asking for such relief must base his claim on some provision of the Constitution either express or implied. The Fundamental

Rights derive their sanctity not from anything which existed previously but from the Constitution and in this sense they are conferred by the Constitution. They are rightly called as "conferred" by the Constitution inasmuch as for enforcement of such rights new remedies are made available to the citizens of India. An application under Art. 226 of the Constitution challenging the Constitutionality of the Madhya Bharat Zamindari Abolition Act is not a proceeding in relation to a right which has been merely recognised, but is in regard to a right which has been conferred by the Constitution. Art. 31A therefore applies to such a case. AIR 1950 S C 27, Foll. Ram Dubey v. Govt. of the State of M. B. **ILR (1952) Madh Bha 178 : AIR 1952 Madh Bha 57 (66, 71) (Pt G) (Prs 31, 32, 34, 71, 74, 75) (FB).**

——**Art. 31A — S. 8**—Saurashtra Barkhali Abolition Act (26 of 1951), S. 8— Section if infringes Art. 14 of Constitution—Even if S. 8 is discriminatory, Art. 31A is conclusive answer since under that Article no law can be rendered void on the ground that it infringes any of the fundamental right guaranteed by Part III of the Constitution. 9 Sau L R 91 : AIR 1955 Sau 80 (85) (Pt E) (Pr 11) (DB).

23. "Acquisition."

● ——Art. 31-A (1) (a) — Bombay Act 4 of 1948 held not saved by Art. 31 (5) (a) or by Art. 31A (1) (a)— If a particular statute attracts Art. 31-A (1) (a), it cannot be invalidated on the ground that it does not comply with the provisions of Art. 31 (2). But Art. 31A cannot have any bearing in the context of an Act which had no legal existence at the time the Constitution came into force. Jeejeebhoy v. Asst. Collector, Thana. **1965 MP L J 114 : 1965 Mah L J 115 : 67 Bom L R 575 : (1965) 2 S C A 457 : AIR 1965 S C 1096 (1101 to 1103) (Pt C) (Prs 11, 12, 13).**

● ——Art. 31-A — Bombay Land, Tenure Abolition Laws (Amendment) Act, 1958 (Bom. 57 of 1958), Ss. 3, 4 and 6—Taluqdari tenure—Effect of provisions contained in Ss. 3, 4 and 6 on such tenure — Right to receive purchase price by tenure-holders affected — No acquisition by the State of any estate or any rights therein or the extinguishment or modification of any such rights—Ss. 3, 4 and 6 are unconstitutional and void — Provisions are not saved by Art. 10 (5) or by Art. 31-A. See Ibid. Art. 19 (1) (f). **AIR 1962 S C 821.**

● ——Art. 31—Assam Fixation of Ceiling on Land Holdings Act (1 of 1957)—Act falls within the protection of Art. 31-A of the Constitution—It is also not a colourable piece of legislation—Hence it is constitutionally valid. Where the lands sought to be acquired under the Act are admittedly an 'estate' as defined by Art. 31A (2), the rights which are extinguished by the acquisition of such lands are undoubtedly "rights in relation to an estate" as defined by that provision. See Tenancy Laws—Assam Fixation of Ceiling on Land Holdings Act (1 of 1937).) **AIR 1962 S C 137.**

● **——Art. 31-A (as amended by Constitution (Fourth Amendment) Act (1955)—Object and Scope of — (Madras Act 32 of 1955)—If covered.**

(Per Majority, Jafer Imam and Sarkar, JJ., contra) : Art. 31-A as amended by Constitution (Fourth Amendment) Act (1955) is concerned with land tenure, called 'estate' and provides for its acquisition or the extinguishment or modification of the rights of the land-holder or the various subordinate tenure-holders in respect of their rights in relation to the estate. AIR 1959 S C 459 and AIR 1959 S C 519, Rel. on.

Madras Marumakkathayam (Removal of Doubts) Act (32 of 1955) does not modify any of the rights appertaining to 'janmam right', but only confers shares in the property on other members of the tarwad. The sole title of the sthanee is not recognized and the members of the tarwad are given rights therein. The Act does not regulate the rights inter se between landlords and tenants. Hence the Act is not covered by Art. 31-A (as amended by the Constitution (Fourth Amendment) Act, (1955). Kochuni v. States of Madras and Kerala, **1960 Ker L J 1077 : 1960 Ker L T (S C) 31 : (1960) 2 S C A 412 : (1960) 3 S C R 887 : (1961) 2 S C J 443 : AIR 1960 S C 1080 (1086, 1087, 1088, 1089) (Pt D) (Prs 15, 16, 19).**

● ——Art. 31A—Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act (1954), Ss. 11, 27—Validity—The Abolition Act falls within the class of statutes contemplated by Art. 31A (a) — Validity cannot be challenged. See Ibid, Art. 19. **AIR 1960 SC 1008.**

● ——**Art. 31-A (1) (a) and Sch. VII, List II; Entry 18— Scope—Ajmer Abolition of Intermediaries and Land Reforms Act (3 of 1955), S. 8—Validity — Whether protected by Art. 31-A.**

The Legislature was certainly competent, under Entry 18 of List II of Sch. VII to the Constitution relating to Land, to enact S. 8. It cannot be disputed that the Legislature has power in appropriate cases to pass even retrospective legislation. Therefore, the Ajmer Legislature certainly had the power to enact such a provision, and in the circumstances in which this provision has been made in the Act, it cannot be said that it is not protected under Art. 31-A. The provision is not an independent provision; it is merely ancillary in character enacted for carrying out the objects of the Act more effectively. Raghubir Singh v. State of Ajmer, **1959 S C J 629 : (1959) Supp (1) S C R 478 : A I R 1959 S C 475 (477, 478) (Pt A) (Pr 4).**

● ——Art. 31-A (1) (a)—Scope — Ajmer Abolition of Intermediaries and Land Reforms Act, S. 38—If saved—(Tenancy Laws—Ajmer Abolition of Intermediaries and Reforms Act (3 of 1955), S. 38).

Section 38 is another ancillary section, like S. 8, and is meant to subserve the purposes of the Act, namely, the abolition of all intermediaries and encouragement of self-cultivation of the land. Therefore S. 38 is also protected under Art. 31-A (1), (a) of the Constitution as an ancillary provision necessary for the purposes of carrying out the objects of the Act. Raghubir Singh v. State of Ajmer, **1959 S C J 629: (1959) Supp (1) S C R 478 : AIR 1959 S C 475 (478)(Pt B) (Pr 5).**

● ——**Art. 31-A — Scope — Bombay Tenancy and Agricultural Lands (Amendment) Act (13 of 1956)— Validity.**

The Bombay Land Revenue Code, 1879, was an existing law relating to land tenures in force in Bombay at the time when the Constitution (Fourth Amendment) Act, 1955, was passed and Art. 31-A in its amended form was introduced therein and the expression 'estate' had a meaning given to it under S. 2 (10) there, viz., 'any interest in lands' which comprised within its cope alienated land and covered the holdings of occupants within the meaning thereof : The impugned Act was however not a law for the acquisition by the State of any estate or of any rights therein. Art. 31-A (1) (a) talks of two distinct objects of legislation; one being the acquisition by the State of any estate or of any rights therein and the other being the extinguishment or modification of any such rights. An extinguishment or modification of any rights in 'estates' is a distinct concept altogether and cannot be in the process of acquisition by the State. Under the Act there is no suspension of the title of the landlord at all. The title of the landlord to the land passes immediately to the tenant on the tiller's day and

there is a completed purchase or sale thereof as between the landlord and the tenant. The impugned Act is covered by Art. 31-A and is protected from attack against its constitutionality on the score of its having violated the fundamental rights, enshrined in Arts. 14 19 and 31 of the Constitution. Sri Ram Ram Narain Medhi v. State of Bombay. 1959 S C A 491 : 61 Bom L R 811 : (1959) 2 Andh W R (S C) 1 (1959) S C J 679 : (1959) 2 M L J (S C) 1 : (1959) 1 S C R (Supp) 489 : A I R 1959 S C 459 (468, 470, 472) (Pt D) (Prs 33, 37, 38, 41, 42).

● ——Art. 31-A—Scope—Assam State Acquisition of Zamindaris Act (18 of 1951)—If protected by Article.

The Assam State Acquisition of Zamindaris Act is a law providing for the acquisition by the State of an estate within the meaning of Art. 31-A and, that being so, its constitutionality or validity cannot be questioned on the ground of any contravention of any of the provisions of Part III of the Constitution dealing with fundamental rights. The impugned Act is a law providing for State acquisition of 'estate' even if its definition of Estate comprises something more than what is comprised in the six categories included within that term in S. 3 (b) of the Assam Land and Revenue Regulation of 1886. The impugned Act is fully protected by Art. 31-A. Bhairebendra Narayan Bhup v. State of Assam, I L R (1956) 8 Assam 469 : 1956 S C A 536 : 1956 S C J 543 : 1956 S C R 303 : AIR 1956 S C 503 (511, 512) (Pt F) (Pr 19).

● —Art 31A—An objection to the validity of an Act relating to acquisition of property on the ground that it did not provide for payment of compensation is an objection based on Art. 31 (2) and it is barred when the impugned Legislation fell within Art. 31A. Amar Singhji v. State of Rajasthan. 1955 S C J 523 : 1955 S C A 766 : A I R 1955 S C 504 (536) (Pt V) (Prs 82, 83, 84, 85).

● ——Art. 31A — Ajmer Tenancy and Land Records Act (42 of 1950), S. 112 — Validity—Law enacted in S. 112 is not saved either by Art. 19(5) or by Art. 31A. It is intended to regulate the rights of landlords and tenants, and not for providing for "the acquisition by the State" Raghubir Singh v. Court of Wards, Ajmer, 1953 S C J 505 : 1953 S C A 629 : 1953 S C R 1049 : 1954 Mad W N 433 : AIR 1953 S C 373 (375) (Pt A) (Pr 11).

● ——Art. 31-A—Article validates acquisition of all estates and is not concerned with States granting adhivasis right. See Tenancy Laws - U. P. Land Reforms (Supplementary) Act (31 of 1952) S. 3. A I R 1964 All 213 (FB).

——Art. 31-A—The word "acquisition" implies that there must be an actual transference of the land or all those rights and it must be possible to indicate some person or body to whom the land or such rights are transferred. See Andhra Inams (Assessment) Act (17 of 1955), S. 3. AIR 1960 Andh Pra 461 (DB).

——Art. 31-A—Land Acquisition (Bombay Amendment) Act (4 of 1948)—Validity — Art. 31-A protects Bombay Act from being declared invalid. See Ibid, Art. 14. AIR 1960 Bom 35 (DB).

● ——Art. 31 A (1) (a)—Applicability — Acquisition of estate or of any rights therein — Right of pre-emption — S. 242 (3), M. P. Land Revenue Code, if saved — (M. P. Land Revenue Code (2 of 1955); S. 242 (3)).

Article 31-A (1)(a) does not deal with any and every right; it deals with an estate or a right therein and the extinguishment must be of such a right. A right which the owner of a property has to claim substitution for a vendee when adjoining property is sold to a third party without notice to him is not a right in any estate but a right purely personal to the occupant arising only in the event of there being a sale. Therefore, Art. 31-A has no application to a right of pre-emption. Consequently S. 242 (3) of the M. P. Land Revenue Code is not saved by Art. 31-A. Balabhau Manaji v. Bapuji Satwaji Nardanwar, 60 Bom L R 18: 1957 Nag L J 351 : I L R (1957) Bom 728 : AIR 1957 Bom 233 (235, 236) (Pt C) (Pr 9) (FB).

——Art. 31-A—Bombay Personal Inams Abolition Act (42 of 1953)—Challenge on ground of compensation. See Ibid, Art. 31 (2). AIR 1955 Bom 28 (DB).

——Art. 31-A—Challenge on ground of public purpose—If the legislation falls under Art. 31-A, it is not open to the person affected by that legislation to challenge it on the ground that the acquisition is not for public purpose (Bombay, Personal Inams Abolition Act (42 of 1953)). See Ibid, Art. 31 (2). AIR 1955 Bom 28 (DB).

——Art. 31-A — W. B. Estates Acquisition Act (1 of 1954), (as amended by W. B. Act (35 of 1955), Ss. 49, 52 — Validity — Acquisition of rights of raiyats and under-raiyats — Provisions are protected by Art. 31-A of the Constitution. See Tenancy Laws—W. B. Estates Acquisition Act (1 of 1954) (as amended by W. B. Act (35 of 1955), S. 49. AIR 1964 Cal 552 (DB).

——Art. 31-A—(As amended by the Amendment Act, 1955) — W. B. Estates Acquisition Act (1 of 1954) (as amended by W. B. Act 35 of 1955), Ss. 52, 4—Notification under S. 4 issued on 10-4-1956 — Validity — Amendment of W. B. Act being retrospective, estates did not cease to exist on date of amendment — Act protected by Art. 31-A though notification of vesting is issued later on. See Tenancy Laws—W. B. Estates Acquisition Act (1 of 1954) (as amended by W. B. Act 35 of 1955), S. 52. AIR 1964 Cal 552 (DB).

——Art. 31-A — Validity of Act — Art. 31-A held to apply — Acquisition of land for public purpose — Contentions as to, cannot be raised.

The contention that there is no public purpose in the acquisition of a jagir or an estate and therefore, the impugned statute is bad, is barred, once Art. 31-A is held to apply. A I R 1955 Bom 28 and A I R 1955 S C 504, Rel. on. (1961) 2 Guj L R 454 : A I R 1962 Guj 297 (300, 301, 302) (Pt B) (Prs 10, 11) (DB).

——Art. 31-A (1) (a)—Agrarian reforms—Legislation modifying rights of landlord—Art. 31-A (1) (a) whether applies - Himachal Pradesh Tenants (Rights and Restoration) Act (1952), S. 3 — Immune from attack under Arts. 19 and 31 by virtue of Art. 31-A.

The Himachal Pradesh Tenants (Rights and Restoration) Act, 1952, is within the competence of the Legislature which passed it. Section 3 of the aforesaid Act under which the rights of a landlord were modified is covered by sub-cl. (a) of Art. 31 A (1) and even if the said provision is supposed to be in conflict with Art. 19 or 31, it would not be deemed to be void on the ground of any such conflict and is immune from such attack. Even though a legislation may not provide for acquisition by the State, it will not be open to attack on account of any conflict with Art. 14, 19 or 31 provided it is covered by Art. 31-A.

The words 'or the extinguishment or modification of any such rights' in Art. 31-A (1), sub-cl. (a) are not dependent upon or subordinate to the words 'the acquisition by the State of any estate or of any rights therein' and the words 'the acquisition by the State' do not modify the words 'or the extinguishment or modification of any such rights'. AIR 1963 Him Pra 28 (29, 30) (Pt B) (Prs 7, 8).

——Art. 31-A—Madras Inams (Assessment) Act (40 of 1956) — Even if the Act is regarded as providing for acquisition of the inams and is inconsistent with

Art. 14 or 19 it is saved by Art. 31-A. See Madras Inam (Assessment) Act (40 of 1956). AIR 1964 Mad 90 (DB).

——Art. 31-A—Mysore (Personal and Miscellaneous) Inams Abolition Act (1 of 1955), S. 9 — Section whether constitutes fraud on Constitution—Law providing for acquisition without payment of compensation cannot be questioned in view of Art. 31-A. See Ibid, Sch. VII, List III, Entry 42. AIR 1959 Mys 222 (DB).

——Art. 31-A—Scope—Orissa Estate Abolition Act, 1941 (1 of 1952), S. 3 (1) — Law dealing with acquisition of part of estate—Protection under Art. 31-A.

Where a law relating to the acquisition of an entire estate gets the protection of Art. 31-A it would necessarily follow that a law dealing with the acquisition of a part of an estate would also get the same protection by reason of the well known maxim 'omne majus continet in se minus' (the greater includes the less). **I L R (1957) Cut 1 : AIR 1957** Orissa 96 (100) (Pt F) (Pr 16) **(DB).**

——Art. 31-A — Orissa Estates Abolition Act (1 of 1952), S. 1—Act is valid. I L R (1953) Cut 71 : A I R 1953 Orissa 185 (195, 219) (Pt H) (Prs 19, 74) (DB).

——Art. 31-A — Orissa Estates Abolition Act (1 of 1952), S. 1—Acquisition of various items is valid.

The acquisition under Orissa Act of various individual items thereof, viz., private lands, personal service inams, waste lands, forests, etc. is valid. I L R (1953) Cut 71 : A I R 1953 Orissa 185 (197, 199, 200, 219) (Pt K) (Prs 23, 28, 74) (DB).

——Art. 31-A —Law of compulsory acquisition—Cases falling within the scope of Art. 31 (4), 31-A or 31 B—Law cannot be challenged on grounds relating to compensation. See Ibid, Art. 31 (4). **AIR 1953 Orissa 185 (DB).**

——Art. 31-A — Bihar Land Reforms Act, S. 4 (h)—Validity — (Bihar Land Reforms Act (30 of 1950), S. 4 (h)).

Section 4 (h), Bihar Land Reforms Act, confers authority on the Collector to make inquiries in respect of any transfer including the settlement or lease of any land comprised in an estate or tenure. It is obvious that the transferee or the lessee of land comprised in an estate or tenure has an interest or right in such estate or tenure. Section 4 (h) must be taken to be a law providing for the acquisition of any estate "or of any right therein or for the extinguishment or modification of such rights" within the meaning of Art. 31-A, of the Constitution. Further the provisions of S. 4 (h) are intimately associated and linked with the main provisions enacted under Ss. 3 and 4. The primary matter dealt with by this legislation of which S. 4 (h) is an integral part in its pith and substance deals with the acquisition of estates or tenures falling within entry 36 of List II and is therefore protected from attack under Art. 31-A of the Constitution. **AIR 1954 Pat 550 (553) (Pt B) (Pr 4) (DB).**

——Art. 31-A—Scope — S. 5 (2) (a) of Pepsu Court of Wards Act (1 of 2008 Bk.) is not saved by Art. 19 (5) or by Art. 31-A. See Ibid, Art. 19 (1) (f). A I R 1957 Pepsu 5 (DB).

● **——Art. 31-A (1) (a) — Common purposes enumerated in clauses (iii) and (iv) of S. 2 (bb), E. P. Holdings Act (50 of 1948) as amended—Reservations for—Validity—Test of—Agrarian reform — Meaning of — Includes legislation meant to improve standard of living and working in villages—Amending Act (39 of 1963 held covered by Art. 31-A (1) (a) of the Constitution — Reservations for income to Gram Panchayat and for other purposes held valid. See Tenancy Laws—East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (50 of 1948) (as amended by Punjab Act 39 of 1963), S. 2 (bb). A I R 1964 Punj 419 (FB).**

——Art. 31-A — Pepsu Tenancy and Agricultural Lands Act (13 of 1955)—Constitutional validity.

The lands which are affected by the provisions of the Act are an estate as defined in Art. 31-A and as the Act comes within the purview of Art. 31-A its validity cannot be assailed on the ground that it offends Arts. 14, 19 or 31. **A I R 1962 Punj 523 (524) (Pt A) (Pr 4).**

● **——Art. 31-A (1) (a)—Acquisition of estate — East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948—Object of Act is agrarian reform—Act is valid.**

Per Full Bench :—The East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (E. P. Act 50 of 1948) as amended by Punjab Act 27 of 1950 has for its objects agrarian reforms ; it is a valid piece of legislation and cannot be struck down as unconstitutional. It is thus immune from attack by virtue of Art. 31-A (1) (a) of the Constitution. Jagat Singh Didar Singh v. The State of Punjab, I L R (1962) 1 Punj 685 : 64 Punj L R 241 : A I R 1962 Punj 221 (221, 222, 223, 224, 225, 227, 228) (Prs 3, 6, 8, 9, 14, 16, 17, 20) (FB).

● **——Arts. 31 and 31-A — East Punjab Holdings (Consolidation and Prevention of Fragmentation) (Second Amendment and Validation) Act (27 of (1960)—Validity—Art. 12—'State'.**

Article 31-A applies equally to an entire estate or to a portion of an estate.

Village Panchayat which is a statutory body is undoubtedly a local authority and therefore 'State' by virtue of the definition in Art. 12.

The act of handing over the management and possession of the land of the proprietors to the village panchayat amounts to acquisition by the State. The transfer of rights to the panchayat can also be considered as modification of proprietary rights within the meaning of Art. 31-A.

The Punjab Village Common Lands (Regulation) Act, 1953 (1 of 1954) which by S. 3 provides for vesting of Shamlat deh in the village panchayat without payment of compensation to the proprietors has been held to be valid. Hence Act 27 of 1960, which merely provides authority for adding to or taking away from the already existing shamlat deh is saved by Art. 31-A. A I R 1955 S C 504, Dist. ; A I R 1954 Punj 167 (FB) and A I R 1959 S C 519, Foll. Kishan Singh v. State of Punjab, **62 Punj L R 840 : I L R (1960) 2 Punj 904 : A I R 1961 Punj 1 (2, 3) (Prs 5, 6, 7) (FB).**

● **——Art. 31-A — Applicability — Acquisition and Resumption of estates—Distinction — Rajasthan Act 6 of 1952 governed by Art. 31-A — (Rajasthan Land Reforms and Resumption of Jagirs Act (6 of 1952), S. 1)—(Words and Phrases—Acquisition and resumption of estates).**

Resumption implies taking back by the person who grants the land, and there can be no liability to pay compensation when such taking back takes place because of breach of conditions of the grant.

The very fact therefore, that the Rajasthan Act provides for payment of compensation is the clearest possible indication that the Act is for the acquisition of jagirs, and not for resumption as that word is well understood. Here the property is being taken away not because of any breach of condition of any grant under which it was given to the jagirdars, but on payment of compensation. The application of Art. 31-A

cannot therefore be excluded on the ground that the Rajasthan Act is not an Act for acquisition of estates. Amar Singh v. State of Rajasthan, 1955 Raj L W 212: I L R (1955) 5 Raj 149 : (1955) 2 S C R 303 : A I R 1954 Raj 291 (294) (Pt B) (Pr 6) (FB).

24. "Extinguishment or modification of any such rights".

●——Art. 31-A — Expressions "any estate or of any rights therein" and "the extinguishment or modification of such rights" in Art. 31-A—Wide connotation of — Held, that the impugned Acts are a part of a general scheme of reforms and any modification of rights has the protection of Art. 31-A. See Ibid, Art. 19 (1) (f). A I R 1965 S C 632.

●——Art. 31-A (1) (a)—Bihar Land Reforms Act (30 of 1950), S. 4 (h)—Constitutional validity—Section 4 (h) is saved by Art. 31-A (1) (a) of the Constitution—It is designed to extinguish or modify the rights in an estate. See Tenancy Laws — Bihar Land Reforms Act (30 of 1950), S. 4 (h). A I R 1962 S C 50.

●——Art. 31-A (1) (a)—Scope — Punjab Security of Land Tenures Act (10 of 1953 as amended by Act 11 of 1955)—If extinguishes or modifies any rights in any estate within Art. 31-A (1) (a) — Constitutional validity — (Punjab Land Revenue Act (17 of 1887), S. 3). A I R 1959 Punj 8, Overruled.

Keeping in view the fact that Art. 31-A was enacted by two successive amendments one in 1951 (First Amendment), and the second in 1955 (Fourth Amendment) with retrospective effect, it must be held that those expressions have been used in their widest amplitude, consistent with the purpose behind those amendments. A piece of validating enactment purposely introduced into the Constitution with a view to saving that kind of legislation from attacks on the ground of constitutional invalidity, based on Arts. 14, 19 and 31, should be given its fullest and widest effect, consistently with the purpose behind the enactment, provided however that such a construction does not involve any violence to the language actually used.

The expression 'rights in relation to an estate' has been used in a very comprehensive sense of including not only the interests of proprietors or sub-proprietors but also of lower grade tenants, like raiyats or under-raiyats. The expression 'other intermediary' added to it shows that the enumeration of intermediaries was only illustrative and not exhaustive. A I R 1959 S C 459, Rel. on ; A I R 1959 Punj 8 (FB), Overruled ; A I R 1954 Punj 167 (FB) and A I R 1955 Punj 220, held correctly decided.

The provisions of Punjab Security of Land Tenures Act (10 of 1953 as amended by Act 11 of 1955) amount to modification of the land owner's rights in the land comprised in his estate or holding. It is clear that the provisions of Art. 31-A save the impugned Act from any attack based on the provisions of Arts. 14, 19 and 31 of the Constitution. Atma Ram v. State of Punjab, 1959 S C J 407 : (1959) Supp (1) S C R 748 : A I R 1959 S C 519 (526, 527, 528) (Pt B) (Prs 11, 12, 14).

●——Art. 31-A—Modification—Meaning of.

The word "modification" in the context of the Article only means a modification of the proprietary right of a citizen like an extinguishment of that right and cannot include within its ambit a mere suspension of the right of managemeut of estate for a time definite or indefinite. Raghubir Singh v. Court of Wards, Ajmer, 1954 Mad W N 433 : 1953 S C J 505 : 1953 S C R 1049 : 1953 S C A 629 : A I R 1953 S C 373 (375) (Pt D) (Pr 10).

——Art. 31-A (1) (a)—Applicability—Law providing for acquisition of rights of lessees and sub-lessees of mines and minerals.

Sub-clause (a) of Cl. (1) of Art. 31-A is very general in its term. and would include the acquisition of any estate or of any rights therein, as also the extinguishment or modification of such rights. Provided that the lessee or sub-lessee is an intermediary and holds an estate or any rights therein it cannot be said that sub-clause (a) has no application. In any event, the provisions as to acquisition of the rights of lessees and sub-lessees of mines and minerals which have been introduced in the W. B. Estates Acquisition Act 1 of 1954 by the W. B. Amending Act 4 of 1957, come within the expression 'extinguishment or modification' in Art. 31-A (1) (a). 66 Cal W N 304 : A I R 1960 Cal 646 (661, 662) (Pt C) (Pr 27).

●——Art. 31-A—'Extinguishment and modification'—Meaning.

It is plainly incorrect to construe Art. 31-A in such a manner as to render the word modification occurring therein wholly redundant. Both the word 'extinguishment' and 'modification' which find place in Art. 31-A must be given their respective meanings and significance. The difference in the import of these two words lies in the degree of the impairment or invasion of the rights in an estate. While extinguishment indicates a total annihilation of the right, whether it be in respect of the entire estate or a part of it, modification covers a case where a right in the estate is abridged or impaired short of extinguishment to the prejudice of the person in whom the right resides. A I R 1953 S C 373, Expl. and Disting.

It is therefore idle to contend that 'modification' in Art. 31-A means nothing other than 'extinguishment' and that anything short of extinguishment, will not be covered by Art. 31-A. Nor is it tenable to contend that a drastic limitation imposed upon a landlord's right to obtain land for personal cultivation by evicting the tenant will not amount to modification of the landlord's right in the estate. The right to resume the land especially for personal use of cultivation is undoubtedly a valuable right which the landlord has in his estate. Any curtailment of this right so as to preclude him from recovering the extent of land he desires or actually needs to bring under personal cultivation will be a modification of his right in the estate. S. Sant Singh v. State of J & K. AIR 1959 J & K 35 (42, 43, 45, 46) (Pt D) (Prs 15, 21) (FB).

●——Art. 31-A—J & K Tenancy Act (2 of 1980) (as amended by Act 7 of 2005 and 12 of 1955), Ss. 16 (1), 1 (a), 15-A, 19-B, 45, 47 and 49 — Constitutional validity — Protection under Arts. 31-A and 31-B whether available—It cannot be said that either S. 15-A or S. 19-B of the Act is directly intended to modify the right of the landlord in the estate. See Tenancy Laws —J. & K. Tenancy Act (2 of 1980) (As amended by Act (12 of 1955), S. 15-A. AIR 1959 J & K 35 (FB).

——Art. 31-A—Mysore Tenants (Temporary Protection from Eviction) Act (37 of 1961), S. 3—Validity— It is not a law providing for "extinguishment" or "modification" of any right — See Tenancy Laws—Mysore Tenants (Temporary Protection from Eviction) Act (37 of 1961), S. 3. AIR 1964 Mys 43 (DB).

——Art. 31-A — Extinguishment of estate rights — Punjab Village Common Lands (Regulation) Act (1 of 1954), S. 3 — Provision vesting rights in village land in Village Panchayat — Object to benefit rural community — Act is a measure of agrarian reform and is protected under Art. 31-A.

Article 31-A applies only to such legislation as is designed to effect agrarian reform : AIR 1960 S C 1080 (Foll.). Agrarian reform is not confined only to the improvement of methods of tilling land for it has a much broader scope and includes all steps affecting the rural economy in general. Section 3 of the Punjab Village Common Lands (Regulation) Act 1953 (I of 1954) vests certain rights in certain areas of land in a

representative body —the village Panchayat —so that it could be better managed for the benefit of the rural community and viewed in this light it is hard to agree that the Act is not designed to affect agrarian reform. Where an Act authorises the reservation of a portion of proprietary land for providing income to the Gram Panchayat and the functions of the Gram Panchayat are to promote the well-being of farmers in all possible ways the Act must be said to be aimed at agrarian reform. A I R 1962 Punj 221 (FB) Foll. Thus the Act having for its object agrarian reform is protected by Article 31-A of the Constitution and does not offend against Articles 19 and 31 or Art 14 of the Constitution: A I R 1955 Punj 220 held still good law after reconsideration in light of A I R 1960 S C 1080. 66 Punj L R 966 : AIR 1964 Punj 503 (504, 505, 506) (Pt A) (Prs 7, 8) (DB).

●——Art. 31-A—E. P. Holdings (Consolidation and Prevention of Fragmentation) (Second Amendment and Validation) Act (27 of of 1960) —Validity—Act is saved by Art. 31-A — The transfer of rights to the Panchayat can be considered as modification of proprietary rights within the meaning of Art. 31A. See Ibid, Art. 31. AIR 1961 Punj 1 (FB).

——Art. 31-A—Punjab Consolidation of Land Proceedings (Validation) Act (6 of 1954) Pre. and Ss. 3 and 4 —Extinguishment and modification of right — The protection afforded by Art. 31A does not avail because such lands or parcels thereof in Punjab State as are not assessed separately to land revenue and which do not form units by themselves cannot be brought within the meaning of 'estate' as defined by Art. 31 A. See Ibid, Art. 31. AIR 1959 Punj 8 (DB).

[Overruled in A I R 1959 S C 519].

——Art. 31-A (1)—"Extinguishment or modification of any such rights"—Punjab Village Common Lands (Regulation) Act —Validity —(Punjab Village Common Land (Regulation) Act (1 of 1954), Ss. 1 and 3).

There is no ground for thinking that if a person's rights in an estate have been taken away from him and given to another person this would not be extinguishing those rights, Therefore the impugned Act does fall within the meaning of Art. 31-A as it provides for the extinguishment of certain rights in certain property belonging to the village proprietors and also for the modification of those rights.

There are in an estate several kinds of rights owned by various persons and one of such rights is the right of proprietorship in the village 'shamilat' and when, therefore, the impugned Act provides for the extinguishment of such ownership rights it clearly provides for the extinguishment or modification of certain rights in an estate. The whole includes the part and where an Act provides for rights in an estate it provides for rights in part of an estate. A I R 1954 Punj 167 (F B), Foll.

There is therefore, nothing in impugned Act which offends against the provisions of the Constitution and the Act is therefore valid. ILR (1955) Punj 1334 : 57 Punj L R 359 : AIR 1955 Punj 220 (221, 222) (Prs 2, 3, 5) (DB).

●——Art. 31 A—Punjab Security of Land Tenures Act (10 of 1953) —Validity — Act does nothing more than modify rights in estates which is permissible under terms of Art. 31A. See Ibid, Art. 31. AIR 1954 Punj 167 (FB).

●——Art. 31-A — Validity of Punjab Security of Land Tenures Act [Tenancy Laws—Punjab Security of Land Tenures Act (10 of 1953)].

The Punjab Security of Land Tenures Act is not an Act aiming at the acquisition of private property. It merely limits the maximum holding of a landlord and lays down a procedure for attaining this object. It therefore does nothing more than modify rights in estates which is permissible under the terms of Art. 31-A of the Constitution.

Even if by any stretch of meaning S. 18 of the Act could be construed into a provision for acquisition the same section contains a provision for the payment of compensation, inasmuch as the tenant has to pay a fair price for the land which he wished to purchase. Sub-s. (2) of S. 18 of the Act lays down the procedure for determining the value of the land. It therefore cannot be said that the Act authorised compulsory acquisition of property without making provision for the payment of compensation to the owners.

So long as the retrospective effect of the Act is in conformity with the objects of the Act and does not violate any principles of the Constitution the provision must be held to be valid. The Act gives certain rights to those tenants who were ejected after the 15th of August, 1947, and there seems to be nothing unreasonable in giving them the same rights as are acquired by persons who are tenants at the commencement of the Act. In the same way the abrogation of mala fide transactions is brought under the mischief of the Act by S. 16. This section is intended to prevent evasion of the provisions of the Act by colourable transactions. Therefore the objection that the statute is not valid because it nullifies retrospectively all gifts, exchanges and family settlements against the spirit of the Constitution and natural justice, is not tenable. A I R 1941 F C 16, Rel. on.; A I R 1951 Cal 85, Ref. to.

There is also no force in the argument that the Punjab Act is invalid because it deals not with whole villages but with portions of estates held by the landowners and therefore is not saved by Art. 31-A. It is clear from the specific instances of Acts mentioned by Art. 31-B as saved by Art. 31-A that the object of the latter Article appears to have been to bring all agricultural land as distinct from urban property within the ambit of the Article and that the Constituent Assembly in enacting that Article intended not only to deal with whole estates but also part of estates. Bhagirath Ram Chand v. State of Punjab. 56 Punj L R 1 : A I R 1954 Punj 167 (170, 171) (Pt B) (Prs 8, 9, 10, 14) (FB).

25. Taking over of management—Clause (1) (b).

——Arts. 31-A, 14, 19, 31 — Petitioner, manager of Oriental Gas Company, complaining that West Bengal Oriental Gas Company Act (15 of 1960) violated Art. 14, 19 or 31 of the Constitution — Held that assuming that the petitioner's alleged right of management was capable of being complained of under Art. 226 it was fully answered by Art. 31-A and the petitioner had no right to complain of any infraction of Arts. 14, 19 or Art. 31. 65 Cal W N 545 : AIR 1961 Cal 267 (284) (Pt I) (Pr 44).

[Reversed on another point in AIR 1962 S C 1044.]

26. Clause (1) (e).

●——Art. 31-A (1) (e) — Coal Bearing Areas (Acquisition and Development) Act (51 of 1957), Ss. 13 (4), 4, 5 — Suspension of the right of a mine owner or a lessee of a mine is modification within the meaning of Art. 31-A (1) (e). Burrakur Coal Co. v. Union of India. (1961) 2 S C A 523 : AIR 1961 S C 954 (962) (Pt E) (Pr 23).

27. First Proviso to Clause (1).

●——Art. 31-A — Benefit of Art. 31-A is available to laws amending the original laws providing for compulsory acquisition — Orissa Estates Abolition (Amendment) Act (27 of 1954).

Benefit of Art. 31-A is available not only to those laws, which by themselves provide for compulsory

acquisition of property for public purposes but also to laws amending such laws, provided assent of the President is obtained to such amending Act. It is to be presumed that the President gives his assent to the amending Act in its relation to the Act it sought to amend, and this is more so, when by the amending law the provisions of the earlier law relating to compulsory acquisition of property for public purpose are sought to be extended to new kinds of properties. In assenting to such law, the President assents to new categories of properties being brought within the operation of the existing law, and he, in effect, assents to a law for the compulsory acquisition for public purposes of these new categories of property. The assent of the President to the Orissa Estates Abolition (Amendment) Act, 1954 (27 of 1954) amending the Orissa Estates Abolition Act (1 of 1952) brought in the protection of Art. 31-A as a necessary consequence. The amending Act must be considered in relation to the old law which it sought to extend and the President assented to such an extension or, in other words, to a law for the compulsory acquisition of property for public purposes. Mahant Sankarshan Ramanuja Das, Goswami v. State of Orissa. 1962 (3) S C R 250 : 1962 S C D 137 : 28 Cut L T 29 : AIR 1967 S C 59 (62) (Pt A) (Pr 12).

● **—Art. 31-A, Proviso—'Law'—Meaning of.**

The word 'Law' as used in Art. 31-A means no more than a Bill passed by the Legislative Assembly of a State or in the case of a State having the Legislative Council a Bill passed by both Houses of Legislature of the State. Further when the Rajapramukh does not withhold his assent to a Bill and reserves the same for the consideration of the President, he must be deemed to have given his assent to that Bill, as an essential part of the Legislature of the State. It cannot therefore be said that inasmuch as the Bill for abolition of Zamindari in Madhya Bharat after it was passed by the Legislative Assembly did not receive the assent of the Rajpramukh as required under Art. 200 of the Constitution to make it a Law, the provisions of the proviso were not complied with and what was reserved by the Raj Pramukh for the assent of the President was a Bill passed by the State and therefore any such Legislation would not attract itself the provisions of Art. 31-A. Misc. Petn. 29 of 1951 (Nag), Rel. on. Ram Dubey v. Government of the State of Madh B. **ILR (1952) Madh B 178 : A I R 1952 Madh B 57 (65, 66) (Pt F) (Prs 29, 30) (FB).**

——Art 31-A—Assent of President to Bill — Scrutiny — Effect of assent on validity of State Act. See Ibid, Art. 31. **AIR 1957 Orissa 96 (DB).**

● **——Art. 31-A (1), Proviso—Applicability— Proviso applies to laws made by 'Legislature of a State' and not to laws made by 'Legislature of Provinces'.**

Per Tek Chand J. — The Proviso to Art. 31-A (1) refers to 'laws made by the Legislature of a State' and ex vi termini this cannot refer to laws made by Legislature of 'Provinces' as the term was known in pre Constitution period. The 'States' have been created by the Constitution and the Proviso does not refer to pre-Constitution laws and, therefore, the Proviso cannot refer to the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (50 of 1948) in which S 36 occurred as it was originally before its amendment in 1953. Bikhan Bobla v. Punjab State. 65 Punj L R 368 : ILR (1963) 1 Punj 660 : 1963 Cur L J 169 : A I R 1963 Punj 255 (266) (Pt C) (Pr 34) (FB).

● **——Arts. 31-A, 14, 19 and 31—East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (50 of 1948), S. 36 — Amendment of S. 36 by Punj. Act 20 of 1953 — Amending Act not reserved for assent by President but subsequent amending Acts reserved for and assented to by President—Effect of such assent on validity of S. 36 — Art 31-A (1) is attracted — S. 36 of the Punjab Act is not void.**

Section 36 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (50 of 1948) was amended by Punjab Act 20 of 1953 which was not reserved for the consideration of the President and consequently did not receive his assent. It received the assent of the Governor of Punjab on 28th April, 1953. After Punjab Act 20 of 1953, the parent Act was amended on ten occasions, though no changes were brought about in S. 36. Out of the subsequent amending Acts, several amending Acts received the assent of the President. It was argued that S. 36 was amended for the first and last time by Punjab Act 20 of 1953, and, not having been reserved for the consideration of the President, had not received his assent but only that of the Governor and therefore, the provisions of Art. 31-A (1) (a) were not attracted.

Held, (Per Tek Chand J.) that when an amending Act goes to the President for his assent, the President, while assenting to it, is presumed to consider the provisions of law both before and after the amendment. If, on consideration, the President were of the view that S. 36 transgressed the fundamental rights under the Constitution he could have withheld his assent. Held further (Per Full Bench) that the provisions of Art. 31-A (1) of the Constitution were attracted, and the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (50 of 1948) in general or S. 36 in particular could not be deemed void on the ground that it is inconsistent with or takes away, or abridges any of the rights conferred by Arts. 14, 19 or Art. 31. Bhikhan Bobla v. Punjab State. **1963 Cut L J 169 : 65 Punj L R 368 : I L R (1963) 1 Punj 660 : A I R 1963 Punj 255 (267, 268, 277, 278) (Pt D) (Prs 36, 65, 70) (FB).**

28. "Estate"—Clause (2) (a).

(a) "Jagir . . . . or other similar grants."

28. "Estate"—Clause (2) (a).

● **——Art. 31-A—Estate—Meaning of — Lands held by ryotwari pattadars in South Kanara district are not estates — Kerala Agrarian Relations Act (4 of 1961) not saved by Art. 31-A.**

As the definition of the word 'estate' came into the Constitution from January 26, 1950, and is based on existing law, the Court has to look into law existing on January, 26, 1950, for the purpose of finding out the meaning of the word 'estate' in Art. 31-A. Lands held by ryotwari pattadars in South Kanara District which had come to the State of Kerala by virtue of the States Reorganisation Act from the State of Madras are not estates within the meaning of Art. 31-A (2) (a) of the Constitution and therefore the Act was not protected under Art. 31-A (1) from attack under Arts. 14, 19 and 31 of the Constitution. Karimbil Kunhikoman v. State of Kerala. **1962 Supp (1) S C R 829 : (1962) 1 S C J 510 : (1962) 1 Mad L J (C) 213 : (1962) 1 Andh W R (SC) 213 : (1962) 2 S C A 1 : 40 Mys L J 17 : 1962 Ker L T (SC) 42 : (1962) 1 Ker L R 67 : 1962 Ker L J 59 : A I R 1962 S C 723 (730, 731, 732) (Pt C) (Prs 11, 12, 13, 14).**

● **——Art. 31-A (2) (a)—Tests to see whether Act is protected under Art. 31-A (2) (a) — 'Estate', what constitutes, indicated.**

In order to see whether an Act attracts the provisions of Art. 31 A (1) (a) and so is immune from any challenge under Arts. 14, 19 and 31, the question as to whether the property with which the Act is concerned constitutes as 'estate' or 'rights in relation to an estate' under Cl. (2) (a) or (b) has to be determined.

The basic concept of the word 'estate' is that the person holding the estate should be proprietor of the soil and should be in direct relationship with the State paying land revenue to it except where it is remitted in whole or in part. If therefore a term is used or defined in any existing law in a local area which corresponds to this basic concept of 'estate' that would be the local equivalent of the word 'estate' in that area. It is not necessary that there must be an intermediary in an estate before it can be called an estate within the meaning of Art. 31 A (2) (a) ; though in many cases of estates such intermediaries exist. Purushothaman Nambudiri v. State of Kerala, 40 Mys L J 193 : 1962 Supp (1) S C R 753 : (1962) 1 S C J 477 : (1962) 1 Mad L J (S C) 180 : (1962) 1 Andh W R (S C) 180 : (1962) 1 S C A 681 : 1962 Ker L T (S C) 1 : (1962) 1 Ker L R 1 : 1962 Ker L J 86 : AIR 1962 S C 694 (703, 704, 705) (Pt E) (Prs 19, 22, 24).

● —Art. 31-A (2) (a) — 'Estate' — Pandaravaka Verumpattam lands and Puravaka Lands in Cochin can be regarded as local equivalent of estate — Proclamation of Cochin (1905), Cls. 13 and 14—Kerala Agrarian Relations Act (4 of 1961).

Per Majority, (*Ayyangar J.*, Contra):—

Under Cl. 13 of the Proclamation issued by His Highness Sir Rama Varma Raja of Cochin on 10th March 1905, (which is the relevant existing law for the purpose of deciding whether the agricultural properties in question constitute an 'estate' under Cl. (2) (a) of Art. 31-A, the person holding lands on the Pandaravaka Verumpattom tenure is not a tenant. He is given the proprietary right in the soil itself, subject of course to the rights as to metals and minerals reserved in favour of the State. Therefore the Pandaravaka Verumpattom can be regarded as a local equivalent of an estate under Cl. (2) (a) of Art. 31-A.

The position with regard to Puravaka lands is still more clear. Lands held under Puravaka tenure are an 'estate' within meaning of Art. 31-A (1) (a). The Kerala Agrarian RelationsAct, 1961, in so far as it operates against Pandaravaka Verumpattom and Puravaka lands is protected under Art. 31-A (1) (a) and its validity cannot be challenged on the ground that its material provisions offend against Arts. 14, 19 and 31. Purushothaman Nambudiri v. State of Kerala, 1962 Supp (1) S C R 753 : 40 Mys L J 193 : (1962) 1 S C J 477 : (1962) 1 Mad L J (S C) 180 : (1962) 1 Andh W R (S C) 180 : (1962) 1 S C J 681 : 1962 Ker L T (S C) 1 : (1962) 1 Ker L R 1 : 1962 Ker L J 86 : AIR 1962 S C 694 (709) (Pt F) (Prs 34, 35, 36).

● —Art. 31-A—Bihar Land Reforms (Amendment) Act (16 of 1959), S. 1 — Validity — Acquisition of right to hold melas on Bakasht lands — Legislation within competence of State Legislature—Right being a right in an estate, Act saved by Art. 31-A — Acquisition of right by State held valid — See Tenancy Laws—Bihar Land Reforms (Amendment) Act (16 of 1959), S. 1. AIR 1961 S C 1649.

● —Art. 31-A—Bombay Tenancy and Agricultural Lands (Vidarbha Region and Kutch Area) Act (99 of 1958), S. 1—Application of Bombay Act (13 of 1956) to lands held as occupants in Berar — Land held to be estate or its local equivalent within Art. 31-A (2) (a)—Act is protected by Art. 31 A of the Constitution -See Tenancy Laws — Bombay Tenancy and Agricultural Lands (Vidarbha Region and Kutch Area) Act (99 of 1958), S. 1. AIR 1961 S C 1517.

● —Arts. 31-A and 31-B—Applicability of, to M. P. Abolition of Proprietary Rights Act—Tenancy Laws —(M. P. Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act (1 of 1951), S. 1).

There is nothing in Art. 31-B to indicate that the specific mention of certain statutes was only intended to illustrate the application of the general words of Art. 31-A. The opening words of Art. 31-B are only intended to make clear that Art. 31-A should not be restricted in its application by reason of anything contained in Art. 31-B and are in no way calculated to restrict the application of the latter article or of the enactments referred to therein to acquisition of "estates". Therefore though malguzari lands could not be regarded as estates within the meaning of Art. 31 A read with the Tenancy Acts, in force in Madhya Pradesh, inasmuch as Art. 31-B purported to validate specifically the Madhya Pradesh Act among others and as that article was not limited in its application to estates, it cannot be said that in regard to the malguzari lands covered by the Madhya Pradesh Act, Arts. 31-A and 31-B could be of no assistance to the Government. State of Bihar v. Kameshwar Singh, 1952 S C J 427 : ILR 31 Pat 565 : 1952 S C R 889 : 1953 S C A 53 : 65 Mad L W 527 : AIR 1952 S C 252 (267) (Pt T) (Pr 23).

—Art. 31-A—Bhumidari plots do not come within purview of "estate"—Bhumidari rights are not proprietary rights—The word "estate" contemplates proprietary rights i. e., the rights of intermediaries and not rights of tenants — See U. P. Acquisition of Property (Flood Relief) Temporary Powers Act (39 of 1948), S. 9 (1). AIR 1962 All 606 (DB).

● —Art. 31-A—Validity of Assam Act (18 of 1951) — Legislation is protected by Arts. 31 (4) and 31-A —"Estate" — What includes — See Tenancy Laws—Assam State Acquisition of Zamindaries Act (18 of 1951), S. 1. ILR (1956) 8 Assam 379 (FB).

—Art 31-A — Tenancy Laws — Bombay Tenancy and Agricultural Lands Act (67 of 1948), as amended by Act (13 of 1956), Ss. 32 and 32R — Interest of landlord in land must be regarded as 'estate' within the meaning of S. 3 (5) of the Land Revenue Code and therefore within the meaning of Art. 31-A (1) (a) —See Tenancy Laws—Bombay Tenancy and Agricultural Lands Act (67 of 1948), (as amended by Act 13 of 1956), Ss. 32 and 32R. AIR 1957 Bom 252.

[Overruled on another point in AIR 1959 S C 459.]

—Art. 31-A (2) — 'Estate' — Vanta tenure.

Vanta tenure is a type of tenure which is prevalent and understood in the Bombay State and mainly in Gujarat, and this tenure would satisfy the definition of "estate" in Art. 31-A. ILR (1955) Bom 127 : 56 Bom L R 1062 : AIR 1955 Bom 28 (35) (Pt 1) (Pr 13) (DB).

—Art. 31-A (2) — Estate—Its meaning as given in S. 3 (5), Bombay Land Revenue Code—Land granted to Ijardar — Ijardar having right to exploit land through tenants and recover rents from them—Rights so granted constitute 'estate' within meaning of Art. 31-A (2). AIR 1955 Bom 28 and AIR 1959 S C 459, Rel. on. (1961) 2 Guj L R 454 : AIR 1962 Guj 297 (303) (Pt E) (Pr 15) (DB).

● —Arts. 31-A, 14—Jenmikaram Payment (Abolition) Act, 1960 (3 of 1961) — Validity — Act does not deal with Jenmom right — Protection under Art. 31-A not available — Act contravenes Art. 14.

The definition of the expression 'estate' in Art. 31-A (2) makes it quite clear that a Jenmom right is covered by that expression. That the Jenmies of Travancore were proprietors of the soil is beyond dispute. They continued to be proprietors even after the introduction of the Travancore Jenmi and Kudiyam Act of 1071. Section 5 of that Act, as originally enacted did not destroy the proprietorship of the Jenmi ; it only conferred on Kudiyan a right of permanent occupancy. A new S. 5 was substituted

for the old S. 5 by the Travancore Jenmi and Kudiyan (Amendment) Act, 1108. The new S. 5 transferred the ownership of the land from the Jenmi to his Kudiyan, or in other words, effected a termination of his Jenmon right in that land. The Jenmikaram Payment (Abolition) Act, 1960, cannot possibly be considered as dealing with a right which had ceased to exist long before its enactment. It follows that the protection afforded by Art. 31-A of the Constitution is unavailable to the Jenmikaram Payment (Abolition) Act, 1960. Section 3 of the Jenmikaram Payment (Abolition) Act, 1960 deals with the abolition of the payment of Jenmikaram and S. 4 with the amount of compensation to be paid. Subsection (1) of S. 4 relates to the amount of compensation payable to a jenmi other than a religious or charitable institution of a public nature. The Act does violate the fundamental right guaranteed by Art. 14 of the Constitution in so far as it relates to Jenmis who come under S. 4 (1). AIR 1962 S C 723 ; AIR 1960 S C 1080 ; AIR 1962 S C 694 and 12 Trav L R 107, Rel. on. Cheria Vasudevan Namboodiripad v. State of Kerala, 1963 **Ker L T 533 : (1963) 2 Ker L R 1 : ILR (1963) 2 Ker 122 : 1963 Ker L J 685 : AIR 1964 Ker 171 (171, 172) (Prs 4, 6, 7, 8, 10, 13) (FB).**

● **——Arts. 31-A (2) (a) 14 and 19 — Tenancy Laws — Kerala Agrarian Relations Act, 1960 (4 of 1961) — Constitutionally invalid in relation to Ryotwari lands situated in Malabar area forming part of Kerala State — Malabar Land Registration Act (Madras Act 3 of 1896) — Whether 'existing law' within Art. 31-A, for lands in Malabar area — Ryotwari lands whether 'estate' within Art. 31-A (2) (a) — 'Jenmam right' in Art. 31-A — Connotation of.** See Tenancy Laws — Kerala Agrarian Relations Act 1960 (4 of 1961). **A I R 1963 Ker 101 (FB).**

● **——Art. 31-A (2) (a) — 'Estates' — Pandaravaka, Jenmom, Inam, Kandukrishi, Sri Pandaravaka and Thiruppuvarom lands situated in former State of Travancore—Whether 'estates' within Art. 31-A (2) (a)—Kerala Agrarian Relations Act (4 of 1961)—Constitutional validity.**

Held, that the Kerala Agrarian Relations Act is protected by Art. 31-A of the Constitution only in respect of the following category of tenures in the area comprising the former State of Travancore: (1) Jenmom Lands, (2) Inam lands other than Viruthi Lands, (3) Kandukrishi lands assigned to occupants under the Travancore-Cochin Kandukrishi Land Assignment Rules, 1958, and (4) Lands assigned by the Government after levying the price thereof, and that the Act must be struck down in respect of the other tenures in that area such as Pandaravaka lands, Kandukrishi lands (other than those belonging to the category 3 mentioned above), Sri Pandaravaka lands and Thiruppuvarom lands.

In the case of Jenmom lands, the following tenures, 'Thanathu, Thettom, Manavaka, Brahmaswom Vaka, Devswom Vaka, Kudijenmom Kanom Kudijenmom and Venpattom' created by Jenmis must be held to be covered by the word 'Estate' in Art. 31-A of the Constitution and the constitutional validity of Act 4 of 1961 cannot be successfully challenged in respect of such lands.

In respect of certain of the tenures which come under the broad head of Jenmom rights, the validity of the Act will have to be upheld even if it offends Arts. 14, 19 and 31. Padmanabharu Govindaru Namboodiripad v. State of Kerala (1962) 2 **Ker L R 571 : (1962) Ker L T 913 : 1962 Ker L J 1365 : ILR (1963) 1 Ker 5 : AIR 1963 Ker 86 (87, 91, 92) (Prs 4, 23, 30) (FB).**

——Art. 31-A — Tenancy Laws — Malabar Tenancy Act (1929), (14 of 1930) as amended by Malabar Tenancy (Amendment) Act (1956), **S. 4 (a), Explanation—Scope—Estate—The expression 'estate' used in Art. 31A will comprehend the relationship between a Jenmi and his Verumpattamdar. The emphasis is on the land concerned, and therefore Kanam, Karipanayam, and Verumpattam would also come within the expression 'estate'.** See Tenancy Laws — Malabar Tenancy Act, (1929) (14 of 1930) as amended by Malabar Tenancy (Amendment) Act (1956), S. 4 (a), Explanation. **I L R (1959) Ker 968.**

——Arts. 31-A (2) (a), 366 (10)—'Existing law.'

The expression 'existing law' should ordinarily be construed in the light of the definition given in Art. 366 (10) of the Constitution and when so construed it would mean only statute law and not mere custom or usage embodied in the record of rights. The dictionary meaning of the expression 'existing law' is wholly inapplicable in Art. 31-A (2) (a). Consequently the special meaning given to that expression in Art. 366 (10) should apply and there is nothing in the context of Art. 31-A (2) (a) to give a wider meaning to that expression. **ILR (1957) Cut 299 : A I R 1957 Orissa 247 (252) (Pt B) (Pr 12) (DB).**

——Art. 31-A (2) (a)—'Estate'—Orissa Estates Abolition Act (1 of 1952)—Validity.

The definition of the expression 'estate' in Art. 31-A (2) (a) is very clear. It has the same meaning as is given to that expression in the 'existing law relating to land tenures. If according to the majority opinion in the previous judgment of the Orissa High Court the record of rights is 'existing law' the decision in the Supreme Court judgment in (1954) 5 S C R 842 is decisive on the question that Hemgir and Sarapgarh zamindaris are not 'estates' within the meaning of Art. 31-A (2) (a). A mere mention of expressions 'estate', 'zamindari' and 'intermediary' in the record of rights is not itself sufficient to make these properties 'estates' as defined in Art. 31 A (2) (a). The use of the words 'the same meaning' occurring in Art. 31-A (2) (a) shows that one must first ascertain what is the meaning of the expression 'estate' occurring in the record of rights and then apply that meaning in construing that expression occurring in Art. 31-A (2) (a). **ILR (1957) Cut 299 : A I R 1957 Orissa 247 (252) (Pt C) (Pr 12) (DB).**

● **——Arts. 31, 31-A and 31-B—Constitutional validity of Punjab Consolidation of Land Proceedings (Validation) Act (6 of 1954).**

The very preamble of the Act says that it is meant to provide for extinguishment and modification of rights in an estate without payment of compensation and as any deprivation of property would be covered by Art. 31, the Act would be void as violative of that article unless sub-Art. (2-A) or Art. 31-A can be pressed into service. The protection afforded by the latter provision does not avail because such lands or parcels thereof in Punjab State as are not assessed separately to land revenue and which do not form units by themselves cannot be brought within the meaning of 'estate' as defined by Art. 31-A.

'Estate' is a legal expression which forms the unit of revenue, assessment and administration in the Punjab, with separate record of rights and (ii) where more than one person own the same estate under the Punjab Land Revenue Act of 1887, which also applies to the Punjab Tenancy Act of 1887. A I R 1952 Sau 114; A I R 1957 Orissa 98 and A I R 1954 Punj 167 (FB), Disting.

Article 31-B was introduced only because Art. 31-A was considered not sufficient to cover the particular enactments validated by Art. 31 B.

But it cannot be said that because the rights involved in the case are not of intermediaries they will not

be covered by the expression "rights" as defined by Art. 31-A (2) (b).

It will not however be open to the owners and the allottees to attack the Act as violative of Art. 31 (2) after the Constitution (Fourth Amendment) Act, 1955 in view of the provisions of Art. 31 (2) (A) whatever might have been the position before the amendment. Further the provisions of Art. 31 (2) are not attracted because the Act does not provide for the ownership or right to possession of any property to the State and hence has made no provision for compulsory acquisition. State of Punjab v. Kehar Singh, 60 Punj L R 461 : ILR (1958) Punj 2136 : A I R 1959 Punj 8 (14, 15, 16) (Pt C) (Prs 7, 8) (FB).

[Overruled in A I R 1959 S C 519].

28 (a). "Jagir . . . . or other similar grants".

● —Arts. 31A (2) (a) — Tenancy laws — Orissa Estates Abolition Act (1 of 1952 as amended by Act 27 of 1954), Ss. 2 (g), 3—Definition of "estate"—Rule of ejusdem generis does not apply to the interpretation of the word "inam".

The ejusdem generis rule is applicable where a wide or general term has to be cut down with reference to the genus of the particular terms which precede the general words. This rule has hardly any application where certain specific categories are 'included' in the definition.

The ejusdem generies rule may be applicable to the general words "other similar grant" in Art 31A (2) (a) and S. 2 (g) in the Orissa Estates Abolition Act, which would take their colour from the particular categories, "Jagir, inam, or muafi" which precede them, but the word "inam" is not subject to the same rule. Once it is held that inams of any kind were included, it makes little difference if the inams were of lands and not of whole villages. So also the fact that the holders of such inams cannot be described as intermediaries, or that they comprised both the melwaram and the kudiwaram rights. Such a distinction would have significance, if the law abolished only intermediaries and not inams which it did.

If the definition of the word "estate" is wide enough to include a minor inam and a notification is issued, the consequences of S. 3 of the Abolition Act must follow. Such a law is not capable of being called in question on the ground that it abridges any fundamental right conferred by Arts. 14, 19 and 31, if it has been assented to by the President. The notification is thus valid, if the law is valid. Sankarshan Ramanuja Das Goswami v. State of Orissa, 1962 S C D 137 : 28 Cut L T 95 : 1962 (3) S C R 250 : A I R 1967 S C 59 (62, 63) (Pt C) (Pr 14).

● —Art. 31A (2) (a)—Estate—Tenancy Laws—Orissa Estates Abolition Act (1 of 1952 as amended by Act 27 of 1954), Ss. 2 (g), 2 (q) - Minor inams are included in definition of "estate" — Resort cannot be had to S. 2 (q). See Tenancy Laws — Orissa Estates Abolition Act (1 of 1952 as amended by Act 27 of 1954), Ss. 2 (g), 2 (q). 1962 (3) S C R 250 : AIR 1967 S C 59.

● —Art. 31-A (2)—Bombay Personal Inams Abolition Act, 1953 (42 of 1953), Ss. 4 and 5 — Inams are 'estates'—Right of inamdar to retain part of full assessment is right in estate.

Inams are 'estates' within the meaning of the expression 'estate' for the purpose of Art. 31 A of the Constitution. And inams being estates, the right of the inamdar to retain part of the full assessment over and above the quit-rent payable to the Government arises because he holds the inam-estate. The right, therefore, can be nothing more than a right in an estate. This is made clear by clause (b) of Art. 31-A (2) for it provides that the rights in relation to an estate would include any rights or privileges in respect of land revenue. Hence, the Bombay Personal Inams Abolition Act, 1953, when it extinguishes or modifies the rights of inamdars in the inam estates is protected by Art. 31 A. Gangadharrao Narayanrao Majumdar v. State of Bombay, 63 Bom L R 511 : (1961) 1 S C R 943 : (1961) 2 S C J 388 : AIR 1961 S C 288 (290) (Pt A) (Pr 7).

● —Arts. 31-A, 245, 246, 294 (b) and 363—Powers of State Legislature to legislate—Extent of—Bombay Merged Territories and Areas (Jagirs Abolition) Act (49 of 1954)—Validity.

The Bombay Merged Territories and Areas (Jagirs Abolition) Act, 1954 was intra vires the States Legislature and the State Legislature was fully competent to enact the impugned Act notwithstanding the terms of guarantee contained in clause 5 of the letter of guarantee accompanying the Merger agreements entered into by the Rulers of the merged States of Bombay with the Dominion Government.

The right of the Government of Bombay to issue any legislation with regard to the enjoyment of the ownership of jagir lands was expressly reserved and this right covered also legislation in regard to the abolition of the jagirs and the Government of Bombay was therefore entitled under the terms of the clause 5 to issue any legislation in regard to the same provided however that such legislation did not discriminate against the State and their subjects.

The legislative competence of the State Legislature can only be circumscribed by express prohibition contained in the Constitution itself and unless and until there is any provision in the Constitution expressly prohibiting legislation on the subject either absolutely or conditionally there is no fetter or limitation on the plenary powers which the State Legislature enjoys to legislate on the topics enumerated in the Lists 2 and 3 of the Seventh Schedule to the Constitution.

Under Art. 246 the State Legislature was invested with the power to legislate on the topics enumerated in Lists II and III of the Seventh Schedule to the Constitution and this power was by virtue of Article 245 (1) subject to the provisions of the Constitution. The Constitution itself laid down the fetters or limitations on this power, e. g., in Art. 303 or Art. 286 (2). But unless and until the Court came to the conclusion that the Constitution itself had expressly prohibited legislation on the subject either absolutely or conditionally the power of the State Legislature to enact legislation within its legislative competence was plenary. The provisions of Article 294 (b) of the Constitution which is said to have transferred the obligations of the Government of the Province to the State of Bombay would not by involving the transference of the obligation undertaken by the Dominion Government in clause 5 of the letters of guarantee to the State Government impose a fetter or limitation on the legislative competence of the State Legislature to enact legislation on any of the topics enumerated in Lists 2 and 3 of the Seventh Schedule to the Constitution. AIR 1943 F C 29, Ref. to.

Even if it could be demonstrated that the provisions of the impugned Act were confiscatory as well as discriminatory the jagirs of the petitioners (except in the case of the petitioner in petition No. 364 of 1954) were also "estates" as defined in Art. 31A (2) (a) and even if the impugned Act provided for the acquisition, extinguishment or modification of estates or of any rights therein, the Act cannot be challenged as void on the ground that it was inconsistent with or took away the fundamental rights under Part III.

Any challenge therefore on the ground of the impugned Act violating the fundamental rights under

Article 14 or or Article 19 (1) (f) or Artlcle 31 (2) of the Constitution was not available. On the other hand if the grievance was that the impugned Act had brought about discrimination in breach of clause 5 of letters of guarantee then the dispute clearly arose out of the letters of guarantee and would by Article 363 be placed beyond the juris diction of the Supreme Court. Umeg Singh v. State of Bombay, 57 Bom L R 709 : 1955 S C J 472 : (1955) 2 S C R 164 : 1955 S C A 749 : AIR 1955 S C 540 (547, 548) (Pt B) (Prs 12, 13, 16).

● ——Art. 31-A — 'Jagir' — Meaning of — Rajasthan Land Reforms and Resumption of Jagirs Act (6 of 1952)—Validity.

All the lands of the State must fall within one or the other of the two categories, Khalsa or jagir; and the essential features of a jagir are that it is held under a grant from the ruler and the grant is of the land revenue. Both in its popular sense and legislative practice the word 'jagir' is used as connoting State grants which conferred on the grantees rights "in respect of land revenue". The word 'jagir' in Article 31-A cannot be construed as limited to its original and primary meaning of a grant made for military service rendered or to be rendered and it cannot be said that accordingly other grants such as maintenance grants made in favour of near relations and dependants would not be covered by it. At the time of the enactment of Article 31-A the word had acquired both in popular usage and legislative practice a wide connotation and it will be in accord with sound canons of interpretation to ascribe that connotation to that word rather than an archaic meaning to be gathered from a study of ancient tenures.

Moreover, the object of Article 31-A was to save legislation which was directed to the abolition of intermediaries so as to establish direct relationship between the State and the tillers of the soil and construing the word in that sense which would achieve that object in a full measure, it must be held that jagir was meant to cover all grants under which the grantees had only rights in respect of revenue and were not the tillers of the soil. Maintenance grants in favour of persons who were not cultivators such as members of the ruling family would be jagirs for purposes of Article 31-A. The impugned Act (Rajasthan Land Reforms and Resumption of Jagirs Act 6 of 1952) does not fall outside the ambit of Article 31-A. Amarsinghji v. State of Rajasthan, (1955) 2 S C R 303 : 1955 S C A 766 : 1955 S C J 523 : AIR 1955 S C 504 (521, 522) (Pt E) (Prs 32, 33, 34).

● ——Art. 31-A—Jagir or other similar grant—Bhomicharas — Rajasthan Land Reforms and Resumption of Jagirs Act (6 of 1952)—Validity.

It is inherent in the very conception of jagir that it should have been granted by the ruling power and that where there is no grant there could be no jagir. This, however, does not mean that the grant must be express. It may be implied. When Jodhpur as a sovereign State imposed its sovereignty over the territory and permitted the ex-rulers to continue in possession of their lands on payment of an annual sum the position was that there was in effect a conquest of the territory and a regrant of the same to the ex-rulers whose title to the lands should thereafter be held to rest on the recognition of it by the ruler of Jodhpur. It is as if the Maharajah of Jodhpur annexed all the territories and re-granted them to the former rulers. They must accordingly be held to derive their title under an implied grant. The status of a person must be either that of a sovereign or a subject. There is no tertum quid. The law does not recognise an intermediate status of a person being partly a sovereign and partly a subject and when once it is admitted that the Bhomicharas had acknowledged the sovereignty of Jodhpur their status could only be that of a subject.

For the purpose of Article 31-A it would make no difference whether the grant is made by the sovereign in the exercise of its prerogative right or by the Legislature in the exercise of its sovereign rights. They were both of them equally within the operation of that Article. Assuming that the Bhomichars did not prior to the enactment of Marwar Act No. 40 of 1949 hold the lands as grantees from the State they must be deemed to hold as State grantees by force of S. 169 of that Act. By long usage and recognition and by the legislative practice of the State Bhomicharas had come to be regarded as jagirdars, and that their tenure is a jagir within the intendment of S. 169. It will, in any event, be "similar proprietary interests" within the language of the section. The word "deemed" imports that in fact there was no grant and therefore interests which were held otherwise than under a grant were obviously intend- to be included.

Therefore if Bhomichara is a proprietary interest, it cannot be taken out of the section because its origin was not in grant. In the result it must be held to fall within S. 169, and therefore within the operation of Article 31-A. Bhomichara is a jagir or other similar grant within the meaning of Article 31-A. The tenure is protected by Article 31-A. Case law, Discussed. Amersinghji v. State of Rajasthan, (1955) 2 S C R 303 : 1955 S C A 766 : 1955 S C J 523 : AIR 1955 S C 504 (523, 525, 526, 527) (Pt F) (Prs 38, 39, 40, 43, 44, 47, 49).

● ——Art. 31-A — Jagir or other similar grant — Bhomias—Rajasthan Land Reforms and Resumption of Jagirs Act (6 of 1952) — Validity — (Mewar Government Kanoon Mal. Act (5 of 1947), S. 106).

The position of the Bhumias in Mewar is in many respects similar to that of Bhomicharas in Marwar. They represent presumbly a section which had occupied the territory by conquest at an earlier stage and when later the rulers of Chittoor and Udaipur established their sovereignty over Mewar, they were allowed to continue in possession of their lands as subjects of the new State Their position is not even as strong as that of the Bhomicharas of Marwar, because it was a condition of the tenure under which they held that they had to render military service when called upon and also to pay quit rent. Their title to the lands is thus referable to an implied grant from the State and their tenure would be jagir even in its stricter connotation. The language of Act 5 of 1947 read as a whole leaves no doubt as to what the legislature intended to do. It declared the State ownership of lands both Khalsa and non-Khalsa lands; and defined the rights of the holders of the non-Khalsa lands and the result of that law was clearly to impress on the Bhom tenure the characteristics of grant. It must accordingly fall within the operation of Article 31-A either as jagir or as other similar grant. The resumption under Act 6 of 1952 would be protected by Article 31-A of the Constitution on the ground that it related to jagirs or other similar grants. Amarsinghji v. State of Rajasthan, (1955) 2 S C R 303 : 1955 S C A 766 : 1955 S C J 523 : AIR 1955 S C 504 (527, 528, 529) (Pt I) (Prs 50, 52, 55).

● ——Art. 31-A — Jagir or other similar grant — Tikanadars of Shekhwati—Rajasthan Land Reforms and Resumption of Jagirs Act (6 of 1952)—Validity.

The true position of the Tikanadars of Shekhwati is that they got into possession of the properties as izardars under the rulers of Jaipur, improved that position latterly and became permanent holders of he estates and were eventually recognised as chiefs

subordinate to the Maharajah. They were not like the Bhomicharas of Marwar or the Bhumias of Mewar the previous conquerors and occupants of the territory before they were subjugated by Jaipur; nor were they the clansmen of the ruling dynasty who assisted in the establshment of the Raj. They derived their title to the properties only under grants made by the rulers of Jaipur, and even if their estates could not be considered as they shaped themselves as jagirs, they were at least "other stmilar grants" within Art. 31-A. Section 4 (15) of the Jaipur State-Grants Land Tenures Act No 1 of 1947 defines "State-grant" as including a jagir, muamla, etc. Muamla is the amount payable by the Tikanadars of Shekhwati to the ruler of Jaipur. Section 4 (7) defines an estate as meaning "land comprised in a State grant." According to this definition, the properties in question would be 'estate' as defined in Art. 31 A of the Constitution. Muamla is mentioned as item 6 in the schedule, and where that is the name under which the tenure of the petitioner is known, it must he held that his lands are within the purview of Art. 31 A. Amarsinghji v. State of Rajasthan, (1955) 2 S C R 303 : 1955 S C A 766 : 1955 S C J 523:AIR 1955 S C 504 (530) (Pt K) (Pr 58).

● ——Art. 31-A—Jagir or other similar grant—Subeguzars — Rajasthan Land Reforms and Resumption of Jagirs Act (6 of 1952)—Validity.

The position is that the petitioner who is admittedly a subeguzar holds under a grant from the State and falls within Art. 31-A. The fact that the family of the petitioners had always enjoyed a special distinction in that the adoption in the ruling house of Jaipur was always made from among the members in this family would not affect the status of subeguzars who must be held to be grantees from the State. Amarsinghji v. State of Rajasthan, (1955) 2 S C R 303 : 1955 S C A 766 : 1955 S C J 523 : AIR 1955 S C 504 (531) (Pt L) (Pr 59).

● ——Art. 31-A — Jagir or other similar grant — Permanently settled estate — If within the scope nf the article.

Where the Tikana is a permanently settled estate paying a fixed annual revenue it is an estate both under S. 4 (7) of the Jaipur State Grants Land Tenures Act No. 1 of 1947 and Art. 31-A of the Constitution. Amarsinghji v. State of Rajasthan, (1955) 2 S C R 303 : 1955 S C A 766 : 1955 S C J 523 , AIR 1955 S C 504 (531) (Pt M) (Pr 61).

● ——Art. 31 A—Jagir or other similar grant—Estate of Yeshwantgarh in the State of Alwar — If within the scope of the article.

In the case of this estate all the requirements of a Jagir are satisfied, and the grant would fall within the scope of Art 31-A. Amarsinghji v. State of Rajasthan, (1955) 2 S C R 303 : 1955 S C A 766 : 1955 S C J 523 : AIR 1955 S C 504 (532) (Pt N) (Pr 64).

● ——Art. 31-A — Jagir or other similar grant — Scope of.

Where the petitioner describes himself in the petition as the "proprietor jagirdar of the jagir known as Garhi", and states that his jagir is unsettled and pays neither revenue nor tribute, and the prayer is that the State should be restrained by an injunction from interfering with the rights of the petitioner as jagirdar it is idle for him to contend that the properties do not fall within Art. 31-A. Amarsinghji v. State of Rajasthan, (1955) 2 S C R 303 : 1955 S C A 766 : 1955 S C J 523:AIR 1955 S C 504 (532)(Pt P) (Pr 67).

● ——Art. 31-A—Muafi—If governed by the Article.

If the petitioner does not make any payment in respect of his estate, it must be muafi, and will be within Art. 31-A. Amarsinghji v. State of Rajasthan, (1955) 2 S C R 303 : 1955 S C A 766 : 1955 S C J 523 : AIR 1955 S C 504 (533) (Pt Q) (Pr 69).

● ——Art. 31-A — Jagir or other similar grant — When within the scope of the Article.

A grant can both be a jagir and a maintenance grant and the fact that it was granted for Lawazma and Kothrikharch does not militate against its being a jagir. Amarsinghji v. State of Rajasthan, (1955) 2 S C R 303 : 1955 S C A 766 : 1955 S C J 523 : AIR 1955 S C 504 (534) (Pt R) (Pr 73).

● ——Art. 31-A—Jagir — Naqdirazan.

Naqdirazan is money commutation for the obligation of maintaining a specified number of horses. This is clearly a grant for military service and will be a jagir Amarsinghji v. State of Rajasthan, (1955) 2 S C R 303 : 1955 S C A 766 : 1955 S C J 523 : AIR 1955 S C 504 (535) (Pt T) (Pr 77).

● ——Art. 31-A — Jagir or other similar grant — Istimrar.

Istimrar would be "other similar grant" within Art. 31-A. Amarsinghji v. State of Rajasthan, (1955) 2 S C R 303 : 1955 S C A 766 : 1955 S C J 523 : AIR 1955 S C 504 (535) (Pt U) (Pr 80).

——Art. 31-A — Applicability to Bombay Personal Inams Abolition Act (42 of 1953).

Inam is only one of the estates referred to in Cl. (2) of Art. 31-A The estate contemplated by Art. 31-A is a tenure or a right in property, which tenure or right is defined as estate under any local law dealing with land tenures; and in the Land Revenue Code 'estate' is defined in S. 3 (5) as meaning any interest in lands and aggregate if such interest vested in a person or aggregate of persons capable of holding the same. Therefore, it is clear that under Art. 31 A, power is given to the State to extinguish or acquire any interest in any land. The Land Revenue Code does not specify the nature or the character or kind of interest in land. If there is any interest in land, whatever its nature it would constitute 'estate' within the meaning of the Bombay Land Revenue Code, and the whole object and intention of amending the Constitution was to provide for, if necessary, expropriation of interest in land by the State. Therefore it is clear that Art. 31-A, applies to Bombay Inams Abolition Act and if that article applies, then the legislation which falls under that article is not subject to a challenge on the ground that it takes away or abridges the fundamental rights of those who are affected by that legislation. 56 Bom L R 1062 : ILR 1955 Bom 127 : AIR 1955 Bom 28 (31) (Pt A) (Pr 5) (DB).

——Art. 31-A (2) (a) — Other similar grant – Orissa Estates Abolition Act (1 of 1952)—Validity.

Though the original Ruler of Gangpur was only a suzerain and not a sovereign of the chiefs of Hemgir, and Sarapgarh, in the course of time he become the sovereign and the chiefs of Hemgir and Sarapgarh became merely his subjects. Hence, these zamindaris are 'implied grants' from the Ruler of Gangpur and as such would come within the latter part of the definition of the expression 'estate' as given in Art. 31-A (2) (a) of the Constitution. They would therefore get the protection of that Article and the Orissa Estates Abolition Act cannot be challenged on the ground that it contravenes the other fundamental rights described in Part III of the Constitution. AIR 1955 SC 504, Foll. I L R (1957) Cut 299 : AIR 1957 Orissa 247 (252, 253) (Pt D) (Pr 13) (DB).

——Art. 31-A (2) (a) — Orissa Estates Abolition Act, 1951 (I of 1952), Ss. 2 (g) and 3 (1) –Madras Estates

Land Act, 1908 (1 of 1908), S. 3 (2) — 'Estates shall include any jagir', etc.—Import of—Applicability of ejusdem generis principle—Estate, if includes pre-settlement minor inams—(Interpretation of Statutes) —(Constitution of India, Pre.)

The inclusive definition is used to enlarge the meaning of words or phrases occurring in the body of the statute, though in some instances the word 'include' may be used in a restrictive sense by way of illustrating what has been said before. But there can be no doubt that in Art. 31-A (2) (a) the word 'include' has been used in an expansive sense. (1899) A C 99 (105, 106), Rel. on.

The use of the words "and", "also", and "any" would show that though some classes of jagir, inam or muafi grant may not come within the definition of "estate" as given in the law of land tenures in a particular area, the makers of the Constitution intended that all classes of jagirs, inams and muafi grants should be construed as 'estates' and hence deliberately widened the definition of that expression by saying that it shall also include any jagir, inam or muafi.

The ejusdem generis construction has absolutely no application so far as the construction of "inam" in Art. 31-A (2) (a) is concerned. **I L R (1957) Cut 1 : AIR 1957 Orissa 96 (99, 100) (Pt E) (Prs 13, 14) (DB).**

● **——Art. 31-A (2) (a)—Jagir—Includes Bhomichara tenure.** See Marwar Land Revenue Act (1949), S. 169. **AIR 1954 Raj 291 (FB).**

● **——Art. 31-A—Estate—Bhomichara jagirs—(Marwar Land Revenue Act (1949), S. 4).**

As Bhomichara jagirdars are paying land revenue and that land revenue is separately assessed with respect to separate parcels of land, their interest in land is an estate within the meaning of the Marwar Land Revenue Act, and, therefore, it is an estate within the meaning of Art. 31-A of the Constitution. Amar Singh v. State of Rajasthan, **1955 Raj L W 212: I L R (1955) 5 Raj 149 : AIR 1954 Raj 291 (297) (Pt D) (Pr 14) (FB).**

——Art. 31-A — Applicability of to V. P. Abolition of Jagirs and Land Reforms Act (11 of 1953), S. 11.

In view of the definition of Jagir and the use of the word resumption, it is clear that Art. 31-A, applies to the V. P. Abolition of Jagirs and Land Reforms Act, 1953, and thus bars all the objections to the validity of the Act based on the contravention of Art. 31 (2), or on the adequacy or reasonableness of the compensation. AIR 1952 SC 252 and AIR 1953 SC 373, Rel. on. **AIR 1954 Vind Pra 24 (27) (Pt C) (Prs 13, 15, 19).**

29. Rights - Clause (2) (b).

——Art. 31-A (2) (b)—'Tenure-holder'—Meaning of —Tenancy Laws — U. P. Consolidation of Holdings Act (8 of 1939), S. 14 (1) (ee) — Validity — S. 14 (1) (ee) of Act is not saved by Art. 31-A of Constitution.

The words "other intermediary" in Art. 31-A (2) (b) of the Constitution point to the conclusion that the proprietor, sub-proprietor, under-proprietor, tenure holder, raiyat, under-raiyat mentioned in that clause are persons who are intermediaries and not tenants cultivating the land. The word "tenure-holders" as used in that clause must be interpreted in that sense. And unless a person is shown to be a tenure-holder within the meaning of the expression in Art. 31 A, that article cannot save Cl. (ee) of S. 14 of the U. P. Consolidation of Holdings Act or the rules framed thereunder, under which lands of tenure-holders are taken away for purposes of common utility without payment of compensation. **1956 All L J 924 : 1956 All W R (HC) 864 : AIR 1957 All 153 (154, 155) (Pt B) (Pr 10) (DB).**

——Art. 31A—Question whether U. P. Act 10 of 1954 contravenes Arts. 14 and 31—Art. 31A—Bar of—The leases under the notification D/- 12-3-1949 created an intermediary between the State and the tenant and the lessees do not become tenants themselves. The leases being of proprietary rights in land they are covered by the expression rights in an estate as mentioned in Cl. 2 (b) of Art. 31A. See Tenancy Laws—Rampur Thekedari and Pattedari Abolition Act, 1953 (U. P. Act 10 of 1954), S 3. **1955 All L J 398 : AIR 1955 All 518 (520) (Pt B) (Prs 12, 13).**

——Arts. 31 A (2) (b), 31-B—Applicability.

The definition in Art. 31-A (2) (b) does not exclude the rights conferred upon the citizens by the Articles of the Constitution. It is also clear from the language of Art. 31-B that it applies to any right conferred by Part III, a Chapter relating to the fundamental rights. **1955 Andh L T 411 : 1955 Andh W R 590 : AIR 1955 Andh 264 (271) (Pt I) (Pr 29) (DB).**

——Art. 31-A—The definition of the word 'rights' in relation to an estate, as given in Article 31-A is very comprehensive and includes any rights vesting in a proprietor or raiyat or other intermediary in the "estate". Assam Act 1 of 1957 — If protected. See Tenancy Laws — Assam Fixation of Ceiling on Land Holdings Act (1 of 1957). **AIR 1959 Assam 147 (DB).**

——Art. 31-A — 'Rights' — Meaning of — Bombay Tenancy and Agricultural Lands Act (47 of 1948), S. 34 (2-A) —Section, if extinguishes or modifies rights.

Under clause (2) (b) of Art. 31-A, the expression 'rights' in relation to an estate' shall include any rights vesting in a proprietor, sub-proprietor, under-proprietor, tenure holder or other intermediary and any rights or privileges in respect of land revenue. The right of a landlord in any agricultural land governed by the provisions of the Bombay Land Revenue Code is, by S 3 (5), an estate, and the right of the landlord to terminate the tenancy of a tenant in occupation and to obtain possession is a right in an estate. But the restriction sought to be placed upon the right of the landlord by the impugned provision, viz., S. 34 (2A) of the Bombay Tenancy and Agricultural Lands Act does not amount to extinguishment or modification of that right.

The modification which is contemplated by Art. 31 A is a modification in the proprietary right and not in the method for enforcement of the right. The landlords's right to terminate the tenancy and to claim possession from a protected tenant for purposes mentioned in S. 34 remains suspended, but mere suspension of the right of the landlord is not extinguishment or modification of the proprietary right. AIR 1953 SC 373, Rel. on. **59 Bom L R 579 : AIR 1958 Bom 94 (98, 99) (Pt C) (Prs 14, 15, 16) (DB).**

——Art. 31-A (2) (b) (as amended by the Fourth Amendment Act, 1955) — Raiyats and under-raiyats — Meaning of — Must be given ordinary meaning — Includes raiyats who are tillers of land. See Tenancy Laws — W. B. Estates Acquisition Act (1 of 1954), Ss. 49, 52. **68 Cal W N 1124 : AIR 1964 Cal 552 (554, 555, 556) (Pt B) (Prs 4, 10) (DB).**

——Art. 31-A — West Bengal Estates Acquisition Act (1 of 1954), Ss. 5 (aa) and 6 (4)—Right to enter forest and cut trees in future—Nature of Grantee is intermediary — His interests vest in Government — Compensation not provided — Article 31 A will apply — (Tenancy Laws — W. B. Estates Acquisition (Second Amendment) Act (25 of 1957), Ss. 3 (b) and 4 (b)) — See Tenancy Laws — West Bengal Estates Acquisition Act, 1953 (1 of 1954), S. 5 (aa). **AIR 1959 Cal 316.**

——Art. 31-A — "Rights in an estate" — West Bengal Estates Acquisition Act (1954), S. 4 — The definition of the word 'rights' in Art. 31-A includes all kinds of rights in estates. See Tenancy Laws — West Bengal

Estates Acquisition Act 1953 (1 of 1954), S. 4. (59) 63 Cal W N 751.

——Art. 31-A (2) (b) — Scope of — 'Other intermediary' — Land cultivated by raiyats or under-raiyats as tenants — Acquisition of — Tenancy Laws — West Bengal Estates Acquisition Act (1 of 1954), S. 52).

Section 52 of the Act is not ultra vires, in so far as it includes the rights of a raiyat who is not a true intermediary, but is in actual possession of the land, because the provisions of Art. 31-A (2) (b) as they stand at present, enable the acquisition of the entire interest of raiyats and under-raiyats, in the same manner as a true intermediary. It is clear that the Fourth Amendment did not intend that raiyats or under-raiyats should any longer be treated differently from true intermediaries. Secondly, Art. 31-A enables 'any' estate or 'any' right to an estate to be acquired by the State. The principle of ejusdem generis cannot be applied because the persons or classes of persons enumerated before, do not belong to the same genus. Thus proprietors are a class widely different from tenure holders, who in turn are quite different from raiyats or under-raiyats. The word 'proprietary right' for purposes of revenue is loosely used, and includes not only the actual proprietor but also tenants. Therefore S. 52 of the West Bengal Estates Acquisition Act in so far as it includes the rights of a raiyat who is not a true intermediary but is in actual possession of the land is not ultra vires. AIR 1958 Cal 143 (146) (Pt B) (Pr 8).

——Art. 31-A — Zamindary abolition laws — West Bengal Estates Acquisition Act (1 of 1954), Chap. 6 and S. 52 — Amendment of — Validity — Acquisition of rights of raiyats and under-raiyats in possession — Legality.

Under Chap. 6 of the West Bengal Act, the provisions of the Act are applicable to raiyats and under-raiyats, not as intermediaries, but 'as if' they were intermediaries. In other words, it is a deeming provision and the Court is bound to give effect to that legal fiction. AIR 1953 S C 244, Rel. on.

Under Chap. 6, as framed after the amendment in 1955, there is no longer any difference between the raiyats and under-raiyats and other true intermediaries, and lands held by them must be deemed to be estates or right in estates which will vest in the state, giving the raiyats and under-raiyats the same rights as other intermediaries, of holding a specified area of land. etc., as laid down in S. 6 of the Act. Coming to the provisions contained in Art. 31-A (2) (b) of the Constitution, it does not appear that the Fourth Amendment intended only to affect the rights of the raiyats and under-raiyats in the limited sense, so as to exclude from its protection laws in so far as they affect the rights of raiyats and under-raiyats who are in possession of the land. Judging from the objects and reasons of the Fourth Amendment, there was no question of affecting the rights of the raiyat and under-raiyat partially. 62 Cal W N 14 : AIR 1958 Cal 96 (101, 102) (Pt B) (Pr 15).

——Art 31-A (1) (a) — Intermediaries with right to moveable property — Provision applies to them also.

Any class of intermediaries whether their right is limited to moveable property within an estate or to immoveale property therein, would come within the wide language used in sub-cl. (a) of Cl. (1) of Art. 31-A of the Constitution. The words 'rights in an estate in Art. 31-A (1) (a)' have been deliberately made as wide as could be in order to take in all kinds of rights qualitatively and quantitatively in an area co-extensive with an estate or any portion thereof. The expression "rights" in relation to an estate has been used in a very comprehensive sense including not only interests of proprietors or sub-proprietors but also of lower grade tenants like ryots or under-ryots and the use of the expression 'other intermediary' shows that the enumeration of the intermediaries was only illustrative and not exhaustive : AIR 1952 S C 519, Rel. on. (1962) 4 Ori J D 234 : ILR (1962) Cut 98.

——Art. 31-A — Rights of intermediary in hats and bazars — Estate acquired under Estates Abolition Act — Legislature can make supplementary provisions for subordinate rights also. See Tenancy Laws — Orissa Estates Abolition Act (1 of 1952), S. 3. (1957) 23 Cut L T 265.

30. Article 31-B — Scope.

● ——Arts. 31-B and 31-A (1) (a) — Land Acquisition (Bombay Amendment) Act (4 of 1948), S. 3 — Scope of Art. 31-B — Article 31-B not governed by Art. 31-A — Bombay Act (4 of 1948) being void from its inception not saved by Art. 31-A. See Ibid, Art. 31-A (1) (a). AIR 1965 S C 1096.

● ——Arts. 31-B, 368, 31-A, 226 and Sch. IX — Scope, interpretation and effect of Art. 368 — Constitution (17th Amendment) Act (1964) — Constitutional validity — Effect of amendments made in Art. 31-A and Sch. 9 on High Courts' powers under Art. 226 is only incidental and insignificant —Pith and substance of Act falls within substantive part of Art. 368 and not under Cl. (b) of proviso to Art. 368 — Act is constitutionally valid. See Ibid, Art. 368. AIR 1965 S C 845.

● ——Art. 31-B, last clause — Effect of — Acts included in 9th Schedule with a view to make them valid can be amended or repealed by State Legislature which passed them.

Per Gajendragadkar, Wanchoo and Raghubar Dayal, JJ. — The effect of the last clause in Art. 31-B is to leave it open to the respective legislatures to repeal or amend the Acts which have been included in the Ninth Schedule. In other words, the fact that the said Acts have been included in the Ninth Schedule with a view to make them valid, does not mean that the legislatures in question which passed the said Acts have lost their competence to repeal them or to amend them. That is one consequence of the said provision. The other inevitable consequence of the said provision is that if a legislature amends any of the provisions contained in any of the said Acts, the amended provision would not receive the protection of Art. 31-B and its validity may be liable to be examined on the merits. Sujjan Singh v. State of Rajasthan, (1965) 1 S C A 875 : (1965) 1 Mad L J (SC) 57 : (1965) 1 S C J 377 : (1965) 1 Andh W R (SC) 57 : (1965) 1 S C W R 593 : AIR 1965 S C 845 (859) (Pt G) (Pr 35).

● ——Art. 31-B (as amended by 17th Amendment)— West Bengal Estates Acquisition Act (1 of 1954), not unconstitutional.

After the enactment of the 17th Amendment to the Constitution, and the inclusion of West Bengal Estates Acquisition Act among those specified in Sch. 9, the absence of a provision for compensation for the acquisition of the rights would not render the Act or acquisition thereunder unconstitutional. Ram Kissen Sinha v. Divisional Forest Officer, Bankura, (1965) 1 S C A 842 : (1965) 2 S C J 112 : AIR 1965 S C 25 (628) (Pt B) (Pr 8).

● ——Art. 31-B—Discriminatory enactment—Madras Estates (Abolition and Conversion into Ryotwari) Act (26 of 1948), S. 45 — Act is protected by Art. 31-B read with Sch. 9 Item 10 of the Constitution — Section 45 of the Act is not void. See Ibid, Art. 14. AIR 1963 S C 842.

● ——**Arts. 31-B, 14 and Sch. IX**—West Bengal Land Development and Planning Act (21 of 1948), S. 7 — Validity of — Does not contravene Art. 14 — Effect of Art. 31-B stated. See West Bengal Land Development and Planning Act (21 of 1948), S. 7. **AIR 1961 S C 16.**

● ——**Art. 31-B and Sch. 9 as amended by S. 5, Constitution (4th Amendment) Act, 1955 — U. P. Land Acquisition (Rehabilitation of Refugees) Act (26 of 1948), S. 11 (1), Provisos — Constitutionality — Government of India Act (1935), S. 299.**

In view of the decision in AIR 1955 S C 47 the ground of unconstitutionality based on the contravention of S. 299 (2) of the Government of India Act (1935) is not available. The provisions of provisos to S. 11 (i) of the U. P. Act (26 of 1948) have been specifically saved from any attack on their constitutionality as a consequence of Art. 31-B read with the Ninth Schedule as amended by S. 5, Constitution (4th Amendment) Act, 1955 the effect of which is that the Act cannot be deemed to be void or ever to have become void on the ground of its being hit by the operation of the Government of India Act. A I R 1955 S C 47, Applied; A I R 1955 All 12, **Reversed.** State of U. P. v. H. H. Maharaja Brijendra Singh, **1961 All L J 1 : ILR (1961) 1 All 236 : 1961 All W R (H C) 71 : (1961) 1 S C J 622 : (1961) 1 S C R 362 : AIR 1961 S C 14 (18) (Pr 6).**

● ——**Art. 31-B** – Bombay Tenancy and Agricultural Lands Act (1948), S. 6 (2) – Validity — **Held, not void on ground of excessive delegation.** See Tenancy Laws — Bombay Tenancy and Agricultural Lands Act (67 of 1948), S. 6 (2). **AIR 1961 S C 4.**

● ——**Arts. 31-B, 245 – Hyderabad (Abolition of Jagirs) Regulation (1358 Fasli), S. 6 (4)—Hyderabad Jagirs (Commutation) Regulation (25 of 1359 Fasli), S. 4 (1) (c) and 4 (2)—Validity—Retrospective operation of Constitution—Rights extinguished by Abolition Regulation—If revived**

Held that S. 6 (4) of the Hyderabad (Abolition of Jagirs) Regulation (1358 Fasli), promulgated by the Military Governor, and Ss. 4 (1) (c) and 4 (2) of the Hyderabad Jagirs (Commutation) Regulation (25 of 1359 Fasli) promulgated by the Chief Minister were valid. They could not be challenged on the ground of want of legislative competence or colourable exercise of legislative authority. AIR 1951 S C 128, Rel. on. Parliament has, by the Constitution (First Amendment) Act included the Abolition and the Commutation Regulations in the ninth schedule, and by virtue of Art. 31-B the two Regulations are exempt from challenge on the ground that they are inconsistent with or take away or abridge any of the fundamental rights conferred by Part III of the Constitution. AIR 1954 Hyd 227, Affirmed. Sarwarlal v. State of Hyderabad, **(1960) 3 S C R 311 : (1961) 1 S C J 37 : A I R 1960 S C 862 (864, 865, 866) (Prs 8, 11, 12, 13, 14, 15).**

● ——**Art. 31-B** — Madras Act (26 of 1948) cannot be challenged on ground that it offended S. 299, Government of India Act (1935)—The Madras Act is one of the Acts included in the Ninth Schedule and is protected by Art. 31-B. See Tenancy Laws — Madras Estate (Abolition and Conversion into Ryotwari) Act (26 of 1948). **AIR 1960 S C 32.**

● ——**Arts. 31-B, 13 (2)—Scope — Bombay Tenancy and Agricultural Lands (Amendment) Act (13 of 1956)—Validity.**

It could not be urged that if the cognate provisions of Act 67 of 1948 were immune from attack in regard to their constitutionality, on a parity of reasoning similar provisions contained in the impugned Act, would be similarly saved, because whatever amendments were made by the impugned Act in the 1948 Act were future laws within the meaning of Art. 13 (2) of the Constitution and required to be tested on the self-same touchstone. They would not be in terms saved by Art. 31-B and would have to be scrutinized on their own merits before the Courts came to the conclusion that they were enacted within the constitutional limitations. The very terms of Art. 31-B envisaged that any competent Legislature would have the power to repeal or amend the Acts and the Regulations specified in the 9th Schedule thereof and if any such amendment was ever made the vires of that would have to be tested : A I R 1958 Bom 94, Approved. Sri Ram Ram Narain v. State of Bombay, **(1959) Supp (1) S C R 489 : 1959 S C A 491 : 61 Bom L R 811 : (1959) 2 Andh W R (S C) 1 : 1959 S C J 679 : (1959) 2 Mad L J (SC) 1 : AIR 1959 S C 459 (469, 470) (Pt C) (Pr 36).**

● ——**Art. 31-B** — Validity of Bombay Taluqdari Tenure Abolition Act — Challenge on ground of violation of S. 299, Government of India Act. The protection under Art 31-B is not merely against the contravention of certain provisions but an attack on the ground of unconstitutional abridgement of certain rights. See Tenancy Laws—Bombay Talukdari Tenure Abolition Act (62 of 1949), S. 1. **AIR 1955 S C 47.**

● ——**Art. 31-B** — Constitutional validity of. See Ibid, Art. 31A. **AIR 1951 S C 458.**

——**Art. 31-B — U. P. Land Acquisition (Rehabilitation of Refugees) Act (26 of 1948), S. 11 — Retrospective operation of Article.**

Article 31-B is retrospective in operation, and the U. P. Act must be deemed to be valid at least from the date that the Constitution came into force. **I L R (1957) 2 All 88 : AIR 1958 All 154 (158) (Pt E) (Pr 14) (DB).**

——**Arts. 31-B and 31-A**—Acquisition of Land under U. P. Land Acquisition (Rehabilitation of Refugees) Act (26 of 1948) S. 11 — Article 31B applies by its own force irrespective of provisions of Art. 31-A. **ILR (1957) 2 All 88 : AIR 1958 All 154 (158) (Pt F) (Pr 15) (DB).**

——**Art. 31-B, Ninth schedule** – (as amended by fourth Amendment)—U. P. Act 26 of 1948 is not ultra vires. See U. P. Land Acquisition Rehabiltiation of Refugees Act (26 of 1948), S. 11. A I R 1955 All 12, Held no longer good law. **AIR 1956 All 416 (DB).**

——**Arts. 31-B and 31 (6)**—Madras Estates (Abolition and Conversion into Ryotwari) Act, (26 of 1948), S. 20, Proviso 2—Validity of — (Government of India Act (1935), S. 299 (1)) — Constitutional validity of the second proviso to S. 20, Madras Act cannot be questioned in view of Art. 31 (6) and 31-B, substituted by the Constitution (Fourth Amendment) Act 1955. See Ibid, Art. 31 (6). **AIR 1958 Andh Pra 522.**

——**Art. 31-B** — It is clear from the language of Art. 31-B that it applies to any right conferred by Part III, a chapter relating to the fundamental rights. See Ibid, Art. 31-A (2) (b). **A I R 1955 Andh Pra 264 (DB).**

——**Art. 31-B — Tenancy Laws — Madras Estates (Abolition and Conversion into Ryotwari) Act (26 of 1948)—Validity.**

Where it is alleged that S. 45 (4) of Act (26 of 1948) takes away the right conferred by Art. 14, namely, equality before the law and equal protection of the laws, it is the alleged repugnancy between Art. 14 which forms part of Part III and S. 45 (4) of the Act that forms the basis of the contention and to give effect to this contention would amount, inter alia to overlook the words "is inconsistent". Hence either S. 45 (4) or the other provisions of the Act cannot

be impeached by reason of Art. 31-B of the Constitution. 1955 Andh L T (Civil) 411 : 1955 Andh W R 590 : AIR 1955 Andhra 264 (271) (Pt J) (Pr 29) (DB).

——Art. 31-B — Scope — Acts mentioned in ninth schedule Power of subordinate legislature to amend — Limitations. See Ibid, Art. 31-A. AIR 1958 Bom 94 (DB).

——Art. 31-B, Ninth Schedule — Scope and effect of —Bombay Act (67 of 1948) —Validity of—Act though inconsistent with Art. 31, saved by Art. 31B and Ninth Schedule. See Tenancy Laws—Bombay Tenancy and Agricultural Lands Act (67 of 1948), S. 1. AIR 1957 Bom 155 (DB).

——Art. 31-B — Notifications under S. 6 (2) of Bombay Act (67 of 1948)—Contravention of fundamental rights — If Art. 31B saves the whole of the Tenancy Act and no provision of that Act can be challenged, then it is clear that S. 6 (2) is as much saved as any other provision of the Tenancy Act. See Tenancy Laws—Bombay Tenancy and Agricultural Lands Act (67 of 1948), S. 6 (2). AIR 1954 Bom 397 (DB).

——Art. 31-B and Sch. 9 — West Bengal Estates Acquisition Act (I of 1954) is constitutional.

Since this Act has been included in the Ninth Schedule by the Constitution (Seventh Amendment) Act, and, by reason of Art. 31-B this inclusion saves the Act from any attack on the ground of unconstitutionality, with retrospective effect, the constitutionality of the Act cannot be challenged. A I R 1965 Cal 539 (543) (Pt B) (Pr 13).

——Art. 31-B—West Bengal Land Development and Planning Act (21 of 1948), S. 8 (1), Proviso (b) —Provisions though contravening S. 299 (2) of Government of India Act (1935) were protected by Art. 31-B and Ninth Schedule of the Constitution of India—Amendment in proviso (b) made in Sept. 1955 also held valid. See West Bengal Land Development and Planning Act (21 of 1948), S. 8 (1), Proviso (b). AIR 1965 Cal 177 (DB).

——Art. 31B and Art. 31A — Articles 31A and 31B, which were added by the Constitution (First Amendment) Act 1951, are constitutional. AIR 1951 S C 458, Foll. ILR (1954) Hyd 783 : AIR 1954 Hyd 227 (231) (Pt A) (Pr 11) (DB).

● ——Art. 31B, Sch. 9 — Hyderabad Regulations included in Sch. 9—Validity of.

It is no longer open to any person to question the validity of any provision of the Hyderabad (Abolition of Jagir) Regulation of 1358 F. and the Hyderabad Jagir (Commutation) Regulation of 1359 F. after they have been incorporated in the 9th Schedule of the Constitution by the insertion of Art. 31B in the Constitution by the Constitution First Amendment Act of 1951, Ahmad Un-Nissa v. State, A I R 1953 Hyd 21 (24) (Pt D) (Pr 11) (FB).

● ——Art 31B — Jammu and Kashmir Tenancy Act (2 of 1980) (as amended by Act 12 of 1955), Ss. 15A, 16 (1) 1 (a), 19B, 45, 47 and 49 — Constitutional validity—Provisions, whether contravene Arts. 14, 19 and 31 — Protection under Arts. 31A and 31B whether available. See Tenancy Laws — J. & K. Tenancy Act (2 of 1980) (as amended by Act 12 of 1955), S. 15-A. AIR 1959 J & K 35 (FB).

● ——Art. 31-B, Sch. 9 — Applicability — Arts. 368 and 370—Acts included in Sch. 9 - Amendments to—Protection under Art. 31-B — (Tenancy Laws — J. & K. Tenancy Act 2 of 1980 (as amended by Act 7 of 2005 and 12 of 1955), Ss. 16 (1) (a), 15-A, 19-B, 45, 47 and 49).

The inclusion of an Act or a provision of an Act in the Ninth Schedule undoubtedly must be the result of adequate consideration, by the President in the case of Jammu and Kashmir, and by the Parliament in the case of the rest of India, of the nature and scope of the Act or the provision so included. The physical incorporation in the Ninth Schedule can be only of the Act or the provision as it stood on the date of its incorporation. What was brought into the Act subsequent to that date was therefore outside the scope of the Ninth Schedule and consequently outside the scope of the protection of Art. 31-B.

The President by order made in exercise of the powers conferred by Art 370 (1) of the Constitution inserted on 14th May, 1954, the J. & K. Tenancy Act (2 of 1980) in the Sch. 9 in its application to the State of Jammu and Kashmir. Any provision which was not in the Act on that date cannot therefore be said to be included in that Schedule. A I R 1958 Bom 94, Rel. on.

What is saved by Art. 31-B are the provisions of the Jammu and Kashmir Act as they stood on the 14th day of May 1954, when the Act was included in the Ninth Schedule and not any other or different provision which was enacted by the State legislature subsequent to that date.

An original Act cannot be considered independently of the amendments, because it is inextricably bound up with the amendments. It follows that S. 16 (1) (a) which was inserted in the Act by the amending Act (7 of 2005 (1948 A. D.)) before its inclusion in Sch. 9 of the Constitution is completely protected by Art. 31-B. A I R 1955 Pat 1 and AIR 1952 S C 324, Rel. on. The Jammu and Kashmir Tenancy (Amendment) Act (12 of 1955) was not included in the Ninth Schedule either by the President's Order of 1954 or by the Amending Order of 1958. It follows that such of the sections as were placed on the Statute Book by the Jammu and Kashmir Tenancy (Amendment) Act, 1955, are not saved or validated by Art. 31-B.

The Constitution (Application to Jammu and Kashmir) Second Amendment Order of 1958 has not in any way either expressly or by implication sought to enlarge or alter the scope, nature or content of Entry No. 16, Jammu and Kashmir Tenancy Act (No. 2 of 1980), inserted in the Ninth Schedule by the President's Order of 1954. The Act which was inserted in the Ninth Schedule by the 1954 Order is undoubtedly the same as the one which stands today in that schedule. The additions and alterations to the Act made subsequent to 14th May 1954, stand today as much outside the scope of the Ninth Schedule as they did at any time before the 26th of February 1958, the date on which the Second Amendment Order came into force. S. Sant Singh v. State of J. & K., A I R 1959 J & K 35 (38, 39, 40, 41) (Pt A) (Prs 2, 3, 8) (FB).

——Art. 31-B — Scope—Validity of M. P. Act (1 of 1951)—Art. 31B expressly saves Act from being held void. See Tenancy Laws — M. P. Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 (1 of 1951). 1957 M P C 771.

——Art. 31-B—Grounds on which law of compulsory acquisition cannot be challenged — See Ibid, Art. 31 (4). AIR 1953 Orissa 185.

——Art. 31-B — Constitutional validity of Punjab Consolidation of Land Proceedings (Validation) Act (6 of 1954). See Ibid, Art. 31. A I R 1959 Punj 8 (DB).

——Art. 31 B—West Bengal Land Development and Planning Act (21 of 1948), S. 8—Section continues to be constitutional in view of Constitution (Fourth Amendment) Act, 1955—See West Bengal Land Development and Planning Act (21 of 1948), S. 8. A I R 1962 Tripura 13.

ARTICLE 32

See Ibid, Arts. 226 and 32.

ARTICLE 33

●——Art. 33 — Army Act (1950) — Provision in Act does not become void because it affects fundamental right under Part III of the Constitution — Each and every provision of the Act is a law made by Parliament and that if any such provision tends to affect the fundamental right under Part III of the Constitution, that provision does not, on that account, become void, as it must be taken that Parliament has thereby, in the exercise of its power under Art. 33 of the Constitution, made the requisite modification to affect the respective fundamental right. Ram Sarup v. Union of India. (1965) 5 S C R 931 : 1964 Mad L J (Cri) 626 : 1964 2 S C J 619 : 1964 S C D 661 : 1964 Cur L J (S C) 169 : 1965 (1) Cri L J 236 : A I R 1965 S C 247 (251) (Pt C) (Pr 16).

●——Art. 33 and Part III—Government servants—If excluded from protection of fundamental rights under Part III.

The Constitution of India does not exclude Government servants as a class from the protection of the several rights guaranteed by the several Articles in Part III save in those cases where such persons are specifically named. Article 33 of the Constitution having selected the Services, members of which might be deprived of the benefit of the fundamental rights guaranteed to other persons and citizens and also having prescribed the limits within which such restrictions or abrogation might take place, other classes of servants of Government in common with other persons and other citizens of the country cannot be excluded from the protection of the rights guaranteed by Part III by reason merely of their being Government servants and the nature and incidents of the duties which they have to discharge in that capacity might necessarily involve restrictions of certain freedom in relation to Art. 19 (1) (e) and (g). Kameshwar Prasad v. State of Bihar. (1962) 2 S C A 240 : ILR 42 Pat 259 : (1962) Supp 3 S C R 369 : (1962) 1 Lab L J 294 : (1961-62) 22 F J R 50 : 1962 B L J R 499 : AIR 1962 S C 1166 (1170) (Pt B) (Prs 11, 12).

●——Art. 33—Pepsu Police (Incitement to Disaffection) Act being enacted by President by virtue of delegation under S. 3 of Act 22 of 1953 is not parliamentary legislation within Art. 33. See Pepsu Police (Incitement to Disaffection) Act (1 of 1953), S. 3. 1962 (2) Cri L J 247: AIR 1962 S C 1106.

——Art. 33—Public Safety — Preventive Detention Act, 1950, S. 7—Arts. 33, 35 (b), 372 — Indian Army Act, 1911—If continued to be effective till passing of Act 46 of 1950.

Though Art. 33 of the Constitution gave power to the Parliament to modify the rights conferred by Part III relating to fundamental rights in their application to the forces of the Crown by making law, still unless the Parliament determines to what extent such rights can be modified, the law which stood before the conferment of the fundamental rights will apply so far as the Armed Personnel are concerned. Therefore, even after the inauguration of the Republic till the passing of Act 46 of 1950 the existing law namely the Indian Army Act, 1911 and the rules and orders made thereunder continued to be effective. 1951 M W N 156 : 1951 M W N Cri 40 : 64 M L W 193 : 1951-1 M L J 258 : 52 Cri L J 827 : ILR (1952) Mad 153 : A I R 1951 Mad 777 (782) (Pt B) (Pr 12) (DB).

——Art. 33—Mysore Police Act (5 of 1908), S. 40 — Notification under—Validity — If can be challenged on ground that proceedings under S. 144, Criminal P. C. would have been more appropriate so as to protect rights of petitioners in respect of management of religious institution — Duty of State to protect civil rights — Extent of, in cases of emergency arising out of breach of public peace. See Mysore Police Act (5 of 1908), S. 40. 1962 Mys L J (Supp) 411.

—Art. 33 — Rajasthan Government Servants and Pensioners Conduct Rules, Rr. 23, 23-A — Constitutional validity—Rules prohibiting Government servants from becoming members of association not recognised by Government—Question of recognition left to arbitrary discretion of Executive — Rules are ultra vires the Constitution as infringing fundamental rights of Government servants including members of the police force as a class. See Ibid, Art 309. 1963 (2) Cri L J 50 : AIR 1963 Raj 136 (DB).

ARTICLE 34

——Art. 34 — Mysore Police Act (5 of 1908), S. 40—Notification under— Validity — It can be challenged on ground that proceedings under S. 144, Criminal P. C. would have been more appropriate so as to protect rights of petitioners in respect of management of religious institution—Duty of State to protect civil rights — Extent of, in cases of emergency arising out of breach of public peace. See Mysore Police Act (5 of 1908), S. 40. 1962 Mys L J (Supp) 411.

ARTICLE 35

●——Art. 35 (c) — Jammu and Kashmir Preventive Detention Act (4 of 2011), S 8 (1) Proviso — Validity —Constitutionality — Constitutionality questioned on the ground of its inconsistency with Arts. 21 and 22 of the Constitution—See Public Safety — Jammu and Kashmir Preventive Detention Act (4 of 2011), S. 8 (1) Proviso. AIR 1956 S C 197.

●——Arts. 35 (c) (applicable to Jammu and Kashmir) and 370 (1) (c) and (d) — Validity of Art. 35 (c) —(Constitution (Application to Jammu and Kashmir), Order, 1954).

Article 370 (1) (c) and (d) authorizes the President by Order to specify the exceptions and modifications to the provisions of the Constitution (other than Arts. 1 and 370) subject to which the Constitution shall apply to the State of Jammu and Kashmir. Hence, Cl. (c) added to Art. 35 only so far as the State of Jammu and Kashmir is concerned by the Constitution (Application to Jammu and Kashmir) Order, 1954, promulgated by the President cannot be said to be in excess of the powers conferred by Art. 370 (1).

There are no provisions of any law which require that the Prime Minister of Jammu and Kashmir himself should sign the copy of the order to be served on the detenu or the copy of the order which is forwarded to the officer in charge of the jail where he was detained. Lakhampal P. L. v. State of Jammu and Kashmir. (1956) S C J 236 : 1956 Cri L J 421 (2) : 1956 S C A 706 : (1955) 2 S C R 1101 : A I R 1956 S C 197 (201, 202) (Pts B, C) (Prs 8, 9).

——Art. 35 — Suppression of Immoral Traffic in Women and Girls Act—Validity—Act cannot be struck down even if it offends Art. 19 (1) (g). See Ibid, Art. 23. AIR 1959 All 57.

——Arts. 35, 13, 17, 372 — U. P. Removal of Social Disabilities Act, 1947, not void (U. P. Removal of Social Disabilities Act (14 of 1947), S. 1).

Article 35 which is not retrospective in operation withdraws from the States the power of making any enactment relating to acts which are declared to be offences under the Constitution after the commencement of the Constitution. It does not render null and void any legislation which had already been passed before the commencement of the Constitution. Hence, even assuming that the U. P. Removal of Social Disabilities Act, 1947, deals with disability arising out of

untouchability, it is not invalid as it is an Act which was already on the statute book before the Constitution came into force.

Further it cannot be said that anything in the U. P. Removal of Social Disabilities Act which was already on the statute book is inconsistent with the provisions of Part III of the Constitution and is thus affected by Art. 13. The U. P. Act, therefore still remains in force under Art. 372 and has not become void by anything contained in the Constitution. 1953 All L J 211 : 1953 Cri L J 1103 : AIR 1953 All 483 (484, 485) (Pt D) (Prs 7, 8) (DB).

——Arts. 35 and 23—Transfers for immoral objects—Setting aside—Plea of particeps criminis by defendant—Applicability of principles laid down in Ayerst v. Jenkins, (1874) 16 Eq 275 in India—Lease of house by owner for running brothel — Right of executors and trustees of will of owner to recover back property with aid of Court —Relief whether can be denied on grounds of public policy — (Contract Act (1872), Ss. 23, 65)—(Evidence Act (1872) S. 115)—(Specific Relief Act (1877), Ss. 39, 40 and 41)—Trusts Act (1882), S. 84)—(Bengal Suppression of Immoral Traffic Act (1933), S. 4 (1)) – (Suppression of Immoral Traffic in Women and Girls Act, (1956). See T. P. Act (1882), S. 6 (h) (2). AIR 1958 Cal 713.

——Art. 35 (c) as applied to J. & K. State.

Though Art. 22 (5) of the Constitution is violated, the provisions of S. 8 (1) of J. & K. Preventive Detention Act are not ultra vires in view of Art. 35 (c) as applied to J. & K. State. See Public Safety – J. & K. Preventive Detention Act. S. 8 (1). 1963 (1) Cr L J 765 : AIR 1963 J & K 23.

● ——Arts. 35 (c) and 370 (1) (d) (as applied to Jammu and Kashmir) — Constitution (Application to Jammu and Kashmir) Order (1954), Para 4 (1) (iii) —Jammu and Kashmir Preventive Detention Act (2001), S. 8 (1) — Art. 35 (c) is not ultra vires—S. 8 (1), Jammu and Kashmir Preventive Detention Act is competently enacted.

Clause (c) added to Art. 35 of the Constitution by the President by Para. 4 (1) (iii) of the Constitution (Application to Jammu and Kashmir) Order 1954 is not in excess of the powers conferred on the President by Art. 370 (1) (d) of the Constitution of India. Hence, the Proviso to Cl. (1) of S. 8. Jammu and Kashmir Preventive Detention Act, 2011. by which the Government can withhold grounds on which the order of detention has been made by them from the detenu is within the competence of the Legislature of the Jammu and Kashmir State. Mohammad Subhan v. State. 1956 Cr L J 48 : AIR 1956 J & K 1 (4, 13) (Pt A) (Prs 11, 44) (FB).

● ——Arts. 35 (c) and 13 (as applied to Jammu and Kashmir) — Fundamental rights—Curtailment of, with respect to preventive detention in Jammu and Kashmir—(Public Safety—Jammu and Kashmir Preventive Detention Act (2011), S. 3).

Per Wazir, C. J.—The effect of Art. 35 (c) is that the Jammu and Kashmir Preventive Detention Act is excepted from the operation of the fundamental rights. Further, as the word "modify', used in Art. 370, means to change and to limit, the President has limited the operation of Art. 13 under his powers to modify. Mohammad Subhan v. State. 1956 Cr L J 48 : AIR 1956 J & K 1 (4) (Pt D) (Prs 9, 10) (FB).

● ——Arts. 35 (c) and 370 (1) (d) (as applied to Jammu and Kashmir) — Provision of Art 35 (c) is covered by word 'modification' used in Art. 370 (1) (d).

While in general the word 'modification' has been interpreted to mean 'tone down, soften rigours of, assuage or to limit', it has also been interpreted in the sense of enlarging the scope of the previous Act.

And as the essential purpose of Art. 370 is to be ascertained from the article itself rather than by travelling beyond its scope and determining what the policy behind the different provisions of the Constitution contained in its different parts is, the provision contained in cl. (c) added to Art. 35 by the President is covered by the term 'modification' as used in Art. 370 (1) (d) of the Constitution. Mohammad Subhan v. State. 1956 Cr L J 48 : AIR 1956 J & K 1 (4, 13, 14) (Pt E) (Prs 10, 47) (FB).

——Art. 35 — M. B. Harijan Disabilities Removal (Amendment) Act being contrary to Art. 35 is invalid. See Ibid, Art. 17. AIR 1955 Madh-Bha 207.

——Art. 35— Scope and applicability — See Ibid, Art. 17. AIR 1956 Mad 541.

——Art. 35 — Scope. See Ibid, Art. 15. AIR 1955 Orissa 113 (DB).

ARTICLE 36

See also Ibid, Art. 37.

● ——Arts. 36, 51, Part IV—Scope— Implementation of directive principles and fundamental rights — Harmonious interpretation. See Ibid, Art. 13 (2). AIR 1958 S C 731.

——Art. 36—Jurisdiction created by S. 65, Punjab Gram Panchayat Act, is couched in words of very wide amplitude—Court should so interpret statute as to implement directive principles. See Panchayats—Punjab Gram Panchayat Act (4 of 1953), S. 65. A I R 1960 Punj 35.

ARTICLE 37

● ——Art. 37 — Directions — Legislative power of State—If affected.

The directions even if disobeyed by the State, cannot affect the legislative power of the State, as they are only directory in scope and operation. Deep Chand v. State of U. P. 1959 S C J 1069 : 1959 SCA 377 : ILR (1959) 1 All 293 : (1959) 2 S C R (Supp) 8: AIR 1959 S C 648 (663, 664) (Pt B) (Pr 26).

——Arts. 37 and 48 — Directive principles of State policy —Value of —Establishment of slaughter house by State— Objection on the ground that cows also be slaughtered—Maintainability.

Although the directive principles of State Policy are fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws, none of them can be enforced by a Court of law. The directive as to prohibition of slaughter of cows, calves and other milch and draught cattle is not absolute. The protection recommended by Art. 48 is confined to cows and calves and those other animals which are presently or potentially capable of yielding milk or doing work as draught cattle but does not extend to cattle which were at one time milch or draught cattle but has ceased to be such. Consequently so long as laws are not made under the one or other of the directives, an executive action for establishment of a slaughter-house, where cows may also be slaughtered, cannot necessarily be condemned as violating the directive principles. AIR 1958 S C 731, Foll. 67 Cal W N 460: AIR 1963 Cal 565 (571, 572) (Pt E) (Pr 22).

——Art. 37—Directive principles of State policy—Not enforceable in Court of law. See Civil P. C. (1908), S. 9. AIR 1964 Madh Pra 231 (DB).

——Art. 37—Directive principles are not enforcable by Court of law. See Ibid, Art. 46. AIR 1953 Mad 21.

——Art. 37—Scope—Art. 17 of Universal Declaration of Human Rights—Effect. See Ibid, Art. 51. AIR 1957 Orissa 247 (DB).

——Art. 37 — Directive principles are subject to fundamental rights.

Per Ramaswami, J. (agreeing with Ahmad, J.)— Giving effect to the directive principles of State policy should not in any way result in any negation of the fundamental rights guaranteed to the people in Part III. AIR 1951 S C 226, Rel. on. ILR 35 Pat 1: 1956 B L J R 458 : AIR 1957 Pat 617 (622, 631) (Pt D) (Prs 14, 51).

—— Art. 37—Directive principles—Value of.

The Directive principles have not been included in our Constitution as mere idle words intended to serve purely as decorative phrases. They are an important and integral part of our Constitution designed to conform to and run as subsidiary to the fundamental rights enshrined in the Constitution. When interpreting statutory provisions the Courts are not expected to ignore these principles of State Policy, because the Legislature must be presumed to bear in mind and be governed bv these principles while enacting laws and not to violate or lose sight of them. I L R (1965) 2 Punj 32 : 67 Pun L R 921 : AIR 1966 Punj 16 (20) (Pt B) (Pr 8) (DB).

——Art. 37 — Jurisdiction created by S. 65, Punjab Gram Panchayat Act, is couched in words of very wide amplitude — Court should so interpret statute as to implement directive principles. See Panchayats—Punjab Gram Panchayat Act (4 of 1953), S. 65. AIR 1960 Punj 35.

——Art. 37 — Directive principles are to be kept in view when enacting laws.

The directive principles are not enforceable by Courts but, it can hardly be doubted, that they are meant to be kept in view when enacting laws, unless they are intended to remain mere idle words. ILR (1959) Punj 1778 : AIR 1960 Punj 35 (39) (Pt A) (Pr 6).

——Art. 37—Art. 29 (2), if overrides Art. 46—Reservation of seats in educational institutions for Scheduled castes — Permissibility—If Art. 37 makes Art. 46 a fundamental principle of governance of this country then correct way of interpreting would be to read Art. 46 as an exception to Art. 29 (2)—See Ibid, Art. 29 (2). AIR 1951 Punj 93 (DB).

ARTICLE 38

——Arts. 38 and 39 — Legislation in welfare State — Interference with contracts. See Madras Essential Articles Control And Requisitioning (Temporary Powers) Act (29 of 1949) (As Amended bv Andhra Act 1 of 1955), S. 3. AIR 1959 Andh Pra 538 (DB).

——Arts. 38, 39, 289 and 19 — Functions of State — It can carry on the business of plying motor vehicles for hire on commercial basis.

It is now idle to contend that trade or business is not a legitimate function of the State or that it departs preposterously from its sovereign function when it indulges in those activities. The State which had in earlier times for its functions defence, police, law and order, can now guarantee many other public services and the entry of the Pepsu Government, in pursuance of its economic policy, in the business of motor transport does not suffer from any legal or other disqualification. AIR 1956 Pepsu 3 (5, 6) (Pt B) (Prs 7, 8).

——Arts. 38, 39, 289, 19 and 298—State can do transport business on commercial basis without legislative sanction.

The provisions of Arts. 19, 38, 39, 289 and 298 of the Constitution authorise the State to take to business in which transport business is apparently included. In that view of the law no legislative sanction to start or run the business of plying motor vehicles for hire would be necessary. No specific Act is therefore necessary to validate the running of motor buses by it particularly when legislative sanction in the form of the necessary Appropriation Act to incur expenditure on the venture and consequent implicit approval of the State Assembly has already been obtained and this should be enough to serve the purpose of making a specific law. AIR 1956 Pepsu 3 (6) (Pt C) (Pr 9).

——Art. 38 — Scope — Function of State — Motor Transport business — State—Whether can carry on business or Trade like other individuals - Legislative sanction if and when necessary. See Ibid, Art. 19. ILR (1956) Patiala 77.

——Arts. 38 and 227—Art. 38 seeks to secure justice to citizens as top priority — Constitution vests wide powers in High Courts for same purpose — Extent and nature of powers stated.

The Constitution which has in Art. 38 sought to secure justice to the citizens as a top priority has also, for this purpose, vested in the High Courts very wide power of judicial supervision and superintendence over all Tribunals and Courts in the State. This power imposes on the High Court a grave and sacred responsibility and invests in it an unlimited and unfathomable reserve of judicial power of supervision and control over all Courts and tribunals in the State concerned. The limitation of this power is only to be found in the Constitution itself and it is self-imposed by the High Court. No external limits, fetters or restrictions have been placed on this power by the express language of Art. 227. It is to be exercised only according to well-recognised judicial principles and with restraint and caution. ILR (1959) Punj 1778 : AIR 1960 Punj 35 (39) (Pt B) (Pr 6).

ARTICLE 39

——Arts. 39 and 43 — Wages - Living wage, minimum wage and fair wage. See Industrial Disputes Act (1947), S. 2 (rr). AIR 1958 S C 578.

——Arts. 39, 38, 298, Sch. 7, List 3, Entry 34 — Madras Essential Articles Control and Requisitioning (Temporary Powers) Act, Ss. 3, 10 (as amended by Andhra Act 1 of 1955) — Electrical energy supplied by Government — Price regulation — Contracts for supply of electrical energy by Government — Upgrading of electricity tariffs by Government under S. 3 during currency of contracts — Validity — (Andhra G. Os. 69 (D/- 28-1-1955) and 187 (D/-30-1-1955)). ILR (1957) Andh Pra 450, Reversed. See Madras Essential Articles Control and Reguisitioning Temporary Powers Act (29 of 1949) as Amended by Andhra Act (1 of 1955), S. 3. AIR 1959 Andh Pra 538 (DB).

● ——Arts. 39 (b), 31 (2), 39 (c) — Public purpose — Test — M. B, Act, 28 of 1951 is for public purpose— Object of Act is to extingiush interests of intermediary and to bring actual cultivators into direct relations with State Government and to avoid concentration of weallh and means of production to common detriment as laid down in Art. 39 (b) and (c). Malojirao Shitole v. State of Madhya Bharat, 1952 M B L J (H C R) 467 : AIR 1953 Madh Bha 97 (100) (Pt C) (Pr 4) (FB).

——Art. 39 — Wealth Tax Act (1927) — Validity — Does not contravene Art. 19. See Ibid, Art. 19 (1) (f). AIR 1964 Orissa 128 (DB).

——Art. 39 — Functions of State — It can carry on the business of plying motor vehicles for hire on commercial basis — See Ibid, Art. 38. AIR 1956 Pepsu 3.

——Art. 39 — Scope — Function of State — Motor Transport business — State whether can carry on

business or trade like other individuals — Legislative sanction if and when necessary. See Constitution of India, Art. 19. **ILR (1956) Patiala 77.**

——**Art. 39**—A perusal of Arts. 5, 6, 8, 9 and 39 makes it clear that a corporation is not a citizen within Art 19 of Constitution. See Ibid, Art. 19. **AIR 1952 Punj 9 (DB).**

ARTICLE 40

——**Art. 40** — G. O. Ms. No. 334, Local Administration, dated 2-3-1956 (Andhra) — Validity. See Panchayats — Madras Village Panchayats (Andhra Second Amendment) Act, (1955), S. 22. **AIR 1957 Andhra Pra 355.**

——**Art. 40 — Organisation of village panchayats — Administrative officers — How to act — Expression of law—Importance of clear language.**

If the object and purpose of Panchayat Legislation in pursuance of the Directive Principle contained in Art. 40 is not to be defeated and if rural India is to be properly educated and trained in imbibing democratic temper in organising and working the Panchayats as healthy units of self-Government then petty power politics should scrupulously be eliminated; and the administrative officers dealing with the Panchayat elections should possess a proper judicial mind adequately detached from off the record influences like prejudice and sympathy, official or personal. They should also have requisite knowledge of the relevant law, so that the citizens whose rights are dealt with by them, may have faith and confidence in the efficaciousness and impartiality of the quasi-judicial process. Justice, even when administered by administrative officers, should be seen to be done.

In a country where rule of law prevails, it is of the utmost importance that law is expressed in plain and clear language and an endeavour should always be made to avoid ambiguities and lacunae. This indeed is the sine qua non for the success of Rule of law and for inculcating democratic temper in the citizens, both in private and official spheres. **67 Punj LR 1238: ILR (1968) 1 Punj 347 : AIR 1966 Punj 274 (282) (Pt D) (Prs 24, 26) (DB).**

——**Arts. 40, 50 — Organisation of village panchayats — Principle of separation of executive from judiciary must be observed**

According to the directive principle contained in Art. 40 of the Constitution, the State is undoubtedly expected to take steps to organise village Panchayat and endow them with such power and authority as may be necessary to enable them to function as units of self government, but the directive principle of separation of the executive from the judiciary contained in Art. 50, which from one point of view may be considered more basic, must also be kept in view and attempt should be made properly to harmonise both of them. The organisation of village Panchayats accordingly deserves to be carried out in practice consistently with Art. 50; in any case, it has to be confined within the orbit of the rule of law, for, there is nothing more fundamental in democracy than this rule of law. **67 Pun L R 134 : AIR 1965 Punj 232 (235, 236) (Pt G) (Pr 12).**

ARTICLE 41

——**Art. 41 — Scope.**

The directive principle contained in Art. 41 can have no application in the decision of a dispute between workers and employers. It is a general direction or behest which the framers of the Constitution have given to the succeeding Governments to see that in the welfare State what is contemplated by the Constitution there shall be no undeserved want or ll employment. It may be that under certain circumstances there is a duty or liability cast upon the State Government to find work for all persons in the State. But we have not yet reached such a happy state of existence. **(1954) 1 M L J 266 : AIR 1954 Mad 686 (690) (Pt C) (Pr 11).**

——**Arts. 41, 19 (1)(g), 19 (6), 43 and 46**—Bihar Shops and Establishments Act 1953 (8 of 1954), S. 26 (2) — Validity of S. 26 (2) — Provision held in interest of general public — But powers of appellate authority held unlimited and therefore unconstitutional (Words and Phrases — 'General Public'). See Bihar Shops and Establishments Act 1953 (8 of 1954), S. 26 (2). **AIR 1958 Pat 442.**

——**Art. 41** — Scope — If controls Art. 16 — Art. 41 has no bearing on interpretation of Art. 16. See Ibid, Art. 16. AIR 1957 Pat 617.

ARTICLE 43

● ——**Art. 43 — Wages — Fair wages and living wages — Meaning of—Directive principle of living wages.**

The concept of fair wages involves a rate sufficiently high to enable the worker to provide 'a standard family with food, shelter, clothing, medical care and education of children appropriate to his status in life but not at a rate exceeding the wage earning capacity of the class of establishment concerned.' Thus a fair wage is related to a fair workload and the earning capacity. Living wage means that every male earner should be able to provide for his family not only the essentials but a fair measure, of frugal comfort and an ability to provide for old age or evil days. Fair wage lies between the concept of minimum wage and the concept of living wage. Though our directive principle as laid down in Art. 43 of the Constitution is living wage, our general wage structure has at best reached to lower levels of fair wage. All India Reserve Bank Employee's Association v. Reserve Bank of India. **(1965) 2 Lab L J 175 : (1965) 11 Fac L R 137 : (1965) 2 S C A 733 : AIR 1966 S C 305 (316, 317) (Pt B) (Prs 27, 28).**

● ——**Art. 43**—Central Excise Rules (1944), R. 8 (1)—Constitutional validity — Rule does not suffer from vice of excessive delegation of power to exempt — Notification under — Notifications Nos. 74 of 1959, dated 31-7-1959 and 60 of 1960 dated 30-4-1960 — Validity—Excise duty on cotton fabrics produced on power looms — Exemption granted to co-operative societies of weavers—No violation of Arts. 14, 19 (1) (f) and (g) of Constitution. See Central Excise Rules (1944), R. 8 (1). **AIR 1963 SC 98.**

● ——**Arts. 43 and 39**—Industrial Disputes Act (1947), S. 2 (rr)—Wages—Concepts of living wage minimum wage and fair wage discussed — (Words and Phrases) —(Minimum Wages Act (1948), S. 4). See Industrial Disputes Act (1947), S. 2 (rr). **AIR 1958 SC 578.**

● ——**Arts. 43 and 226** — Industrial Disputes Act (14 of 1947), S. 2 (k)—Wages structure — State policy in Welfare state, in the matter of labour relationship — Existing wages structure, if and when can be altered to the prejudice of workers — Consideration. See Industrial Disputes Act (1947), S. 2 (k). AIR 1958 SC 30.

——**Art. 43**—Unfair labour practice—Meaning—Cannot be restricted to definition in Trade Unions (Amendment) Act (1947) — Even a single act of employer liable to be condemend as amounting to unfair labour practice—Condition of employment designed to invest employer with arbitrary power regarding chances of workman being made permanent—Amounts to unfair labour practice. **(1961) 2 Lab L J 204 : AIR 1962 All 497 (499, 500, 502) (Pt A) (Prs 14, 15, 16, 25, 26).**

——Art. 43 — Fixation of minimum rates of wages under Minimum Wages Act — Restrictions are protected by Art. 19 (6). See Ibid, Art. 19 (1) (g). **A I R 1962 Bom 97 (DB).**

——**Arts. 43 and 47 — Scope of — Granting living wages to workmen by Industrial Tribunal — Whether amounts to enforcement by Court of directive principles.**

What the Industrial Tribunals are supposed to do is to ensure 'industrial harmony'. They do not order living wages to be paid because the Constitution directs it, but because it must be done to avoid industrial discord. Therefore, the Tribunals are not attempting to give effect to the directive principles but doing something in order to ensure industrial harmony, which is the object of the statutes dealing with industrial disputes. **(1958) 1 Lab L J 472 : (1958) 28 Com Cas 292 : AIR 1957 Cal 500 (507) (Pt G) (Pr 25).**

——Art. 43 –Fixing of minimum wage—Restriction is protected by Art. 19 (6) — Hardship to employer is no consideration. See Minimum Wages Act (1948), S. 3. **AIR 1963 Ker 115.**

——**Arts. 43 and 19 (5)** —Tenancy laws—Orissa Tenancy Act (3 of 1948), Ss. 4, 6—Restrictions are reasonable and are in conformity with Art. 43. A I R 1951 S C 118; AIR 1951 SC 318, Applied; AIR 1951 Cal 85, Ref. AIR 1952 Cal 273 (FB), Rel. on. See Tenancy laws—Orissa Tenants Protection Act (3 of 1948), Ss. 4, 6. **AIR 1953 Orissa 171 (DB).**

——**Arts. 43, 19 (1) (g), 19 (6), 41 and 46** — Bihar Shops and Establishments Act (1953), S. 26 (2) and Preamble — Validity of S. 26 (2) — Provision held in interest of general public — But powers of appellate authority held unlimited and therefore unconstitutional. (Words and Phrases — 'General public'). See Bihar Shops and Establishments Act 1953 (8 of 1954), S. 26 (2). **AIR 1958 Pat 442.**

ARTICLE 45

● ——Art. 45 — Right of minorities to establish and maintain educational institutions — Right to state aid and recognition. See Kerala Education Bill (1957), Cl. 3 (5). **AIR 1958 S C 956.**

——**Art. 45 — Duty of State to give grants-in aid to private schools — Quasi contract — (Contract Act (1872), Ss. 69 and 70).**

Nowithstanding the directive principles of the Constitution in Art. 45 and the declared policy of the State Government, the State Government is under no legal obligation to impart free education, and they are not, in law, bound either to pay the teachers or to meet any of the expenses incurred by private schools. Nor is there anything to show, either in the several rules or in the declarations of policy by the Government that private schools were established and are being run for the Government or that Government has been enjoying the benefit thereof. The so-called obligation is not founded on quasi contract. **1958 Ker L T 233 : 1958 Ker L J 357 : I L R (1958) Ker 558 : A I R 1958 Ker 290 (297) (Pt D) (Pr 27) (DB).**

ARTICLE 46

● ——**Arts. 46, 16 (4), 14, 335, Preamble** — Scope of Art. 16 (4) — Communal representation in Central Services — Reservation of vacancies by Government Resolution for Scheduled Castes and Scheduled Tribes —Provision adopting principle of 'carry forward' in second and third years—Carry forward rule permitting reservation of more than 50% vacancies in the third year—Carry forward rule held unconstitutional and invalid—Government of India Resolution (Ministry of Home Affairs), dated 13-9-50 (as modified by Supplementary Instructions, dated 28-1-52 and Office Memorandum No. 2-11-55—RPS, dated 7-5-55)—Constitutionally invalid. See Ibid, Art. 16 (4). **AIR 1964 S C 179.**

——**Art. 46** — Excise Appellate Authority—If mere Administrative body — Quasi-judicial functions in deciding appeals—Held, that the Appellate Authority was in error in holding contrary to Art. 46 that petitioner could have no superior claim as a tribal. See Eastern Bengal and Assam Excise Act (1 of 1910), S. 2 (2). **AIR 1957 Assam 182 (DB).**

——**Art. 46**—Art. 46 does not control Art. 15 (1). See Ibid, Art. 15 (1). **AIR 1952 Bom 461 (DB).**

——**Art. 46** — Admissions to educational institutions — Reservation of seats under Art. 15 (4)—Member of reserved class competing in general post on merit basis—Does not affect percentage of reserved seats for the class. See Ibid, Art. 15 (4). **AIR 1964 Ker 39.**

[**Reversed** on another point in AIR 1964 Ker 316.]

——**Arts. 46, 37**—Directive principles are not enforceable by Courts of Law. **1952 Mad W N 696 : (1952) 2 Mad L J 450 : 65 Mad L W 953 : A I R 1953 Mad 21 (22) (Pt B) (Pr 3) (DB).**

——**Art. 46 — Duties of State under — Formation of residential extension for adidravidas — Expenditure in acquisition of land — Not illegitimate—Acquisition is for public purpose — Land Acquisition Act (1894), S. 4, Mysore Land Acquisition Act (7 of 1894), S. 4.**

One of the duties imposed upon the State in the form of directive principles of State policy enumerated in Art. 46 is that the State should promote with special care the interests of the weaker sections of the people and in particular, the scheduled castes and scheduled tribes. The application of a portion of the public revenues of the State for the formation of a residential extension for persons belonging to the community of adidravidas of a village which has no other purpose than the advancement of the interests of one of the weaker sections of the people who belong to the scheduled caste cannot be open to the reproach that the expenditure involved in the acquisition is illegitimate or is not for a public purpose - An acquisition of land for the use of persons falling within a reasonable classification and whose amelioration is part of the duty of the State so that they might build their own residential houses on that land is for a public purpose. **(1963) 2 Mys L J 376 (DB).**

——**Arts. 46, 19 (1) (g), 19 (6) 41 and 43**—Bihar Shops and Establishments Act (1953) (8 of 1954), S. 26 (2)—Validity of S. 26 (2) — Provision held in interest of general public —But powers of appellate authority held unlimited and therefore unconstitutional — (Words and Phrases — 'General Public'). See Bihar Shops and Establishments Act, 1953 (8 of 1954), S. 26 (2). **AIR 1958 Pat 442.**

——**Art. 46**—Scope and effect—Art. 29 (2), if overrides Art. 46 — Reservation of seats in educational institutions for scheduled castes — Permissibility. See Ibid, Art. 29 (2). **AIR 1951 Punj 93 (DB).**

ARTICLE 47

● ——**Art. 47**—Basis of restriction on trade of intoxicating liquor. See Ibid, Art. 19 (6). **A I R 1954 S C 220.**

● ——**Arts. 47 and 48**—Municipalities — U. P. Municipalities Act (1916), Ss. 298 (1), (2), 237 to 248, Bye-law 1 (3) (Allahabad Municipality) — Bye law prohibiting slaughter of cows, bulls, bullocks, etc. is within powers of Municipality under Constitution and U. P. Municipalities Act. See Municipalities —

U. P. Municipalities Act (2 of 1916), S. 298 (1) (2). AIR 1952 All 753 (FB).

——Art. 47—Prohibition laws — Validity. See East Bengal and Assam Excise Act (1 of 1910), S. 17 (3). 1958 Cr L J 1461 : AIR 1958 Assam 173 (DB).

——Art. 47—Violation of—Granting living wages to Workmen by Industrial Tribunal—Whether amounts to enforcement by Court of directive principles. See Ibid, Art. 43. AIR 1957 Cal 500.

● ——Art. 47—Enforcement of prohibition—Scope.

Article 47 does not extend to placing an embargo or restrictions on the use of intoxicating drinks or drugs for medicinal purposes when as actual fact it is found that the use is perverted into misuse on a large scale for the purpose of intoxication and not medicinal purposes having concern with the health of the user. Pritpal Singh v. Chief Commr. of Delhi. ILR (1965) 1 Punj 775: AIR 1966 Punj 4 (13, 14, 15) (Pt H) (Pr 15) (FB).

——Art. 47 — Punjab Opium (Restriction on Oral (Consumption) Rules, 1957—Validity—If inconsistent with S. 5, Opium Act 1878—'Regulation' — Whether includes total prohibition. See Punjab Opium (Restriction on Oral Consumption) Rules(1957). AIR 1958 Punj 400.

——Art. 47— Punjab Excise Act (I of 1914), S. 26—Right to sell liquor and Government control.

None has a legal right to sell liquor. The control of the use and traffic in liquor embraces both regulatory and prohibitory measures. This doctrine has been recognised by the Directive Principles of State Policy in Art. 47 of the Constitution. I L R (1956) Punj 390 : A I R 1956 Punj 97 (98, 99) (Pt A) (Pr 5) (DB).

[Reversed on facts in AIR 1959 S C 65.]

——Art. 47—Rules framed under Travancore Abkari Act, 1073 on 17th January 1953—Rules dealing with licence fee, gallonage fee, etc —Validity. See Travancore Abkari Act (4 of 1073), S. 28. AIR 1954 Trav Co 504 (DB).

ARTICLE 48.

● ——Art. 48—Bihar Act (2 of 1956), U. P. Act (1 of 1956) and C. P. and Berar Act (52 of 1949)—Validity. See Ibid, Art. 19 (1) (g). AIR 1958 S C 731.

● ——Art. 48—Construction and Scope — If contains conflicting parts.

There is no conflict between the different parts of Art. 48 and indeed the two last directives for preserving and improving the breeds and for the prohibition of slaughter of certain specified animals represent, as is indicated by the words 'in particular' two special aspects of the preceding general directive for organising agriculture and animal husbandry on modern and scientific lines. Whether the last two directives are ancillary to the first or are separate and independent items of directives, the directive for taking steps for preventing the slaughter of the animals contemplates a ban on the slaughter of the several categories of animals specified therein, namely, cows and calves and other cattle which answer the description of milch or draught cattle. The protection recommended by this part of the directive does not, from the very nature of the purpose for which it is obviously recommended, extend to cattle which at one time were milch or draught cattle but which have ceased to be such. Mahomed Hanif Quareshi v. State of Bihar. 1958 S C A 783 : 1958 S C J 975 : (1958) M L J (Cr) 727 : A I R 1958 S C 731 (736) (Pt A) (Pr 6).

● ——Art. 48, 245 and 246 and Sch. 7, List 2, Entry 15 — Scope — (Bihar Preservation and Improvement of Animals Act (2 of 1956)) —(U. P. Prevention of Cow-Slaughter Act (1 of 1956)) — (C. P. and Berar Animal Preservation Act (52 of 1949) (as amended by M. P. Acts 23 of 1951 and 10 of 1956)).

It is in pursuance to the directive principles contained in Art. 48 and in exercise of the powers conferred by Arts. 245 and 246 read with Entry 15 in List 2 of the Seventh Schedule that the Legislatures of Bihar, U. P. and M P. have respectively enacted Bihar Act (2 of 1956), U. P. Act (1 of 1956) and C. P. and Berar Act (52 of 1949), as amended upto 1956. Mahomed Hanif Quareshi v. State of Bihar. 1958 S C A 783 : 1958 S C J 975 : (1958) M L J (Cr) 727 : 1959 S C R 629 : AIR 1958 S C 731 (736) (Pt B) (Pr 6).

——Art. 48 — Kans Eradication Act (22 of 1951), Ss. 3, 4, 6 and 7 — Act in accordance with Directive Principles of Constitution — Act is valid — It does not abridge rights of cultivators — Provisions are not arbitrary — Person who has taken benefit cannot refuse payment of costs. See Ibid, Art. 19 (1) (f). 1961 All L J 370.

——Art. 48—Directive principle—Offence under U. P. Prevention of Cow Slaughter Act — Sentence — Considerations. See Criminal P. C. (1898), S. 32. 1958 Cri L J 316 : AIR 1958 All 198.

● ——Arts. 48 and 47 — Municipalities — U. P. Municipalities Act (1916), Ss. 298 (1), (2), 237 to 248, Bye-law 1 (3) (Allahabad Municipality) — Bye-law prohibiting slaughter of cows, bulls, bullocks, etc. is within powers of Municipality under Constitution and U. P. Municipalities Act. See Municipalities — U. P. Municipalities Act (2 of 1916) S. 298. Bye law 1 (3) (Allahabad Municipality). AIR 1952 All 753 (FB).

——Art. 48 — Directive principles of State policy — Value of — Establishment of slaughter house by State —Objection on the ground that cows may also be slaughtered—Maintainability. See Ibid, Art. 37. AIR 1963 Cal 565.

——Art. 48—Bengal Municipal Act (1932), S. 370 (2) — Refusal of licence on grounds not specified in section—Order of refusal is invalid in spite of Art. 48. See (1) Municipality — Bengal Municipal Act (15 of 1932), S. 370 (2). AIR 1953 Cal 333.

ARTICLE 50

——Art. 50—Section 187, M. B. Municipalities Act offends Art. 50 of Constitution. See Municipalities — M. B. Municipalities Act (1 of 1954), S. 187. 1960 Cri L J 82 : AIR 1960 Madh Pra 20.

——Art. 50—Separation of judiciary from executive —Administrative instructions cannot override provisions of Criminal P. C. See Criminal P. C. (1898), S. 1. 1965 (2) Cri L J 111 : AIR 1965 Orissa 135.

——Art. 50—Organization of village Panchayats — Principles of separation of executive from judiciary must be observed. See Ibid, Art. 40. AIR 1965 Punj 232.

——Art. 50 — Scope — Separation of executive and judicial functions under Gram Panchayat Act — Directive principles of Art. 50 of the Constitution held not violated. See Panchayat — Punjab Gram Panchayat Act (4 of 1953). A I R 1957 Punj 149 (DB).

——Art. 50—Consultation of High Court in matter of appointment of District Judges mandatory or directory — Effect of holding consultation as directory. (Obiter). See Ibid, Art. 233. ILR (1965) 15 Raj 390 : AIR 1966 Raj 26 (DB).

ARTICLE 51.

SYNOPSIS

(Constitution of India, Art. 51)

1. Scope of the Article.
2. Respect for treaty obligations—Clause (c).
   See also Ibid, Arts. 253 and 363; Sch. 7, List 1, Entry 14.

INTERNATIONAL LAW.

3. Foreign State.
   See (1) Ibid, Note 4.
   (2) Civil P. C. (1908), S. 86.
4. Sovereign State.
   See also Ibid, Art. 298.
5. Merger of States.
   See also (1) Ibid, Note 9.
   (2) Ibid, Arts. 300, 363.
   (a) Cession of territory.
   See also Ibid, Art. 372.
   (b) Obligations of conquering or annexing States.
6. Belligerency.
7. Acquisition of territory.
8. Act of State
   See also (1) Ibid, Art. 300.
   (2) Civil P. C. (1908), S. 9.
9. Jurisdiction of Municipal Courts.
   See also Ibid, Arts. 300, 363.
10. Territorial waters—Extent of.
    See also Ibid, Art. 297.
11-12. Law of Air.
    See Carriage by Air Act (1934).
13. Immunities and privileges.
    See Ibid, Note 4.

PRIVATE INTERNATIONAL LAW (CONFLICT OF LAWS)

14. Scope and operation.
15. Law applicable to India.
15A. Foreign judgment.
    See also Civil P. C. (1908), S. 13.
16. Domicile.
    See also (1) Ibid, Arts. 5 and 9.
    (2) Succession Act (1925), Ss. 5, 7, 9 and 15.
17. Citizenship.
    See also (1) Ibid, Arts. 5, 6 and 7.
    (2) Citizenship Act (1955), Ss. 8 and 9.
18. Emigration and expulsion— Passports and Visas.
    See Ibid, Sch. 7, List 1, Entry 19.
19. Domicile and nationality.
20. Citizenship and nationality.
    See also Ibid, Sch. 7, List I, Entry 17.
21. Succession to immovable property.
22. Matrimonial matters.
23. Tort in foreign country — When actionable in home country.
24. Extradition.
    See (1) Criminal P. C. (1898), S. 188.
    (2) Extradition Act (1903).
25. Contracts.
26. Arbitration.
    See (1) Ibid, Note 25.
    (2) Arbitration (Protocol and Convention) Act, 1937.
27. Debts.
28. Maritime law.
    See also Ibid, Note 10.
29. Corporations.
30. Conflict between Municipal and International laws.

1. Scope of the Article.

● —Art. 51 — No provision in Constitution declaring that all treaties to which Government of India is a party shall be vested with statutory authority — Neither of Arts. 51 and 253 empowers Parliament to make a law which can deprive a citizen of India of fundamental rights conferred upon him. See Ibid, Art. 19 (1) (d), (e) (f) (g) (6). **AIR 1952 Punj 309 (FB).**

2. Respect for treaty obligations — Clause (c).

See also Ibid, Arts. 253 and 363, Sch. 7, List 1, Entry 14.

—Art. 51—International law — Treaty, meaning of —Approval of treaty—How made— Treaties between members of United Nations—Registration essential — Charter of United Nations, Art. 102 — Errors due to mistakes, omission or inadvertence in treaties—Power of municipal Courts to correct — Extent of – Municipal Courts have no power to impose unilateral solution. **(1965) 57 I T R 235: (1965) 2 I T J 139: 69 Cal W N 640.**

—Art. 51 — Treaties — A treaty has to be liberally construed so as to carry out the intention and purpose of the contracting parties thereto. In the interpretation of international agreements it is often necessary to adopta more liberal method of construction than that which might be fairly applied in the case of private instruments. **1954 Cri L J 1722 : 58 Cal W N 659 : A I R 1954 Cal 591 (596) (Pt D) (Pr 16) (DB).**

● —Art. 51—Treaty –Agreement by Raja of Cochin —Jurisdiction to British Government over Cochin portion of Shoranur-Cochin Railway—Effect. See Foreign Jurisdiction Act (1890) (53 and 54 Vict., C. 37), S. 1. **AIR 1958 Ker 146 (FB).**

—Arts. 51, 37, 31 — Art. 17 of Universal Declaration of Human rights—Effect of.

The Indian Constitution has not adopted any of the provisions of the Declaration of Human Rights without modification and Art. 51 being in the Chapter dealing with Directive Principles is not enforceable in the High Court in view of the express bar of Art. 37. A Judge of a High Court is bound by the oath of his office to uphold the Constitution. Doubtless if there is no express provision in the Constitution like Art. 31 or 31-A the provisions of the Charter of the United Nations and the Universal Declaration of Human Rights might possibly be invoked in favour of the petitioners, on the doctrine of the wise use of public policy. But where Art. 31 expressly bars the jurisdiction of the Court to question the adequacy of compensation. it is futile to rely on Art. 17 (2) of the Universal Declaration of Human Rights. The provisions of the Declaration of Human Rights where they conflict with the provisions of the Constitution will be of no avail in municipal Courts. **I L R (1957) Cut 299 : A I R 1957 Orissa 247 (255, 256) (Pt H) (Pr 23) (DB).**

—Art. 51—Treaties — Extradition treaty between Maharaja of Indian State and British Government not incorporated in municipal law of State— If binding on subject.

Treaties, which are part of the International law, do not form part of the law of the land, unless expressly made so by the legislative authority. If a Maharaja of an Indian State enters into an extradition treaty with the British Government, his act is an executive act and the treaty, to have a binding

effect upon a subject, has to be incorporated into a Municipal law. The fact that the Maharaja is the highest executive as well as the legislative authority does not mean that any executive act of the Maharaja amounts to a legislative act. A subject cannot be bound by a mere treaty not incorporated into municipal law on the principle of reciprocity simply because it has been incorporated into the Municipal law of the other State, with which the treaty has been entered into, or because there is a statutory law regarding extradition in the latter State. A I R 1951 Raj 153 (155) (Prs 9, 11) (DB).

INTERNATIONAL LAW

3. Foreign State.

See (1) Ibid, Note 4.

(2) Civil P. C. (1908), S. 86.

4. Sovereign State.

See also Ibid, Art. 298.

● ——Art. 51—Sovereign State—Doctrine of immunity from being sued in foreign Court – How far modified by S. 86. See Civil P. C. (1908), S. 84. (1965) 2 S C A 590: AIR 1966 S C 230.

● ——Art. 51 – International Law—Ruler of former Indian State— Cannot claim immunity from proceedings other than suit. See Civil P. C. (1908), S. 86 (1). AIR 1965 SC 1798.

● **——Art. 51 – Sovereign State – Power to acquire foreign territory as well as cede national territory in exercise of treaty-making power—Implementation of.**

It is an essential attribute of sovereignty that a sovereign State can acquire foreign territory and can, in case of necessity, cede a part of its territory in favour of a foreign State, and this can be done in exercise of its treaty-making power. Cession of national territory in law amounts to the transfer of sovereignty over the said territory by the owner State in favour of another State. The question as to how treaties can be made by a sovereign State in regard to a cession of national territory and how treaties when made can be implemented would be governed by the provisions in the Constitution of the Country. Stated broadly the treaty-making power would have to be exercised in the manner contemplated by the Constitution and subject to the limitations imposed by it. Whether the treaty made can be implemented by ordinary legislation or by constitutional amendment will naturally depend on the provisions of the Constitution itself. Indo-Pakistan Agreement In re, 1960 S C J 933 : (1961) 1 S C A 22: (1960) 3 S C R 250 : A I R 1960 S C 845 (856, 857) (Pt E) (Pr 31).

——Art. 51—Sovereign State — Characteristics of— India before Independence Act — Status of — Right to acquire territory by cession— Frenchpet whether became part of territories of India — (Indian Independence Act (10 and 11, Geo. Vic. 307 (1947), S. 2) — (Municipalities — Madras District Municipalities Act (5 of 1920), S. 12.

States are of two kinds, either independent or dependent. An independent or sovereign state is one which possessess a separate existence, being complete in itself, and not merely a part of a larger whole to whose Government it is subject. A dependent or non-sovereign State, on the other hand, is one which is not thus complete and self-existent, but is merely a constituent portion of a greater State which includes both it and others, and to whose Government it is subject.

Until the Independence Act of 1947, in and by which India became a Dominion, it might fairly have been regarded as dependant and as merely part of the British Empire, though possessed of wide powers of self-government. But the argument that India being then a dependency, could not acquire foreign territory involves a fallacy. The British Crown was exercising absolute sovereignty over the territories which were comprised in and were part of British India and undoubtedly, the British Crown, as a sovereign power could acquire territory by cession: AIR 1941 P C 64, Rel. on.

By 1935 Frenchpet was part of the territory of India over which the British Crown made its will supreme and from which all alien interference was excluded. The transfer of the territory to India by the French Republic was an accomplished fact which was accepted as such both by the French Republic and the British Crown. Therefore Frenchpet was undoubtedly a part of the territory of the Indian Dominion by reason of the provision of the Indian Independence Act as it was part of the territories which were under the sovereignty of the British Crown before the appointed day.

After the Independence Act of 1947 India became a full-fledged Dominion with all the attributes of a Sovereign State both in the international and in the internal sphere and therefore the contention that in spite of the advance of the Dominion to international status, no treaty in the full sense of that term could be concluded save under full powers granted by the King on the advice of the Imperial Government and that no treaty could become operative without the ratification of the King which again was accorded by the advice of the Imperial Government, formally signified in each case by the counter signature of the Secretary to State has no substance.

As a consequence it must be held that the provisions of the Madras District Municipalities Act apply to the former Frenchpet which as early as 1935 was declared to be a part of Masulipatam. 1957 An L T 663: AIR 1958 Andh Pra 73 (74, 75) (Prs 11, 12, 13, 15, 21, 22, 24).

——Art. 51—International law—Applicability—Jurisdictional immunity of foreign State—Applicability to trading activities. See Civil P. C. (1908), S. 86. AIR 1962 Cal 387 (DB).

——Art. 51—Foreign State—Immunity of, from suit —Extent and nature of.

The English decisions establish certain principles, viz., that the principles of immunity should be applied with respect to the legislative acts of a foreign state, the executive and administrative acts of a foreign state and in the matter of diplomatic immunities; the Courts of a state should not require other states to enforce foreign public or fiscal law; the Courts will not assume jurisdiction when a foreign government is made a party either directly or indirectly as the result of an action in rem against property in its possession; the foreign state should not be placed in a position less advantageous than that of private individuals where according to rules of private international law Courts would have no jurisdiction ; the principle of immunity is not an absolute one and the circumstances and the purpose of the suit and the remedy sought are to be looked into.

The plaintiff filed a suit for damages with leave under Cl. 12 of the Letters Patent (Cal) against two defendants, one of them being the United Arab Republic, a foreign state, recognised as such by the Central Government of India, in respect of a breach of contract for supply of tea entered into through defendant. 2. The defendant 1 applied for revocation of leave under Cl. 12 of the Letters Patent on the ground that the defendant 1 being a foreign state could not be impleaded in a suit in India on the principle of absolute immunity.

Held, (i) that the defendant was not entitled to immunity in the suit because firstly there is no principle of absolute immunity. Secondly, the nature of the transaction in the present case was one where the suit did not disregard the legislative or administrative sovereignty of the foreign state. Thirdly, the suit did not seek to enforce foreign public or fiscal law. Fourthly, the claim in respect of the contract forming the subject-matter of the suit was of a commercial nature and such a transaction was not entitled to immunity. Fifthly, where the rule of law prevails, the foreign state ought to be entitled to such immunity, but no more, as enjoyed by the domestic state before its own tribunal.

(ii) That irrespective of the question whether the defendant was entitled to immunity, the defendant had submitted to the jurisdiction as there was appearance to writ in the sense of initiation of proceedings and asking for relief on the basis of application. **AIR 1960 Cal 768 (774, 775, 776) (Pt B) (Prs 27, 31, 32).**

——Art. 51 — Foreign Sovereign State — Immunity from process—Submission to jurisdiction—(Civil P. C. (1908), S. 9).

Where the Republic of Indonesia by its application for leave to be examined pro interesse suo, came forward to establish its title to the goods in question as against the adverse claim of the plaintiff in the suit and also asked the Court to investigate into the question of title of the Republic and the Court ordered an inquiry as asked for, and gave certain directions as to costs of that application and further in order that the pro interesse proceedings may be effective the Republic applied for issue of Letters of Request to examine witnesses in Holland, to prove its title the Republic must be said to have submitted to the jurisdiction of the Court and to have waived its privilege to claim immunity from the jurisdiction of the Court on the ground that the said goods being the public property of the Republic, which was a foreign sovereign State, were immune from the legal process of the Courts in this country according to recognised principles of international law and comity of nations. **AIR 1955 Cal 491 (493, 494) (Pt A) (Prs 4, 12).**

——Art. 51—Foreign Sovereign State—Title to goods—Proof.

Mere assertion of a claim by a Foreign Sovereign to a property which is not admittedly vested in him or which is not in his possession cannot attract the principle of immunity from the legal processes of the Municipal Courts of the country. The doctrine of immunity does not extend to cases where the property is in the hands of a third person and the foreign sovereign has merely made a claim to it. **AIR 1955 Cal 491 (495) (Pt B) (Prs 23, 24).**

——Art. 51 — Foreign Sovereign State — Title to goods—Proof—Immunity.

Foreign State holding Bill of Lading under which goods in question were shipped—Charterer of vessel who issued Bill of Lading and with whom goods were entrusted for carriage being in position of bailee in respect of the goods — **Held** that though the State was not in actual physical possession of the goods when they were on board the vessel or its representatives mentioned in the Bill of Lading having the immediate right to possession of the goods, this was sufficient to attract the principle of immunity from interference by the Municipal Court. **AIR 1955 Cal 491 (495) (Pt C) (Prs 25, 27).**

——Art. 51 — Foreign Sovereign State — Title to goods—Proof.

A certificate by the Government of the country that the Foreign State was entitled to immunity from processes of the Courts of the country in respect of its goods obtained by means of correspondence between the Foreign Sovereign State and the Government of this country cannot be described as a thing altogether unknown or irregular. **AIR 1955 Cal 491 (495) (Pt D) (Pr 29).**

——Art. 51—Sovereign State, powers of—Dependent State may be recognised as a subject of International law—Raja of Indian State leasing forest to the Punjab Government — Raja cannot unilaterally revoke the lease arbitrarily and at his sweet will—Though he might exercise absolute power over his subjects, he cannot do so over Government of another State. **AIR 1964 Him Pra 19 (23, 24) (Pt C) (Pr 25).**

——Art. 51—Scope Dispute between ruler of former Indian State and his employee—Reference to Industrial Tribunal under Industrial Disputes Act—Proceedings not barred under S. 86 read with S. 87-B of C P.C.—Words "may be sued," in S. 86 (1)—Meaning, See Civil P. C. (1908), S. 86. **AIR 1963 Raj 22 (DB).**

——Art 51 — Sovereign of Independent State—Submission to jurisdiction (Civil P. C. (1908), Ss. 9, 13, 14, 86, 87).

Bharatpur State after its accession, which took place before the suits were filed, became a part and parcel of India, so far as the subjects given in the Schedule to the Instrument of Accession were concerned. After the accession, therefore, the Dominion of India could not be said to be an independent foreign State vis-a-vis Bharatpur State or vice versa. Moreover, tho Dominion of India waived the privilege of immunity from suit in Bharatpur State Courts by filing a written statement not only on the point of jurisdiction, but also on all the points relating to the merits of the case, and by making appearance and fighting out the case on all grounds thereafter. The case of a foreign sovereign is not governed by Ss. 86 or 87 of Civil P. C. **1953 Raj L. W 26 : ILR (1952) Raj 386 (DB).**

5. Merger of States.

See also (1) Ibid, Note 9.
(2) Ibid, Arts. 300, 363.

(a) Cession of territory.

See also Ibid, Art. 372.

(b) Obligations of conquering or annexing States.

5. Merger of States.

See also (1) Ibid, Note 9.
(2) Ibid, Arts. 300, 363.

——Art. 51—Former Indian States—Merger of such States in India — State succession in respect of such States. See Ibid, Pre. **AIR 1964 S C 1043.**

——Art. 51 — Merger of States—Covenant, dated 5th May, 1948 for establishment of Pepsu Union, Arts. 6, 10 — Effect — Rulers of merging States not competent to enter into Supplementary Covenant, dated 9th April, 1949 — Constitution of India, Art. 362.

Per Majority. — When the new State of Pepsu was formed on 20th August, 1948, in accordance with the Covenant entered into by the Rulers of the merging States on 5th May, 1948, the eight States which had merged into it ceased to exist as independent persona and there could be no question thereafter of sovereignty of such States or its ex-Rulers. The Rulers cannot be said to have had any authority to enter into any Supplementary Covenant on 9th April, 1949.

The Raj Pramukh had the power under Art. 10 of the Covenant 'to make and promulgate Ordinances for the peace and good government of the Union or any part thereof.' There is no reservation whatso-

ever in the grant of the power to the new Ruler. Then follows the provision that the Ordinance is to be in force for a period not exceeding six months. The effect of this is not to keep back from the Raj Pramukh any portion or field of legislative power. Under Art. 6, all the powers of the Rulers are to vest in the Union, and even if the whole of the legislative power is not exercisable by the Raj Pramukh by reason of Art. 10, it is in the Union that the residue of the power must be held to be lodged and not with the Rulers.

As the effect of the original Covenant is to completely divest the Rulers of their sovereign power there can be no question of their entering into any treaty thereafter. The Supplementary Covenant entered into by the ex-Rulers of the Covenanting States on 9th April, 1949 cannot therefore be sustained on the principle of International Law.

Hence, the Supplementary Covenant, dated 9th April, 1949 whereby Art. 10 of the original Covenant was amended by omitting the words for the space of not more than 6 months from its promulgation, the result of which would be that the laws which had been brought into force by Ordinances I and 16 of 2005 (Bk.), including the Patiala Recovery of State Dues Act, 4 of 2002 (Bk.), would not lapse on 20th August, 1949 on the expiry of 6 months from the date of their promulgation, cannot be held to be effective for modifying the provisions in the original Covenant. AIR 1959 Punj 440, **Reversed**; AIR 1953 Pepsu 161, **Overruled**; AIR 1954 S C 447, Expl, and Disting.

In that view, Ordinances I and 16 of 2005 (Bk.) ceased to be in operation from 20th August, 1949. But that fact would not affect the liability of persons coming from the territory of the erstwhile State of Patiala, under the Patiala Recovery of State Dues Act (4 of 1002). So far as the territories of the erstwhile State of Patiala are concerned, its laws continued to be in force proprio vigore and not by force of Ordinances I or 16 of 2005 (Bk), Lachhman Dass v. State of Punjab, **(1963) 2 S C R 353 : A I R 1963 S C 222 (229, 230, 231, 232) (Pt A) (Prs 11, 12, 14, 15, 17, 19).**

● **——Art. 51 — Merger of States—Rights of subject.** See Administration of Mayurbhanj State Order (1949), Cl. 9 (g). **AIR 1961 S C 1361.**

● **——Art. 51 — Merger of former Indian State into new State—Effect on service of servants of prior Government — Covenant signed by Ruler—Construction.** See Ibid, Art. 311. **AIR 1958 S C 228.**

——Art. 51 — Gwalior State — Status of, before the Constitution — (Government of India Act (1935), S. 5 (as amended by Indian Provisional Constitution Order (1947)).

The result of the coming into force of the Indian Independence Act, 1947, was to make the State of Gwalior completely independent and confirm its foreign character more forcibly than ever before while it was under the protection of the British Crown. Neither the Standstill agreement nor the first Instrument of Accession signed by the Ruler made a material change in the position. The Covenant which the Ruler later on entered into with the other Rulers for the formation of the larger State of Madhya Bharat did not also effect any change in the foreign character of the Gwalior State. The second Instrument of Accession signed by the Ruler also did not change the foreign character of the State. It was only when the Constitution of India came into force and by the virtue of the earlier proclamation, dated 24th November, 1949, adopting it for the State that the State no longer remained a foreign State for purposes of politics or international law. It is therefore not possible to accept the contention that in view of S. 5 of the Government of India Act, 1935 as amended by the Indian Provisional Constitution Order, 1947, the territories of the State had become at a par with the provinces merely because of the accession and could not be treated as foreign State for any purpose. The territories of the Gwalior State must be held to have been a foreign State vis a-vis Allahabad until 26th January, 1950. **AIR 1958 All 775 (781, 782) (Pt B) (Prs 16, 21, 23) (DB).**

——Art. 51—Merger — Liability of merged State as shareholder—Whether devolves on successor State — Recognition—Effect.

A subject or inhabitant of a merged State can enforce against the successor State such rights as are recognized by that State Such recognition can be express or implied. AIR 1955 S C 540 and AIR 1924 P. C. 216 and Spec. Civil Application No. 3251 of 1958, dated 22-4-1959 (Bom.), Rel. on.

The former State of Idar purchased preference and ordinary shares of 2 lakhs of rupees in a private limited company in that State. Only half of the share money of the ordinary shares was called and the State paid that amount. A balance of Rs. 50,000 was the unpaid call in respect of those shares. Later, the State of Idar as share-holders entered into possession of all the properties of the company. Thereafter, the State of Bombay, as successor State, took possession of the properties of the company. The company was subsequently compulsorily wound up. The liquidator made an application to the Court, claiming from the State of Bombay the unpaid call of Rs. 50,000.

Held, that by implication the State of Bombay accepted the liability of the merged State to pay the unpaid call money on shares. The State of Bombay as the successor State was bound by the same obligation by which the State of Idar was bound. Alternatively, it can be said that the State of Bombay could not be allowed to assert their rights as share-holders but dispute the liabilities arising from the fact that they were the share-holders. **62 Bom L R 400 : (1960) 30 Com Cas 491 : AIR 1960 Bom 516 (518) (Pt A) (Pr 9) (DB).**

——Art. 51—Order awarding compensation on recommendation of Crown Representative — Subsequent merger of State with Bombay State—See Kolhapur State (Application of Laws) Order (1949), Cl. (5). AIR 1959 Bom 263 (DB).

——Art. 51—International Law—Merger of States—Effect.

When a State merges voluntarily into another State the latter remains one and the same International Person and the former becomes totally extinct as an International Person. As to the devolution of political rights and duties no succession takes place with regard to the rights and duties of the extinct State arising either from the character of the latter as an International Person or from its purely political treaties. Thus treaties of alliance or of arbitration or of neutrality or of any other political nature fall to the ground with the extinction of the State which concluded them. They are personal treaties and they naturally, legally and necessarily presupposes the existence of the contracting State. ('65) 69 **Cal W N 692.**

——Art. 51—Merger of States—Power of new sovereign to repudiate rights which subjects had under old sovereign.

For waiver or relinquishment there must be full knowledge and the act alleged to constitute waiver or relinquishment must be of the person entitled to exercise the right or power which is waived or relinquished. In order, therefore, to establish waiver or

relinquishment against the Government of Bombay, it must be shown that the Officer whose act is alleged to constitute waiver or relinquishment had full knowledge of the facts and of the prerogative or sovereign power of the Government of Bombay to ignore or repudiate the particular rights in question and further the officer had the authority to waive or relinquish such prerogative or sovereign power on behalf of the Government. (1961) 2 Gui L R 343 : AIR 1961 Guj 151 (173, 174) (Pt I) (Pr 24) (DB).

——Art. 51 — Merger of States — Rights of subjects under old Sovereign.

A secret decision of the government recorded in a confidential inter-departmental letter is not enough to constitute repudiation or confiscation of rights of property by an act of State, particularly when the property is in the possession of the person whose rights are alleged to have been extinguished by the act of State, unless the decision is communicated to such person or the possession of the property is forfeited or resumed by the Government. (1961) 2 Guj L R 343 : AIR 1961 Guj 151 (179, 180, 181) (Pt K) (Pr 28) (DB).

——Art. 51 — Emergence of new State — Effect — (Constitution of India, Art. 372).

The emergence of new State or a change of Sovereignty within a State does not bring about any change in private rights of its citizens or the law governing such rights. (1924) 2 Ir 139, Rel. on. AIR 1959 Mad 410 (417) (Pt B) (Pr 24).

——Art. 51 (c)—Applicability—Manipur State ordering by resolution confiscation of land — Succeeding Government if can deviate from it—Resolution if operates as law of land.

In 1949 the Manipur State Council passed a resolution that the patta granted to certain persons was against the customary law of State, namely, that no one shall hold more than 10 paris of land without the special permission of the State Government. They therefore, directed the Land Revenue Officer to issue notices to all parties concerned to show cause within 30 days from the date of service of the notice, why the patta in respect of land in excess of 10 paris be not cancelled, and if the cause shown be found to be not satisfactory, then to cancel the patta accordingly and to take possession. The succeeding Government, however, passed an order on 24th May 1952, that it would not be fair to proceed to confiscate the land outright after the holders of the patta had been in possession for a long period and that they or their heirs must be allowed to dispose of the land to the actual tenants.

Held, that the order or decision contained in the resolution of 1949 would not operate as the law of land so as to attract the principles of international law contained in Art. 51 (c) of the Constitution, inasmuch as the old Government had the powers to allow the holders to hold land in excess of 10 paris and it followed, therefore, that the succeeding Government had the same power, and what was done by the final order conveyed on 24th May 1952, was nothing more than this. **AIR 1957 Manipur 25 (30) (Pt E) (Pr 26).**

——Art. 51—Merger of former State in Indian Union —Effect on grant by former Ruler—Grant of land and cash allowance for maintenance to younger brother — Union Government refusing to recognise cash allowance — Act amounts to Act of State — Claim by grantee not justiciable—Continuance of allowance till completion of enquiry—Effect—Claim held not based on special family custom — Administration of Orissa States Order (1948), Para. 4 (b). AIR 1954 S C 447 Disting. **AIR 1962 Orissa 60 (63, 64, 65) (Prs 6, 9, 10, 11, 12) (DB).**

——Art. 51—Merger of States—Successor State does not inherit rights and obligations of merged State.

It is not correct to say as a matter of international law that the successor State automatically inherits the rights and obligations of the merged State. There is no question of subrogation; the successor State is not subrogated ipso jure to the contracts with the merged State. The true legal position is that the contract of the predecessor State terminates with the change of sovereignty and the Successor State does not inherit the legal personality and legal relationship of the predecessor State. AIR 1958 S C 816 : 1958 S C J 1041, Rel. on. **I L R 38 Pat 1160 : 1960 B L J R 105.**

● ——Art. 51 — Merger of States — Laws in merging States — Whether continue to operate. See Ibid, Art. 295. **AIR 1960 Raj 256 (FB).**

5 (a). Cession of territory.

See also Ibid, Art. 372.

● ——Art. 51—Cession—When takes effect.

A mere agreement to transfer is not the same thing as the actual cession. Unless anything to the contrary is expressly agreed, the cession becomes effective only with the actual transfer of sovereignty. Pratap Vikram v. Upendra Bahadur, **AIR 1952 All 6 (16) (Pt C) (Pr 40) (FB).**

——Art. 51 — Cession of territory—Waiver or relinquishment by Government of its prerogative or sovereign power — Effect — Subject of ex-sovereign seeking to enforce right acquired under - Right of ex-sovereign.

Every subject of the ex-sovereign who wants to make good in the Municipal Courts of the new sovereign the rights acquired by him under the ex-sovereign must show that the new sovereign has waived or relinquished his right or power to ignore or repudiate those rights, for it is only then that those rights would be legally enforceable against the new sovereign in his Municipal Courts. This waiver or relinquishment can be by legislation or by proclamation or by agreement and it can even be inferred from circumstantial evidence. Clauses or stipulations in a treaty of cession which is an Act of State can also be referred to for the purpose of establishing such waiver.

A subject of the ex-sovereign who seeks to enforce against the new sovereign an existing right acquired by him under the ex-sovereign can rely upon clauses in the treaty of cession for establishing that the new sovereign has elected to waive or relinquish his right or power, to ignore or repudiate the existing right which the subject seeks to enforce. This principle would apply only in case of completed rights and would not apply in case of rights involving obligations of a contractual nature or other financial obligations on the part of the ex-sovereign. AIR 1954 S C 680, AIR 1954 S C 447 and 61 Bom L R 20, Rel. on.

Held, that the Letter of Guarantee merely supplemented the provisions contained in the merger agreement entered and, therefore, was invested, with the character of an Act of State. The appellant was, therefore, entitled to rely on clauses 5 and 7 of the Letter of Guarantee for establishing the plea that the Government of India waived or relinquished its prerogative or sovereign power to ignore or repudiate the rights acquired under the order passed by the Ruler of Sant State. (1961) 2 Guj L R 343 : AIR 1961 Guj 151 (175 to 179) (Pt J) (Pr 27) (DB).

——Art. 51 — Change of sovereignty by cession — Contract entered into by former sovereign — Other party to contract not bound to fulfil old contract with succeeding sovereign, unless it so agrees. 29 Cut L T 548 : AIR 1964 Orissa 73 (74) (Pt A) (Pr 5) (DB).

5 (b). Obligations of conquering or annexing States.

——Art. 51—Obligations of conquering or annexing States — (Constitution of India, Art. 363)—(Patiala Income-tax Act (7 of 1001), S. 1).

Under the International Law, obligations of the successor State with regard to private property of private individuals, particularly land as to which the title had already been perfected before the conquest or annexation, are widely different from the obligations which arise in respect of personal rights by contracts. As regards the contractual obligations of the succeeding State it is for it to consider and decide which of them it is prepared to recognize and which other to repudiate. The principles of international law, as enunciated by the various authorities, do not insist on their wholesale recognition by the conquering or annexing State. Case-law referred.

Held, that Patiala Income-tax Act, 2001, which was validly made and promulgated by the Raj Pramukh of Pepsu after its formation, as a new State could not be regarded as invalid or inoperative merely because it was not in consonance with or contravened such supposed principles of international law, and no relief on that account could be granted by the municipal Courts to persons adversely affected thereby. **I L R (1955) Patiala 215 : (1954) 26 I T R 375 : AIR 1955 Pepsu 3 (19, 20) (Pt I) (Pr 48) (DB).**

6. Belligerency.

——Art. 51—War—Enemy character—Test to determine.

The enemy character of a person under English common law (which applies to India) attaches to a person, irrespective of his nationality or his domicile if he is living or residing in enemy territory or enemy occupied territory and the test is an objective test depending upon facts. The domicile of a person may be in the civil law sense or a commercial domicile, but is used in both cases in technical or territorial sense and not necessarily in the sense in which it is understood under Civil law. **65 Mad L W 384 : 1952-1 Mad L J 709 : I L R (1952) Mad 361 : A I R 1952 Mad 736 (740) (Pt B) (Pr 15) (DB).**

——Art. 51—War — Change of nationality of territory—Test to determine.

It is necessary that for the territory, either by conquest, cession or annexation of a permanent or temporary nature, to become part of the territory of the enemy there should be a formal declaration changing the national character of the territory; and effective control with a view to hold the territory in question by an establishment of civil and military administration would not be sufficient to bring about a change of nationality of the territory. 11 Moore P C 88, Foll. 1943 A C 203, Not foll. Case law discussed. **65 Mad L W 384 : 1952-1 Mad L J 709 : I L R (1952) Mad 361 : A I R 1952 Mad 736 (750) (Pt D) (Pr 30) (DB).**

——Art. 51—War — Creditor's agent and debtor on same side of line of war — Payment by latter to former—Validity — (Defence of India Rules (1939), Rr. 97 (b) and (f) and 98 (2)).

When a creditor and his agent and the debtor are not across of the line of war but in the same belligerent State and on the same side of the line of war there is no reason prohibiting the payment of the debt by the debtor and a receipt by the creditor. Case law discussed.

The plaintiff and the defendant carried on money-lending business in Burma. In 1939 the defendant executed a promissory note to the plaintiff in India. The plaintiff filed a suit in India to recover the amount due under the promissory note ignoring the payment made in Burma by the defendant's agent to the plaintiff's agent in 1944. The questions were whether Burma was an enemy territory at the time of the payment and if Burma was an enemy territory, whether the plaintiff's agent had authority to give a valid discharge:

Held, that in the absence of any evidence to show that the Government of Japan had established anything like a civil administration under its control and authority besides the military occupation which could effectively exercise dominion and control over the territory, it could not be held that Burma was an occupied enemy territory:

Held further that even otherwise the payment was good and valid as the defendant's agent and the plaintiff's agent were living in the same enemy occupied territory and both being enemies there was no ground for treating the payment as invalid:

Held also that none of the disabilities contemplated by R. 98 of Defence of India Rules would apply as the transaction was between enemies inter se and not between a British Indian subject on the one hand and an enemy on the other and therefore even if Burma was treated as an enemy territory within the meaning of the Defence of India Rules, the payment in Burma by the debtor to the creditor was not hit at by any of the rules made under the Defence of India Act. 65 Mad L W 384 : 1952 1 Mad L J 709 : I L R (1952) Mad 361: AIR 1952 Mad 736 (750, 751, 753) (Pt E) (Prs 30, 31, 32, 39) (DB).

7. Acquisition of territory.

● **——Art. 51—Subjects of newly acquired territory—Rights of — Effect of Act of State on such rights.** See Ibid, Art. 226. **AIR 1964 S C 1043.**

● **——Art. 51—Power to acquire or cede national territory—Scope of — If confers power to acquire foreign territories.** See Ibid, Art. 1 (3) (c). **AIR 1960 S C 845.**

——Art. 51—Adverse possession.

Where a village lying within the Union State territory was in occupation by the State since 1947, and which village rightly belonged to Pakistan and was proposed to be transferred to Pakistan in 1983, and it was contended that the village was held by the Indian Union by adverse possession and could not thus be transferred, **Held**, that under the public international law, adverse possession could only be by the Indian Union. The State had no independent existence in the eye of law for that purpose. Moreover, the essence of prescription in international law is that the lapse of time and the manner of holding possession should be such that the nations of the world should come to consider it as the natural state of things from the point of view of International order. (1910) 217 U S 1 and (1893) 148 U S 503, Disting. **AIR 1965 Cal 282.**

——Art. 51 — Acquisition of territory — Modes of — Acquisition of Chandranagore. See Ibid, Art. 1. **AIR 1954 Cal 615 (DB).**

8. Act of State.

See also (1) Ibid, Art. 300.
(2) Civil P. C. (1908), S 9.

——Art. 51 — Agreement between former rulers and certain companies regarding certain concessions in taxes to latter—Cession of territory by Ruler in favour of Government of India—Agreements, whether binding on Government of India. See Act of State. **A I R 1962 All 425 (DB).**

——Art. 51 — 'Act of State' — Cession — Rights of citizen against merged State—Enforcement in municipal Courts of succeeding State—Conditions.

It is a well-established principle of international law that when a territory is acquired by a Sovereign

State that amounts to an act of State. It makes no difference how the acquisition was brought about It may be by conquest, it may be by cession following on treaty, it may be by occupation of territory hitherto unoccupied by a recognised Ruler. In all cases, the result is the same. Any inhabitant of the territory can make good in the Municipal Courts established by the new Sovereign only such rights as that Sovereign has, through his officers, recognised. The right to enforce remains only with the high contracting parties. AIR 1924 P C 216 and A I R 1954 S C 447 and A I R 1958 S C 818, Foll.

The enforceability of the right of a citizen against the merged State in the Municipal Courts of the succeeding State will depend upon the acceptance of that liability by the succeeding State. From the mere fact that certain laws, which were in force in the former State, were allowed to continue by the succeeding State it does not follow that the liabilities of the citizens against the State were also recognised by the succeeding State. On the point of recognition stronger proof will have to be adduced on behalf of the plaintiff. That proof may consist of express recognition or implied recognition by conduct, but, it must be a recognition of a specific right A I R 1954 S C 680 and 61 Bom L R 20 (FB), Disting **ILR (1961) Bom 101 : 62 Bom L R 735 : A I R 1961 Bom 11 (17) (Pt D) (Pr 11) (DB).**

——Art. 51 — Exercise of executive power of State — Limitations — Boundary dispute between India and Pakistan regarding Berubari Union No. 12—'Radcliffe Award'—Agreement between Prime Ministers of India and Pakistan—Interpretation—Enforcement of agreement — Directive of Central Government to State — Implementation — Writ against State — Agreement if Act of State — Question of cession of territory, if involved in agreement — Jurisdiction of Municipal Courts. See Ibid, Art. 226. **AIR 1959 Cal 506.**

——Art. 51—Act of State — Merger Agreement with ruler of Indian State providing for recognition of existing rights — Grant made by ruler before merger —Decision of Government annulling grant—If justiciable in Municipal Courts. See Ibid, Art. 363 (1). **I L R (1961) Cut 133 : AIR 1961 Orissa 161 (DB).**

9. Jurisdiction of Municipal Courts.
See also Ibid, Arts. 300, 363.

● ——Art. 51—Personal actions—Court of competent jurisdiction — Personal action against defendant residing within jurisdiction—Subsequent death of the defendant does not oust jurisdiction of Court to proceed against defendant. See Civil P. C. (1908), S. 13 (a). **AIR 1962 S C 232.**

● **——Art. 51—Title to immovable property in foreign country—Courts in India cannot decide No reference to arbitration can be made in respect thereof—(Arbitration Act (1940), S. 2 (a) and (e)).**

Courts in India have no jurisdiction to determine questions of title in respect of immovable properties in foreign countries or to direct a division thereof. Further, when such a Court has no jurisdiction to determine any matter in controversy such as the question of title in respect of the foreign immovable property it has no jurisdiction to refer it for the determination of the arbitrators.

Held, on the construction of pleading in this case that the reference to arbitration did not include any claim with regard to the immovable properties in the foreign country (namely, Burma) and hence the attack against the reference on the ground that it included immovable properties in the foreign country, must fail. AIR 1953 Mad 492, Affirmed. Nachiappa Chettiar v. Subramoniam Chettiar, **1960 Mad W N 567 : (1960) S C J 416 : (1960) 1 M L J (S C) 101 : (1960) 1 S C A 655 : (1960) 2 S C R 209 : (1960) 1 Andh W R (S C) 101 : A I R 1960 S C 307 (312, 314, 315) (Pt A) (Prs 17, 24, 25).**

——Art. 51—Jurisdiction — Trust created by foreign sovereign in Bombay City and registered under Bombay Public Trust Act—Trustees, beneficiaries and assets within jurisdiction of Bombay City—Suit for removal of trustees and appointment of new trustees—Jurisdiction of City Civil Court at Bombay. See Civil P. C. (1908), S. 9. 60 Bom LR 660 : A I R 1959 Bom 275.

——Art. 51 — Staying of actions — Bill of lading limiting jurisdiction to Courts in Italy—Suit brought in India—Stay should be granted.

Where a bill of lading in respect of goods shipped at Naples provided that a claimant under the bill had to summon the shipping company before the Courts at Trieste or Genoa in Italy renouncing the competence of any other judicial Authority, the Court will stay a suit instituted in India in breach of such agreement and compel the plaintiff to institute legal proceedings at Trieste or Genoa unless good cause is shown. Grounds must be put forward by the party who relies on the bill of lading to show that he is not bound by the clause in the bill and that the Courts at Trieste and Genoa will have no jurisdiction because the goods were shipped at Naples. A I R 1959 Cal 669, Foll. **AIR 1960 Cal 545 (545, 546) (Prs 2, 4).**

——Art. 51—Stay of suit — Bill of lading — Clause providing that disputes arising would be decided by certain foreign Courts Suit for damages filed in Calcutta High Court—Discretion of Court to stay suit—Relevant considerations. See Civil P. C. (1908), S. 151. AIR 1960 Cal 45.

——Art. 51 Suit for partition of properties in Barisha and Chandernagore instituted on 1-6 1950 —Jurisdiction of Barisha Court See Civil P. C. (1908), S. 17. AIR 1953 Cal 159 (DB).

——Art. 51—Administrative or executive order passed by ruler of covenanting state before merger — Right to property created by such order cannot be enforced in the Municipal Courts of the successor state, namely India unless recognised by the successor State — Municipal Courts can enforce only such rights and obligations as are by law or otherwise recognised by the State to which they owe their origin and judicial power—An administrative or executive order passed by the quondam Ruler does not amount to 'existing law' within the meaning of Art. 372, Constitution of India and is not saved by its provisions—An order of the ruler in order to be treated as law must purport to have been issued in exercise of a statutory power. AIR 1962 S C 1288; A I R 1964 S C 1043; A I R 1964 S C 888; AIR 1963 S C 953; A I R 1963 S C 1638 and AIR 1941 P C 64, Rel. on. 1965 Jab L J 154 : AIR 1966 Madh Pra 32 (34) (Prs 7, 8) (DB).

——Art. 51—Declaration of title to foreign properties — Competency of arbitrator or Court to record the admission.

It is only a declaration following upon adjudication by the Court, of disputed title to foreign immovables that is beyond its jurisdiction and where there is no adjudication, there is no declaration such as is prohibited by the principles of private international law. It is not incompetent either to arbitrator or to the Court to record an admission of title to foreign properties by the parties and to incorporate it in the award or in the decree **(1952) 2 Mad L J 524 : 65 Mad L W 980 : AIR 1953 Mad 492 (498) (Pt C) (Pr 15) (DB).**

——Art. 51—Sovereign State—Jurisdiction of Courts of one Sovereign State over another foreign State—Civil P. C. (1908), Ss. 9 and 13.

One of the cardinal principles of International Law is that every Sovereign State respects the independence of every other Sovereign State and as a consequence of this absolute independence and of the international comity which underlies the relations between sovereign States, each State declines to exercise by means of any of its Courts, jurisdiction over the person of any sovereign or Ambassador or over the public property of any State. LR 5 PD 197, Rel. on.

A Sovereign State cannot be sued in the Courts of a foreign State, unless of course it voluntarily submits to the jurisdiction of the Court concerned. 1951 M W N 391 : (1951) 2 Mad L J 23 : 64 Mad L W 659 : AIR 1951 Mad 880 (881) (Pt C) (Pr 5) (DB).

——Art. 51—Sovereign ruler granting rights—Subsequent surrender of sovereignty and cession of territory—Enforceability of rights in the Courts of new sovereign — (Pepsu General Provisions (Administration) Ordinance (20 of 2005 Bk.), S. 3 (1)).

An order of the Ruler of former Nabha State, who in the matter of internal sovereignty was a sovereign Ruler, was law Where the order made a free grant of one Nal of water to a particular person in perpetuity it was a personal law in favour of the grantee and his successors. This personal law was not repealed or abrogated by S. 3 (1) of the Patiala and East Punjab States Union General Provisions (Administration) Ordinance. No doubt the rights of the grantee cannot avail against the sovereign in Pepsu State after the Ruler of Nabha State surrendered his sovereignty to the new State and ceded his territory to that State unless the new sovereign recognised those rights. Such a recognition is implied from the facts that the new sovereign did not demand water rates from the grantee for nearly four years after the formation of the new State and also did not repeal the personal law in existence in favour of the grantee and the rights are enforceable in the Courts of the new sovereign. ILR (1954) Patiala 679 : AIR 1955 Pepsu 20 (21, 22) (Pt A) (Prs 6, 8, 10).

——Arts. 51, 363 — Rights conferred by treaty — Enforcement of—Jurisdiction of Courts—Civil P. C. (1908), S. 9.

It is a well-settled principle that any right purporting to be conferred by the treaty of cession cannot be enforced in municipal Courts, except in so far as they have been incorporated in municipal laws.

Once, therefore, it is found that the Covenant entered into by the Rulers of the States forming Pepsu is a sort of treaty, it is not within the province of municipal Courts to enforce or grant relief in respect of rights howsoever forceful, reasonable and equitable they may appear to be, arising out of the treaty. Relief in such cases has to be sought not in the precincts of law Courts 'but along the corridors of diplomacy'. ILR (1955) Patiala 215 : (1954) 26 ITR 375 : AIR 1955 Pepsu 3 (14) (Pt H) (Pr 30) (DB).

——Art 51 — Jurisdiction over foreign territory administered by State—Territory formerly part of British India, upon partition forming part of Pakistan — By agreement territory administered by India — Indian nationals living in the territory committing offence—Jurisdiction of Indian Courts to try them. See Criminal P. C. (1898), S. 188. 1954 Cri L J 302 : AIR 1954 Punj 37.

10. Territorial waters — Extent of.

See also Ibid, Art. 297.

——Art. 51 — Territorial waters — Jurisdiction over foreign ships — Right of innocent passage — Scope and extent of.

The right of innocent passage is but a right of way along the coast. The right of innocent passage does not confer any immunity from territorial laws on ships that enter not in distress the ports of a friendly State. On the other hand, any foreign ship entering and taking advantage of the facilities afforded in ports of a country becomes amenable to its territorial laws, incur the obligation of observing its customs laws, and that obligation extends to foreign citizens on board the ship.

Where the acts of a foreigner on board a foreign ship at anchor in Cochin Port contravene the Indian Customs laws, they amount to an offence under the Indian law although they were not committed on land and the Indian Court has jurisdiction to take cognizance of the offence. (1922) 67 Law Ed. 894 (902) and AIR 1933 P C 16 (17), Rel. on. **1960 Ker L J 476 : 1960 Ker L T 488 : 1960 Mad L J (Cr) 388 : 1960 Cr L J 1455 : ILR (1960) Ker 989 : AIR 1960 Ker 335 (338, 339) (Pt C) (Prs 12, 16) (DB).**

——Art. 51 — Territorial waters Extent of. See Tenancy Laws — Madras Estates (Abolition and Conversion into Ryotwari) Act (26 of 1948), S. 20. AIR 1954 Mad 291 (DB).

11. 12. Laws of Air.

See Carriage by Air Act (1934).

13. Immunities and privileges.

See Ibid, Note 4.

PRIVATE INTERNATIONAL LAW (CONFLICT OF LAWS)

14. Scope and operation.

——Art. 51—International Law (Private) — Meaning of.

What is called private international law is not law governing relations between independent States : private international law, or as it is sometimes called 'Conflict of Laws', is simply a branch of the civil law of the State evolved to do justice between litigating parties in respect of transactions or personal status involving a foreign element The rules of private international law of each State must therefore in the very nature of things differ but by the comity of nations certain rules are recognised as common to civilised jurisdiction. Through part of the judicial system of each State these common rules have been adopted to adjudicate upon disputes involving a foreign element and to effectuate judgment of foreign Courts in certain matters or as a result of international conventions R. Viswanathan v. Rukn-ul Mulk Syed Abdul Wajid, (1963) 3 S C R 22 : AIR 1963 S C 1 (14, 15) (Pt C) (Pr 16).

——Art. 51—Scope.

The name "Private International Law" is rather unfortunate because it is difficult to conceive of a law which is both International and at the same time private. It is called "private" inasmuch as it deals with the legal relations of individual and not of States; it is "International", inasmuch as it deals with conflicts of laws of different nations. It is properly called law, inasmuch as its rules are enforced by Courts, and in that respect it is a branch of the ordinary law of the land. In fact International Law proper is "Public International Law" which again is no law at all as it is not enforced by the ordinary Courts of law, and there is no sanction behind it except the Comity of Nations. The problems of Private International Law originate in the territorial diversity of legal systems. Wherever such diversity exists, these problems are likely to arise. The function of Private International Law is complete when it has chosen the appropriate system of

law. Its rules do not furnish a direct solution of the dispute, and it has been said by a French writer that this department of law resembles the inquiry office at a Railway Station where a passenger may learn the platform where a train starts. Private International Law is not a separate branch of law in the sense of the law of contract or the law of bankruptcy, but it is nevertheless a separate and distinct unit in our legal system. "Private International Law", is not the same in all countries. A I R 1952 Cal 508 (515) (Pt B) (Pr 20).

——Art. 51—Matters of procedure — Rule of international law — No right alive by reason of extinguishment by statute — Nothing can be enforced in any country—Principle recognised in S. 11 (2), Limitation Act (1908) — Liability under foreign contract sought to be enforced in a country outside it — Rules to be applied. See Limitation Act (1908), S. 11. AIR 1964 Mad 527 (DB).

——Art. 51—Rules of—Nature and binding effect.

The so-called rules of international law are merely opinions of jurists and political thinkers and however weighty they may be, they are not to be administered by the Courts of a country unless sanctioned by the laws of that country. I L R (1959) Punj 384 : AIR 1959 Punj 440 (443, 444) (Pt B) (Pr 8) (DB).

——Arts. 51, 5—Rules of—No statutory force.

The rules of Conflict of Laws or of Private International law as adumbrated by various writers do not have any statutory force of universal application in all countries These rules have been deduced, from certain decided cases, as they arose from time to time in different countries. ILR (1959) Punj 1318 : 1959 Cri L J 1018 : A I R 1959 Punj 375 (376, 377) (Pt C) (Pr 3).

● ——Art. 51 — Rules of Private International Law are subject to legislative enactments and must yield to them I L R 22 Cal 222 (PC), Rel. on. Gauri Lal Gurdev Das v Jugal Kishore Sharma, I L R (1958) Punj 1211 : 61 Punj L R 418 : AIR 1959 Punj 265 (269, 270) (Pt C) (Pr 14) (FB).

15. Law applicable to India.

——Art. 51—Rules of — Private International Law applicable in India.

Hitherto the Courts in India have invariably followed the English rules of Private International Law. In fact, the Judicial Committee of the Privy Council in England being the ultimate authority in these matters, nothing else could be expected. Circumstances, however, have now altered, and it is no longer incumbent upon them to follow the English rules, or for the matter of that, any rule excepting their own. So far as the English rules are concerned, they are without question entitled to their very great respect. But no system of law is infallible and it must not be forgotten that Private International Law is of a comparatively recent growth and the English system has not yet had time to attain perfection. Since the Courts in India are now at liberty to lay down and follow their own rules with regard to Private International Law, they are in this respect in a very fortunate position. They can adopt the rules laid down in various countries as accord best with their sense of justice, equity and good conscience. They can profit by the experience of other nations and avoid their errors. AIR 1952 Cal 508 (515, 516) (Pt C) (Prs 21, 22).

——Art. 51—Law applicable to Indian Union.

In India Private International Law is not regulated by statutes. Private International Law applicable to the Indian Union can ordinarily be built up by judicial decisions in concrete cases, and any attempt at any statutory enactment in this very wide and uncertain field which will invest it with a rigidity may impede its natural evolution. (1953) 2 M L J 405 : 1953 Mad W N 618 : 66 Mad L W 773 : A I R 1954 Mad 97 (98) (Pt A) (Pr 4).

15-A. Foreign judgment.

See also Civil P. C. (1908), S. 13.

● ——Art. 51 — Foreign judgments — Enforcement of foreign awards or foreign judgment based upon those awards — Principle — Doctrine of merger of original cause of action — Applicability to foreign judgments — Arbitration agreement entered into in Bombay — Award in New York and confirmed by New York Supreme Court — Suit to enforce award of judgment in Bombay High Court — Held not maintainable — Civil P. C. (1908), S. 13 — Letters Patent (Bom), Cl. 12.

Held, on facts (Per Majority, Subba Rao J., dissenting) that the suit was not maintainable for the following reasons : (1) since the judgment was pronounced in New York the cause of action for a suit based thereon must be said to have arisen at that place. Hence the cause of action in so far it rested on the judgment, did not arise within the limits of the original jurisdiction of the High Court of Bombay and the suit based upon that judgment must be held to be beyond the jurisdiction of the Bombay High Court. AIR 1959 Bom 414, Affirmed but for different reasons. No doubt the English doctrine of merger does not apply to a foreign judgment. But if the plaintiff chooses to sue upon the judgment he cannot found jurisdiction on the basis of the original cause of action even though it may not have merged in the judgment; (2) the alternative claim of the plaintiff based on the awards themselves must also fail. An award in order to furnish a cause of action must be final. According to the New York law an award does not become final until a judgment had been obtained on the basis of the awards and the awards themselves could never be enforced and only the judgment could be enforced. If the law of the country in which it was made gives finality to a judgment based upon an award and not to the award itself, the award can furnish no cause of action for a suit in India Hence, though the High Court of Bombay had jurisdiction to enforce a final award made in a foreign country in pursuance of a submission made within the limits of its original jurisdiction, the awards in question not being final could not furnish a valid cause of action for the suit. AIR 1959 Bom 414, **Reversed**; (1959) 2 Q B 44, Dist. Badat and Co., Bombay v. East India Trading Co., (1965) 1 S C J 747 : 66 Bom L R 402 : (1964) 2 S C A 1 : AIR 1964 S C 538 (542, 543, 544, 552 to 558) (Pt A) (Prs 7, 28, 29, 31, 34, 35, 39, 42, 43, 44).

——Art. 51 — Foreign judgments — Judgment by Court in Gwalior State—(Civil P.C. (1908), Ss. 2(5), 2 (6) and 13).

In order to be a foreign State for the purpose of holding the judgments pronounced by its Courts as foreign judgments absolute independence of that State is not necessary. The only thing that is needed to hold it a foreign State is that it should have an independent civil, criminal and fiscal jurisdiction. If it had that, it could be considered to be a foreign State notwithstanding the fact that it was under the protection, suzerainty or paramountcy of another superior power. As there can be no doubt, that the Gwalior State had independent civil, criminal and fiscal jurisdiction and that its Ruler enjoyed the full measure of internal and domestic sovereignty, although subject to the protection of the British Crown, there can be no difficulty in holding that a foreign State vis a-vis a Court in the British Pro-

vince. AIR 1958 All 775 (780) (Pt A) (Prs 10, 11) (DB).

● ——Art. 51 — Foreign Court — Ex parte decree passed by Palghat Court on 3rd January 1951 — Whether a decree of foreign Court — Executability in Perumbavoor in Travancore after extension of Civil P C. to Travancore Cochin by Part B States (Laws) Act, 1951. See Ibid., Art. 261. AIR 1958 Ker 15 (FB).

● ——Art. 51 — Decree passed by Court in British India Decree passed against person not submitting to Court's jurisdiction — Decree can be executed in Courts of Madhya Bharat after 26-[-1950. See Civil P. C. (1908), S. 2 (5). AIR 1955 Madh B 1 (FB).

——Art. 51—Ex parte decree of Bombay High Court in 1946 against resident of former Gwalior State — Execution of decree taken to Gwalior Court after Constitution of India — Decree being a nullity its execution held not maintainable. See Civil P. C (1908), S. 13. AIR 1962 Madh Pra 276.

——Art. 51 — Burma Accrual of Interest (War-time Adiustment) Act (11 of 1947) — Judicial notice of (Evidence Act (1872), S. 57).

(Dubitante);—Where a suit is brought in the Courts of Madras State to recover a sum payable in Burma, whether, according to the canons of Private International law, the Madras Court can take notice of Burma Act (11 of 1947) is somewhat doubtful. 1956 Mad W N 587 : (1956) 2 Mad L J 372 : 69 Mad L W 577 : AIR 1956 Mad 629 (630) (Pt B) (Pr 4) (DB).

——Art. 51 — International law (Private) — Foreign judgment. See Civil P. C. (1908), S. 13. ('54) 67 Mad L W 147.

——Art. 51 — Adjudication of insolvency in foreign Court Immovable property of insolvent situated in India is not affected.

Where in an insolvency proceeding started in a foreign country an adjudication order is passed against the insolvent by the Court of that country, it has no effect on the immovable property of the insolvent in India and consequently the property of insolvent situated in India can be proceeded against by the decree-holder who has obtained a decree against the insolvent. A I R 1933 P C 134 and A I R 1932 Cal 124 and (1910) A C 508, Rel. on. I L R (1961) 2 Punj 166 : A I R 1962 Punj 228 (231) (Pt B) (Pr 25).

——Art. 51 — Decree obtained by citizen of India against another citizen of India in Court of Sub-Judge, Lahore—Decree set aside in appeal by Lahore High Court but restored by Federal Court of Pakistan — Rights of decree holder lost by evacuee property Law of Pakistan — Execution in India — Procedure. See Indian Independence (Legal) Proceedings Order (1947), S. 4 (3). AIR 1957 Punj 201 (DB).

● ——Art. 51 — Foreign decrees —: Execution. See Civil P. C. (1908), S. 13. A I R 1954 Trav-Co 358 (FB).

16. Domicile.

See also (1) Ibid, Arts. 5 and 9.

(2) Succession Act (1925), .Ss. 5, 7, 9 and 15.

● ——Art. 51—International Law (Private) — Domicile — Determination of — Change of domicile. See Ibid, Art. 5. (1965) 2 S C A 702 : A I R 1966 S C 160.

● ——Art. 51—Domicil—Principles determining domicil—Domicil of origin in Multan District —Subsequent migration to India — Effect — (Constitution of India, Art. 5).

Two constituent elements that are necessary by English Law for the existence of domicil are : (1) a residence of a particular kind and (2) an intention of a particular kind. There must be the factum and there must be the animus. The residence need not be continuous but it must be indefinite not purely fleeting. The intention must be a present intention to reside for ever in the country where the residence has been taken up.

It is also a well established proposition that a person may have no home but he cannot be without a domicil and the law may attribute to him a domicil in a country where in reality he has not.

In order to make the rule that nobody can be without a domicil effective, the law assigns what is called a domicil of origin to every person at his birth. This prevails until a new domicil has been acquired, so that if a person leaves the country of his origin with an undoubted intention of never returning to it again, nevertheless his domicil of origin adheres to him until he actually settles with the requisite intention in some other country.

Where therefore a person and his ancestors lived in Multan district, had a considerable business there and had no home in India, his domicil of origin must be held to be in the district of Multan and when the district of Multan fell by the partition of India in Pakistan, he had to be assigned Pakistan domicil till the time he expressed his unequivocal intention of giving up that domicil and of acquiring Indian domicil and also took up his residence in India. His domicil cannot be determined by his family coming to India and without any finding that he had established a home for himself there. Even if the animus can be ascribed to him, the factum of residence is wanting in his case; and in the absence of that fact an Indian domicil cannot be ascribed to him. Central Bank of India, Ltd. v. Ram Narain. 1954 Mad W N 999 : 1955 S C J 4 : 1954 S C A 1305 : 57 Punj L R 153 : (1955) 1 S C R 697 : 1955 All W R (Sup) 12 : 1955 Cr L J 152 : AIR 1955 S C 36 (39, 40) (Pt B) (Prs 6, 8).

——Art. 51—International Law (Private) —Domicile —Minor—Minor cannot acquire domicile different from that of father — Minor going to Pakistan after 1st March, 1947 and was minor on 26th January, 1950— Applicability of Art. 7 of Constitution of India.

A minor is unable to acquire a domicile by his own act. Therefore when the minor, whose father was domiciled in India and citizen of India, left India for Pakistan after 1st March, 1947 and continued to be a minor when the Constitution of India came into force cannot be said to have acquired a domicile of choice in Pakistan by his own act and hence he continued to retain his domicile of origin in India on 26th January, 1950 and Art. 7 could have no application to his case. A I R 1963 S C 645, Foll. 1964 All L J 760 : 1964 All W R (HC) 509: 1964 All Cr R 381: AIR 1965 All 191 (192) (Pt A) (Prs 6, 7) (DB).

——Art. 51—Domicile —Minor—Minor migrating to Pakistan —Effect.

A minor during his minority has no legal capacity to acquire a domicile different from that of the guardian and cannot in law migrate. Where therefore, the petitioner during his minority went to Pakistan in 1948, while his father remained in India and retained his Indian domicile and nationality, the petitioner cannot lose or abandon his Indian citizenship or acquire Pakistan nationality so long as he remained a minor in the absence of any action on the part of his guardian : A I R 1954 All 456, Foll. 1960 All L J 461: 1960 All W R (H C) 346 : AIR 1960 All 637 (639) (Pt A) (Prs 3, 4).

[Overruled on another point in A I R 1962 S C 1052].

——Art. 51—Domicile — Person born in Goa of Goan parents coming to Bombay in his boyhood, taking education there, residing in Bombay since then and doing his father's business — Indian domicile held established. See Ibid, Art. 5. **A I R 1956 Bom 729 (DB).**

——Art. 51— Domicile of origin — Private international law — Abandonment of domicile of origin — Evidence necessary to show — Held K, an Indian, who was in England for 30 years and died there did not intend to discard domicile of origin. See Ibid, Art. 5. **AIR 1964 Ker 244 (DB).**

——Art. 51 —Domicile —Domicile of choice —Conditions necessary for acquiring domicile of choice— See Ibid, Art. 5. **1965 BLJR 936.**

——Art. 51 —Domicile —Determination of. See Ibid, Art. 5. **AIR 1964 Pat 417 (DB).**

——Art. 51—Domicile —Father migrating to Pakistan —Minor son — Nationality — Acquisition of Indian nationality. See Ibid, Art. 7. **AIR 1957 Punj 86 (DB).**

——Art 51—Domicile- Change of Proof —Person carrying on profession in place other than his domicile —Change of domicile —If can be inferred.

The fact that for purposes of his profession or avocation a man goes and stays outside does not mean that he abandons his parmanent place of residence, which in other words is his domicile There must be evidence to show the animus non-revertendi in order to effect the change of domicile.

Where a pleader lawfully obtains Ajmer residence certificate to practice in Aimer on the ground of his grand father's residence there, he is not debarred from obtaining subsequently a certificate that he is a bona fide "Marwari" of Jodhpur on the basis of his father's domicile at Jodhpur, unless there is something to show that he has definitely indicated his intention not to reside permanantly in Jodhpur but to stay permanently in Ajmer. **1960 Raj L W 79 : ILR (1960) 10 Raj 351.**

17. Citizenship.

See also (1) Ibid, Arts. 5, 6 and 7.
(2) Citizenship Act (1955), Ss. 8 and 9.

——Art. 51—Citizenship -Migration involves change of domicile. See Pakistan Citizenship Act (1951), S. 3 (d). **1963 (1) Cri L J 724 : AIR 1963 All 260.**

——Art. 51—Citizenship—Loss of—Presumption and onus Onus of proving that citizen of India has lost his citizenship is on party seeking to deprive him of those rights — Evidence Act (1872), Ss 100 104 — Presumption and onus — Citizenship Act (1955), Ss. 8, 9—Constitution of India, Arts. 5, 6 and 7.

Ordinarily, it is for the plaintiff to prove the facts on which his prayer for relief is based. But where the plaintiffs claim that they are citizens of India whereas the State alleges that they are citizens of Pakistan and the plaintiffs are able to prove that they were citizens of India when they left for Pakistan, there will be a presumption that they continued to be citizens when they returned Citizenship does not evaporate with the passing of time; it clings to a person wherever he may roam. It cannot be taken away from him unless he voluntarily renounces it or is guilty of some conduct involving loss of citizenship. The onus of proving that a citizen of India has lost his citizenship is on the party seeking to deprive him of his rights as a citizen. **1963 (1) Cr L J 724 : AIR 1963 All 260 (263) (Pt B) (Pr 9).**

——Art. 51—Citizenship —Domicile- Minor —Father muslim and resident of India, prior to partition—Minor entering India by Pakistan passport and overstaying in India—Father practicising in India after partition —Prosecution of minor under Foreigners Act. See Ibid, Art, 5. **1959 Raj L W 322.**

18. Emigration and expulsion— Passports and Visas.

See Ibid, Sch. 7, List 1, Entry 19.

19. Domicile and nationality.

——Art. 51—Domicile — Domicile and nationality — Nationality and domicile are two entirely different concepts in private international law. A man may have one nationality and different domicile. He may owe allegiance to one country and he may have a domicile in another country. Therefore, although the father of a person may continue to be a Goan National he can still change his domicile and give up his Goan domicile and acquire Indian domicile. **58 Bom L R 825 : A I R 1956 Bom 729 (731) (Pt B) (Pr 11) (DB).**

20. Citizenship and nationality.

See also Ibid, Sch. 7, List 1. Entry 17.

——Art. 51—Nationality and citizenship—Distinction between.

Per B. P. Sinha, C. J., S. K. Das; P. B. Gajendragadkar, A. K. Sarkar, K. N. Wanchoo and N. Rajagopala Ayyangar JJ.

The expressions 'nationality' and 'Citizenship' are not interchangeable terms. 'Nationality has reference to the jural relationship which may arise for consiration under international law. On the other hand 'citizenship' has reference to the jural relationship under municipal law. In other words, nationality determines the civil rights of a person, natural or artificial; particularly with reference to international law, whereas citizenship is intimately connected with civil rights under municipal law. Hence all citizens are nationals of a particular State, but all nationals may not be citizens of the State. In other words, citizens are those persons who have full political rights as distinguished from nationals, who may not enjoy full political rights and are still domiciled in that country (vide P. Weis—Nationality and Statelessness in International Law pp. 4-6, and Oppenheim's International Law, Vol I, pp. 642, 644). State Trading Corporation of India v. Commercial Tax Officer, **1963 Cur L J (S C) 126 : (1963) 33 Com Cas 1057 : (1963) 2 Comp L J 234 : (1963) 2 S C J 605 : (1964) 2 S C A 201 : A I R 1963 S C 1811 (1819) (Pt B) (Pr 18).**

21. Succession to immovable property.

——Art. 51 — Succession to immovable property — Property owned by Hindu in England—Owner expiring in England —Rule of succession to such property.

Law regulating the succession to the property of a person expiring in a foreign country is that succession to the estate of a person is governed by the lex situs in the case of immovables, and in the case of movables by the law of his domicile. Hence, where an Indian Hindu who owns a house property in England expires there then the domestic law of England must apply to the house if that property is considered by English Law to be immovable. A I R 1963 S C 1, Rel. on.

In domestic English Law the division of properties is as real and personal and not as immovable and movable. But in the sphere of Private International Law the Anglo Saxon distinction between realty and personalty is abandoned and the division into immovable and movable is accepted. Thus the division as personalty and realty cuts across the division as movable and immovable, in the sense that personalty includes both movables and immovables. Realty is not synonymous either with land or with immov-

ables. The question whether a particular property is movable or immovable has to be decided under the law of place where the property is situated. According to the law of England, the house property is considered, for the purpose of Private International Law, to be immovable. If, therefore, an Indian Hindu who expires in England, be found not to have lost his domicile of origin his immovable properties in India and all his movables whether in India or in England, should be divided according to the law of succession in India. And succession to the house in England, being immovable property according to the law of the situs as applied to Conflict of Laws, should be decided under the English Law of succession. The subsequent conversion of that immovable into money does not alter this position (1964) 2 Ker L R 339 : 1964 Ker L J 205 : 1964 Ker L T 252 : ILR (1964) 1 Ker 384 : A I R 1964 Ker 244 (249, 250, 251) (Pt G) (Prs 29, 30, 31, 35) (DB).

——Art. 51 — Legitimacy of persons — If could be affected by change in the law subsequently — Succession Act (39 of 1925), S. 43 — Scope.

No person who is legitimate when born can be bastardised retrospectively by the subsequent operation of law. A relationship which was legitimate at the time when it came into being cannot become illegitimate with any retrospective effect by the subsequent introduction of new laws.

When the former State of Pudukottai was merged with the Madras State, the Indian Succession Act no doubt became applicable to the Indian Christians in the State. But where an estate devolved upon a person before the operation of the Act, the subsequent succession to it according to the new Act cannot be varied merely because the original holder would be a bastard according to the new law.

There are no words in the Indian Succession Act which limit the relations contemplated therein to relations which are legitimate according to Christian law. The relations contemplated in the Act are those which are recognised by the law—(in this case Hindu law) which governed the parties at the time the relationship came into being. 72 Mad L W 142 : ILR (1959) Mad 449 : (1959) 1 M L J 19 : A I R 1959 Mad 180 (180, 181) (Pr 5).

22. Matrimonial matters.

——Art. 51 — Rule as to dissolution of marriage between parties domiciled in different countries — Applicability of, when law in one Province of India is different from another.

Strictly speaking the rules of private international law apply when there is conflict of laws of different sovereign States. But there is authority for the proposition that where the law in one province in India is different from the law in another province, the two provinces must be regarded as analogous to two sovereign States.

The rule of International law laid down in 1895 A. C. 517 which applies to the Courts in the exercise of jurisdiction to dissolve marriages between spouses domiciled in another country, may therefore be applied where the dispute is sought to be litigated in a Court of the country in which the parties are domiciled even though the personal law applicable in the place where the parties are domiciled is different from the personal law applicable in the area in which the Court is functioning. 57 Bom L R 569 : ILR (1955) Bom 749 : AIR 1955 Bom 300 (302, 303, 304, 305) (Pt B) (Prs 6, 7, 13) (DB).

——Art. 51 — Marriage — Essentials. See Special Marriage Act (1872) (as amended in 1923), S. 2. A I R 1962 Madh Pra 212 (DB).

——Art. 51 — Marriage — Validity—Determination — Principles — Hindu marriage — Principles of the rule of intended matrimonial home applies.

As regards determination of the validity of marriages the following principles emerge from an analysis of judicial pronouncements: (a) Where the parties at the time of their marriage are domiciled in a country where laws prohibit their marriage, the marriage is void whether they are domiciled in the same country or in different countries. (b) Where the laws of the country in which they are domiciled bestow on both parties capacity for the marriage, the marriage is a good marriage. (1861) 9 H L C 193 and (1860) 164 E R 917 and (1752) 2 Hag. Con. 395 and 1930 A C 79 and (1859) 164 E R 792 and (1877) 3 P D 1 and (1877) 2 P D 81 and (1879) 5 P D 94 and 1940 Ch. 46, Considered.

On the question of law that would govern capacity for marriages, there are three views. One view is that it is the law of the place of celebration which overlooks the distinction between formality and capacity. The second view which appears to be conservative and orthodox is that it is the law of the domicile of each party before the marriage. The third is that the law of the intended matrimonial home governs the capacity. (1835) 6 E R 1239 and 1908 P 46 and 1948 P. 100 and (1955) 2 W L R 439 and 1949 P. 420, Rel. on. The doctrine against incapacity in either of the two parties to the marriage rests upon the theory that a marriage being a contract both parties to it must have the capacity to marry one another. But even if the insistence on capacity in both the parties to the marriage is founded upon a sound principle of Private International law, it is doubtful whether such insistence is possible in the case of a Hindu marriage which is an institution which does not share all the attributes, with a marriage under other laws or in other countries, for there is divergence of judicial opinion whether a Hindu marriage is only a sacrament and not a contract or it is both. But if the sacramental aspect of a Hindu marriage is its principal feature and unlike the husband, the wife could not marry again during his lifetime, a rule which emanates from the concept of a marriage being essentially a contract, when applied to a Hindu marriage, may not produce results of accuracy. The law governing the capacity as far as a Hindu marriage is concerned is the law of the intended matrimonial home.

The validity of a marriage between a husband whose personal law does not prohibit polygamy and a woman whose personal law does, can be judged by applying yet another principle. It is an accepted principle that a person domiciled in one country carries with him sufficient personal law of his own when he is temporarily in another country and that it is that personal law which has to be referred to on many questions such as minority, marriage and succession. If that personal law so accompanies a person temporarily present in another country, it is possible to say that that personal law also enables him to contract a marriage in the manner recognised by it. (1835) 6 E R 1239 and (1885) 53 L T (NS) 711 and (1929) Scottish L T 96 and (1932) 48 L Q R 341, Ref. to.

Where a ceremony of marriage is proved and is followed up by cohabitation as man and wife, the presumption in case of doubt or in the absence of evidence to the contrary is always in favour of validity and legitimacy. (1962) 3 All E R 1108, Rel. on.

Before the Indian Constitution came in force, S, a resident of Hyderabad State having a legally wedded wife, married another woman at Bombay where the Bombay Prevention of Hindu Bigamous Marriages Act forbidding bigamy in the State of Bombay was in force. There was no such law in Hyderabad State and S was governed by Mitakshara law which did

not prohibit bigamy. After the death of S his second wife claimed right to his properties as against his daughter by first wife. On the question whether the marriage was valid as regards the second wife of S who was subjected to the Bombay Act which forbade bigamy, held on the principles of private international law that the rule of intended matrimonial home applied to the case and the marriage was valid. (1965) 1 Mys L J 577 : A I R 1966 Mys 100 (107, 110, 111, 112) (Pt B) (Prs 43, 45, 46, 63, 66, 69, 73, 75) (DB).

——Art. 51 — Applicability — Husband and wife— Application by husband for divorce on ground of desertion — Court to which application should be made — Applicability of Private International Law. See Special Marriage Act (43 of 1954), S. 31. A I R 1959 Raj 133.

23. Tort in foreign country—When actionable in home country.

——Art. 51—Tort in foreign country—When actionable in home country of defendant.

Whether an act done in a foreign country is or is not a tort, i. e., a wrong for which an action can be brought in the State to which the foreigner belongs depends upon the combined effect of the law of the country where the act is done (lex loci delicti commissi) and of the law of the country of the foreigner (lex fori).

An act done in a foreign country is a tort and actionable as such in the State to which the foreigner belongs only if it is both (i) actionable as a tort according to the law of his State ; and (ii) not justifiable according to the law of the foreign country where it was done. 1960 Raj L W 284 : I L R (1960) 10 Raj 705 : A I R 1960 Raj 224 (234) (Pt G) (Pr 31) (DB).

——Art. 51 — Suit for damages against new State for torts committed by former State which had ceased to exist—Maintainability. See Ibid, Art. 300. A I R 1960 Raj 49 (DB).

24. Extradition.

See (1) Criminal P. C. (1898), S. 188.
(2) Extradition Act (1903).

25. Contracts.

——Art. 51—Contract — The proper law applicable depends on localisation of the contract — The contract must be substantially connected to it—Factors to be considered in determining it.

The proper law applicable to a contract is the system of law by reference to which the contract was made or with which the transaction has its closest and most real connection. Held, on facts and circumstances of the case that the proper law of the contract was the Bombay law, that is, the Indian law, and that the Pakistan law had no application in the case. Held further, that as the proper law intended as a whole to govern a contract was administered as a living and changing body of law and effect was given to any change which was occurring in it before performance fell due, the law applicable in the present case was the law at Bombay as it stood when the performance was due. A I R 1955 S C 590, Rel. on. A I R 1964 Cal 141 (146, 147, 151) (Pt A) (Prs 22, 23, 25, 29, 30, 51, 53, 58).

——Art. 51—Contract—Performance of—Impossibility due to supervention of foreign law—When arises —Essential conditions — Held on facts that no such impossibility arose in performance of contract in suit.

If an Indian contract lawful at its inception is to be rendered unenforceable in the Court of India by supervening foreign law, two elements must co-exist, namely, (i) there must be an act which the contract requires to be performed in the foreign country and (ii) that act must have been rendered unlawful there. 1935 A C 148 and (1920) 2 K B 287, Rel. on.

Where however, the obligation which the plaintiff wants to enforce is only the payment of money under a life insurance policy which provides that the money is to be paid in Bombay, the contract was also executed in Bombay which was therefore, both the locus contractus and locus solutionis and also the place round which the elements of the policy were densely grouped, there is no principle upon which it should be held that Pakistan law should be applied to it. It is only when performance of a contract is illegal in a foreign country that the doctrine based on comity of friendly nations can be invoked. As the contract did not expressly call upon the defendant insurer to do any act at all in Pakistan and no act was necessary for the performance which would be a breach of Pakisthan Law, the defendant could not invoke the doctrine. A I R 1964 Cal 141 (153) (Pt D) (Prs 71, 72).

——Art. 51—Contracts — Law and forum for settlement of disputes — Choice of Swedish law and Courts—Forum of dispute arising out of contract by agreement between parties—Suit for breach of contract against non-resident foreigner — Suit filed in India —Stay can be ordered by Court in India pending institution and disposal of proper proceedings in Swedish Courts—Arbitration Act (1940), S. 34.

A bill of lading, issued by a shipping company to a shipper in connection with a contract of affreightment of certain goods to be carried to Calcutta entered into in Sweden, both parties being Swedish, provided, inter alia, that any dispute arising out of the contract would be decided in Sweden according to the Swedish law. But the plaintiff an endorsee of the bill of lading, brought a suit for damages for short delivery of the goods in the High Court of Calcutta where the endorsement took place and where the contract was alleged to have been broken, with leave under Cl. 12 of the Letters Patent :

Held, that though the contract did not rob the Court of its jurisdiction to decide the dispute, which is derived from the laws of the land, it would be in consonance with justice and fair play to stay the suit in India pending institution and disposal of proper proceedings in Sweden. A I R 1960 Cal 155, Rel. on ; (1913) A C 241 ; (1958) 1 A E R 333 ; A I R 1960 Cal 47, Disting.

It would, however, be perfectly open to the plaintiff to prosecute his suit in the Court at Calcutta in the event of any action brought in the Swedish Court being held barred by limitation. 66 Cal W N 538 : A I R 1962 Cal 601 (603, 604, 605, 606) (Pt B) (Prs 9, 12, 14 18, 20, 22) (DB).

——Art. 51 — (Civil P. C., S. 20) — (Contract Act (1872), S. 2 (d))—(Railways Act (1890), S. 80).

Plaintiff entered into a contract of carriage with the Government of Pakistan, as representing the Eastern Bengal Railway at Faridpore, for carriage of some goods to Calcutta. The goods were seized by the Land Customs at the Indian Land Frontier and detained as a result of which they were damaged and had to be sold. The Union of India never denied the liability to pay over the actual sale proceeds but the plaintiff brought suit at Sealdah for non-delivery of goods. On objection of jurisdiction the trial Court decided that he had "ample jurisdiction". On revision by defendant.

Held, (i) One independent sovereign power is not the agent of another independent sovereign power as far as municipal Courts are concerned unless specifically such a state of agency is for a particular purpose assumed and the Courts are given jurisdiction. Therefore the Government of India could not be sued in

Indian Courts as an agent of the Pakistan Government ;

(ii) It is an accepted principle of private international law that in a case of this nature the 'lex loci contractus' will apply. Section 80, Indian Railways Act, as now in force in India cannot apply beyond its own territories to a foreign State namely, Pakistan. It is possible that there may be a corresponding law with a corresponding section applicable in Pakistan, but such law again cannot apply beyond the limits of Pakistan and give a right to sue an independent sovereign power outside Pakistan because of a Pakistani law. Under the circumstances S. 80, Indian Railways Act or for the matter of that any corresponding Pakistani law, was of no help to plaintiff ;

(iii) The ground that there may be some unknown arrangement was not tenable since no such arrangement had been alleged in the plaint between the Union of India and Pakistan as regards mutual liability. The plaintiff not being a party to any such arrangement or contract between the two sovereign powers, even if there was any such, could not take advantage of any contract to which he was not a party. His remedy, therefore, was either to sue the Union of India for the amount of money belonging to him actually held in their hands by the Union of India as representing the East India Railway or to sue at Faridpore on his contract of carriage the Pakistan Government as representing the Eastern Bengal Railway for the breach of the contract, entered into at Faridpore ;

(iv) The assumption of jurisdiction by the trial Court was therefore illegal. **57 Cal W N 164 : I L R (1953) 2 Cal 168 : A I R 1953 Cal 366 (367) (Pt A) (Prs 4, 5).**

——**Art. 51** — Contract — Suit in India on ex parte foreign judgment on contract — Right to relief under Madras Agriculturists' Relief Act — Liability for interest—Law applicable. See Civil P. C. (1908), S. 13. **A I R 1958 Ker 126.**

——**Art. 51**—Conflict of Laws — Foreign Law—Contract entered in Foreign Country — Suit on, in India — Defendant cannot plead law of limitation of that foreign country where contract took place — But if parties were domiciled in the place of contract and the period of limitation according to the foreign rule of limitation had expired, while they so resided the suit in India would also be held barred by time if not brought within time prescribed by the foreign law. **1959 MPL J (Notes) 13.**

——**Art. 51**—Private contract — Forward contract in vegetable oil with foreign buyer prohibited by order — Arbitration clause, integral part of contract — Dispute referred to foreign arbitration — Contract being illegal award is illegal and cannot be enforced in India — Law applicable is Indian where award is sought to be enforced. See Vegetable Oils and Oilcakes (Forward Contracts Prohibition) Order (1944), S. 7 (1) (e). **AIR 1964 Mad 532.**

——**Art. 51—Law governing contract—Lex loci.**

The general rule laid down in (1890), 25 Q B D 399 as to the law which governs a contract is that the law of the country either where the contract is made, or where it is to be so performed that it must be considered to be a contract of that country, is the law which governs such contract; not merely with regard to its construction, but also with regard to all the conditions applicable to it as a contract.

Therefore if there be a bankruptcy law, or any other law of such country, by which a person who would otherwise be liable under the contract would be discharged, and the facts be such as to bring that law into operation, such law would be a law affecting the contract, and would be applicable to it in the country where the action is brought.

But this rule is applicable to India only when any change of law in the country in which the contract was made is not repugnant to the principles of our Constitution, or of those principles of justice, equity and good conscience on which our own lex fori is founded. If such be the case, the change of law will not be applied by our Court. 1953 Mad W N 618 : (1953) 2 M L J 405 : 66 Mad L W 773 : AIR 1954 Mad 97 (98) (Pt B) (Pr 5).

——**Art. 51** — Contract made in Burma enforced in Indian Union — Burma Accrual of Interest Wartime Adjustment Act (11 of 1947), S. 3 — Applicability — (Civil P. C. (1908), Ss. 34 and 151).

A and B entered into a contract of loan in Burma while they were doing business there prior to Japanese occupation of that territory. Subsequently they came to reside in the State of Madras. A filed a a suit against B on 23rd August, 1941, for recovery of the loan in a Court in the Madras State. A compromise decree for amount of loan was passed prior to the passing of Burma Act (11 of 1947). The decretal amount was to carry interest at 6 per cent from the date of the decree. The judgment-debtor B filed an application under Ss. 47 and 151, Civil P. C. that he was not liable to pay any interest for the period between 8th December, 1941 to 31st March, 1947, by virtue of S. 3 of the Burma Act.

Held, (i) that the Burma Act which was clearly founded on principles of justice, equity and good conscience should govern such contract as far as possible, when sued upon in the Indian Court by an extension of the principle governing English Private International Law ;

(ii) that the relief to debtors under the Burma Act (11 of 1947) can only be granted by the Court which passed the decree by an application made to it under S. 151, Civil P. C. for amendment of the decree on the analogy of applications to amend decrees and wipe out interest under the Madras Act (4 of 1988). It is not open to an executing Court as such to give any relief under the Burma Act of 1947.

(iii) Since the suit itself was instituted prior to 8th December, 1941, the amount due on the date of suit did not include any interest which could be wiped out by S. 3 of the Burma Act which only wiped out interest between 8th December, 1941 and 31st March, 1947.

(iv) Pendente lite interest from the date of suit to the date of decree was solely in the discretion of Court under S. 34, Civil P. C. Future interest from date of decree at the Court rate of interest had no relation to the nature of contract on which the decree was passed. As such pendente lite and future interest between the dates 8th December, 1941 and 31st March, 1947, could not be wiped out under the Burma Act. **1953 Mad W N 618 : (1953) 2 M L J 405 : 66 Mad L W 773 : AIR 1954 Mad 97 (98, 99) (Pt D) (Prs 5, 7, 8, 9).**

——**Art. 51 — Acquisition of title must conform to lex situs.**

The lex situs is the governing law for all questions that arise with respect to immovable property, and no disposition can create interest in immovable property which is in breach of the lex situs which must determine whether an effective and lawful transfer of title has taken place. Acquisition of legal title must, generally speaking, conform to the lex situs. **AIR 1959 Punj 575 (577, 578) (Pt C) (Pr 6).**

——**Art. 51**—Conflict of laws—Contract made outside Marwar and to be performed entirely outside Marwar — Contract is not illegal and can be enforced by

Marwar Courts. See Defence of India Rules (as applied to Marwar), R. 90-C. AIR 1952 Raj 81 (DB).

——Art. 51 Conflict of laws — Railway contract — Conflict between law of country where it is made and law of country where it is to be performed—Law of latter place governs the contract. **AIR 1955 N U C (Sau) 5413.**

26. Arbitration.

See (1) Ibid, Note 25.

(2) Arbitration (Protocol and Convention) Act, 1937.

27. Debts.

● ——Art. 51 — Debt arising in foreign country — Determination of its nature — Lex situs and "the proper law of the contract" — (T. P. Act (1882), S. 130).

A debt is property. It is a chose in action and is heritable and assignable and it is treated as property under the Transfer of Property Act which calls it an "actionable claim."

Choses in action arising out of contract have two aspects: (1) as property and (2) as involving a contractual obligation for performance. The property aspect is relevant for purposes of assignment, administration, taxation and the like; the contractual aspect for performance.

Debt, being intangible, cannot have location except notionally and in order to give it notional position rules have to be framed along arbitrary lines. Determination of the legal liabilities which arise out of the facts relating to a debt raises complex questions of private international law. Two distinct lines of thought emerge. One is that applied by the English Courts, namely, the lex situs; the other is the one favoured by Cheshire in his book on Private International Law, namely, the "proper law of the contract."

When an involuntary assignment of a debt is effected by garnishment, it is probably true to say that a debt is properly garnishable in the country where, according to the ordinary usages of business, it would normally be regarded as payable. In cases of this nature, the proper law of the contract is applied, that is to say, the law of the country in which its elements are most densely grouped and with which factually the contract is most closely connected. It is true the Judges purport to apply the lex situs but in determining the situs they apply rules (and modify them where necessary to suit changing modern conditions) which in fact are the very rules which in practice will be used to determine the proper law of the contract. When the intention is not express one must be inferred and the rules made come to this ; that as reasonable men they must be taken to have intended that the proper law of the contract should obtain. The other view is that the intention does not govern even when express and that the proper law must be applied objectively. But either way, the result is the same when there is no express term and the "proper law" is in fact applied.

And in this respect the "proper law" is the law that obtains not when the contract was made and the obligation fashioned but the law in force at the time when performance is due. A proper law intended as a whole to govern a contract is administered as a living and changing body of law and effect is given to any changes occurring in it before performance falls due. Delhi Cloth and General Mills Co., Ltd. v. Harnam Singh, **57 Pun L R 313 : (1955) 2 S C R 402: 1955 S C J 645 : 1955 Andh W R (SC) 141 : (1955) 2 M L J (SC) 141 : AIR 1955 S C 590 (596, 598, 599) (Pt A) (Prs 32, 34, 47, 48, 49, 51).**

● ——Art. 51—Debt arising in Lyallpur in Pakistan —Defendant made to pay to Custodian under Pakistan Law amount belonging to plaintiff — Discharge of debt.

The plaintiffs carried on business with the defendant company for some three or four years before 1947 and purchased cloth from the company from time to time. In the course of their business they used to make lump sum payments to the defendant against their purchases. Sometimes these were advance payments and at others the balance was against them. In 1947 there was a balance of about Rs. 12,000 left in favour of the plaintiffs. They brought this suit in the Court at Delhi to recover this balance plus interest. The defendant, while admitting the facts contested that when India was partitioned on 15th August 1947, Lyallpur, where these transactions took place and where the money was situate was assigned to Pakistan. The plaintiffs fled to India at this time and thus became evacuees and the Pakistan Government froze all evacuee assets and later compelled the defendant to hand them over to the Custodian of Evacuee Property in Pakistan. The defendant was ready and willing to pay the money if the Pakistan Government would release it but until it did so the defendant contended that it was unable to pay and was not liable.

Held, (1) that the dealings showed a running account very like a customer' current account in a bank and that it was reasonable to assume, as in the case of banking and insurance that on the termination of the contract the balance was to be paid at Lyallpur and not elsewhere which localised the place of primary obligation;

(2) that the elements of this contract, that is to say the contract out of which the obligation to pay arose were most densely grouped at Lyallpur and that that was its natural seat and the place with which the transaction had its closest and most real connection. It followed from this that the "proper law of the contract," in so far as that is material, was the Lyallpur law;

(3) that there was no demand for return of the balance before 3rd January 1949 ;

(4) that the proper law would be the law at Lyallpur applied as a living and changing whole and therefore the Pakistan Ordinance 15 of 1949 applied, S. 11 (2) of which discharged the person making payment from further liability to pay to the extent of the payment made ;

(5) that whether the proper law of the contract applied or the English law of situs in a case of this kind, the defendant was exonerated because the debt being "property", the Ordinance divested the plaintiffs of ownership in it and vested the debt in the Custodian and at the same time interfered with the obligation for performance by providing that payment to the Custodian shall operate as a discharge of the obligation; and

(6) that the Pakistan Ordinance could not be condemned as opposed to the public policy of this country because the same kind of laws existed in India also. AIR 1955 Punj 129, Reversed. Delhi Cloth and General Mills Co. Ltd. v. Harnam Singh, **57 Punj L R 313 : 1955 Andh W R (SC) 141 : (1955) 2 S C R 402 : 1955 S C J 645 : (1955) 2 M L J (SC) 141 : ILR (1955) Punj 1127 : AIR 1955 S C 590 (594, 595, 596, 599, 600) (Pt C) (Prs 23, 24, 28, 29, 50, 51, 53, 54, 55).**

——Art. 51 — Assignment of debt — Proper law— Assignment of claim due under life insurance policy — Validity of—Held was determined by Indian law in this case—T. P. Act (1882), S. 130.

That a debt is property cannot be doubted—It is a chose in action and is heritable and assignable—It is

also clear that the assignment of a chose in action arising out of a contract is governed by the proper law of the contract. It is reasonable and logical to refer most questions relating to a debt to the transaction in which it has its source and to the legal system which governs the transaction. One undeniable merit of this is that where there have been assignments in different countries, no confusion can arise from a conflict of laws since all questions are referred to a single legal system.

Thus where the claim due under a life insurance policy was assigned by a deed of assignment executed at Calcutta; at the time of the assignment both the parties were residing in India and were non-resident of Pakistan; the assignment related to a policy which was governed by the Indian law; the notice of assignment was sent to the Head Office at Bombay both by the assignor and the assignee under the policy the notice of assignment was to be registered at the Bombay Head Office and at no other place; the situs of the debt assigned and the residence of the debtor (Insurer) was at Bombay; the formalities of Indian Law were fully observed and the assignment had no connection with Pakistan ex facie or otherwise.

Held, that it was clearly manifest that the proper law of the assignment was the law of India which was also the proper law of the policy. **AIR 1964 Cal 141 (151, 152) (Pt B) (Prs 60, 64, 67).**

28. Maritime law.

See also Ibid, Note 10.

——Art. 51 — Seamen's contracts — Lex loci contractus or lex loci solutionis — Test applicable.

There can be no universal principle in the case of seamen's contracts by the test of which it can always be said that either lex loci contractus or lex loci solutionis must prevail in every case. The true approach should be guided by consideration of the entire contract in each individual case and examination of its terms and the decision as to which test— Lex loci contractus or lex loci solutionis – will apply should depend on the result of a proper interpretation of such contract. If the interpretation in a particular case be that the explicit or the tacit intention in a particular contract is that the place of contract should govern, then lex loci contractus should be the test to be applied; but if on the otherhand the interpretation be that such intention is that the place of performance should govern then lex loci solutionis should be the test to be applied. If there is any doubt and if it appears that the point is new or unsettled, then the scales should be used in favour of applying lex fori.

(Lex fori applied to claim for wages by seaman.) **AIR 1952 Cal 859 (863, 864) (Pt E) (Prs 37, 39).**

29. Corporations.

——Art. 51 — Corporation when suing or is sued in country other than of its origin — Law applicable to — (Corporation) – (Company) — Municipalities— (Limitation Act (1908), Preamble.)

A special law of procedure and a special law of limitation applicable to the corporation by the laws of the country of its origin cannot, however, be said to be part of the attributes of the juristic personality of the corporation. The corporation does not carry with it the special law of limitation and the special law of procedure when it sues or issued in another country. **ILR (1957) 3 Cal 113 : A I R 1956 Cal 216 (218) (Pt C) (Prs 21, 22) (DB).**

30. Conflict between Municipal and International laws.

——Art. 51 — Conflict between municipal law and other laws.

Assuming that according to the Anglo-Tibet Regulations of 1914 free export to Tibet (out of India) of articles not specifically referred to in Cl (8) was permitted, it does not appear that so far as Indian citizens are concerned, it received statutory recognition and became a part of the municipal law of India. There is apparent repugnance between the implied provision of the Anglo-Tibet Trade Regulations, 1914, permitting free trade between the two countries on the one hand, and the subsequent Indian Statutes, e.g., Essential Supplies Act, 1948 and the numerous Orders issued thereunder, the Imports and Export (Control) Acts of 1945 and 1947 and Notification No. 91-C W. (1)/51, dated 7th July 1952 putting restrictions on such free trade on the other and it is not easy to reconcile the divergent sets of provisions.

The maxim 'generalia specialibus non derogant' does not apply to such a case as it was not a case of conflict between two Indian statutes only—the prior enactment being special and the subsequent enactment being general. The conflict in the present case went deeper in that there was a conflict between non-Indian law, assuming for a moment that the implied provisions of Anglo Tibet Trade Regulations, 1914, constituted law, and subsequent Indian statutes. The language of the Indian statutes was clear enough; in the interests of India, they sought to put restrictions in the way of trade between India and other countries. If that language was in conflict with any principle of international law as was said to be deducible from the implied provisions of the Anglo-Tibet Trade Regulations of 1914, municipal Courts of India had to obey the laws passed by the Legislature of the country to which they owed their allegiance.

In interpreting and applying municipal law, these Courts would try to adopt such a construction as would not bring it into conflict with rights and obligations deducible from rules of international law. If such rules or rights and obligations are inconsistent with the positive regulations of municipal law, municipal Courts cannot override the latter. **1954 Cr L J 1722 : 58 Cal W N 659 : A I R 1954 Cal 591 (597, 598) (Pt H) (Pr 19) (DB).**

——Art. 51 — Right of innocent passage under International Law — Traveller from Colombo to Genoa touching port of Cochin en route found in possession of contraband currency — Contravention of municipal law — Municipal law is in conflict with international law — Law to be applied — Court must decide in accordance with Municipal law. See Sea Customs Act (1878), S. 167. **1960 Cr L J 600 : A I R 1960 Ker 170.**

——Art. 51 — International Law — (Private) — Suit against foreigner — Rule of private international law if subject to rules of Municipal law. See Civil P. C. (1908), S. 20 (c). **AIR 1957 Pat 256 (DB).**

——Art. 51 — Conflict of jurisdiction.

It is a matter of great public importance that there should be as far as possible no conflict or clash of jurisdiction between two equally competent authorities. The principle at stake is the principle of comity. In the matter of construction of a statute the presumption is that the legislature did not intend that the statute should be inconsistent with the principle of comity or with the established principles of international law. **1953 B L J R 732 : 33 Pat 22 : AIR 1954 Pat 262 (264) (Pt A) (Pr 6) (DB).**

ARTICLE 53

——Art. 53 — Functions of Government — Executive, legislative and judicial functions — Distinction — Functions which are not legislative or judicial must be regarded as executive. Jayantilal Amratlal v. F. N.

Rana, (1964) 5 Guj L R 481 : (1964) 2 S C A 284 : AIR 1964 S C 648 (655, 656) (Pt B) (Prs 10, 11).

● —Art. 53—Scope of executive power—Executive power not confined to carrying out of laws—Power of executive Government to carry on trade or business without specific legislation sanctioning such course—Held, in the circumstances the carrying on of the business of printing and publishing text books could not be said to be beyond the competence of the executive Government without a specific legislation sanctioning such course. See Ibid, Art. 162. AIR 1955 S C 549.

——Arts. 53 and 77 (1) and 258 (1) — Acquisition of land for union purpose—Appropriate Government to issue notification is Central Government—Notification issued by State Government is invalid in absence of valid delegation by Central Government—Delegation of powers by Central Government under Land Acquisition Act — Mode of — Notification, dated 29th March, 1952, by Central Government under Art. 258 (1)—Held, the notification was invalid. See Land Acquisition Act (1894), S. 3 (ee). **A I R 1962 All 208.**

——Art. 53—President and Governor — Meaning — The words, "President" and "Governor" appearing in Art. 310 should not be understood as the President and Governor in person. Those words have to be understood in symbolical sense. The word 'Governor' in Art. 310 denotes the executive power of the State. Even where an authority (not being the Governor) duly empowered in this behalf dismisses a subordinate civil servant, Art. 310 will be attracted. See Ibid, Art. 310. AIR 1959 All 771.

● ——Arts. 53 (1), 154 (1), 289 (2), (3) and 298 — "Executive power", meaning of — Right of State Government to provide buses for passenger transport for hire—Nationalisation of transport business, if executive act—Motor Vehicles Act, 1939, S. 47.

Per Malik C. J.—In a written Constitution the executive power must be such power as is given to the Executive or is implied, ancillary or inherent. It must include all powers that may be needed to carry into effect the aims and objects of the Constitution. It must mean more than merely executing the laws.

As incidental to the ordinary functions of Government or merely as a trade or a business venture the State has a right to hold and manage its own property and carry on such trade or business as a citizen has the right to carry on so long such activity does not encroach upon the rights of others or is not contrary to law. If in the interest of the general public and to provide them with transport amenities the State decides to run transport buses, it would only be discharging one of its primary duties. It is not necessary to have a specific Act before a State Government can provide buses for transport of passengers for hire.

This is clear from the provisions of Cls. 2 and 3 of Art. 289.

But nationalisation of any industry (transport) does not appear to be possible without legislation, since it would be an infringement on the rights of the citizen and, therefore, nationalization must be by legislation, which would probably have to be justified under the provisions of Art. 19 (6) of the Constitution.

Per Mootham and Wanchoo JJ.—Although an executive act by a State Government may not be authorised by legislative enactment it will nevertheless be within the executive power of the State, if—(i) it is not an act which has been assigned in the Constitution to the legislature; the judiciary or the Public Service Commission; (ii) it is not contrary to the provisions of any law; and (iii) it does not encroach upon or otherwise infringe the legal rights of any member of the public.

Per Sapru J. — The executive power of the Indian Union and the States has to be gathered not from our fixed notions of what the prerogative powers of the Crown are and were as applicable to India before 26-1-1950, but from the text of the Constitution itself. In determining the extent of executive power it is permissible for Courts to take into account the nature of the relationship between the executive and the Legislature, contemplated by a particular Constitution.

Per Agarwala J.—The mere fact that the Government has launched upon the policy of nationalization of motor transport services and has put its own buses in the field to achieve that end is not a valid consideration for the Regional Transport Authority in determining an application under S. 47. Moti Lal v. Govt. of Uttar Pradesh, **ILR (1951) 1 All 269 : A I R 1951 All 257 (266, 267, 271, 281, 282, 309, 322) (Pt F) (Prs 43, 44, 47, 48, 49, 69, 112, 261, 356) (FB)**

——Art. 53 — Granting of sanction is executive act—Exercise of executive power through subordinates—Sanction signed by secretary to Government Sanction not expressed in the name of President—Sanction held valid. See Criminal P. C. (1898), S. 197. **AIR 1958 Andh Pra 643.**

——**Art. 53**—Letters Patent, Cl. 12 — Carry on business—Government Railway — Government does not carry on business. AIR 1956 Assam 85, Dissented from. See Letters Patent (Cal) Cl. 12. **AIR 1960 Cal 430.**

——**Arts. 53, 3, 73** — Scope of — Adjustment of boundaries between foreign States — Limitations to the exercise of executive power — Sanction of Parliament. See Ibid, Art. 226. **AIR 1959 Cal 506.**

——**Art. 53, Sch. 7, List 1, Entry 14 — Treaty with Sovereign State—Nature of—Does not require legislation by Parliament for validity.**

Making a treaty is an executive act and not a legislative act. Legislation may be and is often required to give effect to the terms of a treaty. Thus if a treaty say, provides for payment of a sum of money to a foreign power, legislation may be necessary before the money can be spent; but the treaty is complete with the legislation.

Entry 14 of List I in Sch. 7 provides for all legislation in connection with entering into treaties. This cannot however justify the conclusion that the makers of the Constitution intended that no treaty should be entered into unless the Parliament has legislated on the matter. The power of legislation on the matter of entering into treaties leaves untouched the executive power of entering into treaties. **ILR (1956) 1 Cal 493 : 59 C W N 107 : AIR 1954 Cal 615 (616) (Pt B) (Pr 9) (DB).**

——**Art. 53 — Treaty — Nature of — Jurisdiction of Court—(Civil P. C, (1908), S. 9.)**

When the President, in whom Art. 53 of the Constitution vests all the executive power of the Union, has entered into a treaty, the Municipal Courts cannot question the validity of the treaty. **ILR 1956) 1 Cal 493 : 59 C W N 107 : AIR 1954 Cal 615 (617) (Pt C) (Pr 10) (DB).**

——Art. 53—Collector fixing dates for election—Subsequent postponement of election on Government directive — Legality — Executive powers of Government—Extent of—See Panchayats—M B Panchayat Act (58 of 1949), S. 9 **AIR 1956 Madh-Pra 163.**

——**Art. 53 — Executive and other branches of Government—Relations between.**

The Constitution of India has not enshrined the doctrine of separation of powers in its absolute rigidity but the functions of the different parts or branches of the Government have been sufficiently differentiated so that functions belonging to one part cannot be assumed by the other part. A I R 1955 S C 549,

Rel. on. 1956 Mad W N 180 : 69 Mad L W 75 : (1956) 7 S T C 105 : (1956) 1 Mad L J 339 : ILR (1956) Mad 1123 : AIR 1956 Mad 298 (301) (Pt D) (Pr 16) (DB).

——Arts. 53, 73, 154 and 162 — Executive and judiciary—Conflict—Duty of executive.

Satyanarayana Rao J.: The Court is not concerned with person or personalities and has to administer justice according to law without consideration of the character of the person who invokes its jurisdiction. The executive is as much bound to obey the law as an ordinary citizen and show respect to the law. The judiciary being only another limb of the Government it is as much the duty of the executive as that of anybody else to maintain the dignity of the Court and see that its prestige is not lowered in the eyes of the public by flouting the judgment of the Courts. AIR 1948 Bom 417, AIR 1949 Pat 247 and AIR 1915 P C 106 (2), Rel. on.

Raghava Rao J. : While this Constitution does not in so many words provide for a separation of powers in the strict sense of the term between the legislature, the judiciary and the executive, there are specific provisions in regard to the three heads of powers embodied in different portions of the Constitution which have to be read together. Whatever the relative degrees of importance enjoyed by the three organs of State the powers of each one of them have to be exercised as fundamentally subject to the provisions of the Constitution relating to the organ individually as well as to the provisions relating to the other organs.

Whatever the limits within which the judiciary in this land can function in relation to the Union Parliament and State Legislatures and whatever the residual powers of the executive under the Constitution over and above what is defined in the specific articles thereof there is no doubt that the executive must needs respect the decisions of the judiciary and can only avoid as in England, their due operation by appropriate legislation. In India as in England it is the business of the Courts to apply the Constitution and the laws and in cases properly brought before them the judiciary exercises control over the executive action in so far as to refuse to uphold as valid any act of government which is not supported by the Constitution or by some law The authority of the Courts as regards the executive action arises when the executive exceeds its authority in which case the agents and instruments through which the action is carried out are personally responsible to law and the Courts. AIR 1915 P C 106 (2), applied.

While on the one hand it is not the business of the Courts to pass judgments on the policy of executive action, the executive on the other hand has no authority to pass verdict upon the validity of a judgment but must assist in enforcing the judgment even though the executive may believe it to be erroneous. (1916) 1 K B 595, AIR 1931 P C 248 and 22 Mad 270 (PC), Ref. to.

It is the respect that is accorded by one organ of the State to the others that ensures that healthy working of the Constitution which is the acid test of its merits whatever the paper value of its provisions. 65 Mad L W 876 : (1952) 2 Mad L J 690 : 1953 Cri L J 224 : AIR 1953 Mad 4 (46, 47, 48, 52, 53) (Pt B) (Prs 9, 10, 22, 22a, 23) (DB).

——Art. 53—Presidential orders under Art. 359 (1)—Validity. See Ibid Art. 359 1966 Cri L J 929: (1965) 2 Mys L T 584 : AIR 1966 Mys 207.

——Art. 53 -Officers subordinate to him — Minister of a State is an officer subordinate to the Governor. See Ibid, Art. 154. AIR 1958 Punj 302.

ARTICLE 58

● ——Arts. 58 (1) and 102 (1) (a)— Construction and scope—Distinction—'Office of profit'—What is—Tests—Mohatmin (Manager) of Madarsa Durgah Khawaja Sahib Akbari under Act 36 of 1955—If holds office of profit under Government of India. See Ibid, Art. 102 (1) (a). AIR 1958 S C 52.

——Art. 58 (2)—Orissa Gram Panchayats Act (15 of 1948), S. 10 (9) (c)—Office of profit — Election of Sarpanch—Deed writer licensed under Orissa Licensing of Deed Writers' Rules, 1950 is not a person holding office of profit. ILR (1961) Cut 391 : (1961) 3 Ori J D 248 ; (1961) 27 Cut L T 301 : AIR 1961 Orissa 205 (207, 208) (Prs 5, 8) (DB).

——Arts. 58 and 102 (1) — Office of profit— Office of Oath Commissioner in Rajasthan State — (Representation of the People Act (1951), S. 9).

The office of an Oath Commissioner in Rajasthan is an office of profit under the Government of Rajasthan. An Oath Commissioner holds an office. As that office brings a profit to the holder thereof, it must be held to be an office of profit.

The definition of 'appropriate Government' in S. 9 (1) (a), Representation of the People Act, 1951, cannot control Art. 102 of the Constitution. The word 'Government' used in Art. 102 must be read widely to include all the three functions of Government, namely, executive, legislative and judicial and an office of profit held under any of the three branches of Government would be an office under the Government of India or the Government of a State. This of course excludes the legislators themselves. From the very nature of things, these will have to be excluded and such others as Parliament may by law exclude as provided in Art. 102 (1) (a) itself. AIR 1958 S C 52, Disting.

What Art. 102 emphasizes is the holding of office in fact and the defect in an order of appointment relating to the holder of an office would not make any difference. ILR (1958) 8 Raj 875 : (1959-60) 15 Ele L R 55 : 1959 Raj L W 337 : AIR 1959 Raj 227 (228, 229, 230) (Pt B) (Prs 8, 10, 12, 13, 14, 16) (DB).

ARTICLE 59

——Arts. 59 (2), 58 (2), 64 and 66 (4) (a)—Disqualification for contesting election — Principle Orissa Gram Panchayat Act (15 of 1948), S. 10 (g) (c)—Election of Sarpanch Deed writer licensed under Orissa Licensing of Deed Writers' Rules, 1950—Not a person holding office of profit. ILR (1961) Cut 391 : (1961) 3 Ori J D 248 : (1961) 27 Cut L T 301 : AIR 1961 Orissa 205 (207, 208) (Prs 5, 8) (DB).

ARTICLE 64

——Art. 64—Orissa Gram Panchayat Act (15 of 1948), S. 10 (9) (c) — Election of Sarpanch — Deed writer licensed under Orissa Licensing of Deed Writers' Rules, 1950 is not a person holding office of profit. ILR (1961) Cut 391 : (1961) 3 Ori J D 248 : (1961) 27 Cut L T 301 : AIR 1961 Orissa 205 (207, 208) (Prs 5, 8) (DB).

ARTICLE 71

● —Art. 71 (1)—Presidential and Vice-Presidential Elections Act and O. 37 A, Supreme Court Rules, if ultra vires — (Presidential and Vice-Presidential Elections Act (1952), S. 18) —(Supreme Court Rules, O. 37-A).

Article 71 (1) merely prescribes the forum in which disputes in connection with the election of the President and Vice-President would be enquired into. It does not prescribe the conditions under which the petition for setting aside an election could be presented. Presidential and Vice Presidential Elections Act, S. 18 of which prescribes such conditions and the Rules in O 37-A of the Supreme Court Rules, therefore, do not derogate from the jurisdiction of the

Supreme Court under Art. 71 (1) and are not ultra vires; and a petitioner has no right to move for setting aside an election except in accordance with the provisions of the Presidential and Vice-Presidential Elections Act. He has no right as a citizen to approach the Supreme Court under Art. 71 (1) whenever an election is held in breach of the constitutional provisions. He must bring himself within the four corners of the Act and has no rights apart from it. Dr. N. B. Khare v. Election Commission of India, (1958) S C J 278 : 1958 S C A 287 : 1958 S C R 648 : AIR 1958 S C 139 (140) (Pt B) (Prs 4, 5).

● ——Arts. 71 (1) and 327 — Powers of Supreme Court—Enquiry as to and decision of 'doubts and disputes arising out of or in connection with election'—Time for enquiry is after entire process of election—(Presidential and Vice-Presidential Elections Act (1952), S. 18).

Article 71 (1) confers jurisdiction and power on the Supreme Court to inquire into and decide 'all doubts and disputes arising out of or in connection with the election of a President or Vice-President.' The word 'election' occurring in Art. 71 (1) must be given the same wide meaning as comprising the entire election process culminating in a candidate being declared elected, therefore the inquiry is to be made after such completed election, i. e., after a candidate is declared to be elected as President or Vice-President as the case may be. In exercise of powers conferred on it by Art. 71 (3), Parliament has enacted the Presidential and Vice-Presidential Elections Act, 1952 to regulate certain matters relating to or connected with elections to the office of President and Vice-President of India. The time for the exercise of jurisdiction by this Court to inquire into and decide doubts and disputes arising out of or in connection with the Presidential Election is after the entire election process is completed. The well-recognised principle of election law, Indian and English, is that election should not be held up and that the persons aggrieved should not be permitted to ventilate his individual interest in derogation of the general interest of the people, which requires that elections should be gone through according to the time schedule. Dr. Narayan Bhaskar Khare v. Election Commission of India, 1957 S C J 663 : 1957 S C R 1081 : 1957 S C C 344 : 1956 S C A 953 : AIR 1957 S C 694 (697, 698) (Pt A) (Prs 8, 9, 10).

● ——Arts. 71 (1) and 329 (b)—Difference in drafting.

There is an important difference between article 71 (1) and article 329 (b). Article 71 (1) had to be in an affirmative form, because it confers special jurisdiction on the Supreme Court which that Court could not have exercised but for this article. Article 329 (b), on the other hand, was primarily intended to exclude or oust the jurisdiction of all courts in regard to electoral matters and to lay down the only mode in which an election could be challenged. The negative form was therefore more appropriate, and, that being so, it is not surprising that it was decided to follow the pre-existing pattern in which also the negative language had been adopted. Ponnuswami N. P. v. Returning Officer, Namakkal, 1952 Mad L R (Civ) 109 : 90 Cal L J 160 : (1952) S C A 332 : 65 Mad L W 760 : 1952 Mad W N 209 : 1952 S C J 100 : 1952 S C R 218 : 1952-1 Mad L J 775 : AIR 1952 S C 64 (72) (Pt C) (Pr 25),

ARTICLE 72

● ——Arts. 72, 161, 238, 362 and 372 (1)—Prerogative of Maharaja of Cochin relating to execution of death sentences — Prerogative if consistent with Constitution — Prerogative if stands repealed—Applicability of Art. 362 — Criminal P. C. (1898), Ss. 401, 402 and 402-A. ILR (1955) Trav-Co 788 affirmed.

The continuance of the law contemplated by Art. 372 (1) is subject to the other provisions of the Constitution; and the continuance is only until altered or repealed or amended by a competent Legislature. In the light of the provisions contained in Arts. 72, 161 and 238 the continuance of the prerogative of the Maharaja of Cochin relating to the execution of the death sentences with reference to the ex-State of Cochin would be inconsistent with the new Constitution. Such power, therefore, must be taken to have been superseded and abrogated as stated in the last para. of the Proclamation dated 24th November. 1949, issued by the Raj Pramukh of Travancore-Cochin. It would follow that Art. 21 of the Covenant of 29th May 1949, entered into between the Rulers of Travancore and Cochin no longer survives. Further, the Code of Criminal Procedure and along with it Ss. 401, 402 and 402-A thereof, relating to commutation of sentences, having been made specifically applicable by the Code of Criminal Procedure (Amendment) Act, 1951, to all Part B States the prerogative under the old Cochin Law must in any case be deemed to have been repealed or abrogated by competent legislative authority after the coming into force of the Constitution. Art. 362 has no bearing. Thaivalappil Kunjuvaru Vareed v. The State of Travancore-Cochin, 1956 S C J 166 : (1955) 2 S C R 1022 : 1956 Ker L T 101 : 1956 S C A 488 : 1956 Cr L J 315 : AIR 1956 S C 142 (144, 145) (Prs. 4, 5).

——Arts. 72 and 73 — Order of Governor commuting death sentence confirmed by High Court—Validity—Mandamus directing State to execute death sentence—Cannot be issued. See Ibid, Art. 226. 1962 (1) Cr L J 241 : AIR 1962 All 151.

——Arts. 72 and 161— Power of Governor in respect of pardons. Art. 161 read in conjunction with para 2 of Art. 72 shows that Governors, in regard to matters to which the executive power of the State extends, have powers similar to those of the President. See Ibid, Art. 161. AIR 1960 Andh Pra 259 (SB).

● ——Art. 72—'Remit'—Meaning of—Death sentence—If can be remitted. See Criminal P. C. (1898), S. 401. AIR 1960 Andh Pra 259 (SB).

● ——Arts. 72 and 161—Effect of pardon.

When a convicted person is pardoned, he is free both from the punishment imposed on him as also from all penal consequences and such disqualifications, as disentitle him from following his occupation and which are concomitant of the conviction are removed. 24 Law Ed 442, 24 G. B. D. 561, Rel. on. Deputy Inspector-General of Police v. D. Rajaram, 1960 Cri L J 565 : I L R (1959) Andh Pra 1294 : (1959) 2 Andh W R 526 : 1959 Andh L T 916 : A I R 1960 Andh Pra 259 (261) (Pt A) (Pr 11) (SB).

● ——Art. 72—Amnesty—Meaning.

The word 'amnesty' means a general pardon. Deputy Inspector-General of Police v. D. Rajaram, I L R (1959) Andh Pra 1294 : (1959) 2 Andh W R 526 : 1959 Andh L T 916 : 1960 Cr L J 565 : AIR 1960 Andh Pra 259 (262) (Pt E) (Pr 17) (SB).

——Arts. 72 and 161—Scope—Power of Governor to grant pardon.

Articles 72 and 161 of the Constitution can only be reconciled by limiting the power of the Governor to grant pardon to cases not governed by Art. 72. If so read, the President alone has the exclusive power to grant pardons, reprieves, respites in all cases where the sentence is a sentence of death and both the President and the Governor have concurrent power in respect of suspension, remission and commutation of

a sentence of death. The power of the Governor to grant pardons, reprieves and respites in all cases where the sentence is not a sentence of death, and to suspend, remit or commute the sentence of any person is co-extensive with the executive power of the State. It therefore follows that the Governor has the power to grant a pardon or remit the sentence of a person who is transported for life. 1956 Andhra W R 1071 : 1957 Cr L J 822 : AIR 1957 Andh Pra 249 (251) (Pt A) (Pr 4) (DB).

——Arts. 72 and 161—Pardon granted to a convict — He is free both from punishment and all penal consequences and disqualifications. 1956 Andh W R 682.

[Reversed on another point in AIR 1960 Andh Pra 259.]

● ——Arts. 72 and 161 — Power of pardon, etc.—Scope—Exercise of power during pendency of judicial proceeding—Legality.

Having regard to the language used in Arts. 72 and 161 of the Indian Constitution, which is similar to that used in S. 295 (2) of the Government of India Act and Art. II of the American Constitution the framers of the Indian Constitution intended to confer on the President and the Governors, within their respective spheres, the same power of pardon, reprieve and clemency both in its nature and effect, as is possessed by the Sovereign in Great Britain and by the President in the United States. The power of pardon and the other allied but lesser powers of reprieve, suspension of sentence, etc., can be exercised before, during or after trial. AIR 1954 Mad 911, Rel. on. The powers conferred by Art. 161 are also such that any order made in exercise of those powers must necessarily affect or alter the effect of the judgment of a Court. Consequently, an order made under Art. 161 cannot be held to be illegal, merely because there is a conflict between it and the order made by a Court. State v. Kawas Manekshaw Nanavati, 62 Bom L R 383 : I L R (1960) Bom 915 : 1960 All Cr R 226 : 1960 Nag L J 371 : 1960 All W R (Sup) 27 : 1960 Cr L J 1558 : A I R 1960 Bom 502 (507, 508) (Pt C) (Prs 15, 17) (FB).

● ——Arts. 72 and 161 — Power of Governor under Art. 161 in respect of offences under Penal Code.

The power of the Governor under Art. 161 in respect of offences under the Penal Code is not taken away by Art. 72 except perhaps a power to grant a pardon, when a sentence of death has been passed. State v. Kawas Manekshaw Nanavati, I L R (1960) Bom 915 : 62 Bom L R 383 : 1960 Nag L J 371 : 1960 All W R (Supp) 27 : 1960 All Cr R 226 : 1960 Cr L J 1558 : AIR 1960 Bom 502 (512) (Pt J) (Pr 36) (FB).

——Art. 72 — Remission of sentence—Recommendation by Court.

The Court is concerned only with the passing of the sentence; to carry it into effect is the function of the executive Government. It is up to them to decide whether they should invoke their powers of granting remission in a particular case. 1957 Ker L J 404 : 1957 Ker L T 418 : 1957 Mad L J (Cri) 321 : 1957 Cri L J 852 : AIR 1957 Ker 102 (103) (Pt B) (Pr 4).

——Arts. 72, 161 and Preamble — Cognate and analogous law—American decisions—Use of.

In many respects the power of pardon and reprieves conferred under the Indian Constitution by Art. 72 on the President and by Art. 161 on the Governor of State is very similar to the power of the President of the United States of America in granting pardons and reprieves. The wording of the corresponding articles is also similar and such being the case, decisions of the United States Supreme Court are useful in the decision of questions with respect to the power of pardon and reprieves conferred under Arts. 72 and 161. 1954 Mad W N 337 : (1954) 2 M L J 166 : 1954 Cr L J 1370 : ILR (1955) Mad 92 : AIR 1954 Mad 911 (913) (Pt B) (Pr 6) (DB).

——Arts. 72, 161 — Pardon — Power—Nature and extent of—Amnesty pending reference for confirmation of sentences—Effect—(Criminal P. C. (1898), S. 401).

Under Arts. 72 and 161 the Head of the State is given authority by means of an executive act to tender pardons and reprieves and those functions can be exercised even before conviction. How far a general jail delivery is wise, justified or expedient in circumstances prevailing in the country is a matter perfectly within the discretion and decision of the executive authorities, and need not be discussed, or decided by Courts of law whose functions are entirely judicial.

Therefore, the release of the prisoners condemned to death, as a result of a general amnesty granted by the State Government, when their trials were referred for confirmation of their sentences by the High Court does not amount to an act of interference with the due and proper course of justice, as even after their release the power of the High Court to pronounce upon the validity, propriety and correctness of the convictions and sentences remains unaffected. American case-law relied on. 1954 Mad W N 337 : (1954) 2 M L J 166 : 1954 Cr L J 1370 : I L R (1955) Mad 92 : A I R 1954 Mad 911 (915, 918) (Pt C) (Prs 12, 13, 25) (DB).

——Arts. 72 and 161 — Powers under—Nature of — Executive or judicial.

The powers conferred under Arts. 72 and 161 to grant pardons, suspend, remit or commute sentences, etc., of any convict, are obviously judicial in nature and they are to be exercised by the President or the Governor in the exercise of executive functions and that also not in accordance with rules of natural justice, i. e., not after hearing the parties concerned. It cannot be seriously urged that when the President or the Governor of a State exercises these powers he is doing so as a judicial or quasi-judicial authority. 59 Punj L R 199 : AIR 1958 Punj 302 (304) (Pt E) (Pr 5).

——Arts. 72, 161, 238, 362 and 372—Scope—Travancore Cochin Covenant, Art. 21— Power of Maharaja of Cochin to grant suspension, remission or commutation of sentence cannot be invoked or exercised after commencement of Constitution.

After the commencement of the Constitution of India, the Maharaja of Cochin can no longer invoke the powers under Art. 21 of the Covenant. Notwithstanding the integration of the two States of Travancore and Cochin Art. 21 of the Covenant retained in the Maharaja of Cochin the powers of suspension, remission or commutation of death sentences passed in respect of offences committed in the territory of Cochin, but those powers cannot survive the passing of the Constitution of India, after which no power of sovereignty continues to vest in the members of the Princely Order. After the commencement of the Constitution no individual or body or institution in the territory of India can exercise any executive or judicial or legislative power unless the Constitution confers it or countenances its exercise. The Constitution confers these powers on no other authority or dignitary than those specified in Arts. 72, 161 and 238 viz., the President, Governor of a State and the Rajpramukh. The Covenant, assuming it is law within the meaning of Art. 372, can prevail only subject to the provisions of the Constitution, and when the Constitution confers these powers on specified authorities it is not proper to construe the powers

under Art. 21 of the Covenant to survive after the commencement of the Constitution. ILR (1955) Trav-Co 788 : 1955 Ker L T 727.

ARTICLE 73

● ——Art. 73—Law—Notification by President under Art. 258 (1) of the Constitution held to have force of law — Commissioner appointed under notification under Art. 258 (1) could appoint Additional Special Land Acquisition Officer as Collector for purposes of S. 5-A, Land Acquisition Act.

By Entry 42, List 3 the subject of acquisition of property falls within the concurrent List and the Union Parliament has power to legislate in respect of acquisition of property for the purpose of the Union, and by virtue of Art. 73 (1) (a) the executive power of the Union extends to the acquisition of property for the Union See Bombay Reorganisation Act (1960), S. 87. AIR 1964 SC 648.

● ——Art. 73—Scope of executive power—Executive power not confined to carrying out of laws—Power of executive Government to carry on trade or business without specific legislation sanctioning such course—Functions of Executive indicated. See Ibid, Art. 162. AIR 1955 SC 549.

——Arts. 73, 226, 72, 161, 162 and 246 — Order of Governor commuting death sentence which was confirmed by High Court—Validity—Mandamus directing State to execute death sentence—Cannot be issued. See Ibid, Art. 228. AIR 1962 All 151.

——Art. 73 (1) —Central Government can validly delegate, under Art. 258 (1) read with Arts. 73 (1) and 246 (1), its functions under S. 7, Explosive Substances Act, to State Governments - Consent given by Governor of State under S. 7 for prosecution under Act after delegation is not open to challenge. See Ibid, Art. 258 (1). AIR 1962 Andh Pra 322.

——Arts. 73, 162, 298 and 297—Scope—State Government issuing notification reserving mining area for public sector—Validity—Right of Government to carry on trade—(Mineral Concession Rules (1949), Rr. 13, 17)—(Mines and Minerals (Regulation and Development) Act (1948), S. 5).

Article 73 indicates the extent of the executive power of the Union while Art. 162 deals with the executive power of a State and Art 298 further extends the scope of the executive power of the Union and of each State. Article 297 lays down that all lands, minerals and other things of value underlying the ocean within the territorial waters of India, shall vest in the Union and be held for the purposes of the Union.

Held, that the notification of the Andhra Pradesh Government G. O. Ms. No. 1617 Industries, dated 17th December, 1957, titled 'Reservation of certain areas of Krishna District in Jaggayyapet Taluk for public sector' was issued in pursuance of the Industrial Policy Resolution of the Government of India and with their prior approval and therefore there was no constitutional inhibition in regard to the action taken by the State Government. The State Government has power to carry on trade or business as prescribed by Art. 298 as amended in its present form by the Constitution (7th Amendment) Act, 1956. AIR 1955 S C 549, Rel. on. It cannot be contended that the resolution passed by the Government of India, which was given effect to by the State of Andhra Pradesh, is bad for want of legislative sanction. Article 298 of the Constitution clothes the Union and State Governments with the power to carry on any trade or business. Rr. 13 and 17 of the Mineral Concession Rules, 1949 and S. 5 of the Mines and Minerals (Regulation and Development) Act, authorise the State to undertake the exploitation of mineral resources. AIR 1959 Andh Pra 485 (486, 487) (Prs 6, 7, 8, 9, 10).

● ——Arts. 73 (1), Proviso—(As amended by Constitution (Seventh Amendment) Act, (1956))—Acquisition of land within State area for purposes of Union—Delegation of power by Central Government to State Government under Art. 258 — Validity—Scope of Arts. 73 (1), Proviso, 298. See Ibid, Art. 258. AIR 1961 Assam 133 (FB).

——Art. 73 — Issuing passport — Function vests in Union of India—Art. 14 applies also to executive acts —Union has no unfettered discretion in the matter—Order refusing passport to some citizens Held discriminatory and invalid. See Ibid, Art. 14. 67 Bom L R 544 : 1965 Mah LJ 834 : AIR 1966 Bom 54.

——Art. 73—Exercise of power under S. 6 (4) (a) of Bombay Land Requisition Act by State Government—Validity. See Houses and Rents — Bombay Land Requisition Act (33 of 1948), S. 6 (4) (a). AIR 1953 Bom 337 (DB).

——Arts. 73 and 162—Executive power not confined to carrying out laws.

Articles 73 and 162 of the Constitution do not contain any definition as to what executive function is and what activities would legitimately come within its scope. The two Articles are concerned primarily with the distribution of executive power between the Union on the one hand and the States on the other. They do not mean that it is only when the Parliament or the State Legislature had legislated on the items pertaining to their respective lists, that the Union or the State executive, as the case may be, can proceed to function in respect to them. The language of Art. 73 clearly indicates that the powers of the Union executive do extend to matters on which the Parliament is competent to legislate and are not confined to matters over which the legislation has been passed already. The same principle underlies Art. 162 of the Constitution. AIR 1955 S C 549, Foll.

An acquisition of land was made by the State for the purpose of establishing a slaughter house and a drug factory. The purpose behind the latter project was stated to be to save foreign exchange.

Held, that it could not be said that the establishment of a slaughter house and a drug factory could not be a State purpose and a State ought not to establish the same. The Union and the State could launch upon such projects. 67 Cal W N 460 : A I R 1963 Cal 565 (570, 571) (Pt D) (Pr 19).

——Art. 73—Notification No. 4/3-58 (1) F I dated 19-4-1958 entrusting power under S. 3 of Foreigners Act to State Government—Validity of. See Ibid, Art. 258. AIR 1963 Cal 369.

——Art 73 — Scope of — Adjustment of boundaries between foreign States—Limitations to the exercise of executive power — Sanction of Parliament. See Ibid, Art 226. AIR 1959 Cal 506.

——Art. 73 (2) — Offences under Explosive Substances Act—Power to give consent for trial of such offences under S. 7 of that Act delegated by the Central Government under S. 124 (1), Government of India Act, 1935, to Provincial Governments — Exercise of such power after the Constitution — (Government of India Act (1935), S. 124(1)) —Explosive Substances Act (1908), S 7.

The effect of Art. 73 (2) is that the power the State of West Bengal had, to give consent to a prosecution under the Explosive Substances Act before the commencement of the Constitution, which power was

delegated to it by the Central Government under S. 124 (1), Government of India Act, 1935, continued even after the Constitution came into force. Hence, a consent given by the West Bengal Government to a trial of the accused for offences under Ss. 3 and 5, Explosive Substances Act before the Constitution is a legal and valid consent even after the Constitution came into force. I L R (1957) 3 Cal 1 : 1955 Cri L J 1348 : AIR 1955 Cal 535 (540) (Pt D) (Pr 17) (DB).

——Art. 73—'Laws in force'—Entrustment of power under Art. 258 (1)—Nature of—Whether executive in nature. See Bombay Reorganisation Act (11 of 1960), S. 87. AIR 1963 Guj 80 (DB).

——Arts. 73 and 162—Kerala Education Bill submitted for assent of President — Executive order embodying provisions of bill—Validity—Articles 73 and 162 of the Constitution do not mean that it is only when Parliament or the State legislature has legislated on matters within their respective limits that the Union or the State executive as the case may be can proceed to function in respect of them. See Ibid, Art. 162. A I R 1958 Ker 290.

——Art. 73—Collector fixing dates for election—Subsequent postponement of election on Government directive — Legality — Executive powers of Government - Extent of. See Panchayats — M. B. Panchayat Act (58 of 1949), S. 9. AIR 1956 Madh Bha 163.

——Art. 73—Executive and judiciary—Conflict—Duty of executive indicated. See Ibid, Art. 53. A I R 1953 Mad 41.

——Art. 73 — Disposal of applications for import licence — State Government constituting committee including State Government Officer who was acting as sponsoring authority under Import and Export (Control) Act - Order constituting committee amounted to encroachment upon exclusive jurisdiction of Union Government and sponsoring authority ought to have exercised its own individual judgment. See Ibid, Art. 226. AIR 1965 Mys 143 (DB).

ARTICLE 74

——Art. 74—'Aid and advise'—Meaning.

The expression 'aid and advise' in Art. 74 may apparently suggest that it is left to the President to accept the advice or ignore the same and thus the decision on all matters will be of the President himself. But on a true interpretation of the expression in the context of the relevant provisions of the Constitution it becomes abundantly clear that the function of Ministers or Council of Ministers is not merely giving advice; they can take decisions which must take effect. (1957) 2 Andhra W R 459: 1957 Mad L J (Cri) 700 : 1958 Andh L T 91 : 1958 Cri L J 1290 : A I R 1958 Andh Pra 643 (645) (Pt B) (Pr 4).

——Art. 74—Scope.

Though undoubtedly by virtue of Art. 74(1), the Prime Minister is at the head of the Council of Ministers and charged with the duty to aid and advise the President in the exercise of his function, it must be borne in mind that the executive power of the Union is vested in the President and all the executive actions of the Government of India are to be taken in the name of the President. I L R (1952) Nag 331 : 1954 Nag L J 327 : A I R 1952 Nag 301 (302) (Pt B) (Prs 6, 7).

ARTICLE 75

● ——Art. 75—President is a formal or constitutional head of the executive and the real executive powers are vested in the Ministers or the Cabinet. See Ibid, Art. 162. AIR 1955 S C 549.

● ——Art. 75 — Scope — Article 75 (3) and (5) shows that the approach of our Founding Fathers of the Constitution was basically different from that of those responsible for framing of the American Constitution. See Ibid, Preamble. AIR 1954 All 538 (FB).

[Reversed on another point in AIR 1961 S C 420.]

ARTICLE 77

● ——Art. 77—Scope—Art. 77(1) is directory—Order not complying with Art. 77 (2)—Order proved to be made by Deputy Secretary on behalf of Central Government in exercise of power conferred on him under Rules delegating such power to him — Order cannot be questioned.

Article 77(1) is only directory. Though an impugned order was not issued in strict compliance with the provisions of Art. 77 (1), it can be established by evidence aliunde that the order was made by the appropriate authority. If an order is issued in the name of the President and is duly authenticated in the manner prescribed in Art. 77 (2) there is an irrebuttable presumption that the order is made by the President. Where the impugned order does not comply with the provisions of Art. 77(2) it is open to the party to question the validity of the order on the ground that it was not an order made by the President and to prove that it was not made by the Central Government. Where however the evidence establishes that the order was made by the Deputy Secretary on behalf of the Central Government under the Rules relating to delegation of powers, the orders cannot be questioned. Major E. G. Barsay v. State of Bombay, (1962) 1 S C A 106 : (1962) 1 S C J 231 : 1962 Mad L J (Cri) 153 : (1962) 2 S C R 195 : 1961 (2) Cri L J 828 : A I R 1961 S C 1762 (1774, 1775, 1776) (Pt E) (Prs 25, 26).

● ——Art. 77 — Deputy Secretary having power to make some orders in his own right and to authenticate other orders issued in the name of the President —Deputy Secretary having power to accord sanction under S. 197, Criminal P. C. and S. 6 (1) (a) of the Prevention of Corruption Act (1947) in his own right — Order giving sanction ex facie showing that he did not authenticate it by order of the President—It must be held that he gave sanction in his own right. Major E. G. Barsay v. State of Bombay, (1962) 1 S C A 106 : (1962) 1 S C J 231 : 1962 Mad L J (Cr) 153 : (1962) 2 S C R 195 : 1961 (2) Cr L J 828 : AIR 1961 S C 1762 (1774, 1775, 1776) (Pt F) (Pr 25).

——Art. 77 (3) — Government in sub-article means executive. ILR (1955) 2 All 585 : AIR 1955 All 468 (469, 472) (Pt B) (Prs 3, 17) (DB).

——Art. 77 — Authentication of Government Orders —Sanction for prosecution of public officer, signed by Secretary to Government—Validity. See Criminal P. C. (1898), S. 197. 1958 Cri L J 1290 : AIR 1958 Andh Pra 643.

——Art. 77—Previous sanction to prosecute—Defect in form held did not vitiate sanction. See Prevention of Corruption Act (1947), S. 6. AIR 1954 Madh B 101.

——Art. 77 (1) — Clerical mistake or omission in notification—Correction of—Need not be expressed in name of President.

Mere correction of a clerical mistake or omission in a notification is only a ministerial act, and not an executive action of the Government of India, and according a corrigendum, which does not effect any change in the notification, need not be expressed in the name of the President. ILR (1959) Madh Pra 955 : 21 Ele L R 33 : 1961 M P C 104 : 1961 Jab L J 842 : 1961 M P L J 927 : AIR 1961 Madh Pra 84 (87) (Pt B) (Pr 8) (DB).

——Art. 77 (2)—Presidential orders under Art. 359 (1) — Validity. See Ibid, Art. 359. **(1965) 2 Mys L T 584 : 1966 Cr L J 929 : AIR 1966 Mys 207.**

——Art. 77 — Executive power of Union — Sindri Fertilisers and Chemicals, Ltd. — Labour Commissioner of Bihar — Jurisdiction to certify draft standing orders of company. See Industrial Employment (Standing Orders) Act (20 of 1946), S. 2 (b). **AIR 1959 Pat 36 (DB).**

——Art. 77 (2) — Order issued in name of Central Government and validly authenticated by Joint Secretary for and on behalf of President of India — Order could be said to have been made or executed by President. See Public Safety — Preventive Detention Act (1950), S. 3 (1) (a) (i). **1965 (2) Cri L J 119 : AIR 1965 Punj 270 (DB).**

ARTICLE 79

——Arts. 79, 12 and 194 (3) — Words "other authorities" as referred in Art. 12—Meaning of—House of Legislature is separate entity not coming under Art. 12 or 79. See Ibid, Art. 12. **ILR (1957) Bom 218 : 60 Bom L R 279.**

ARTICLE 80

——Art. 80—Provisions of Ss. 11, 15 and 17, Andhra Pradesh and Madras (Alteration of Boundaries) Act (1959) do not touch matters dealt with by Arts. 80, 81, 170 and 171 of the Constitution — There is no repugnancy between these sections and any of these articles of the Constitution—They are valid. **(1960) 2 Andh W R 479 : AIR 1961 Andh Pra 50 (54) (Pt E) (Pr 22) (DB).**

ARTICLE 81

● ——Art. 81 (1)—Modification of Art. 81 under Art. 370 (1) (d)—Constitution (Application to Jammu and Kashmir) Order (1954), Para. 5 (c) — Effect — Introduction of indirect election in place of direct election to seats in House of the People from State of Jammu and Kashmir not unconstitutional. See Ibid, Art. 370 (1) (d). **AIR 1961 S C 1519.**

——Art. 81 — Provisions of Ss. 11, 15 and 17 of Andhra Pradesh and Madras (Alteration of Boundaries) Act (1959) do not touch matters dealt with by Arts. 80, 81, 170 and 171 of the Constitution — There is no repugnancy between these sections and any of these articles of the Constitution — They are valid. **(1960) 2 Andh W R 479 : AIR 1961 Andh Pra 50 (54) (Pt E) (Pr 22) (DB).**

ARTICLE 83

● ——Art. 83 — Bicameral State Legislature — Legislative Assembly can be dissolved but Legislative Council is not subject to dissolution — Same is the position under Art. 83 in regard to the House of the People and the Council of States — English law distinguished. See Ibid, Art. 172 (2). **AIR 1962 S C 694.**

——Art. 83—Government can take steps for getting new House of the People elected even before existing House is dissolved — New House can start functioning only when existing House is dissolved or when its term comes to an end. See Representation of the People Act (1951), S. 73. **AIR 1963 All 363.**

ARTICLE 84

● ——Arts. 84 and 330—Representation of the People Act (1951), S. 32—Use of word 'seat' or of expression "fill a seat" in articles of Constitution or section of Act of 1951 do not mean that election is held by reference to two seats in double-member constituency. V. V. Giri v. Suri Dora, **AIR 1959 S C 1318 (1326) (Pt E) (Prs 18, 19).**

● ——Art. 84 — Preventive detention does not disqualify a member, and a person against whom an order under the Preventive Detention Act has been made can be elected as a member of either House of the Legislature and if so elected, such an order does not disqualify him from membership. See Ibid, Art. 105. **AIR 1952 Cal 632 (SB).**

ARTICLE 98

● ——Art. 98—Servants of Parliament—Art. 309 not applicable—Arts. 308 to 314 not exhaustive regarding all services. See States Reorganisation Act (1956), S. 115. **AIR 1965 Punj 444 (FB).**

ARTICLE 101

——Arts. 101 (4), 190 (4) — Defence of India Rules (1962), R. 30 (4) — Continued detention of members of Parliament and State Legislature, is valid even though they forfeit seats by continued absence.

Assuming, that the Parliament and the State Legislature both possess the power to declare a seat of a detained person vacant on account of his continued absence, when good cause for the same exists, but that does not establish the other proposition that such a person must not be kept in detention, even if law permits. AIR 1952 Cal 632 (SB), Ref. **(1965) 69 Cal W N 913 : 1966 Cri L J 826 (829) (Pt B) (Pr 18) (Cal).**

● ——Art. 101—Preventive detention whether a disqualification for membership. See Ibid, Art. 105. AIR 1952 Cal 632 (SB).

ARTICLE 102

● ——Art. 102 (1) (a) — 'Office of profit under the Government'—What constitutes — Person appointed auditor of Durgapur Projects, Ltd. or Hindusthan Steel Ltd., holds office of profit under the Government.

For holding an office of profit under the Government, one need not be in the service of Government and there need be no relationship of master and servant between them. The Constitution itself makes a distinction between the holder of an office of profit under the Government and the holder of a post or service under the Government. The Constitution has also made a distinction between the holder of an office of profit under the Government and the holder of an office of profit under a local or other authority subject to the control of Government. The decisive test for determining whether a person holds any office of profit under the Government is the test of appointment. The circumstance that the source from which the remuneration is paid is not from public revenue is a neutral factor—not decisive of the question. Whether stress will be laid on one factor or the other will depend on the facts of each case. However, where the several elements, the power to appoint, the power to dismiss, the power to control and give directions as to the manner in which the duties of the office are to be performed, and the power to determine the question of remuneration are all present in a given case, then it must be held that the officer in question holds the office under the authority so empowered.

The Hindustan Steel Ltd. and the Durgapur Projects Ltd. are Government Companies. The Comptroller and Auditor-General of India exercises full control over the auditors of a Government company. The Comptroller and Auditor-General is himself a holder of an office of profit under the Government of India, being appointed by the President and his administrative powers are such as may be prescribed by rules made by the President, subject to the provi-

sions of the Constitution and of any law made by Parliament. If we look at the matter from the point of view of substance rather than of form, an auditor as the holder of an office of profit in the two Government Companies, the Durgapur Projects Ltd. and the Hindustan Steel Ltd., is really under the Government of India. Thus he holds an office of profit under the Government of India within the meaning of Art. 102 (1) (a) of the Constitution. As such he is disqualified for being chosen as, and for being, member of either House of Parliament. A I R 1958 Mad 343; AIR 1958 S C 52 and A I R 1958 S C 937, Rel. on. **Guru Gobinda Basu v. Sankari Prasad Ghosal, (1963) 33 Com Cas 1132 : (1964) 1 S C W R 68 : (1964) 1 Com L J 87 : (1964) 1 S C J 259 : (1964) 2 S C A 188 : (1963) Cal L J 156 : A I R 1964 S C 254 (256, 257, 258, 259, 260) (Prs 7, 12, 14, 15).**

● **——Arts. 102 (1) (a) and 58 (1) — Office of profit under Government of India — Mohatmin (Manager) of Madarsa Durgah Khawaja Sahib Akbari under Act 36 of 1955, does not hold office of profit under Government of India — "Office of profit", tests — Distinction between Arts. 102 (1) (a) and 58 (1) — (Durga Khawaja Sahib Act (36 of 1955), Ss. 4, 6) — (Words and Phrases — "Office of profit".) Abdul Shakur v. Rikhab Chand, 1958 S C A 279 : (1958) 1 Andh W R (SC) 88 : 1958 S C J 329 : (1958) 1 Mad L J (SC) 88 : 1958 S C R 387 : AIR 1958 S C 52 (54, 55, 56) (Prs 6, 11, 12, 15, 16).**

● **——Art. 102 (1) (e) — Interpretation of S. 17 of Act (49 of 1951) — Applicability of Representation of the People Act (1951), S. 7 (d) — What would be a disqualification for a candidate being chosen to either house would be a disqualification to be chosen to the State legislature. See Government of Part C States Act (49 of 1951), S. 17. AIR 1954 S C 587.**

——Art. 102 — One seat to be filled contested by two candidates—Election of successful candidate declared void on ground that he was holding an office of profit under Government and therefore he was disqualified to be elected — Notification under S. 149 of Representation of the People Act (1951) issued for fresh bye-election — Petition under Art. 226 by unsuccessful candidate for directing Returning Officer to cancel notification and to declare petitioner elected is incompetent and misconceived — High Court cannot entertain it. See Ibid, Art. 329 (b). ('64) 68 Cal W N 270.

——Art. 102 — Office of profit — Firm appointed as auditors of Life Insurance Corporation of India, Durgapur Projects, Ltd. and Hindustan Steel, Ltd. Partner of such firm whether holds offices of profit. **('63) 67 Cal W N 558.**

——Arts. 102 and 133 (1) (a)—Office of profit— Firm appointed as auditors of Life Insurance Corporation of India, Durgapur Projects Ltd. and Hindustan Steel Ltd. — Partner of such firm whether holds offices of profit is a question of general public importance. See Ibid, Art. 133 (1) (a). **AIR 1963 Cal 364.**

——Art. 102 — Government Servants' Conduct Rules, 1926, Rule 23 — Person holding post in Provincial Government — Not ineligible for election to the Union Board, under the Bengal Village Self-Government Act. See Government Servants' Conduct Rules (1926), R. 23. **AIR 1955 Cal 382 (DB).**

● **——Art. 102 —** Preventive detention whether a disqualification for membership. See Ibid, Art. 105. **AIR 1952 Cal 632 (SB).**

——Art. 102 (1) (a) — Office of profit — Requirement — Shareholder in a company transporting postal articles and mail bags, not a person holding office of profit under the Government. 1963 M P L J 614 : 1963 Jab L J 747 : A I R 1963 Madh Pra 316 (321) (Pt C) (Pr 13) (DB).

——Art. 102 (1) (a)—"Office of profit under Government" — What is — Person holding permit to ply bus — Not holder of office under Gevernment.

In order to bring the case under Art. 102 (1) (a) the 'element of profit' is not enough by itself. It must first be proved that what was held was an 'office'. A person who holds a permit to ply a bus, can by no means be said 'to be the holder of an 'office' under the Government. A bus permit is issued by the Transport Authority which is a statutory body consisting of both official and non-official members appointed under the Motor Vehicles Act. A I R 1958 S C 52, Rel. on. Further, the essential requirement is that the candidate himself must hold the "office". The "office" cannot be held in benami. A permit for plying a bus can be held in benami. AIR 1963 Madh Pra 316, Rel. on. **AIR 1964 Pat 543 (547, 548) (Pt C) (Pr 21) (DB).**

——Arts. 102 (1) and 58—Office of profit — Office of Oath Commissioner in Rajasthan State is office of profit— Elections — Representation of the People Act (1951), S. 9 — Interpretation of word 'Government' in Art. 102. I L R (1958) 8 Raj 875 : (1959-60) 15 Ele L R 55 : 1959 Raj L W 337 : AIR 1959 Raj 227 (229, 230) (Pt B) (Prs 8, 10, 12, 13, 14, 16) (D B).

ARTICLE 105

● **——Arts. 105 and 194, 19 — Article 194 not subject to Art. 19—Provisions of Art. 105 (3) and Art. 194 (3) are constitutional laws and not ordinary laws made by Parliament or the State Legislatures — They are as supreme as the provisions of Part III—A I R 1952 Madh B 31, Overruled;** A I R 1954 S C 636, Not foll. (Per majority, Subbarao J., Contra). See Ibid, Art. 194. **A I R 1959 S C 395.**

——Art. 105 — Rights and privileges of Houses of Parliament and Houses of State Legislature—Speaker's right to take notice of contempt and commit. See Ibid, Art. 194. **A I R 1958 Assam 160 (DB).**

——Art. 105 (3), 194 (3) — Members of Parliament and State Legislature cannot claim privilege from detention under Defence of India Rules (1962), R. 30 (4).

The contention that the members of the Parliament and of the State Legislature were privileged from being imprisoned or restrained except upon a criminal charge, without the order of the House concerned is not tenable. The privilege claimed by the members is an imaginary privilege and does not in fact exist either in England or in this country. A I R 1952 Cal 632 (SB), Rel. on. **(1965) 69 Cal W N 913 : 1966 Cri L J 826 (829, 830) (Pt C) (Prs 19, 20) (Cal).**

● **——Arts. 105, 21, 22, 84, 101, 102 and 226—Members of State Legislature—Immunity from arrest for preventive detention — Representation of the People Act (1951), Ss. 5 to 8.**

Under the existing law persons returned as members of a State Legislative Assembly or the Council of States cannot claim immunity from arrest for preventive detention and therefore, they can be detained under the provisions of the Preventive Detention Act whilst their membership of the Assembly or the Council of States continues.

A claim by a member of either house of State Legislature of freedom from arrest during his membership is a claim to privilege or immunity and, therefore, is governed by Art. 105 of the Constitution of India.

Under Art. 105 (3) the powers, privileges and immunities of members may be defined by Parliament and until they are so defined they shall be similar to the powers, privileges and immunities of members of the British Parliament.

A perusal of the provisions of Arts. 84 and 102 of the Constitution of India and the relevant provisions (Ss. 5, 6, 7, 8, 16 and 19) of the Representation of the People Act, 1951, which deal with qualifications and disqualifications of members of either house of the State Legislature will make it clear that preventive detention does not disqualify a member and a person against whom an order under the Preventive Detention Act has been made can be elected as a member of either House of the Legislature and if so elected, such an order does not disqualify him from membership. Further, if the order was made during his membership such would not disqualify him.

Under Arts. 21 and 22 of the Constitution of India, if a person, whoever he may be, has been convicted of an offence under the law in a trial in accordance with the procedure laid down by law, or if a person, whoever he may be, has been detained by an order made under some valid law, the procedure of that law being properly followed, such conviction or detention is valid. Articles 21 and 22 do not exempt members of either House of a Legislature, and apply to all.

The various articles of the Constitution must be construed as a whole and effect, if possible, must be given to all of them. It would be impossible to hold that Arts. 21 and 22 of the Constitution do not apply to members of the Legislature who have been convicted and sentenced to shorter terms of imprisonment and to persons detained under valid orders made under the Preventive Detention Act.

The Constitution of India deals with the qualifications for membership and disqualifications for membership in Arts. 84 and 102 and it deals with the privileges and immunities of members in Art. 105. The makers of our Constitution therefore drew a sharp distinction between the qualifications and disqualifications of members and their privileges and immunities. The Representation of the People Acts of 1950 and 1951 merely deal with the qualifications and disqualifications of members. They do not purport to deal with the privileges and immunities of members The Acts in question have been passed under powers given in Arts. 84 and 102 of the Constitution. The Constitution envisages express legislation on these questions of privileges and immunities and mere legislation on qualifications and disqualifications will not touch the question. Parliament has not yet defined any privileges or immunities of members. All that it has done is to lay down what should be the qualifications of a member and what will disqualify him. If he is not disqualified he will continue as a member with such privileges and immunities as now exist. As no legislation has yet been passed affecting such powers and immunities, the rights, privileges and immunities of members of either House of the Legislature are those of members of Parliament of the United Kingdom. Disqualification is a very different matter from any particular immunity claimed by members. If a member is not disqualified he remains a member. Whether as such member he can claim any particular immunity must depend upon express law relating to such immunities.

At the present time in England the privilege of freedom from arrest is limited to civil causes and has not been allowed to interfere with the administration of criminal justice.

Preventive detention partakes more of a criminal than of a civil character. The Preventive Detention Act only allows persons to be detained who are dangerous or are likely to be dangerous to the State. It is difficult to contend that an order of preventive detention is of a civil character. They are orders made when persons are suspected of serious criminal activities directed at the welfare of the State and of the community. It is true that such orders are made when criminal charges possibly could not be established, but the basis of the orders are a suspicion of nefarious and criminal or treasonable activities.

It seems to follow, therefore, that the English Parliament claims no privileges for its members against preventive detention or against executive order made under legislative authority. If no such privilege exists or is claimed in the United Kingdom then it follows that no such privilege exists at the present moment in India.

Under Art. 101 (4) of the Constitution the absence of a member for sixty days without permission of the House does not automatically lead to vacation of the seat. The House in such a case may declare the seat vacant. But it may not and it is impossible to believe that a House of Parliament would declare a seat vacant by reason of absence where the cause of absence was due to detention, or imprisonment, unless the House thought that the conduct of the person concerned was such as really to make him unfit to be a member of the House. Though there is no such provision in England it cannot be overlooked that the House of Commons in England may expel a person for reasons which do not disqualify him, and declaring a seat vacant under Art. 101 (4) of the Constitution is action very similar to expulsion and therefore action under that clause may never be taken except for good cause That being so, the existence of cl. (4) of Art. 101 does not really make the position in India materially different from that obtaining in England.

Even assuming that privilege could be claimed because it was recognised in England, such could only be claimed within a period of forty days from the summoning of Parliament In England, the immunity from arrest existed for forty days before the sitting of Parliament and for forty days after prorogation. Hence where the Assembly of a State has not been summoned and there is no knowing when it will be summoned it would be premature to claim such a privilege. Ansumali Majumdar v. State of West Bengal, 1952 Cri L J 1454 : ILR (1954) 1 Cal 272 : 56 Cal W N 711 : AIR 1952 Cal 632 (634, 635, 636 637) (Prs 8, 9, 18, 23, 25, 29, 30a, 32, 37, 38) (SB).

——Arts. 105, 122, 194 and 212—Officers and members of Parliament or Legislature—Court's power to interfere with their legislative functions.

A Speaker of Parliament or Legislature or a Chairman of the Rajya Sabha are officers within the meaning of Art. 122 or 212. Ministers of the Government whether of the Centre or of States are also members respectively of Parliament or Legislature; as such the Courts cannot interfere with them in the part they play in the proceedings or business of the Assemblies nor can they interfere with their privileges, as the rights of any of them to introduce any Bill in their respective assemblies are rights and privileges of these members whether as members or as Ministers. There is an inherent right in the Legislatures to conduct their affairs without any interference from any outside body. I L R (1956) Hyd 648 : AIR 1956 Hyd 186 (189) (Pt C) (Pr 12) (DB).

ARTICLE 107

● ——Arts. 107, 174 (2) (a) and (b), 196 — 'Dissolution' and 'Prorogation' of Legislature — Effect of, under English Constitution, on pending business, discussed. Purushotham Nambudiri v. State of Kerala, 40 Mys L J 193 : 1962 Supp (1) S C R 753 : (1962) 1 S C J 477 : (1962) 1 Mad L J (S C) 180 : (1962) 1 Andh W R (S C) 180 : (1962) 1 S C A 681 : 1962 Ker L J (SC) 1 : (1962) 1 Ker L R 1 : 1962 Ker L J 86 : AIR 1962 S C 694 (698, 699, 700, 701) (Pt A) (Prs 4, 5, 11).

ARTICLE 110

●——Art. 110 (2) — Money bill, meaning of. See Municipalities–Calcutta Municipal Act (33 of 1951), S. 548. AIR 1965 S C 1107.

● ——Art. 110 (a)—Distinction between tax and fee. See Ibid, Art. 27. AIR 1954 S C 388.

● ——Art. 110 (a)—Tax—Indicia of. See Ibid, Art. 27. AIR 1954 S C 282.

● ——Art. 110 (a)—Distinction between tax and fee. See Ibid, Art. 27. AIR 1954 S C 282.

● ——Art. 110—Licence fee under Ss. 298 (2) and 294 on owners and drivers of rickshaws—Nature of—Imposition is not tax but fee, involving element of quid pro quo – Proof of service rendered—Mode of—Annexure filed with written statement not admissible—Major portion of fee collected spent in discharge of statutory duties — Fee fixed held disproportionate to service rendered and was ultra vires. See Municipalities — U. P. Municipalities Act (2 of 1916), S. 294. AIR 1962 All 277 (FB).

——Arts. 110 (2), 199 (2), 245, 265 and 277, Sch. 7, List 2, Item 5—Delegated legislation—Taxation laws—Delegation to municipal corporation of powers to fix rate of tax—Validity (Municipalities–Calcutta Municipal Act (33 of 1951), S. 229 — Constitutional validity).

Per Das Gupta, C. J.—There is nothing in principle or authority that would permit delegation of the question to a subordinate body as to how the rate of tax should be determined. The legislation in S. 229, Calcutta Municipal Act, in so far as it leaves the determination of the rate of what it calls a license fee but is in reality a tax to the Corporation with the approval of the State Government is beyond the limits of permissible delegation and so invalid.

Per Bachawat, J., Contra.—The delegation made by S. 229 of the Calcutta Municipal Act, 1951, to the Corporation of Calcutta of the power to fix the rates of tax for different classes of advertisements is valid. Such a delegation of power to municipal corporation is constitutionally permissible. The provisions of the State List, Item 5, Art. 110 (1), Art. 199 (2) and Art. 277 of the Constitution sufficiently indicate that the delegation to a municipality or other local authority of the power to impose and levy a tax enumerated in the State List is permitted by the Constitution. Section 229 empowers the Corporation of Calcutta to prescribe the rate of taxation by rules with the approval of the State Government. Such a delegation is permissible in law. Section 229 is not invalid on the ground that it delegates legislative functions beyond the permissible limits of delegation.

Per Das Gupta, C. J. and Bachawat, J.—The power to select cases for exemptions which have been left to the Corporation under S. 229 is permissible. AIR 1959 Cal 704 (708, 709, 714) (Pt A) (Prs 17, 20, 57, 58, 59) (DB).

ARTICLE 118

——Art. 118 — Parliamentary practice — Laying of document before Parliament—Advantage of.

The first step in parliamentary control is the requirement that the document be laid before Parliament. The advantage of such a procedure is that members of both Houses have, of course, such chances as parliamentary arrangements afford of pressing for the repeal of an enactment under which obnoxious rules and orders are made or of revoking those rules and orders by statute. I L R (1959) 9 Raj 740 : 1950 Raj L W 702 : AIR 1959 Raj 206 (212, 213) (Pt E) (Pr 17) (DB).

ARTICLE 120

——Art. 120—Rule promulgated in Hindi — English translation not given — Validity. See Ibid, Art. 348. AIR 1957 Madh B 26 (DB).

ARTICLE 121

——Art. 121 — Matter exclusively in Speaker's jurisdiction — Correct etiquette for Courts. See Ibid, Art. 194 (3). AIR 1954 All 319 (DB).

ARTICLE 122

● ——Art. 122 (as amended by fifth Amendment Act (1955) — Validity of any proceedings in Parliament shall not be called in question on ground of irregularity of procedure—Art. 3 cannot be interpreted so as to nullify effect of Art. 122. See Ibid, Art. 3, Proviso. AIR 1960 S C 51.

——Art. 122—Officers and members of Parliament or Legislature—Court cannot interfere with their legislative functions. See Ibid, Art. 105. AIR 1956 Hyd 186 (DB).

ARTICLE 123

——Art. 123—Satisfaction of President is not justiciable — Delegation of power to Central Government for taking action, is not illegal—Essential Services Maintenance Ordinance (1960), S. 3 (1).

The satisfaction of the President regarding the existence of circumstances that render it necessary for him to take immediate action is a subjective matter, which cannot be probed or questioned in a Court of law; and the precise nature of the action that he may decide to take in such circumstances is also left to his discretion and cannot be challenged. Where the immediate action which the President deemed necessary was not to ban the general strike himself but to arm the Central Government with the necessary powers to issue such a ban, the immediate action of this kind is not within the scope of Art. 123. 1961 All L J 837 : 1961 All W R (HC) 724 : 1961 All Cr R 413 : 1962 (1) Cr L J 629 (630, 631) (Pt A) (Pr 7).

——Art. 123—Scope — Arts. 245, 246 and 248. See Administration of Evacuee Property (Chief Commissioners Provinces) Ordinance (12 of 1949). AIR 1957 All 561 (DB).

——Art. 123—Satisfaction of Governor—Must be his own satisfaction. See Ibid, Art. 213. AIR 1956 All 557.

——Art. 123—Governor's satisfaction—Proof of existence as fact — Powers of Court. See Ibid, Art. 213. AIR 1956 All 557 (DB).

——Art. 123 — Existence of satisfaction when House is in session—Effect. See Ibid, Art. 213. AIR 1956 All 557 (DB).

——Art. 123 — Proroguing of council — Powers of Governor—Very short interval between proroguing of council and promulgation of Ordinance—Effect on bona fides of Governor—Validity of U. P. Ord. No. 9 of 1956. See Ibid, Art. 213 AIR 1956 All 557 (DB).

——Art. 123 (2) (a)—"Shall be laid before the Parliament" — Meaning of — See Madras Motor Vehicles Rules (1940), R. 134A. AIR 1956 Andh Pra 129.

——Art. 123 — Government servants — Ordinance issued under Art. 123 relating to conditions of service and Services Rules framed under Proviso to Art. 309, affecting fundamental rights—Validity is justiciable under Art. 226 — Art. 310, no bar. See Ibid, Art. 13. AIR 1962 Bom 53.

——Art. 123 — Promulgation of Ordinance under — Conditions to be fulfilled—Essential Services Maintenance Ordinance (1960)—Constitutionality.

Article 123 (1) empowers the President to promulgate an Ordinance when two conditions are fulfilled : (i) that both Houses of Parliament are not in session, and (ii) the President is satisfied that circumstances exist which render it necessary for him to take immediate action. On the terms of the Preamble of the Essential Services Maintenance Ordinance, 1960, promulgated by the President, it is clear that both these conditions were satisfied at the time of the promulgation of the Ordinance. Observations of Meredith, C. J. in AIR 1950 Pat 332 to the contrary, Diss. from. **63 Bom L R 774 : (1963) 2 Lab L J 264 : 1961 Nag L J 695 : (1961-62) 21 F J R 441 : AIR 1962 Bom 53 (63, 64) (Pt B) (Pr 37) (DB).**

——**Art. 123**—Art. 123 is not intended to circumscribe powers of President which otherwise he may possess under Constitution by restricting the exercise of them to mode mentioned in Art. 123—'Laws in force'—Entrustment of power under Art. 258 (1)—Nature of—Whether executive in nature. See Bombay Reorganization Act (11 of 1960), S. 87. **AIR 1963 Guj 80 (DB).**

——**Art. 123—Ordinance passed under Government of India Act, Sch. 9, Cl. 72—Procedure.**

When once an ordinance is passed under Cl. 72 of Sch. 9 of the Government of India Act, 1935, it should be regarded as law enacted by a Legislature. It is difficult to see why it should be subjected to the procedure relating to Ordinances prescribed under Art. 123 of the present Constitution. **1956 Mad W N 185 : 1956 Cr L J 751 : AIR 1956 Mad 333 (334) (Pt B) (Pr 8).**

ARTICLE 124

——**Art. 124 (4)**—Judicial Commissioner whether can act as arbitrator without President's permission — High Court Judges do not suffer from any disqualification, except barring those cases where they might be liable to removal under Art. 218 read with Art. 124 (4)—(Judicial Commissioners' Courts (Declaration as High Courts) Act (1950), S. 6 (a). See Ibid, Art. 217. **AIR 1958 Manipur 38.**

——**Arts. 124 (3), Expl., 214 (2) and 366 (14)—Relative scope — High Court as defined in Expl. 3 to Art. 124 (3), if in conflict with Arts. 214 (2) and 366 (14).**

The general definition of the term "High Court" in Art. 366 (14) of the Constitution incorporates Art. 214 (2) which relates only to the position as regards the Constitution of India and the Provincial High Courts. The definition in Art. 124 (3), Explanation, is a special definition of the term and does not conflict with the definitions in Arts. 214 (2) and 366 (14). **1952 Cri L J 540 : ILR 29 Pat 904 : AIR 1951 Pat 305 (307) (Pr 10).**

——**Art. 124**—"Misbehaviour"—Meaning. See Public Servants (Inquiries) Act (1850), S. 2. **('61) 63 Punj L R 780.**

ARTICLE 129

●——**Arts. 129, 194 (3) and 215—Contempt of Court and Legislature — Power to punish for contempt to be exercised cautiously.**

A Court should never forget that the power to punish for contempt large as it is, must always be exercised cautiously, wisely and with circumspection. Frequent or indiscriminate use of this power in anger or irritation would not help to sustain the dignity or status of the Court, but may sometimes affect it adversely. Wise Judges never forget that the best way to sustain the dignity and status of their office is to deserve respect from the public at large by the quality of their judgments, the fearlessness, fairness and objectivity of their approach, and by the restraint, dignity and decorum which they observe in their judicial conduct. What is true of the judicature is equally true of the Legislatures. In the **Matter of** under Art. 143 of the Constitution of India. **(1965) 1 S C J 847 : (1965) 1 S C A 447 : AIR 1965 S C 745 (791) (Pt O) (Pr 142).**

●——**Arts. 129, 215 — Contempt of Court — What constitutes —Breach of undertaking—(Contempt of Courts Act (1952), S. 5).**

The petitioner had made a petition to the Supreme Court in respect of a consignment of goods for carriage by sea. This petition had come before the Supreme Court for hearing on 24th March 1955. The Solicitor-General of India made a statement to the Court indicating that the goods which had been confiscated by the Customs Authorities would not be sold or otherwise dealt with for a month from the date of the communication to the petitioner of the final order that the Central Government might pass in the revisional petition preferred by him before them.

Held, that the assumption that the Supreme Court's order required that his revisional petition should be disposed of by the Central Government within a month, was entirely unwarranted. The period of one month which was mentioned in the order was the period granted to the petitioner to move the Supreme Court for special leave after the decision of his revision petition by the Central Government was communicated to him. If no undertaking was given as assumed by the petitioner no contempt could arise on the ground that the undertaking had not been complied with. Bhatnagars and Co. v. Union of India, (1957) S C J 546 : 1957 S C A 810 : 1957 S C R 700 : AIR 1957 S C 478 (481, 482) (Pt F) (Pr 5).

●——**Arts. 129 and 215— Contempt — Interference with course of administration of justice—Punishment.**

In order to constitute contempt it is not necessary that there should in fact be an actual interference with the course of administration of justice but it is enough if the offending publication is likely or if it tends in any way to interfere with the proper administration of law. The summary jurisdiction exercised by superior Courts in punishing contempt of their authority exists for the purpose of preventing interference with the course of justice and for maintaining the authority of law as is administered in the Court and thereby affording protection to public interest in the purity of the administration of justice. This is certainly an extraordinary power which must be sparingly exercised but where the public interest demands it the Court will not shrink from exercising it and imposing punishment even by way of imprisonment, in cases where a mere fine may not be adequate.

A party to a pending appeal in the Supreme Court in which the State of Uttar Pradesh was the respondent distributed in the Court premises a printed leaflet which contained the following paragraph :

"The public has full and firm faith in the Supreme Court but sources that are in the know say that the Government acts with partiality in the matter of appointment of those Hon'ble Judges as Ambassadors, Governors, High Commissioners, etc., who give judgments against Government but this has so far not made any difference in the firmness and justice of the Hon'ble Judges."

Held, (1) that the object of writing this paragraph and particularly of publishing it at the time it was actually done was quite clearly to affect the minds of the Judges and to deflect them from the strict performance of their duties. The offending passage and the time and place of its publication certainly tended to hinder or obstruct the due administration of justice and was a contempt of Court.

(2) that even if the passage about the Judges was not in the leaflet the rest would still amount to a serious contempt of Court. There was in it a strong denunciation of the State of Uttar Pradesh, a party to the appeal and the petitions, regarding the very matters then under the consideration of the Court. It was not fair comment on the proceedings but an attempt to prejudice the Court against the State and to stir up public feeling on the very question then pending for decision. The manner in which the leaflets were distributed, the language used in them and the timing of their publication could only have had one object namely, to try and influence the Judges in favour of the petitioner and the others who were in the same position as himself. This again was a clear contempt of the Court.

(3) that in all the circumstances of this case it was a fit case where the power of the Court should be exercised and that it was necessary to impose the punishment of imprisonment. Hiralal Dixit v. State of U. P., **(1954) 2 Mad L J 720 : 1954 S C J 846 : 1954 S C A 1263 : 1955 All W R 1 : 68 Mad L W 3 : 1955 S C R 677 : A I R 1954 S C 743 (746, 747) (Prs 5, 6, 7, 18).**

●——**Art. 129—Contempt of Supreme Court—(Contempt of Courts Act, S. 1).**

Where a newspaper article while criticising a Supreme Court decision not merely preached to the Courts of law the sermon of divine detachment from extraneous considerations such as politics and policies but also proceeded to attribute improper motives to the Judges, it was held that the article not only transgressed the limits of fair and bona fide criticism but had a clear tendency to affect the dignity and prestige of the Court and therefore amounted to gross contempt of Court. Aswini Kumar v. Arabinda Bose, **1953 Mad W N 171 : 1953 S C J 38 : 1953 Cri L J 519 : 1953 S C R 215 : 1953 All W R (Sup) 25 : (1953) 1 Mad L J 211 : 1953 S C A 188 : 55 Bom L R 278 : A I R 1953 S C 75 (76) (Pr 2).**

——**Art. 129**—Writ petition by X for restraining prescribed authority under U. P. Act (34 of 1958) from demolishing certain constructions made by X without permission — X giving undertaking to Court that he would make no further constructions and in view of undertaking interim order passed by Court restraining prescribed authority from demolishing constructions already made by X — **Held**, that X had committed breach of solemn undertaking by making additional constructions and was guilty of contempt of Court— **Held further**, that constructions were not made under bona fide belief that they were not constructions within meaning of undertaking — Even if they were made under bona fide belief, that might be relevant only in determining sentence. See Contempt of Courts Act (1952), S. 3. **1964 All W R (H C) 504.**

——**Art. 129**—Magistrate passing order of attachment of suit property along with preliminary order under S. 145, Criminal P. C. — Revision against both orders —Additional District Magistrate (Judicial) and Additional District Magistrate (Executive) staying further proceedings till pendeney of revision application— Order of attachment reaching police for execution before stay order could reach Magistrate — Police referring Magistrate on being confronted with difficulty of having warrant of attachment for execution and stay order of A. D. M (J.) both bearing same date—Magistrate considering reference as unwarranted and foolish, directing police to execute orders passed by his Court—On execution of orders proceedings for contempt — **Held**,—Proceedings could not be taken against police as he was complying with orders of Magistrate — Magistrate, however, acted improperly when he took perverse view of police report and made unwarranted remarks against police — Though conduct of Magistrate in not interpreting stay order in its true spirit deserved censor, contempt proceedings could not be taken against him, all the more, when any harm done to applicant could be set at right. See Contempt of Courts Act (1952), S. 3. **1964 All W R (H C) 450.**

ARTICLE 131

●——**Art. 131, Proviso**—Accessions and their acceptance by Dominion of India—Nature of the act—Disputes arising out of—Jurisdiction of Courts in India to enquire into or settle the dispute. See Ibid, Art. 363. **A I R 1954 S C 447.**

[Overruled on another point in A I R 1964 S C 1043.]

●——**Art. 131 (a)** — Suit by one State against Union of India—Can only lie in the Supreme Court. Kerala State v. General Manager, Southern Railway, Madras, **1965 Ker L J 627 : (1965) 1 Ker L R 449 : I L R (1965) 2 Ker 112 : 1965 Ker L J 671 : A I R 1965 Ker 277 (280) (Pt B) (Pr 9) (FB).**

——**Art. 131 (a)** — Suit for damages for shortage in goods carried by railway filed by State — Suit is not barred by Art. 131 of Constitution. **1963 M P L J** (Notes) 142.

ARTICLE 132

SYNOPSIS

(Constitution of India, Art. 132.)

1. Scope.
2. "Judgment, decree or final order."
3. "Final order."
4. High Court.
5. Appeal from single Judge of High Court.
6. "In a civil, criminal or other proceeding."
   See also Ibid, Art. 133.
7. Substantial question of law.
   (a) Illustrative cases.
8. "As to the interpretation of this Constitution."
   (a) Questions raising interpretation of the Constitution.
   (b) Questions not involving interpretation of the Constitution.
9. Special leave.
10. Scope of appeal before Supreme Court.
11. Form of certificate.
12. Stage at which certificate can be granted.
13. Cancellation of certificate.
14. Effect of grant of certificate.
15. Order refusing certificate—Appeal.
16. Procedure.
17. Limitation.

1. Scope.

——**Art. 132** — Scope of — Right conferred by this article and Art. 134. See Ibid, Art. 134. **A I R 1954 Ajmer 18 (1).**

——**Art. 132 (1)** — Scope — Power of High Court to grant bail to, or suspend execution of sentence of, convicted person who has been granted certificate under Art. 134 (1) (c) or Art. 132 (1). See Criminal P. C. (1898), S. 426 (2-B). **1958 Cri L J 1107 : A I R 1958 All 667.**

——**Arts. 132 (1) and 133 (1) and (2)—Scope of enquiry.**

Per A. P. Srivastava, J.—A certificate under Art. 133 entitles the applicant to raise in his appeal all questions including questions relating to the interpretation of the Constitution which he may like to raise. It is,

therefore, not necessary to grant to him a certificate under Art. 132 also. ILR (1958) 1 All 318: AIR 1958 All 621 (633) (Pt D) (Pr 66) (DB).

——Arts. 132, 133 and 134—Power to stay execution or operation of order passed by High Court.

Per Desai J.—Arts. 132, 133 and 134 simply confer jurisdiction upon a High Court to issue a certificate. The power to stay execution or operation of a decree or order passed by it because an appeal from it is contemplated or has been filed cannot be said to be a power incidental to the power of granting a certificate and cannot be assumed to be included in it. 1957 All W R (H C) 268 : A I R 1957 All 505 (519) (Pt Q) (Pr 24) (DB).

——Arts. 132 and 133—Civil P. C. (1908), Ss. 109 and 110 and O. 45, R. 3—Power of High Court to issue certificate of fitness in case of appeal to Supreme Court—Respective scopes of provisions.

The provisions of Ss. 109 and 110, Civil P. C., must be and are expressed to be, subject to the constitutional rights. Therefore, the person cannot be denied his constitutional rights merely on the ground that the circumstances in which he claims the rights are not governed by the provisions of Ss. 109 and 110.

These two Articles 132 and 133 grant a right of appeal in certain circumstances and the provisions in the Civil P C are expressed to deal with only some of them. Therefore the provisions in the Code cannot be said to be at variance with those of the Constitution. Hence, merely because Ss. 109 and 110 and O. 45, Civil P. C. provide for the granting of a certificate in certain circumstances, it cannot be argued that the High Court cannot, under the provisions contained in Arts. 132 and 133, Constitution of India, grant a certificate in other circumstances. AIR 1949 P C 239, Dist. AIR 1957 All 28 (32, 33) (Pt A) (Pr 9) (DB).

——Arts. 132 (1), 134 and 136 (1)—Interpretation of —Liberal construction if should be given —Right of appeal in criminal matters—Intention of legislature. See Ibid, Art. 134 (1) (c). AIR 1957 Andh Pra 871 (DB).

——Arts. 132 (1), 133 (1) & (3) — Scope — Certificate under Art. 133 (1) (c) granted — Case also involving wrong decision on a substantial question of law as to interpretation of Constitution — Whether leave under Art. 132 also is necessary. See Ibid, Art. 133 (1) and (3). AIR 1953 Assam 101.

——Arts. 132, 133 Distinction between—Decision on vital issue—Same can be appealed against under Art. 132 but not under Art. 133.

There is a marked difference in approach between the two Articles. Article 132 permits a decision on a vital issue to be agitated before the Supreme Court even if it is a decision on just an issue, whereas Art. 133 does not permit an appeal to be taken, unless the order proposed to be appealed from is a complete adjudication determining the rights of the parties. The absence of an explanation like the one attached to Art. 132 is an indication that unless an order proposed to be appealed from under Art. 133 completely disposes of and determines the rights of the parties, no appeal was intended to be permitted under that article. (1964) 51 ITR 807 : AIR 1963 Cal 281 (288) (Pt C) (Pr 24) (DB).

——Art. 132 — Object underlying Article.

Under Art 132 proceedings which involve a substantial question of law as to interpretation of the Constitution are placed by the Constitution in a special category irrespective of the nature of the proceedings in which they arise and an appeal to the Supreme Court of the widest amplitude is allowed in cases involving such questions. The main object underlying the Article is that the final authority of interpreting the Constitution must rest with the Supreme Court. (1964) 2 Mad L J 289 : (1964) 2 I T J 287 : 1964-54 I T R 293.

2. "Judgment, decree or final order".

●——Arts. 132 and 133—Abatement of appeal—Preliminary issue in suit raising question of vires of Act—State impleaded as party—Certificate of appeal to defendant against finding on issue—Death of plaintiff—Effect Maintainability of appeal - (Civil P. C. (1908), O. 22, R. 1).

While the suit of the plaintiff for a declaration was pending, the Bombay Prevention of Ex-communication Act (Bombay Act 42 of 1949) came into force. The defendant contended that the Act had no retrospective operation and that it was unconstitutional. As one of the issues tried as a preliminary issue, raised the question of vires of the Act the State of Bombay was impleaded as the second defendant. The Single Judge of the High Court who tried the preliminary issue held that the impugned Act was retrospective in its operation and it was within the competence of the Provincial Legislature. Against this finding the defendant preferred an appeal. The Court granted a certificate to appeal to the Supreme Court under Arts. 132 and 133 of the Constitution of India. During the pendency of the appeal the plaintiff-respondent died. The only parties who were before the Supreme Court were the defendant-appellant and the State of Bombay.

Held, that (1) as the claim with which the plaintiff came to Court was an action personal to him, on the principle actio personalis moritur cum persona, when he died, the suit should abate. As an appeal is only a continuation of the suit, there could be no question of continuing what did not exist. The appeal could not be continued against the State for seeking decision on the validity of the Act. AIR 1941 F C 16, Distinguished.

(2) Apart from this, the order appealed against was only a decision on one of the issues and it did not dispose of the suit. There was no judgment, decree or final order and therefore the appeal was not maintainable. The fact that the certificate had been granted would not alter the position as no certificate could be granted in respect of an interlocutory finding. Syedna Taher Saifuddian Saheb v. State of Bombay, 1958 S C J 403 : (1958) 1 Mad L J (S C) 127 (1958) 1 Andh W R (SC) 127 : 1955 S C A 431 : 1958 S C R 1007. AIR 1958 S C 253 (254, 255) (Prs 7, 8, 9).

——Arts. 132 and 133—Order of High Court on a reference under S. 82, Hyderabad Income-tax Act—Appeal - (Civil P. C. (1908), S. 109))—(Income-tax Act (1922), S. 66) — (Hyderabad Income-tax Act (1357) Fasli (8 of 1357F) Ss. 82 and 33).

When a forum is abolished without any forum substituted in its place the vested right perishes. Inasmuch as the State Judicial Committee the forum for appeals has been abolished by virtue of Cl. (4) of Art. 374 of the Constitution and having regard to the fact that an appeal from a reference under S. 82, Hyderabad Income-tax Act being a creature of the Statute, the absence of a statutory provision providing for the forum of appeal would not confer a right of appeal to the Supreme Court. Clause (23) of the Adaptation of Laws Order (1950) cannot be said to substitute the Supreme Court in the place of the State Judicial Committee; particularly when an appeal to the State Judicial Committee was a prerogative right exercised by the Nizam and was subject to his assent, the Supreme Court cannot be said to be a corresponding

authority to the authority abolished, namely, the State Judicial Committee.

A 'judgment' on a reference under S. 82, Hyderabad Income tax Act is not meant as a 'judgment, decree or final order' within the meaning of Art. 132 or 133. Hence an application filed under S 109, Civil P. C. read with Art. 133 of the Constitution and S. 83, Hyderabad Income-tax Act for leave to appeal to the Supreme Court must be dismissed. AIR 1951 Mad 590, Diss. from. ILR (1956) Hyd 555 : (1956) 30 ITR 726 : AIR 1956 Hyd 136 (136, 137, 138, 139) (Prs 1, 3, 4, 5, 6, 8) (DB).

——Arts. 132, Expl and 134 (1) – Provisions of Act impugned - Reference made to High Court - Order thereon - No leave to appeal to Supreme Court.

Where on certain sections of the Madras Prohibition Act being impugned as being invalid on one ground or the other, the Magistrate makes a reference to the High Court, even before any evidence is taken, and the High Court decides that none of the provisions so impugned is void, the order of the High Court is not covered by the Explanation to Art. 132.

In such a case as there is neither a judgment, final order nor sentence the petitioners are not entitled to obtain leave under Art. 134 either. 1955 Mad W N 342 (1) : AIR 1955 Mad 532 (532, 533) (Prs 1, 2, 3) (DB)

● ——Art. 132 (1)—Scope of – (Government of India Act (1935), S 205 (1)).

The language of Article 132 is materially different from that of sub-s. (1) of S. 205, Government of India Act, 1935. The change in language in Art 132 (1) is deliberate and that it was intended by the makers of the Constitution to confer a right of appeal from a judgment, decree or final order not only in civil and criminal proceedings but from a judgment or final order in other proceedings as well, provided a substantial question of law as to the interpretation of the Constitution was involved The insertion of the words "or other proceeding" has widened the range of decisions which can be the subject of appeal to the Supreme Court. Case-law discussed.

No narrow interpretation should be applied to the interpretation of the words "judgment in other proceeding" occurring in the Article. AIR 1939 F C 43, Relied on Sriram Gulabdas v Board of Revenue, M. P., 1953 Nag L J 561 : ILR (1953) Nag 871 : A I R 1954 Nag 1 (10, 11) (Pt C) (Pr 53) (FB).

● ——Art. 132 (1) -'Judgment' – Meaning – Decision of High Court in reference under S 24 (6) C. P. and Berar Sales Tax Act, 1947 Appeal to Supreme Court – (Sales Tax – C P and Berar Sales Tax Act (21 of 1947), S 23 (5)) - (Income-tax Act (1922) S 66 5) – (Letters Patent (Nagpur), Cl. 29).

The term 'judgment" is used in Art 132 (1) in the wider sense to include any decision given by the High Court on a question or questions at issue between the parties to any proceeding properly before the Court which finally determines the rights of parties so far as the Court is concerned. In this sense a decision under S. 23 (5) of the C P and Berar Sales Tax Act or under S 66 (5) of the Income tax Act is clearly a "judgment". It finally determines the rights of the parties so far as the High Court is concerned though the Tribunal may have to reopen the assessment proceedings and make or order further enquiry to give effect to the decision of the High Court.

The decision under S. 23 (5) of the C. P. and Berar Sales Tax Act being thus a 'judgment" in revenue proceedings, the applicant is entitled to a certificate under Art. 132 (1) of the Constitution.

Per Contra. – The jurisdiction exercised by the High Court, whether it be under the Income-tax Act or the Sales Tax Act, is merely advisory and consultative and the opinion given on the questions mooted neither ranks as a "final order" nor even as a 'judgment'. The order does not decide the controversies but merely gives expression to an opinion for the guidance of the referring authority. The opinion, though binding on the Board of Revenue, is not on an "issue" and is not "sufficient for the final disposal of the case". Such decisions did not fall either within the expression "judgment, decree or final order" as used in the Letters Patent of the High Courts or in the Constituion Act in force before the present Constitution The use of the words "civil, criminal or other proceeding" does not make Art. 132 wider than S. 205 of the Government of India Act, 1935. The use of the same expression, namely, "judgment, decree or final order" once again in Art. 132 clearly imports the decisions under S. 205 for the interpretation of that phrase. The addition of the words "other proceeding" does not enlarge the ambit of the section beyond what was included in section 205 of the earlier Constitution and it is not open to the Courts to depart from the view so consistently taken.

The explanation widens the ambit of Art. 132 beyond that of S. 205 but the advisory opinion is not generally an order "sufficient" for the final disposal of the case Sriram Gulabdas v. Board of Revenue, M. P., ILR (1953) Nag 871 : 1953 Nag L J 561 : AIR 1954 Nag 1 (4, 5, 11) (Pt D) (Prs 18, 19, 20, 54, 55) (FB).

3 "Final order."

——Art. 132—"Final Order," meaning of. See Ibid, Art. 133 AIR 1954 Ajmer 12 (2).

——Arts. 132 and 133 — Final order in revision by High Court — Appeal to Supreme Court — (Civil P. C. (1908), S. 109).

There is no provision in the Civil P. C. similar to that contained in Art. 132 of the Constitution. Since, the Constitution is supreme the right of appeal conferred by Art 133 cannot be abridged or abrogated by any Legislature There can, therefore, be no doubt that an order passed in revision by the High Court, which is a final order in civil proceeding, would be the subject of appeal before the Supreme Court if the other conditions under Art. 133 of the Constitution are fulfilled. AIR 1957 All 28 (33, 34) (Pt F) (Pr 11) (DB).

—Art. 132 – Certain sections of Madras Prohibition Act impugned – Magistrate referring case to High Court even before any evidence is taken—Decision of High Court that impugned provisions are not void is not covered by the Explanation 1955 Mad W N 342 (1) : AIR 1955 Mad 532 (532) (Prs 1, 2) (DB).

—Arts 132 and 133 - The explanation to Art. 132, stating as to what the expression 'final order' means, cannot be applied to the provisions of Art. 133. 1953 B L J R 423 : ILR 32 Pat 880 : A I R 1954 Pat 241 (242) (Pt B) (Pr 5) (DB).

4. High Court.

——Art 132 (1) – Applicability – Bhopal High Court – If "High Court" as defined in Art. 366 — Appeal to Supreme Court from judgments and orders — Competency

For purposes of Art. 132 (1) of the Constitution of India, the Bhopal High Court which owes its existence to the charter granted to it by the Ex-Ruler of Bhopal is not a High Court as defined in Art. 366 of the Constitution nor is it a High Court within the meaning of the Rules of the Supreme Court. The mere fact that the Federal Court Act was applied to the Chief Commissioner's Court of Bhopal cannot confer on it the status of a High Court as defined by Art. 366. Hence no judgment or order of the Bhopal

High Court is appealable to the Supreme Court. **AIR 1951 Bhopal 11 (12) (Prs 7, 8, 9).**

5. Appeal from single Judge of High Court.

●——Art. 132—Forum of appeal — Order of single Judge of High Court refusing to file complaint under S. 476—Appeal—High Court or Supreme Court. See Criminal P. C. (1898), S. 476. **1961 (1) Cri L J 317 : AIR 1961 S C 181.**

●——Art. 132 (1) — **Appeal against judgment of single Judge of High Court.**

Civil proceeding — Judgment of single Judge of High Court—Certificate granted under Art. 132 (1) — Appeal to Supreme Court is competent and Art. 133 (3) is no bar. Election Commission, India v. Saka Venkata Rao, **1954 Mad W N 427 : 1953 S C J 293: 1953) 1 Mad LJ 702 : 66 Mad L W 379 : 1953 S C R 1144 : AIR 1953 S C 210 (212) (Pt A) (Pr 5).**

——**Arts. 132 and 133 (3)—Single Judge dismissing writ petitions following earlier Division Bench decision—Earlier Division Bench decision already before Supreme Court—Leave to appeal.**

Where a single Judge of a High Court dismisses certain writ petitions following an earlier decision of the Division Bench of the same High Court leave to appeal to the Supreme Court from the decision of the Single Judge cannot be granted by virtue of cl. (3) of Art. 133 on the ground that they are fit cases for appeal to the Supreme Court as is provided under sub-cl. (c) of cl. (1) of Art. 133; and the mere fact that there hss been an order of Division Bench granting leave to appeal under Art. 133 will not entitle the applicants ipso facto to an order in their favour. But there is no bar for granting a certificate under Art. 132 from such a decision of the single Judge.

Broad propositions of law governing discrimination prohibited by or equally adumbrated in Art. 14 will not shut the door for considering the constitutionality of a statute or of its provisions. AIR 1951 Mad 969 (FB) and AIR 1951 Cal 424 and AIR 1953 S C 210, Rel. on. **AIR 1960 Andh Pra 628 (629, 630, 631) (Prs 3, 5, 6, 7).**

——**Art. 132—Applicability—Decision of one Judge sitting singly—Appeal.**

On questions covered by Art. 132, an appeal lies directly to the Supreme Court from the decision of even one learned Judge sitting singly, if he gives the necessary certificate. 61 Cal W N 600 : AIR 1957 Cal 528 (529) (Pt B) (Pr 2) (DB).

6. "In a civil, criminal or other proceeding."
See also Ibid, Art. 133.

●——**Art. 132 (1) — Proceeding for recovery of tax and proceeding claiming relief against action of revenue authorities — Nature of — Whether amounts to "civil proceeding" or "other proceeding" mentioned in Article. See Ibid, Art. 133 (1) (c). AIR 1965 S C 1818.**

——**Art. 132 — "Other proceedings" — Meaning of—**
—"Other proceedings" in Art. 132 does not recognise third category apart from civil or criminal. See Ibid, Art. 133. **AIR 1965 All 106 (DB).**

——**Arts. 132, 133, 134, 135 and 136 — Order in proceeding that is neither civil nor criminal — Appeal to Supreme Court when lies.**

Per Desai J. — In civil and criminal proceedings a party has a right of appeal to the Supreme Court if he has obtained a certain certificate; but no party in any other proceeding has a right of appeal to the Supreme Court except when a question of law as to the interpretation of the Constitution is involved. If a party to a proceeding that is neither civil nor criminal desires to appeal, even though the proceeding does not involve a question of law as to the interpretation of the Constitution, he can do so only after obtaining special leave from the Supreme Court. **1957 All W R (H C) 268 : AIR 1957 All 505 (510) (Pt B) (Pr 3) (DB).**

——**Art. 132—Civil, criminal or other proceedings—American law.**

Whereas according to the American law a proceeding that is not criminal must be civil, it is not so according to our Constitution, because it can be not civil also. Moveover, it cannot be assumed that the words 'civil proceedings' and 'criminal proceedings' have established meanings and that what is a civil proceeding in one country is a civil proceeding in another. **1957 All W R (H C) 268 : AIR 1957 All 505 (512) (Pt C) (Pr 7) (DB).**

——**Art. 132—Civil or other proceedings.**

Per Desai J. — The simplest definition of 'civil proceeding' is a proceeding in a Court of civil jurisdiction, the words 'jurisdiction' and 'proceeding' are interchangeable. The Code of Civil Procedure is meant to govern the procedure in Civil Courts but its applicability is not the test of a civil proceeding, because it may be applied to revenue and other proceedings also. The expression 'other proceedings' does seem to envisage the existence of certain types of proceedings which may be regarded to be neither civil nor criminal.

What Art. 133 lays down is that judgment or decree or final order which is souqht to be appealed against should be passed in a 'civil proceeding'. It does not lay down that the Court passing the order should be a Civil Court. A civil proceeding is one which is taken for the enforcement of a civil right. Whether a proceeding is civil or not depends on the nature of the subject-matter of the proceeding and its object, and not on the mode adopted or the forum provided for enforcement of the right. **1957 All W R (H C) 268 : AIR 1957 All 505 (515, 521, 522) (Pt F) (Prs 12, 28, 31, 32) (DB).**

——**Art. 132—Words "civil proceeding' are wide enough to cover any proceeding of civil nature.**

The words 'civil proceeding' are wide enough to cover any proceeding of a civil nature and would include proceedings held by the High Court in exercise of its original jurisdiction and also proceedings held by it in exercise of its appellate jurisdiction and there is no warrant whatsoever for excluding proceedings held by it in exercise of its revisional jurisdiction from their scope. **AIR 1957 All 28 (32, 33) (Pt B) (Pr 9) (DB).**

●——**Arts. 132, 133 — Civil proceeding — Appeal under S. 116B, Representation of the People Act is a civil proceeding. AIR 1958 Andh Pra 642 (DB), Overruled. C. V. K. Rao v. Bhaskararao, (1963) 2 Andh L T 494 : (1964) 1 Andh W R 9 : ILR (1964) Andh Pra 95 : AIR 1964 Andh Pra 185 (188) (Pr 24) (FB).**

——**Art. 132—'Civil proceedings'—Meaning of.**

It is only when the questions of law involved relate to the interpretation of the Articles of the Constitution that the petitioner could get a certificate under Art. 132 of the Constitution. In order that the petitioner may be entitled to get a certificate under Art. 133 (1) of the Constitution of India he has to satisfy the High Court that the judgment of the High Court in appeal was an order arising in a civil proceeding. Ordinarily, 'civil proceedings' are proceedings relating to right to property, status of a

person or right to an office. 'Proceeding' means in the ordinary sense, the form in which action is brought or defended. The right to election is a creature of the statute. It is not a right vested in one person with the duty on the other to obey the right. It is also not a right which could be enforced in a Court of Law. When it is not a right which could be enforced in a Court of Law and which does not create an obligation on the other party and does not vest any right in the petitioner, it cannot be deemed to be a civil right. **(1957) 1 Mad L J (Cri) 700 : 1958 Cri L J 1290 : (1958) 2 Andh W R 324 : 1958 Andh L T 1118 : AIR 1958 Andh Pra 642 (642, 643) (Pts A, B) (Prs 2, 5) (DB).**

[**Overruled** in AIR 1964 Andh Pra 185 (FB).]

——Arts. 132 (1) and 133 — Decision of High Court in reference under S. 44 (1) of M. P. General Sales Tax Act (1958) — Certificate for appeal cannot be granted — M. P. General Sales Tax Act (1958), S. 44 (1).

A decision of the High Court on a reference under S. 44 (1) of the M. P. General Sales Tax Act, 1958 being a decision in the exercise of the High Court's advisory or consultative jurisdiction, the provisions of the Constitution in regard to the certificate for appeal to the Supreme Court do not, in terms, apply to it and certificate cannot be granted either under Art. 132 (1) or under Art. 133. AIR 1960 S C 278, Foll. 1965 Jab L J 264 : (1965) 16 S T C 302 : 1965 M P L J 328 : AIR 1965 Madh Pra 253 (253, 254) (Pr 2) (DB).

——Arts. 132, 133, 226—Writ proceedings—Nature of—'Civil, criminal or other proceedings'—Demands upon and takes colour from proceedings in inferior tribunals—Judgment in writ proceedings relating to assessment to income-tax — Not civil proceedings—Leave to appeal to Supreme Court—Not sustainable—Constitution—Substantial question of law as to interpretation of — Supreme Court, final authority — Final order, extended meaning of — Right of appeal of widest amplitude — Equality clause—Question if provision of Income-tax Act violates—Not a question of law as to interpretation of Constitution—Interpretation — Constitution — Interpretation of and application of — Distinction — Indian Income-tax Act, 1922 (Central Act 11 of 1922), S. 3.

In assessment proceedings culminating in reference to the High Court, it was held that the petitioner had to be assessed for the assessment years 1952-53 to 1956-57 as the principal officer of an Association of persons under S. 3 of Income-tax Act. Then the petitioner applied under Art. 226 of the Constitution seeking to restrain the Income-tax Officer from enforcing the collection of income-tax arrears from him on the ground that S. 3 of the Act allowing the Officer in his discretion to assess an Association of persons or the members thereof individually offended the equality clause enshrined in Art. 14 of the Constitution. A Bench of the High Court dismissed the application. The petitioner sought leave to appeal to the Supreme Court against the order, under Arts. 132 and 133 of the Constitution.

Held, it is clear from the provisions of the Constitution that there can be proceedings other than civil and criminal and that it is impossible to say that any proceeding other than a criminal proceeding must necessarily be a civil proceeding. The proceedings relating to liability to pay tax partake the character of revenue proceedings. The proceeding under Art. 226 of the Constitution seeking to correct, direct or prohibit proceedings before inferior tribunals will necessarily take its colour from the nature of the original proceeding before the inferior tribunal. The writ proceeding will be a 'civil proceeding' or a 'criminal proceeding' or 'other proceeding' according to the nature of the application and how the questions were raised and decided in the proceeding and how ultimately it reflects upon the proceeding before the inferior tribunal or upon the rights of the aggrieved party. The writ proceeding cannot be deemed to be a civil proceeding merely because an infringement of a fundamental right under Art. 14 of the Constitution is complained of.

Article 133 of the Constitution would not apply because the writ proceeding relating to liability to income-tax is not a civil proceeding. Under Art. 132 of the Constitution, proceedings which involve a substantial question of law as to interpretation of the Constitution are placed by the Constitution in a special category irrespective of the nature of the proceedings in which they arise and a right of appeal to the Supreme Court of the widest amplitude is allowed in cases involving such questions. The main object underlying the Article is that the final authority of interpreting the Constitution must rest with the Supreme Court. With the same idea, an enlarged definition of the expression 'final order' is given in the Article significantly different from Arts. 133 and 134. In an application under Art. 132, two conditions must be satisfied concurrently; (i) the case should involve a decision on the interpretation of the Constitution; and (ii) that decision should also involve a substantial question of law touching that aspect.

Merely because Art. 14, has to be referred to, to find out whether S. 3 of the Income tax Act violates Art. 14 of the Constitution, a substantial question of law as to the interpretation of the Constitution cannot be said to be involved in the case. A I R 1963 Mad 190; A I R 1964 Bom 116; AIR 1964 Mad 194 (FB); AIR 1963 S C 946; AIR 1953 S C 210; 2 Q B D 43; 20 Q B D 832; (1940) 1 K B 917; (1940) 2 All E R 372; (1943) A C 147; A I R 1958 Mad 151; AIR 1953 Mad 79; AIR 1963 Cal 389; A I R 1958 S C 293; AIR 1962 S C 1314, Ref. **(1964) 2 I T J 287 : (1964) 2 Mad L J 289 : (1964) 54 I T R 293.**

● **——Art. 132 (1)—Other proceedings — Meaning—Includes revenue proceedings.**

The words "other proceedings" in Art. 132 should not be construed ejusdem generis with what precedes. Those are words of wide amplitude and include all proceedings other than civil or criminal proceedings and thus include revenue proceedings. AIR 1950 S C 169, Ref.

Substantial constitutional questions arise not only in civil and criminal proceedings but in other proceedings as well. The Supreme Court is the final authority on constitutional matters. It cannot therefore be the intention to exclude the right of appeal from the revenue proceedings even though substantial questions of law as to the interpretation of the Constitution arise in such proceedings. AIR 1952 Nag 330, A I R 1953 Nag 89 and AIR 1953 S C 210, Ref. Sriram Gulabdas v. Board of Revenue, M. P., **ILR (1953) Nag 871 : 1953 Nag L J 561 : AIR 1954 Nag 1 (5, 7) (Pt B) (Prs 28, 37) (FB).**

● **——Art. 132—Scope—Nature of proceedings under Art. 226.** See Ibid, Art. 133. **AIR 1965 Punj 459 (FB).**

——Art. 132 (1) — Application for writ of certiorari under Art. 226, Constitution of India against Income-tax Officer—Nature of proceedings—Order dismissing application—Leave to appeal granted under S. 109 (b) and (c) — See Civil P. C. (1908), S. 109 (b) and (c). **AIR 1955 N U C (Punj) 5983 (DB).**

7. Substantial question of law.

(a) Illustrative cases.

7. Substantial question of law.

——Art. 132 — Substantial question of law—(Civil P. C. (1908), S. 110).

Substantial question of law means that (i) the question involved must be one of law, and (ii) it must be a substantial question. The question of law, to be substantial must be in regard to which there is difference of opinion between the different High Courts. AIR 1957 Manipur 7 (9) (Pt B) (Pr 15).

——Art. 132—"Substantial questson of law"—Meaning of.

The term "substantial question of law" in Art. 132 of the Constitution of India does not mean a question of general importance but a substantial question of law as between the parties to the case and a question of law in order to be a substantial question must be a question in respect of which there may be a difference of opinion. 5 L. 260 and 9 L. 581, Referred to. 3 Pepsu L R 26 : AIR 1951 Pepsu 61 (61) (Prs 2, 3).

—— Art. 132—Substantial question of law—Question regarding competency of Principal of College to rusticate student—Civil P. C. 1908, S. 110—Substantial question of law.

The term 'substantial question of law' in Art. 132 must be interpreted in the same manner as it was done under S. 110, Civil P. C.

Where the only question was whether the Principal of a College was competent to rusticate a student of his College during the subsistence of his studentship for issuing and printing a handbill in which he had condemned the authorities of the College in very strong terms, it was held that there was no difference of opinion regarding the question involved and hence was not a fi case for granting the certificate. 1952 Cri L J 403 : 2 Pepsu L R 506 : AIR 1951 Pepsu 59 (60, 61) (Pr 5).

——Arts. 132 and 311 — 'Substantial question of law as to the interpretation of the Constitution' — Person holding permanent post of Excise Head Clerk promoted and working as Office Superintendent for indefinite period — Subsequent reversion to post of Excise Head Clerk on ground of dishonesty and misconduct—Question, if 'substantial question of law as to the interpretation of the Constitution.'

The term 'substantial question of law' in Art. 132, does not mean a question of general importance but a substantial question of law as between the parties to the case and the question must be one in respect of which there may be a difference of opinion. A I R 1951 Pepsu 61, Rel. on.

A person holding a permanent post of Excise Head Clerk was promoted and was working as Office Superintendent for an indefinite period. He was reverted. On a petition for a writ of mandamus and certiorari his reversion was set aside. The State applied under Art. 132 for leave to appeal to the Supreme Court.

Held, (i) There was no substantial question of law involved regarding the interpretation of the word 'holding' as used in Art. 311 of the Constitution of India.

(ii) There was no substantial question of law involved so far as 'the reduction in rank' of the respondent was concerned. AIR 1957 Tripura 22 (23, 24, 25) (Pt A) (Prs 7, 10, 13, 15).

7 (a). Illustrative cases.

● —Art. 132 — Question whether the jurisdiction of the High Court under Art. 226 to quash the order of Administrative Tribunals is confined only to circumstances under which High Court of England can issue a writ of certiorari or is much wider than the said power— Question involves substantial question of law as to the interpretation of the Constitution— Such question can be heard only by a Bench of five Judges. See Ibid, Art. 145 AIR 1963 S C 1626

● — Art. 132 (2) — 'Substantial question of law'—Law finally and authoritatively decided by Supreme Court —Effect.

The interpretation of Art. 14 in the context of classification has been finally settled by the highest Court of this land and under Art. 141 of the Constitution that interpretation is binding on all the Courts within the territory of India — What remained to be done by the High Court was only to apply that interpretation to the facts before it. A substantial question of law therefore cannot arise where that law has been finally and authoritatively decided by the Supreme Court. State of J and K. v. Thakur Ganga Singh, 1960 Mad L J (Cr) 180 : (1960) 1 Ker L R 387 : 1960 -S C J 231 : (1960) 1 Mad L J (S C) 67 : (1960) 1 Andh W R (S C) 67 : (1960) 2 S C R 346 : AIR 1960 S C 356 (359, 360) (Pt C) (Pr 8).

● ——Arts. 132 (3) and 311 (2)—Substantial question of law — Failure to give reasonable opportunity of showing cause against dismissal.

The State Government asked the respondent to show cause why he should not be dismissed from service for making false declarations with regard to his date of birth to Government and also in his application for the post of Assistant Superintendent Jails addressed to the Public Service Commission. The respondent was not asked to show any cause apart from what was stated in that letter ; after the respondent had submitted his explanation and given documentary evidence in proof of his correct age, he received no communication from Government except his order of dismissal—On his dismissal by the Government the respondent filed a writ petition to the High Court which held that the order of dismissal passed against the respondent was made in violation of the constitutional guarantee contained in Art. 311 (2) and was on that ground void and ineffective.

Held, that, in the circumstances, there was no substantial question of law regarding the interpretation of Art. 311 and on the facts the High Court having found that the respondent had no reasonable opportunity of showing cause against the action proposed to be taken against him, there were no good or compelling reasons for expressing dissent from that view. The State of Mysore v. H L. Chablani, A I R 1958 S C 325 (327, 328) (Pt B) (Pr 6)

——Art. 132—Substantial question of law — Vesting of legal character as speaker Declaration if necessary. See Ibid, Art. 133 (1) (C) AIR 1955 Ajmer 40.

——Art. 132 (1) — Scope Right to obtain mining lease, whether fundamental right — Substantial question of law. See Ibid, Art. 19 (1) (f). A I R 1958 All 621 (DB).

——Art. 132 (2)—Substantial question of law—Rules under Art. 309, Rr. 11 and 17 —High Court's jurisdiction to hold enquiry against a Subordinate Judge —Question as to.

Where the High Court has held that it has jurisdiction under Rr. 11 and 17 of the Rules framed under Art. 309 to hold an enquiry into charges against a Subordinate Judge without its being initiated by the State Government, there is no substantial question of law as to the interpretation of the Constitution involved in the case in view of the decision of the Supreme Court in AIR 1959 S C 512. No leave to appeal to Supreme Court can therefore be granted under Art. 132 (2) against an order of the High Court

refusing to quash the order of dismissal of the Subordinate Judge. A I R 1960 Andh Pra 194 (195, 196) (Pt B) (Pr 5) (DB).

——Art. 132—'Substantial question of law.'

Having regard to the fact that the provisions of S. 5 of Sch. 5 of the Constitution are substantially the same as of S. 92 of the Government of India Act, on which there is authoritative pronouncement of the Federal Court the question of law as to the interpretation of S. 5 in Sch. 5 of the Constitution involved in this case can no longer be regarded as substantial as to warrant the grant of leave under Art. 132. A I R 1951 Mad 969 FB), Rel. on. A I R 1959 Andh Pra 359 (359, 360) (Pt B) (Pr 1) (DB).

—Art. 132 (1) — 'Substantial question of law'—Meaning of.

In order to grant a certificate under Art. 132 of the Constitution, the question involved must, in the first instance be a substantial question of law and secondly that substantial question of law must be as to the interpretation of the Constitution:

Where the Police Commissioner's Orders and Notifications were challenged under Arts. 19 (1) (g), 13, 14 and 31 of the Constitution, but the decision of the case did not involve the interpretation of these articles of the Constitution.

Held, that no certificate could be granted under Art. 132 (1) as no substantial question of law as to the interpretation of the Constitution was involved in the case. AIR 1960 S C 356, Rel. on. Bijon Krishna Mukherjee v. Commissioner of Police, AIR 1961 Cal 521 (522, 523, 526) (Pt A) (Prs 6, 24, 25) (SB).

——Art. 132 (1) — 'Substantial question of law as to interpretation of Constitution.'

Where the question about the want of jurisdiction of the High Court to interfere under Art. 227 was not raised when the Rule was heard, and besides the article had already been construed by the Supreme Court, there was no case for the certificate under Art. 132 (1). AIR 1958 Cal 679 (680, 681) (Pt B) (Prs 10, 11) (DB).

——Art. 132 — 'Substantial question of law' —Scope and implications of Arts. 14 and 19— Consideration of—If amounts to—(Civil P.C. (1908), S. 110, O. 27-A R. 1).

The scope and implications of Art. 19 and Art. 14 of the Constitution of India have been the subject of several decisions of the Supreme Court and are now well-known. So it cannot be said now that merely because in considering the question whether a particular statute offends against the Constitution, Art. 19 (1) (g) and Art. 14 have to be referred to for finding out whether the provisions of the Constitution are violated by the impugned statute, there is substantial question as to the interpretation of the Constitution involved in the case. 61 Cal W N 694 : (1958-59) 15 F J R 193 : (1958) I Lab L J 285 : AIR 1957 Cal 702 (709) (Pt F) (Pr 23).

——Art. 132 (1) — Substantial question of Law — Question whether Art. 19 is retrospective. See Ibid, Art. 19. AIR 1953 Him Pra 77.

——Art. 132—Substantial questions of law.

Every question of law cannot be regarded as a substantial question of law which would warrant the grant of leave to appeal to the Supreme Court—Applications under Art 226 of the Constitution were directed against an order of 'requisition' made by the Collector of Warangal (then styled as the Civil Administrator of Warangal) under the Defence of Hyderabad Regulation for public purposes. The main objections that were raised with regard to the validity of the order were:—(a) that this order offended Art. 19(1) of the Constitution of India inasmuch as it deprived the petitioners of possessing and holding the property; (b) that this order infringed Art. 31 of the Constitution of India because there was deprivation of the property without payment of compensation; (c) that it was against the fundamental rights conferred under the Constitution under Art. 14 of the Constitution because it went against the principle of equal protection of the laws; (d) that according to S. 15 of the Defence of Hyderabad Regulation it was obligatory that an order of requisitioning should be made causing the least inconvenience to the person who was deprived of his property and the matter as to whether the least inconvenience was being caused to the Petitioners required enquiry and in his case no enquiry had been made and therefore the order was bad; and (e) the pre-requisite of there being a public purpose before a property could be requisitioned had not been satisfied in this case.

Held, that every one of these aspects had been considered and the law with regard to these various points had been laid down by the Supreme Court. The legal objections that could be raised as regards the validity of the order and the right of the Court to go into the question as to whether the requisitioning order was rightly issued were matters which did not warrant reconsideration by the Supreme Court. AIR 1950 S C 222; AIR 1951 S C 41, Foll. AIR 1954 Hyd 126 (127) (Prs 3, 6) (DB).

——Art. 132 (1)—Substantial question of law.

Judgment holding S. 13, (Hyderabad) Atiyat Enquiries Act. 1952 ultra vires the Constitution—Interpretation of Constitution involved—Certificate could be granted. ILR (1953) Hyd 123 : AIR 1953 Hyd 131 (131) (Pt A) (Pr 2) (DB).

——Art. 132—Substantial question of law — Public safety—Preventive Detention Act 1950, S. 3.

If the applicant was a member of a Communist party which itself was indulging in unlawful and subversive activities that by itself would be sufficient for the Government to come to the conclusion that his being at large would be prejudicial to the maintenance of public order in the State. There is no substantial question of law involved in such a case. 1951 Mad W N 68 (2) : 52 Cri L J 252: 64 Mad L W 202 : 1951 Mad W N Cr 16 (2) : 1951-1 Mad L J 11 : AIR 1951 Mad 611 (612) (Pt B) (Pr 3) (DB).

——Arts. 132 add 133—Leave to appeal—Substantial question of law regarding interpretation of Constitution — Finding that denial of legal help to public servant to defend himself was tantamount to denial of reasonable opportunity — Not a substantial question of law—No question of interpretation of Art. 311 involved.

The question as to whether a delinquent public servant was given a 'reasonable opportunity' envisaged by Art. 311 of the Constitution being dependent on the circumstances and facts of a particular case, a finding by the High Court in a particular case that denial of legal help to the public servant concerned was tantamount to denial of 'reasonable opportunity' within the meaning of Art. 311 of the Constitution does not involve any substantial question of law or any such question regarding interpretation of the Constitution nor does it involve any interpretation of Art. 311 of the Constitution and leave to appeal to Supreme Court cannot be granted. A I R 1960 S C 356 and A I R 1947 F C 37 and A I R 1944 P C 72 and A I R 1957 S C 882 and A I R 1948 Mad 379 and AIR 1957 Andh Pra 414 and AIR 1958 All 532 and A I R 1959 Orissa 152 and A I R 1960 Assam 141, Rel. on. I L R (1962) Cut 1 : A I R 1962 Orissa 105 (106, 107) (Prs 6, 9) (DB).

——Art. 132—Constitutional question taken in previous application but not pressed at hearing — Question also concluded by authority—Leave to appeal.

Where the question of interpretation of the Constitution taken up in petition u Art. 226 was not pressed at the time of the hearing of that application but was raised by way of argument at the time of petition for granting leave to appeal and the question was concluded by authority of the Supreme Court:

Held, that leave to appeal could not be granted. **23 Cut L T 245 : I L R (1957) Cut 328 : A I R 1958 Orissa 18 (19, 20) (Pt D) (Pr 7) (DB).**

——Arts. 132 (1) and 133 (1) (c) — Substantial question of law—Contempt proceedings—Leave to appeal to Supreme Court—Nature of proceedings—Mandamus — Writ of — Alleged invasion of fundamental right under Art. 19 (1) (f) — Power of High Court under Art. 226—Leave to appeal—Art. 134 (1) (c).

A contempt of court may be committed either when a person's action or inaction is in disobedience of an order of Court or when his action or conduct is in disregard of an undertaking given to the Court. An agreement between the parties together with the Court's order thereon may amount to an injunction.

At the hearing of a proceeding after an ad interim order of injunction, a consent order was passed in pursuance of the agreement of the parties one of the terms thereof was: "The respondent will take possession only after the purchase to which he claims to be entitled has been legally completed." After the consent order was recorded, the ad interim order of injunction was vacated. The petitioner, alleging that the respondent disturbed his possession, by forcible entry, in violation of the consent order moved the Court praying for a writ of mandamus against the respondent, directing him to forbear from interfering with the petitioner's possession and also for a rule committing him for contempt of Court. But the rules were discharged, the Court holding that no injunction was called for, that no case was made out, for a writ of mandamus, and that the respondent had not committed any contempt of Court. The petitioner applied for leave to appeal to the Supreme Court by means of two applications, one under Art. 133 and the other under Art. 132 of the Constitution:

Held, (1) that with regard to the question whether the respondent committed any contempt of Court, two views were possible, namely (a) that a consent order remains in the domain of contract, and no undertaking could be implied simply by reason of the fact that a command of the Court was superadded to the agreement, and since no undertaking was given to the Court the taking of possession by the respondent was in breach of an undertaking to the petitioner only and not of an undertaking to the Court, and no contempt was committed; and (b) that the order of the Court read as a whole was in the nature of a prohibitory injunction by the Court, commanding the respondent to refrain from doing anything in breach of the undertaking and the respondent was therefore guilty of contempt in taking possession in violation of the injunction and in breach of the implied promise to the Court; and therefore the point was of great public as well as private importance and the case was a fit case for appeal to the Supreme Court and leave should be granted; (2) that even if the contempt proceedings were treated as criminal proceedings, in view of the fact that the principle involved is of wide public as well as private importance, the High Court would be justified in granting a certificate of fitness under Art. 134 (1) (c) of the Constitution; (3) that, however proceedings in Court are to be regarded as anomalous in their nature, and are sui juris; for purposes of leave to appeal to the Supreme Court they are civil proceedings, since the remedy to the petitioner could be given only by way of civil execution, and therefore leave should be granted under Art. 133 (1) (c) of the Constitution; (4) that with regard to the question whether it was a case in which a mandamus should issue under Art. 226, to restore possession to the petitioner, that involved a substantial question of law within the meaning of Art. 132, in view of constitutional questions raised as to the powers of the Court under Art. 226 and as to whether any fundamental right to hold property under Art. 19 (1) (f) has been invaded by reason of the respondent taking possession, which would entitle the petitioner to move the Court for enforcement of such fundamental right and (5) that therefore a certificate should be granted under Arts. 132 (1) and 133 (1) (c) of the Constitution for leave to appeal to the Supreme Court.

Per Reuben, J.—In considering whether there has been an invasion of a fundamental right under Art. 19 (1) (f) a distinction has to be made between the right of a citizen "to hold property" and his title to, hold a particular property, and when the latter, is disputed by a party and definite answer cannot be given without an investigation, it must be held that there is substantial question of law as to the interpretation of the Constitution. 42 Cal W N 203; AIR 1948 Cal 294; A I R 1929 Pat 72 (FB) Ref. **I L R 30 Pat 287 : A I R 1952 Pat 23 (25, 27, 28) (Pt A) (Prs 10, 11, 12, 21, 24) (DB).**

——Art. 132—Substantial question of law as to the interpretation of the Constitution.

In a proceeding against the petitioners under S. 137, Companies Act, the Registrar of the Joint Stock Companies made a first information report on the basis of which the Police started investigation. The petitioners applied to the High Court under Art. 226, Constitution of India and contended that an investigation by the Police under Criminal P. C., was excluded when an investigation had been made under the provisions of the Companies Act, because otherwise a discrimination in the procedure would be introduced which would be in conflict with Art. 14 of the Constitution. This argument was rejected by the High Court Thereupon the petitioners applied for leave to appeal under Arts. 132, 133 and 134 of the Constitution to the Supreme Court:

Held, that it could not be said that the case involved a substantial question of law as to the interpretation of the Constitution and Art. 132 was therefore, not applicable. **57 Punj L R 332 : I L R (1955) Punj 1345 : AIR 1956 Punj 1 (2) (Pt A) (Pr 3) (DB).**

——Arts. 132 (1) and 311 (2) — Substantial question of law as to interpretation of Constitution—Termination of service of temporary Government servant — Finding that termination amounts to dismissal from service so as to attract Art. 311(2) arrived at following the test laid down in Supreme Court decision — Case held involved no substantial question of law relating to interpretation of Art. 311 (2)—Case involved at best further interpretation of Supreme Court decision, for which no certificate under Art. 132 (1) could be granted. A I R 1961 Tripura 27 (28) (Pt A) (Prs 3, 6).

——Art. 132—'Substantial question of law as to the interpretation of the Constitution' — Question of academical interest.

On a petition for mandamus and certiorari, the reversion of a Government servant was set aside and he was reinstated to the post of the Office Superintendent. He was paid the arrears of his salary in compliance with the Court's order without any protest by the Government. Subsequently, the State made an application under Art. 132 for leave to appeal to the Supreme Court.

Held, that even if the application be not deemed to be barred by estoppel, it was not a fit case for being certified as involving a substantial question of law as to the interpretation of the Constitution of India. A I R 1957 Tripura 22 (25) (Pt B) (Pr 18).

——Art. 132 (1)—Substantial question as to interpretation of constitution—Law of pre-emption whether repugnant to fundamental rights.

The question whether the law of pre-emption is repugnant to the fundamental right given in Art. 19(1)(f) is one involving the interpretation of a provision of the Constitution and, therefore, the matter involves a substantial question of law appealable under Art. 132 (1) AIR 1951 Vind Pra 38 (39)(Pt A) (Pr 4).

8. "As to the interpretation of this Constitution."

(a) Questions raising interpretation of the Constitution.

(b) Questions not involving interpretation of the Constitution.

8. "As to the interpretation of this Constitution."

——Art. 132—Applicability—Conditions.

Where the question of law involved in the case related to interpretation of a provision of the Income-tax Act, and no question relating to the interpretation of the Constitution was involved, Art. 132 does not apply. ILR (1960) 1 All 42 : (1962) 44 I T R 574 : 1959 All L J 589 : AIR 1960 All 84 (84) (Pt A) (Pr 2) (DB).

——Art. 132 (1) — Scope — Right to obtain mining lease under the Rules—Whether a fundamental right—Proceeding under Art. 226 for issue of writ of mandamus — Nature of — Whether involves a substantial question of law as to interpretation of Constitution. See Ibid, Art. 133 (1). A I R 1958 All 621 (DB).

——Art. 132—Scope.

Leave can be granted under Art. 132 only in a case involving a substantial question of interpretation of the Constitution. AIR 1955 All 74 (75) (Pt B) (Pr 10) (DB).

● ——Arts. 132 (1), 134 (1)—Question under Preventive Detention Act — Case held not fit for appeal to Supreme Court.

Before the High Court can grant a certificate under Art. 132 (1), the case must involve a substantial question of law as to the interpretation of the Constitution of India. Where the case merely involves the interpretation of certain sections of the Preventive Detention Act 4 of 1950, as amended by Act 4 of 1951 and not the Constitution of India and the short point for determination is whether a detenu is entitled to be released forthwith when his case has not been considered within the period prescribed by all the 3 members of the Advisory Board, it is not a fit case for appeal to the Supreme Court, Kishorilal Bahati v. State, 52 Cri L J 1453 : ILR (1951) 3 Assam 394 : AIR 1951 Assam 169 (172) (Pt C) (Prs 23, 24) (SB).

——Art. 132 (1)—Substantial question of law.

Where neither a provision of the Constitution nor its application to the facts of a case is in any way in controversy, it cannot be said that the case involves a substantial question of law as to the interpretation of the Constitution. A I R 1953 Him Pra 77 (78) (Pt A) (Pr 3).

——Arts 132 and 134 (1) (c) — No substantial question of law as to interpretation of the Constitution involved—No special ground made out under Arts. 132 and 134 (1) (c) — Leave to appeal to Supreme Court refused. ILR (1952) Hyd 78 : A I R 1953 Hyd 218 (219) (Pt B) (Pr 3).

——Art. 132—Question of law—No question of interpretation of Constitution — No leave to appeal. 1961 M P L J (Notes) 24.

——Art. 132 — Applicability of article — Necessary conditions.

In an application under Art. 132 two conditions must be satisfied concurrently, (i) the case should involve a decision on the interpretation of the Constitution (ii) that decision should also involve a substantial question of law touching that aspect. (1964) 2 I T J 287 : (1964) 54 I T R 293 : (1964) 2 Mad L J 289.

——Art. 132—Applicability—Essential elements.

For the application of Art. 132 to a case it is necessary that (i) the case must involve a question of law; (ii) it must be a substantial question of law; (iii) it must be a question of law, not of fact, and (iv) it must be a question as to the interpretation of the Constitution and not of any other law. A I R 1957 Manipur 7 (8) (Pt A) (Pr 5).

8 (a). Questions raising interpretation of the Constitution.

● ——Arts. 132, 145, 226 — Question whether the jurisdiction of the High Court under Art 226 to quash the orders of Administrative Tribunals is confined only to circumstances under which High Court of England can issue a writ of Certiorari or is much wider than the said power — Question involves substantial question of law as to the interpretation of the Constitution — Such question can be heard only by a Bench of five Judges. See Ibid, Art. 145. A I R 1963 S C 1626.

——Art. 132 (1) — 'Substantial question of law as to the interpretation of this constitution'.

The question whether the Regulation 3 of 1877 and the bye laws framed thereunder amount to a reasonable restriction on the applicant's fundamental right to hold a cattle-fair in his own land involves a substantial question of law as to the interpretation of the Constitution. A I R 1951 Cal 424. Rel on. 1953 A M L J 118 : A I R 1954 Ajmer 17 (17) (Pr 7).

——Art. 132—Jurisdiction—Allahabad High Court's power to quash notification issued by Ministry of Food, Government of India—Certificate under Art. 132 granted. See Ibid, Art. 226. A I R 1954 All 726 (DB).

——Arts. 132, 133 (i) (c), 134 (i) (c) — Certificate of fitness—Substantial question of law.

Under an agreement between the promoters of the Light Railway Company and the District Board of Patna the latter had a right of purchasing the Light Railway, subject to certain conditions, in accordance with the provisions of S. 41 of the Bengal Tramways Act. The District Board on the 16-12-1949, gave six months' notice in writing to the Company, according to the provision of S 41 of the Act, declaring its intention to exercise its right of purchasing the Light Railway with effect from the 25-6-1950. On the 17-5-1950, the petitioner company moved the High Court and prayed for a writ of mandamus, restraining the District Board from taking possession of the Light Railway "except in due course of law." A rule was issued by the High Court on the 23-6-1950, and a consent order was passed. One of the terms of the agreement between the parties was thus :

"The District Board will take possession of the undertaking, viz., the Bihar Bukhtiyarpur Light Railway (including the Rajgir Extension) only after

the purchase, to which the District Board claims to be entitled, has been legally completed." The petitioner's case was that the opposite party disturbed its possession by a forcible entry at midnight of the 24-6-1950, in violation of the consent order, and a petition was moved in the High Court on the 28-6-1950, praying for a writ of mandamus against opposite parties Nos. 1 and 2 and others, directing them to forbear from interfering with the possession of the petitioner over the Light Railway and also for a rule committing the opposite parties Nos. 1 and 2 for contempt of Court. On the 19-7-1950, the petitioner filed a supplementary petition on the ground of complete dispossession and obtained a further rule calling upon the opposite parties Nos. 1 and 2 to show cause why a mandatory injunction should not issue against them directing them to restore possession of the Light Railway to the petitioner. In view of the admission that dispossession was complete, the rule relating to the issue of a writ to restrain the opposite party from disturbing the petitioner's possession was discharged by the High Court. It had been found that the opposite party had not, by its action complained of, committed any contempt of Court, nor had the petitioner made out a case for the issue of a writ of mandamus asked for.

Held (1) that a contempt of Court may be committed either when a person's action or inaction is in disobedience of an order of a Court or when his action or conduct is in disregard of an undertaking given to the Court. The order of the High Court incorporating the agreement was divisible into parts, namely, (1) the agreement between the parties, and (2) the command of the Court superadded to it. It was open to two constructions. According to one view a consent order remains in the domain of contract and no undertaking to the Court can be implied simply by reason of the fact that a command of the Court is superadded to the agreement. According to the other view as soon as the sanction of the Court is superadded to an agreement undertaking by the party to the Court is implied. The point raised was of great public as well as private importance, and the principle when finally decided by the Supreme Court would be of benefit not only to the parties who were directly involved in the present litigation but to a considerable body of other people also. Therefore it was a fit case for appeal to the Supreme Court and leave should be granted under Art. 133 (1) (c). Even treating the proceeding in the High Court as a criminal proceeding, in view of the fact that the principle involved was of wide public as well as private importance, the High Court would be justified in granting a certificate of fitness under Art. 134 (1) (c).

(2) the writ of mandamus can issue to a person, (or corporation) requiring him to do some particular thing which appertains to his office and is in the nature of a public duty. It could not, however, be said that taking possession of the Light Railway by the District Board or its Chairman was in breach of duty appertaining to the office of the Chairman or the corporation, for their duties are defined in the Local Self-Government Act. If there was an infringement of a fundamental right, it is a substantial point for consideration whether or not the power under Art. 226 is coupled with a duty. In deciding whether decision of the High Court could be supported it would be necessary to consider one or both of two questions: — (1) Is the right alleged to have been infringed a fundamental right? and (2), if it is a fundamental right, does Art. 226 impose a duty in addition to conferring a power? Both of these were questions as to the interpretation of the Constitution of India and were substantial questions of law. The questions raised were ;matters of wide public importance; and in the absence of any authoritative decision of the Supreme Court directly on the point, the High Court ought to grant a certificate under Art. 132. A I R 1948 Cal 294 : 42 Cal W N 203, Ref. **ILR 30 Pat 287 : AIR 1952 Pat 23 (25, 27, 28) (Pt A) (Prs 10, 11, 12, 21, 24) (DB).**

——**Arts. 132 (1), 134 (c) — Leave to appeal to Supreme Court — Appeal involving important questions of law one of which relating to interpretation of the Constitution — Question as to validity of Saurashtra Public Safety Measures (Third Amendment) Ordinance (66 of 1949) also involved — Leave granted. ('51) 4 Sau L R 178 (DB).**

——**Arts. 132 (1) and 311 (2), Proviso (a)—Substantial question of law as to interpretation of Constitution — Question whether proviso (a) to Art. 311 (2) would also apply in respect of a conviction before entry of public servant in service is substantial question of law involving interpretation of Constitution — Question is of general importance and likely to crop up often — Case fit for grant of certificate under Art. 132 (1) — Considerations that dismissed Government servant was poor and not in a position to contest appeal before Supreme Court, not to be taken into account. AIR 1961 Tripura 27 (29) (Pt B) (Prs 13, 14).**

——**Art. 132 (1) — Order rejecting jail appeal summarily — Leave to appeal — (Criminal P. C. (1898), S. 421).**

Whether the order of High Court under S. 421, Criminal P. C., rejecting the jail appeal summarily without giving to the accused an opportunity of being heard violates Art. 14 of the Constitution is a substantial question of law as to the interpretation of the Constitution. Leave to appeal can therefore be granted under Art. 132 (1) of the Constitution. **1956 Cri L J 1251 : A I R 1956 Vindh Pra 35 (37) (Pt C) (Pr 6).**

——**Arts. 132 (1) and 133 (1) (c) — Substantial question of law—Whether law or custom of pre emption is repugnant to Art. 19 (1) (f)—Whether principle of pre-emption by vicinage should apply to entire mauza — Certificate of leave to appeal to Supreme Court.**

The question whether the law or custom of pre-emption is repugnant to the fundamental rights given in Art. 19 (1) (f) of the Constitution is one involving the interpretation of a provision of the Constitution and is therefore a substantial question of law under Art. 132 (1) of the Constitution. But the question whether the principle of pre-emption by vicinage should apply to an entire mauza, which is one of reasonableness with reference to the circumstances of each case, such as, the area sought to be pre-empted, the length over which there is vicinage, the facilities for cultivation and the like, etc., is not a substantial question of law which would justify the grant of a certificate for leave to appeal to the Supreme Court under Art. 132 (1) or Art. 133 (1) (c). **A I R 1951 Vindh Pra 38 (39) (Pts A, B) (Prs 4, 6).**

8 (b). Questions not involving interpretation of the Constitution.

● ——**Art. 132 (2)—'Interpretation of the Constitution'—Meaning of.**

Where the parties agree on the true interpretation of a provision, it is not possible to hold that the case involves any question of law as to the interpretation of the Constitution.

At no stage of the proceedings either the correctness of the interpretation of Art. 14 or the principles governing the doctrine of classification had been questioned by either of the parties. Indeed accepting the doctrine of classification evolved by the deci-

sions of the Supreme Court the appellants contended that there was a valid classification under the rule (4.47) of the J. and K. Motor Vehicles Rules.

Held, that the question raised in this case did not involve any question of law to the interpretation of the Constitution. State of J. and K. v. Thakur Ganga Singh, **1960 S C J 231 : (1960) 1 Mad L J (SC) 67 : (1960) 1 Ker L R 387 : (1960) 1** Andh W R (SC) 67 : **1960 Mad L J (Cr) 180 : (1960) 2 S C R 346 : A I R 1960 S C 356 (359) (Pt B) (Pr 7).**

——Art. 132—Question of law as to interpretation of the Constitution.

The question whether S. 3 (5) of Press (Objectionable Matter) Act, 1951, is a restriction in the interests of public order is a question of fact and not a question of interpretation of the Constitution.

The question whether the petitioner who was detained and then released on the advice of the Advisory Board cannot be proceeded with for the same offence does not involve any substantial question of interpretation of the Constitution. AIR 1953 S C 325, followed. **1954 Cri L J 1022 :** AIR **1954** Ajmer 41 **(42) (Pt A) (Prs 2, 3).**

——Art. 132 (1) — Substantial question of law as to the interpretation of the Constitution — Question whether certain railway circular was "existing law."

The question whether the circular dated 29-7-1957 issued by the Railway Board under R. 157 of the Railway Establishment Code is a part of the existing law or not is not a substantial question of law as to the interpretation of the Constitution because S. 241 (2), Government of India Act, 1935 and Arts. 313 and 366 (10) of the Constitution and the ruling of Supreme Court in AIR 1961 S C 751 have fully clarified the position in this regard. No certificate can, therefore, be granted under Art. 132 (1). I L R (1964) 1 All 397: AIR 1964 All 125 (126) (Pt A) (Pr 3) (DB).

——Arts. 132, 133 (1) (c)—No question of interpretation of Constitution—Article 132 does not apply.

Where in an appeal to the High Court from the decision of an Election Tribunal upon an Election petition, there is no question of interpretation of the Constitution, Art. 132 does not apply and no certificate under it for appeal to the Supreme Court can be given.

It was further held that certificate under Art. 133 (1) (c) also could not be granted in this appeal, since this could only be granted according to the Rules and Practice of the Calcutta High Court, by the Bench taking up Supreme Court matters. I L R (1959) 2 Cal 117.

——Arts. 132 and 311 — 'Question of law as to the interpretation of the Constitution' — Petitioners' services terminated in accordance with terms of appointment — Leave to appeal under Art. 132 not granted.

Where the petitioner's services were terminated in accordance with the terms of her appointment, Article 311 does not come into play at all. Consequently, there is no question of law as to the interpretation of the Constitution and leave to appeal to the Supreme Court under Art. 132 cannot be granted, **AIR 1956 Him Pra 8 (8) (Pr 3).**

——Arts. 132, 133 and 311—Question as to interpretation of Constitution — Application under Arts. 132 and 133 — Contention that compulsory retirement amounted to removal and that opportunity to show cause was essential—Compulsory retirement does not amount to removal — Art. 311 is not attracted – No question of interpretation of Constitution or substantial question of law arises — Civil P. C. (1908), Ss. 109, 110. **AIR 1955 N U C (Madh B) 3733.**

——Art. 132 (1) — Accused tried under S. 5 (2), Prevention of Corruption Act and acquitted—High Court holding that he could not be subsequently tried on same facts under S. 409, Penal Code — Application under Art. 132 (1) rejected. See Ibid, Art. 20 (2). AIR 1955 N U C (Madh B) 3037.

——Arts. 132 and 134 (1) (c), 226 — Leave to appeal against order of release in a petition for habeas corpus Conditions of appealability—Test of — Civil P. C. (5 of 1908), S. 109 (c) —Analogy — Substantial question of law as to interpretation of Constitution should exist.

The High Court ought to be extremely chary of exercising its power under Cl. (c) of Art. 134 of the Constitution of India against a person released from detention. The intention of the framers of the Constitution seems to have been that if on the one hand absolute immunity from appeal against an order of release obtaining in England is not to be imported into India, appealability in India ought not to be treted as a matter of course on the other hand. The Constitution provides accordingly for a certificate of fitness and (b) of Art. 134 (1) of the Constitution of India, the High Courts as a sine qua non for imperilling the liberty of a released subject. In all other criminal matters than those falling under sub-cls. (a) and (b) of Art. 134 (1) of the Constitution of India, the High Courts in the respective States in the territory of India should ordinarily be the final Court of appeal. This is a fact which should not be lost sight of when considering the question as to whether a certificate of fitness should or should not issue in any case.

The jurisdiction to certify a case as a fit one for further appeal is to a certain extent discretionary and the jurisdiction to give leave or to refuse leave to appeal is a very delicate one. (Cf. judgment of Lord Esher, M. R., in (1886) 17 L R Q B D 521 at 528).

Where petitions to give leave to appeal to the Supreme Court under Art. 134 (1)(c) were filed by the Government of Madras against orders for release of a detenu.

Held, (1) that making any allowance for possible difference between considerations pertinent to civil cases and those pertinent to criminal cases, in the matter of application of tests, those laid down under S. 109 (c), Civil P. C., are broadly applicable to petitions under Art. 134 (1) (c) of the Constitution.

(2) That under the Constitution which contains fuller and wider provisions as to appeal than those of the Government of India Act of 1935 which contained only S. 205 corresponding to Art. 132 of the Constitution, there is no such immunity from appealability in the case of an order of release on an application for a writ of habeas corpus as obtains in England.

(Certificate in this case was refused as no substantial question of law as to interpretation of Constitution was involved). (Case-law reviewed). **(1952) 2 Mad L J 725 : 65 Mad L W 892 : 1953 Cri L J 256 : AIR 1953 Mad 66 (70) (Pt F) (Prs 9, 10) (DB).**

——Art. 132 — Applicability — Right to property — Pasturage—Nature of right — Question of interpretation of Constitution held not involved. See Ibid, Art. 226. AIR 1957 Manipur 1.

——Art. 132 (1) — Power of Nagpur High Court to punish for contempt — Question of interpretation of Constitution does not arise every time the High Court exercises the power. See Ibid, Art. 215. AIR 1952 Nag 130 (DB).

——Arts. 132 (1) and 133 (1) (c) — "It shall be lawful" in S. 13, Police Act — Wrong interpretation of — Leave to appeal—(Police Act (1861), S. 13).

The Police Act was enacted to reorganize the police and to make it a very efficient instrument for the prevention and detection of crime, and S. 13 gives a statutory protection to the authorities if they act in the manner provided therein. It imposes no obligation on any of them to exercise the power if they do not consider it necessary to do so. It cannot therefore be contended that the use of the expression "it shall be lawful" in S. 13 of the Police Act makes it obligatory on the officers concerned to act in the manner indicated in the section and failure to act in such a manner entitled the person aggrieved to ask for a writ. But assuming that the contention is right, the question involved is one of interpretation of S. 13 of the Police Act; and even if the High Court be held to have rejected the application of the petitioner for the issue of a writ of mandamus on a wrong interpretation of the statute, leave to appeal cannot be granted under the provision of Art. 132 (1) of the Constitution because no question of law as to the interpretation of the Constitution arises. Nor can leave be granted under Art. 133 (1) (c) of the Constitution, because the High Court has not passed any order in a Civil proceeding nor is any matter of wide public importance involved in the case. **I L R 30 Pat 1252 : 1952 Cri L J 1639 : AIR 1952 Pat 386 (387) (Pt B) (Pr 4) (DB.)**

——Arts. 132 (1) and 134 (1) (c)—Criminal case — Leave to appeal—Grounds—Competency of High Court Judge to hear and decide case if proper ground—Constitution of India, Art. 376 (2).

The petitioners accused were convicted on a murder charge and sentenced to imprisonment for life. The sentence was confirmed on a reference and appeal to a Division Bench of the High Court. The petitioner thereupon applied under Art. 132 (1) and Art. 134 (1) (c) of the Constitution of India for leave to appeal to the Supreme Court on the grounds (1) that one of the judges constituting the Bench which disposed of the appeal was not validly appointed to the office of the Chief Justice and as such the Bench had no jurisdiction to hear the appeal (2) that on the merits the decision confirming the conviction and sentence was wrong and unsustainable in law.

Per Koshi J. — Held that even assuming that the appointment of the Chief Justice was not Constitutionally correct, in view of the events that had become accomplished facts when the decision in the case was given, it was not open in law to the petitioner to raise the competency of the Chief Justice to hear and decide the appeal when it was taken up for hearing or in a proceeding for leave to appeal or in the appeal before the Supreme Court itself, inasmuch as it would amount to a collateral attack which the law did not permit. The first ground raised being devoid of any merit leave to appeal could not be granted on that ground. 1919-46 D L R 547 and Cooley's Constitutional Limitations 8th Edn. Rel. on.

Held also, that the construction of Art. 376 (2) which is involved in the first ground and which occurs in Part 21 of the Constitution is not a substantial question of law as to the interpretation of the Constitution within the meaning of Art. 132 (1).

Held further, that the second ground urged in support of the application merely involved the question of the appreciation of the approver's evidence and the form of the judgment and therefore it was hardly a matter that could be made the subject of appeal to the Supreme Court. Leave to appeal is not granted except where some clear departure from the requirements of justice exists nor unless by a disregard of the forms of legal process, or by some violation of the principles of natural justice or otherwise substantial and grave injustice has been done. Where the grounds suggested cannot sustain the appeal itself leave cannot be given. **1950 Ker L T 439 : AIR 1951 Trav-Co 45 (48, 50) (Pts A and B) (Prs 10, 14, 16) (DB).**

9. Special leave.

● **——Art. 132 (2) — Applicability—Special leave — Grant of—Conditions.**

Under Cl (2) of Art. 132 there is no scope for granting a special leave unless two conditions are satisfied: (i) the case should involve a question of law as to the interpretation of the Constitution; and (ii) the said question should be a substantial question of law. The principle underlying the Article is that the final authority of interpreting the Constitution must rest with the Supreme Court. With that object the Article is freed from other limitations imposed under Arts. 133 and 134 and the right of appeal of the widest amplitude is allowed irrespective of the nature of the proceedings in a case involving only a substantial question of law as to the interpretation of the Constitution. State of J. and K. v. Thakur Ganga Singh, **1960 S C J 231 : 1960 Mad L J (Cr) 180 : (1960) 1 Mad L J (SC) 67 : (1960) 1 Ker L R 387 : (1960) 1 Andh W R (SC) 67 : (1960) 2 S C R 346 : AIR 1960 SC 356 (359) (Pt A) (Pr 6).**

——Art. 132 — Criminal P. C. (1898), S. 426 (2B) — 'Special Leave'—Meaning of—Not restricted to leave granted by Supreme Court under Art. 132 (2) or Art. 136—It means leave granted on special grounds and includes certificate of fitness under Art. 134 (1) (c) of the Constitution of India. See Criminal P. C. (1898), S. 426 (2B). AIR 1960 Andh Pra 622.

● **——Art. 132 (1) — Grant of certificate—Question of interpretation of Preventive Detention Act**

Before the Supreme Court can grant a certificate under Art. 132 (1) of the Constitution, the case must involve a substantial question of law as to the interpretation of the Constitution of India. The Supreme Court will decline to grant a certificate under that Article if the case merely involves the interpretation of the Preventive Detention Act. Kishori Lal v. State, **I L R (1951) 3 Assam 494 : 52 Cri L J 1453 : AIR 1951 Assam 169 (172) (Pt C) (Prs 23, 24) (SB).**

10. Scope of appeal before Supreme Court.

● **——Art. 132—New point—Point that Central Government had not formed opinion as required by S. 3, Essential Commodities Act before promulgating Fruit Products Order (1955), cannot be taken for first time in appeal before Supreme Court. See Essential Commodities Act (1955), S. 3. AIR 1965 SC 1167.**

● **——Arts. 132, 226—New point—Writ petition decided by High Court upon assumption of existence of certain legal position—Existence of such position not challenged before High Court—It cannot be allowed to be challenged in appeal before Supreme Court from order of High Court—Essential Commodities Act (1955), Ss. 2, 3—Fruit Products Order (1955), Cl. 16 (1) (c).**

Before the High Court, in a writ petition, the argument was based on the plea that the petitioner's product was medicinal and, therefore, was exempt under Cl. 16 (1) (c) of the Fruit Products Order, 1955. The High Court held against the contention. The point that the product was not an essential commodity within the meaning of the Essential Commodities Act, 1955, was not raised. It was assumed that the product was an essential commodity.

Held, that the point that it was not an essential commodity within the meaning of the Essential Commodities Act could not be raised for the first time in an appeal before the Supreme Court against the order of the High Court. Hamdard Dawakhana (Wakf), Delhi v. Union of India, **1965 S C D 348 :**

1965 Cur L J 429 : AIR 1965 SC 1167 (1172) (Pt A) (Pr 14).

● —Arts. 132 and 136 — Certificate of fitness under Art. 132 — Appellant cannot raise grounds other than those on which certificate is granted except with leave of Court – Such leave when can be granted.

A person appealing to the Supreme Court under Art. 132 of the Constitution may not challenge the correctness or propriety of the decision appealed against on grounds other than those on which the certificate is granted, unless the Supreme Court grants him leave to raise other questions. Such leave is generally granted where the trial before the High Court has resulted in grave miscarriage of justice or where the appeal raises such substantial questions, that on an application made to the Supreme Court under Art. 136 of the Constitution leave would be granted to the applicant to appeal against the decision on those questions.

The Assam Sales Tax Act, 1947, provides a hierarchy of taxing tribunals competent to decide question as to the liability of the tax-payer under the Act, with a right to have questions of law arising out of the order decided by the High Court of the Province. The scheme evolved by the Legislature for determination of tax liability is that all questions of fact are to be decided by the taxing authorities and on questions of law arising out of the decision of the taxing authorities the opinion of the High Court may be obtained. The High Court is again not an appellate authority over the decision of the Commissioner; it has merely to give its opinion on questions of law arising out of order of the Commissioner. Whether the decision of the Commissioner is not supported by any evidence or is based upon a view of facts which could never be reasonably entertained, is a question of law which arises out of the order.

The assessee appellants who were assessed to sales tax without resorting to the machinery provided under S. 32 of the Act, moved the High Court under its writ jurisdiction and invited the High Court to reopen the decision of the taxing authorities on questions of fact and this they did without even raising the questions before the Superintendent of Taxes and the Assistant Commissioner. The High Court declined to consider whether the conclusions of the taxing authorities on questions of fact were correct but granted a certificate under Art. 132 of the Constitution on the ground that the plea about vires of S. 2 (12) of the Act raised a substantial question as to the interpretation of the Constitution At the hearing the appellant sought to raise grounds other than constitutional on which certificate had been granted.

Held, that the Supreme Court would decline to entertain the application to raise questions other than those raised by the certificate granted by the High Court because the questions sought to be raised were questions of facts which were not canvassed at the appropriate stage before the taxing authorities and the machinery provided under the Act for determination of questions relating to liability to tax was attempted to be by-passed. Thansingh Nathmal v. Superintendent of Taxes, Dhubri, ILR 16 Assam 203 : (1964) 6 S C R 654 : (1964) 15 S T C 468 : AIR 1964 SC 1419 (1422, 1425) (Pt A) (Prs 5, 12).

● —Arts. 132 and 133 — Interference with finding of fact — Practice of Supreme Court — Finding of authority hearing objections to scheme under S. 68-A Motor Vehicles Act that there was due service of notice on objectors, affirmed by High Court in writ proceedings – Finding being one of fact will not be interfered with in appeal to Supreme Court. Sobharaj Odharmal v. State of Rajasthan, (1963) Supp (1) S C R 99 : 1963 S C D 410 : (1963) 2 S C J 188 : AIR 1963 SC 640 (643, 644) (Pt A) (Pr 9).

● —Arts. 132, 133—Scope—Certificate under Article 133—High Court cannot limit certificate to any particular point — Entire appeal is before Supreme Court —Point though not argued before High Court not abandoned—Supreme Court dealt with the same.

Order 16, R 4 and O. 18, R. 3 (2) of the Supreme Court Rules (1950) do not proprio vigore lay down that the High Court can issue a limited certificate; but they assume that under certain circumstances it can do so. Article 133 of the Constitution does not empower the High Court to limit the certificate to any particular point. If the decree of the High Court is one of affirmance, the High Court certifies that the appeal involves a substantial question of law; and it has been the practice of some of the High Courts to state the substantial question of law in the certificate issued. Once the certificate is issued and the appeal is properly presented before the Supreme Court, the entire appeal will be before it. The assumption underlying the said rules of the Supreme Court may appropriately refer to a certificate issued by a High Court under Art 132 of the Constitution. Where the certificate is given under Art. 133 the entire appeal is before the Supreme Court. But it does not follow from this legal position that the Supreme Court should allow the appellants to raise a plea before it if they had failed to do so before the High Court. Where the appellant did not argue a point before the High Court but at the same time did not abandon it, Supreme Court dealt with the same. Chandrasekhara Mudaliar v. Kulandaivelu Mudaliar, (1963) 2 S C R 440 : AIR 1963 S C 185 (199) (Pt E) (Pr 25).

● —Art. 132:— New plea— Contention not raised before High Court—Opposite party not having opportunity to meet the contention—Contention was rejected by Supreme Court. Sudhansusekhar Singh Deo v. State of Orissa, 1961 S C D 99 : (1961) 41 ITR 743 : (1961) 1 S C R 779 : AIR 1961 S C 196 (199, 200) (Pt B) (Prs 10, 11).

● —Art. 132 (1) and (3) — Applicability — Certificate under Art. 132 (1) — High Court holding that case involves substantial question of law as to interpretation of Art. 226 and not Art. 311—Effect of.

Where a High Court in granting a certificate under Art 132 (1) holds, rightly or wrongly, that the case involves a substantial question of law as to the interpretation of Art 226 and not Art. 311 the effect of the certificate is to enable the appellant to appeal to the Supreme Court on the ground that the question of the interpretation of Art. 226 has been wrongly decided by the High Court, and if the appellant wishes to appeal on any other ground, he can move the Supreme Court for necessary leave as required by Article 132 (3). The State of Mysore v. H. L. Chablani, AIR 1958 S C 325 (327, 328) (Pt A) (Pr 6).

● —Art. 132—New plea — Practice of Supreme Court –Question of fact. See Civil P. C. (1908), S. 112. AIR 1958 S C 239.

● —Art. 132—New plea—Question of fact.

Bose, J. — The ground, that the opposite party had waived the irregularity in the departmental inquiry, not raised in the grounds of appeal against orders under Art. 226 before the Supreme Court, being a question of fact, requiring evidence, cannot be raised during argument. The State of U. P. v. Mohammad Nooh, (1958) S C J 242 : 1958 S C A 73 : (1958) Mad L J (Cri) 197 : ILR (1957) 2 All 422: 1958 S C R 595: AIR 1958 S C 86 (97) (Pt E) (Pr 28).

● —Art. 132 — Practice — Supreme Court — New point regarding question of fact—See Civil P. C. (1908), S. 112. AIR 1956 S C 446.

●——Art. 132 (1), (3) — Grounds of appeal.

Where the appeals have come up before Supreme Court on the strength of a certificate granted under Art. 132 (1) the appellants are not entitled to challenge the propriety of the decision appealed against on a ground other than that on which the certificate was given except with the leave of the Supreme Court. Darshan Singh v. State of Punjab, (1953) S C J 48 : (1953) 1 Mad L J 220 : 1953 Cri L J 525: 1953 S C R 319 : 19 Cut L T 419 : (1953) S C A 856 : ILR (1953) Punj 639 : AIR 1953 S C 83.(87) (Pt C) (Pr 14).

——Art. 132 — Scope — Appeal to Supreme Court—Conditions.

Per Desai, J.—Three facts emerge from the provisions of Art 132 (1) that proceedings are divisible into three classes, 'Civil', 'Criminal' and 'other' proceedings; (2) that the appeal must be filed after the certificate is given by the High Court and not before; (3) that it must be filed in the Supreme Court, and not in the High Court, the grounds of appeal may, with the leave of the Supreme Court, include grounds other than that the question of law as to the interpretation of the Constitution has been wrongly decided; it follows that they are expected to be prepared after the certificate is given or the leave is granted. If the appellant wants to appeal on any other ground, he must after receiving the certificate from the High Court or the special leave from the Supreme Court obtain the leave of the Supreme Court for the same, 1957 All W R (H C) 268 : AIR 1957 All 505 (510) (Pt A) (Pr 3) (DB).

——Art. 132 — Scope — Certificate granted under Art. 132 (1)—Appellant wishing to urge other grounds —Leave of Supreme Court and not further certificate from High Court is necessary — (Government of India Act (1935), S. 205 (2)).

Under clause (3) of Art. 132 if any appellant to the Supreme Court who has obtained from the High Court a certificate under Cl. (1) wishes to urge other grounds in his appeal, he can do so if the Supreme Court gives him the necessary leave and only if such leave is given. There is no scope for the High Court granting a further certificate under Art. 133 for the purpose of authorising the further grounds to be taken in the appeal. The intermediate class of grounds which was contemplated by S. 205 (2), Government of India Act, (namely those on which a party could have appealed without special leave to His Majesty in Council, if no certificate under S. 205 (1) had been given), has now disappeared and does not find a place in Cl. (3) of Art. 132. That clause knows only of two broad divisions, namely, grounds authorised by the certificate granted under Cl. (1) and such other grounds as the Supreme Court may permit the appellant to take. 61 Cal W N 600 : AIR 1957 Cal 528 (529, 530) (Pt C) (Prs 4, 5, 6) (DB).

11. Form of certificate.

——Art. 132—Form of certificate.

No particular form is required for a certificate under Art. 132. It can be granted by the Judge by an observation at the end of the judgment. 61 Cal W N 600 : AIR 1957 Cal 528 (529) (Pt A) (Pr 2) (DB).

12. Stage at which certificate can be granted.

——Art. 132 (1) — Allahabad High Court Rules, Chap. 23, R. 28— Prescribing stage at which application for leave to appeal has to be made — Validity — See High Court Rules and Orders— Allahabad High Court Rules, Ch. 23, R. 28. AIR 1953 All 610.

13. Cancellation of certificate.

——Arts. 132 (1), 133 (1) and 135 — Civil P. C. (5 of 1908), Ss. 109 and 110 and O. 45—Security and deposit for printing charges, etc.—Failure to furnish—Effect—Supreme Court Rules, O. 12, R. 3.

The Adaptation of Laws Order, 1950, made suitable amendments to Ss. 109 and 110 and O. 45 of the C. P. Code and the Supreme Court by virtue of rule-making power conferred upon it by the Constitution in regard to matters pertaining to appeals have made the rules in O. 12 applying the provisions of O. 45 of the Civil P. C. to appeals preferred under Arts. 132 (1) and 133 (1) and 135 of the Constitution.

Where after an appeal had been filed in the Supreme Court the appellant fails to furnish security and also the deposit towards defraying charges of printing he cannot escape the consequences of cancellation of his certificate by relying on the fact that O. 45, Civil P C., had not been suitably amended by the High Court. 1951 Mad W N 527 : (1951) 2 Mad L J 197 : AIR 1952 Mad 94 (Pr 6) (DB).

14. Effect of grant of certificate.

●——Art. 132—Interlocutory orders.

Where the order appealed against is only a decision on one of the issues and it does not dispose of the suit there is no judgment, decree or final order and hence no appeal to the Supreme Court is maintainable. The fact that the certificate of fitness has been granted would not alter the position as no certificate can be granted in respect of all interlocutory orders. Syednor Taher Saifuddin Saheb v. State of Bombay, (1958) 1 Mad L J (S C) 127 : (1958) 1 Andh W R (S C) 127 : 1958 S C R 1007 : 1958 S C A 431 : 1958 S C J 403 : AIR 1958 S C 253 (254, 255) (Pr 7, 8, 9).

——Arts. 132, 133, 134 and 136 -Leave to appeal—Grant of—Effect—(High Court Rules and Orders—Allahabad Rules of Court (1952), Chap. 23, R. 1)

Per Desai, J.—There is nothing like applying for leave to appeal; what an intending appellant has to apply for is simply a certificate. Leave to appeal is to be sought for only under Art. 136 and from the Supreme Court not from the High Court or under Art. 132 or 133 or 134. A High Court has no power to grant leave to appeal, still applications for leave to appeal are being presented though what they really ask for is one certificate or another. This practice, which is undoubtedly wrong has unfortunately received some support from Rules of Court (Allahabad) which erroneously refer to such applications as applications 'for leave to appeal to the Supreme Court', Vide R. 1 of Chap. 23. When an application for a certificate is made to a High Court, all that it has to decide is whether the facts to be certified exist or have been established: it is beyond its jurisdiction to consider whether an appeal lies on the basis of the certificate or not. It cannot refuse to grant a certificate on the ground that no appeal lies from the order even if the certificate is granted : this is a matter within the exclusive jurisdiction of the Supreme Court. The grant of a certificate or the entertainment of an application for a certificate does not mean that in the opinion of the High Court an appeal lies 1957 All W R (H C) 268 : AIR 1957 All 505 (515) (Pt G) (Pr 15) (DB).

——Art. 132 (1)—Certificate under—Effect of — If becomes appeal — Further petition for appeal — Necessity for filing.

There is no provision for lodging a petition of appeal directly in the Supreme Court within the period of limitation after a certificate under Art. 132 (1) is granted. The whole procedure prior to the admission of the appeal lies in the High Court. Therefore the mere grant of a certificate under Art. 132 (1) by the Judge does not bring an appeal into existence. A certificate under Art. 132 (1), embodied in the judgment, is a mere declaration as to the nature of the case and is not granted to any particular party. On the

strength of that certificate, any of the parties aggrieved by the judgment can prefer an appeal. Unless therefore, there is a further petition by a party actually desiring to appeal, it cannot be known that anybody is going to appeal at all or who the appellant is or that the appeal is in time and in form. In order that there may be an appeal, a further petition is thus necessary. 61 Cal W N 600 : AIR 1957 Cal 528 (531) (Pt D) (Pr 12) (DB).

15. Order refusing certificate - Appeal.

■——Arts. 132 and 133 — Discretion - Interference with—Facts of case considered and discretion properly exercised by High Court—Supreme Court would not interfere. Union of India v. Shree Ram Bohra. (1965) 1 S C W R 811 : 1965 2 S C A 29 : 1965 B L J R 589 : AIR 1965 S C 1531 (1535) (Pt C) (Pr 18).

16. Procedure.

——Arts. 132, 133 and 134 — Appeals to Supreme Court—Procedure for obtaining leave.

The scheme under Art. 132 and Arts. 133 and 134 as regards appeals to the Supreme Court is different. Under Art. 132 (1), it is the Judges who deal with the case in the High Court who have to certify whether the case involves a substantial question of law as to the interpretation of the Constitution. That however is not the final certificate for leave to appeal. The Bench, dealing with applications for leave to appeal to the Supreme Court, examines the application and sees whether the other requirements as to limitation and the like are satisfied. Where an application is made to the High Court for leave to appeal to the Supreme Court under Art. 132 (1) of the Constitution of India, but no certificate, as contemplated by that Article granted by the Judges who dealt with the case in the High Court, is produced, the application is not maintainable. A I R 1961 Cal 527 (527) (Pr 1) (DB).

■—— Arts. 132, 133 (1) (c) and 134 (1) (c) — Applications under — To whom to be made — Practice in Calcutta High Court — Calcutta High Court Rules (Original Side) Chap. 33-A, Rr 2 and 4 — Appellate Side Rules, Part 2, Chap. 6, Rr. 2 and 5 and Vol. I, Chap. 2, R. 14.

Under the Calcutta High Court Rules, as developed by practice and certain Division Bench decisions, not only Bench different from the Bench deciding the case itself, deals with the question whether a certificate should or should not be granted under Art. 132 (1) and Art. 133 (1) (c), but also two applications have to be made and two certificates, one informal and another formal, should be given, the informal certificate being granted under Art. 132 (1) by the Bench which decided the case. Bijon Krishna Mukherjee v. Commissioner of Police. A I R 1961 Cal 521 (524, 526) (Pt B) (Prs 11, 14, 22) (SB).

——Art. 132 (1)—Scope of — Grant of certificate for appeal to Supreme Court—Petition of appeal in pursuance of — Form of — Procedure. See Civil P. C. (1908), O. 45, R. 7. AIR 1957 Cal 528 (DB).

——Arts. 132 (1) and 133 (1) (b) — Grant of leave to appeal to Supreme Court against order dismissing petition to quash order of Government vesting an electrical undertaking in Government—Stay of operation of the order vesting the undertaking pending disposal of appeal to the Supreme Court—If can be ordered—Civil P. C, (5 of 1908), O. 45, R. 13 (2) (d) —Scope — If can be invoked to restrict or prevent successful party from exercising the right under the Order of High Court under appeal.

Order 45, R. 13 (2) (d) of the Civil P. C. only enables the High Court to place the party seeking its assistance under any condition which the Court may think fit to impose. It enables the High Court to give such other directions, i. e., a direction other than a direction placing the party under any condition respecting the subject-matter of the appeal such as for instance, by an order directing the appointment of a Receiver. The provision does not enable the High Court to give any direction to the successful party by way of obstructing or preventing him from exercising the rights to which he has become entitled under the final order of the High Court.

Where an application for the issue of a writ of mandamus directing the Government to forbear from taking possession of the petitioner (an electrical undertaking) under a G. O. was dismissed and leave to appeal to Supreme Court was granted and the petitioner then prayed for a stay of operation of the G. O. pending disposal of the appeal to the Supreme Court.

Held, that O. 45, R. 13 (2) of the Code does not enable the High Court to grant the relief. (1952) 2 Mad L J 732 : 1952 Mad W N 823 : 65 Mad L W 1023 : I L R (1952) Mad 980 : A I R 1953 Mad 475 (Pt A) (Pr 2) (DB).

——Arts. 132, 133 — Form of application to High Court.

Held that the petitioners should have filed petition for obtaining a necessary certificate under Arts. 132 and 133 and not for obtaining a special leave which could be granted only by the Supreme Court. A I R 1956 Manipur 33 (34) (Pt B) (Pr 9).

——Arts. 132, 133 — Form of application to High Court.

Reference to O. 45, Civil Procedure Code in the petition for a certificate under Art. 132 or Art. 133 of the Constitution appears to be necessary. Again the grounds of Appeal have to be mentioned in the petition as appears to be necessary under R. 3 of O. 45, Civil Procedure Code. An affidavit to the effect that what is stated in the petition is true to peiitioner's knowledge, information and belief should be filed duly sworn before proper authority. Under O. 6, R. 15, Civil Procedure Code, pleadings, i. e., plaints or written statements are to be verified at the foot, but not petition for leave to appeal in a writ petition and in proceeding subsequent thereto. AIR 1956 Manipur 33 (34) (Pt C) (Pr 10).

——Arts. 132, 133—Form of application—Parties.

Where in a writ petition under Art. 226 the Deputy Commissioner of Manipur and the State of Manipur were the contesting opposite parties, but they had not been made parties to the petition under Arts 132, 133 and the petitioners did not file any affidavit during the course of hearing of that writ petition in order to rebut the allegations made in the writ petition.

Held, that the form of the petition would be deemed to be defective. A I R 1956 Manipur 33 (34) (Pt D) (Pr 11).

17. Limitation.

——Art. 132—Limitation. See Limitation Act (1963), S. 12 (2) and Art. 132. AIR 1965 Cal 630 (DB).

——Arts. 132 and 133 — Application for leave to appeal—Order under Art. 226 — Judgment — Time requisite for copy — Exclusion of — Presentation of application for leave—Clerk of Advocate General — Competency—Non-impleadment of a party by oversight—S. 5, Limitation Act applied.

Order on petition under Art. 226 was made on 19-10-1951. Application for copy of judgment made on 15-1-1952, copy delivered on 30-1-1952. Application for leave to appeal made on 30-1-1952. The application for leave to appeal by the Government was presented by the clerk of the Advocate General and one of the petitioners in the petition under Art. 226

was not impleaded as respondent by mistake. The application was opposed as not maintainable.

Held, the word "order" in Limitation Act, S. 12 (2) must cover judgments in cases under Art. 226 of the Constitution of India. In cases covered by Art. 226 the judgment itself is the order to be appealed from and the time taken in obtaining the copy of the judgment has to be excluded.

One of the petitioners in whose favour the order under Art. 226 was, was not impleaded by oversight and the Court condoned the delay in impleading him as a party caused by such oversight.

Order 3, R. 1, Civil P. C., provides that any act in any Court required or authorised by law to be made or done by a party may, except when otherwise provided, be made or done by the party or his agent or by a pleader. The presentation of the application for leave is an act governed by O. 3, R. 1, Civil P. C. The Government Advocate represents the State; but the presentation by his clerk is not permitted under the rule. But considering the prevailing practice, which is to cease, the time between the presentation to the date of the appearance of the Advocate-General in the petition which date might be taken as the date of presentation was condoned under S. 5 of Limitation Act. **1952 Raj L W 511 : ILR (1952) 2 Raj 492 : AIR 1952 Raj 180 (181) (Pts A, B) (Prs. 7, 8, 9) (DB).**

ARTICLE 133

SYNOPSIS

(Constitution of India, Art. 133)

1. Scope.
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6. "Judgment."
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8. "Final order."
   (a) Order on application under Art. 226.
   (b) Interlocutory orders.
   (c) Order of remand.
   (d) Orders relating to appointment of receivers.
9. Civil proceeding.
   See also Ibid, Art. 132.
   (a) Proceedings under Art. 226.
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10. High Court.
11. Value of subject-matter in Court of first instance —Clause (a).
   (a) Court of first instance.
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   (c) Determination of value.
   (d) Applicant for leave, if barred from showing the real value—Estoppel and res judicata.
   (e) Subject matter incapable of pecuniary valuation.
   (f) Consolidation.
12. Amount or value of subject-matter in dispute on appeal.
13. Clause (1) (b)—General.
   (a) Illustrative cases.
14. Grant of leave to appeal.
   (a) Clause (c) applies only to "judgment, decree or final order."
   (b) Questions must be of great public or private importance.
      (i) Questions that are of great public or private importance.
      (ii) Questions that are not of importance.
   (c) Questions on which there is conflict of decisions.
   (d) Leave, if can be granted to both parties.
   (e) Leave with conditions.
   (f) Effect of granting leave to appeal.
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   (a) Findings based on settled law.
   (b) Question of law involving difference of opinion.:
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   (d) Procedural matters.
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   (f) Construction of documents.
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18. Clause (2).
19. Judgment of single Judge of High Court.
20. Concurrent findings of fact.
21. Practice and procedure.
   (a) Form and contents of applications for leave.
   (b) Application to whom to be made.
   (c) Stay.
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   (e) New plea.
22. Limitation.

1. Scope.

● —Art. 133—Right of applicant to ply buses lawfully extinguished – He cannot challenge right of State Transport undertaking to ply their buses with or without permits — Application under Art. 226 dismissed — He is not entitled to maintain appeal. See Ibid, Art. 32. AIR 1962 S C 1183.

● —Art. 133—Scope—Bihar Hindu Religious Trusts Act, S. 55 (2) — If overrides Article — Bihar Hindu Religious Trusts Act (1 of 1951), S. 55 (2) Moti Das v. S. P. Sahi, ILR 38 Pat 639 : (1959) 2 S C R (Supp) 563 : (1959) 2 S C A 432 : 1959 S C J 1144 : AIR 1959 S C 942 (950, 951) (Pt H) (Pr 16).

—Arts. 133, 134 and 136 — Applicability—Proceedings not covered by Art. 133 or Art. 134—Remedy is under Art. 136.

It cannot be said that all proceedings must fall either within the purview of Art. 133 or Art. 134. There are many proceedings like the proceedings before the Election Tribunals which are not within the purview of either Art. 133 or Art. 134. In such cases, the remedy lies in applying direct for special leave under Art. 136. 1956 Cri L J 358 (1) : AIR 1956 Ajmer 40 (1) (40) (Pt B) (Pr 2).

—Art. 133—Scope of. See Ibid, Art. 134. 1954 Cri L J 540 : AIR 1954 Ajmer 18 (1).

—Art. 133 (1) (a)—Order passed on revision—Civil P. C. (1908), S. 109 (a).

Article 133 (1) (a) of the Constitution of India presupposes that the order impugned is passed on appeal and not otherwise. Where the order in question is passed on the revisional side of the High Court no

leave can be granted under Art. 133 (1) (c). AIR 1945 P C 239, Rel. on. 1951 A M L J 84 : AIR 1952 Ajmer 15 (15) (Pt A) (Pr 5).

——Art. 133—Scope.

Order in proceeding that is neither civil nor criminal—Appeal to Supreme Court when lies. See Ibid, Art. 132. AIR 1957 All 505 (DB).

——Art. 133—Final order in revision by High Court —Appeal to Supreme Court. See Ibid, Art. 132. AIR 1957 All 28 (DB).

——Art. 133 (1) — Reference in income-tax proceeding — Decision by High Court under Income-Tax Act, S. 66 — Petition for leave to appeal to Supreme Court—(Income-Tax (1922), Ss. 66, 66A).

The expression "judgment, decree or final order" used in Art. 133 (1) of the Constitution does not apply to a decision given by the High Court under S. 66 of the Income-tax Act on a reference. Therefore, when a petition is made to the High Court arising out of a reference decided by the High Court for leave to appeal to the Supreme Court, apart from Art. 132 the High Court has to consider whether leave should be granted or not only under S. 66A (2) of Income-Tax Act and not under Art. 133 of the Constitution (1952) 22 I T R 150 : 54 Bom L R 609 : ILR (1953) Bom 549 : AIR 1952 Bom 479 (482, 483) (Pt A) (Pr 10) (DB).

——Art. 133 — Applicability — Distinction between Art. 132 and this article — Decision on vital issue — Same can be appealed against under Art. 132 but not under Art. 133. See Ibid, Art. 132. AIR 1963 Cal 281 (DB).

——Arts. 133 and 135 — Scope of—Litigant coming under Art. 133 but unable to fulfil its requirements—Right to fall back upon Art. 135. 1960 Cal L J 210 : ILR (1960) 2 Cal 617 : 64 Cal W N 52 : AIR 1960 Cal 77 (80) (Pt B) (Pr 10) (DB).

——Art. 133—Art. 135 not applicable—Art. 133 does not apply.

Obiter : It is not logical to turn to Art. 133 after it is found that Art. 135 does not apply to a particular case. The order in which the provisions of the Constitution are arranged is that Arts. 133 and 134 provide for civil and criminal cases respectively and then Art. 135 makes further provisions for a certain class of cases to which Arts. 133 and 134 do not apply. 58 Cal W N 354 : (1954) 25 I T R 418 : AIR 1954 Cal 477 (480) (Pt B) (Pr 12) (DB).

——Art. 133 (1) — Not applicable to appeal in income-tax matter—Income-tax Act (1922), S. 66-A(2).

Art. 133 (1) of the Constitution has no applicability to appeal in income-tax matters and cannot be invoked in an application under S. 66-A (2) of the Income-tax Act. AIR 1952 Bom 479 and AIR 1954 Cal 477, Rel. on. 1961 Ker L J 1436.

——Art. 133 — Applicability — Right of appeal — Nature of—Words ambiguous—Court should uphold right—Constitution not to be read as departing from established law.

Per Jagadisan, J.—A right of appeal is a substantive right, though it stems from a statute or the Constitution, and is not inherent in every defeated suitor. The constitutional provisions dealing with the right of appeal to the Supreme Court have to be read with due regard to the qualifications, limitations and restrictions contained therein, but with a liberality which would favour an appeal being preferred rather than with the stringency that would defeat it. If the words are sufficiently clear, either for or against an appeal, there can be no issue regarding the right. If, however, the words are ambiguous and are capable of being construed as sustaining a right of appeal, or as conferring such a right, it would be proper and legitimate for the Court to uphold the right. Broadly stated, the ambiguity resulting from the language of an enactment is resolved by adopting that meaning which accords with justice and good sense. As between two constructions which are open, both being equally plausible, the Court may lean in favour of the more reasonable of the two. (1882) 7 A C 694 and 1917 A C 260, Rel. on.

The Constitution should not be read as departing from the established law, if the words therein do not lean to that conclusion. In choosing one of two meanings where words are equally susceptible of both the meanings, the Constitution should be read as far as possible in harmony with the existing provisions of law. A I R 1952 S C 10, Rel. on. (1964) 1 Mad L J 7 : I L R (1964) 1 Mad 133 : A I R 1964 Mad 314 (314, 315) (Pt B) (Prs 2, 3) (DB).

● ——Arts. 133, 226—Order granting or refusing to grant a writ applied for under Art. 226 of Constitution — If a "judgment or final order" for appeal to Supreme Court—Article 226 — Proceedings under—Nature and scope of—Original in nature—Quashing orders of inferior Tribunals — Power of the High Court to issue directions in appropriate cases.

The petitioner failed to secure a stage carriage permit before the Regional Transport Authority but succeeded in appeal before the State Transport Appellate Tribunal. The propriety of the grant was challenged by the respondent in an application under Art. 226 of the Constitution but without success. But in appeal the respondent succeeded and the writ was issued quashing the order of the Appellate Tribunal. On the question of the right of the petitioner to appeal to the Supreme Court against the order quashing the order of the Appellate Tribunal :

Held, an order on an application under Art. 226 of the Constitution, whether it quashes the order of the inferior Tribunal or not, will be a judgment or final order within the meaning of Art. 133 of the Constitution for the purpose of an appeal to the Supreme Court. The essential tests which have been applied for the interpretation of the word "judgment" in clause 15 of the Letters Patent, will equally apply to Art. 133 of the Constitution. The scope of Art. 133, which confers a valuable right of appeal to the highest Court cannot be whittled down by resorting to analogies and fictions.

The proceedings under Art. 226 of the Constitution, are original in nature and founded on rights of parties aggrieved, with a view to keep the orders of statutory tribunals within the bounds of law. The subject-matter of a petition under Art. 226 will be entirely different from the matters in controversy agitated before the inferior tribunal, the former relating to vindication of a constitutional right. The merits of the controversy in proceedings cannot be equated to the controversy regarding the rights or privileges asserted or claimed before the inferior Tribunal whose order is sought to be quashed in those proceedings. The only question in the writ proceedings will be whether a fundamental right of the party has been infringed or whether the order of the tribunal is outside the authority conferred on it by the statute. The proceedings before the High Court under Art. 226 would be independent and not a continuation of the original proceedings before the statutory authority. Where a Superior Court issues a writ of certiorari quashing the order of an inferior Tribunal, thereby enabling it to hear the case before it afresh and come to a correct conclusion thereon, it cannot be said that the judgment of the Superior Court is interlocutory or a preliminary one, depending for its finality on the ultimate decision on the controversy by the Tribunal. It must follow that the

finality of an order under Art. 226 cannot be made to depend on the revival or pendency or otherwise of the controversy before the Tribunal. A writ issued in the exercise of an original jurisdiction possessed by the High Court cannot either amount to or be likened with an order of remand. An order passed by a single Judge on applications under Art. 226 of the Constitution whichever way it went and whatever its effect on the proceedings before ihe inferior Tribunal might be, will amount to a judgment capable of being appealed against under Clause 15 of the Letters Patent. The decision in S. C. P. No. 117 of 1960 and S. C. P. No. 147 of 1961, **Overruled**. The decision in A I R 1958 Mad 151 on this point held to be incorrect. A I R 1957 Punj 173, Dissented from. Southern Roadways v. Veeraswami Nadar, **1963 Mad W N 677 : (1964) 1 Mad L J 25 : 77 Mad L W 1 : I L R (1964) 1 Mad 1 : A I R 1964 Mad 194 (196, 197, 198, 200) (Pt A) (Prs 8, 12, 13, 14, 17, 27, 28) (FB).**

——**Art. 133**—Application order S. 66 (2) of Income-tax Act, 1922—Appeal to Supreme Court — Maintainability. See Income-tax Act (1922), S. 66 (1). **A I R 1955 Mad 624.**

——**Art. 133**—Section 31, Manipur Courts Act (1947), if impliedly repealed by Art. 133. See Manipur State Courts Act (1947), S. 31. **A I R 1955 N U C (Manipur) 4553.**

● ——**Art. 136 (1) (c)**—Appeal lies from order passed in revision. A I R 1949 P C 239 ; A I R 1943 Mad 614, Rel. on. Bombay Steam Navigation Co., Ltd. v. Damodar Savailal, **6 Sau L R 144 : A I R 1953** Sau 166 (167) (Pt B) (Pr 5) (FB).

2. Conditions under which appeal lies under the Article.

——**Art. 133—Scope.**

The result on analysis of Art. 133 is that an appeal to the Supreme Court will lie in the following cases : (i) where the judgment, decree or final order of the High Court is not one of affirmance, the requisites as to value are satisfied ; (ii) where the judgment, decree or final order of the High Court is one of affirmance, firstly, the requisites as to the value are satisfied, and secondly, a substantial question of law is involved in the appeal ; and (iii) where the High Court certifies that the case is a fit one for appeal to the Supreme Court. **A I R 1957 All 28 (33) (Pt D) (Pr 10) (DB).**

——**Art. 133 — Scope — Powers of High Court to grant leave**—(Civil P. C. (1908), Ss. 109, 110).

The right of a party to appeal to the Supreme Court from a judgment of a High Court passed after the commencement of the Constitution is prima facie to be determined by Art. 133 ; and where the amount or the value of the subject-matter of the dispute is less than Rs. 20,000 and the requirements of sub-clauses (b) and (c) of clause (1) of that article are not fulfilled, a High Court has no power to give the requisite certificate and leave to appeal cannot be granted under that Article. **1955 All W R (H C) 724 : A I R 1956 All 321 (322) (Pt B) (Pr 5) (DB).**

[Overruled on another point in A I R 1957 S C 540.]

● ——**Art. 133 (1) (b) — Civil P. C. (1908), S. 110,** Paras 1 and 2 and **Art. 133 (1) (a) and (b) — Rules of valuation under, stated—Money decree for Rs. 10,000 —Properties attached—Objection to attachment dismissed—Suit under O. 21, R. 63, Civil P. C.—Decree-holder and judgment-debtor made defendants — Suit partly allowed — Appeal by plaintiff to High Court fully decreed — Application for leave to appeal to Supreme Court by decree-holder—Property attached alleged to be worth Rs. 20,000—Held, subject-matter of the suit or of the appeal was not property attached —Requirements of S. 110, Civil P. C. or Art. 133 of the Constitution were not fulfilled. See Civil P. C. (1908), S. 110. A I R 1960 Andh Pra 286 (FB).**

——**Art. 133 (1) — Scope — Decision of Bench exercising original jurisdiction—Appeal to Supreme Court from—Right of appeal does not depend upon appeal lying from particular Act — (Arbitration Act (1940), S. 39) — (High Court Rules (Cal.), Chap. 5. R. 2) (Original Side). A I R 1955 N U C (Cal) 412 (DB).**

——**Art. 133 (1) (a)—Leave to appeal—Conditions.**

Where the valuation of the subject-matter in dispute both in the Court of first instance and in appeal is over Rs. 20,000 and the judgment of the High Court is not of affirmance, the petitioner is entitled to leave under Art. 133 (1) (a). **I L R (1959) Hyd 782 : A I R 1957 Hyd 24 (24) (Pt A) (Pr 3) (DB).**

● ——**Art. 133 (1) — Distinction between cl. (a) or (b) and cl. (c).**

There is a real distinction between an appeal under sub-cl. (a) or (b) of cl. (1) of Art. 133 and under sub-cl. (c). An appeal under sub-cl. (a) or (b) is one as of right, for a party becomes entitled to appeal under either of these sub-clauses ex facto when certain facts and conditions are found to exist after investigation. There is no such right of appeal under sub-clause (c). An appeal under sub-clause (c) of Art. 133 (1) depends solely on the volition and discretion of the High Court. It is a misnomer to say that the appellant has a right of appeal under that sub-clause. A person cannot be said to have a right to do anything when he cannot do it except with the permission of some other person or authority. AIR 1950 Nag 177 (FB) Foll.; AIR 1952 Punj 103 (FB); AIR 1952 Pat 341, Dissented. Udaythan v. Firm Shankar Lal. **I L R (1952) M B 536 : AIR 1953 Madh B 209 (213) (Pt D) (Pr 9) (FB).**

——**Art. 133 (1) (a) and (b) — Subject-matter incapable of valuation.**

The petitioner was removed from Government service. His application under Art. 226 against that order of dismissal was also dismissed and he sought leave to appeal to the Supreme Court. He claimed that he was entitled as of right to a leave under Art. 133 (1) (a) and (b) as he was put to loss to the tune of Rs. 90,000 which he would have earned had he continued in service till his retirement.

Held, that as the petitioner failed to show how the question of the applicant's dismissal from service is a subject-matter capable of valuation for the purposes of Art. 133 (1) (a) or as to how the order of High Court sought to be appealed against involves directly or indirectly some claim or question respecting property of a value not less than Rs. 20,000 at the time of the order, cl. (a) or (b) of Art. 133 (1) had clearly no applicability. **1957 Jab L J 728 : AIR 1957 Madh Pra 226 (227) (Pt B) (Pr 2) (DB).**

——**Art. 133 (1) (a) (b) and (c)—Suit claiming right to joint Muthawalliship in a wakf involving properties worth more than Rs. 20,000 — High Court decreeing suit reversing decision of Court below — Case involving no substantial question of law — Appeal to Supreme Court—Certificate under Article 133, if can be granted.**

Whenever a right for joint Muthawalliship or trusteeship is involved in a suit the pecuniary value of it would be incapable of valuation. Where, therefore, a suit filed by the plaintiff claiming that he is entitled along with the defendant to joint Muthawalliship of a wakf is decreed by the High Court reversing the decision of the Court below, the defendant cannot invoke Art. 133 (1) (a) or (b) of the Constitution of India (1950) for the purpose of obtaining leave to appeal to the Supreme Court as the

eal subject-matter in dispute between the parties, viz., claim to joint Mutha wallishiip, would be incapable of valuation and when such a case does not involve any substantial question of law leave to appeal cannot be granted even under Art 133 (1) (c). (1965) 2 M L J 482 : 78 Mad L W 563 : 1965 Mad W N 260 : AIR 1966 Mad 313 (314, 315) (Prs 4, 5) (DB).

——Art. 133 — Conditions requisite for grant of leave.

The conditions requisite for the grant of a certificate are : firstly, that the order sought to be appealed against should be a judgment, decree or final order in a civil proceeding of the High Court; secondly, that the High Court should certify that the case is a fit one for appeal to the Supreme Court under sub-cl. (c), Art. 133; in the other cases, the subject-matter of the dis ute should be valued at not less than twenty thousand rupees; and lastly, if the final order is one of affirmation the appeal should involve some substantial question of law in the opinion of the High Court. 21 Cut L T 292 : ILR (1955) Cut 25 : AIR 1955 Orissa 71 (72) (Pt B) (Pr 4) (DB).

● ——Art. 133 (1) (c)—Right of appeal under cl. (c) —Essentials.

Two essential requisites of a right of appeal to the Supreme Court under Art. 133 (1) (c) are (1) that the appeal should be from any "judgment, decree or final order," and (2) that the said "judgment decree or final order" must have been passed in civil proceeding. These two requisites of the article must be satisfied before a litigant can be held to be entitled to a right of appeal to the Supreme Court. Tobacco Manufacturers (India) Ltd. v. The State, 30 Pat 174 : AIR 1951 Pat 29 (37, 38, 40) (Pt B) (Prs 30, 32, 38, 45) (FB).

——Art. 133—Interlocutory order—Leave to appeal cannot be given.

Under Art. 133 leave to appeal can be given only against a decree or final order or judgment which finally disposes of the case and does not keep it alive. Leave to appeal cannot be given against an interlocutory order which does not finally dispose of the suit but leaves it alive. Case law referred. ILR (1955) 5 Raj 711 : AIR 1955 Raj 208 (212) (Pt A) (Pr 31) (DB).

3. This Article and Ss. 109 and 110, Civil P. C.:

——Art. 133—Points of difference between provisions of Art. 133 and Ss. 109 and 110, Civil P. C., noted and enumerated. AIR 1957 All 28 (33) (Pt E) (Pr 11) (DB).

● ——Art. 133 — Valuation of the subject-matter in dispute for obtaining leave to appeal to Supreme Court—Rules—S. 110, Civil P. C.—Distinction.

The rules for determining the value of the subject-matter of suits and appeals under S. 110 (1) and (2), C. P. Code and Art. 133 (1) and (2) of the Constitution may be stated as follows :

(1) For valuation under S. 110 of the subject-matter of the suit in the Court of first instance, the matter should be looked at from the point of view of the plaintiff.

(2) For also the valuation under Art. 133 (1) (a) of the subject-matter of the dispute in the Court of first instance, the matter must be looked at from the point of view of the plaintiff.

(3) For the valuation of the subject-matter in dispute on appeal to the Supreme Court, both under S. 110, paragraph 1 and Art. 133 (1) (a), the effect of the judgment appealed from must be looked at from the point of view of the appellant as on the date of the judgment. It is the amount or the value of the reliefs determined under R. (2) supra in respect of which he is prejudiced by the judgment.

(4) For also the valuation of an appeal under S. 110, paragraph 2 and under Art. 133 (1) (b), the judgment appealed from must be looked at from the point of view of the appellant as on the date of the judgment.

There is no difference in principle in determining the subject-matter of a suit for the purpose of jurisdiction and for the purpose of S. 110, Civil Procedure Code. AIR 1937 All 169, Diss. from Smt. Rajah Kishore Devi Garu v. Bhaskara Gouta Ghorani, ILR (1960) 1 Andh Pra 9 : 1960 Andh L T 43 : (1960) 1 Andh W R 82 : AIR 1960 Andh Pra 286 (291, 292) (Prs 15, 17, 18) (FB).

——Art. 133 (a) and (b) — Applicability — Necessity for fulfilment of requirement as to valuation. See Civil P. C. (1908), S. 110. AIR 1953 Assam 70 (DB).

——Art. 133—Article prevails over S. 109, Civil P. C. —(Civil P. C. (1908), S. 109). AIR 1955 NUC (Bhopal) 5852.

——Art. 133—Scope—Right of appeal under — Civil P. C., S. 109 (c) — Difference. See Civil P. C. (1908), S. 109 (c) (before amendment by Act (66 of 1956). AIR 1960 Cal 77 (DB).

——Art. 133—C. P. Code (1908), S. 110—Scope.

Section 110 of the Civil P. C. as it stands now, cannot possibly be read as supplementing the provisions of the Constitution with regard to appeals specifically made in Art. 133 and adding to those provisions even with regard to matters covered by them. 57 Cal W N 933 : AIR 1954 Cal 289 (293) (Pt F) (Pr 15) (DB).

[Overruled on another point in AIR 1957 S C 540].

——Art. 133 — Applicability — Civil P. C. (1908), S. 109—How far can be read as supplementary.

It is true that in the absence of any inconsistency between the Constitution and the Civil Procedure Code, the provisions of the latter can be invoked. But in cases of conflict between Art. 133 of the Constitution and S. 109, Civil P. C., the former alone will prevail. Where there is no right of appeal under Art. 133, Civil Procedure Code cannot be read as a supplementary enactment conferring such a right of appeal. 1963 Mad W N 288 : ILR (1963) Mad 33 : (1963) 1 Mad L J 127 : 5 Mad L W 536 : AIR 1962 Mad 508 (509, 510) (Pt B) (Pr 4) (DB).

——Art. 133—S. 109 (c), Civil P. C. and this Article.

Section 109 (c), Civil P. C., after its amendment by the Adaptation of Laws Order (1950) is subject to the provisions of Art. 133. Wide as is the language of these provisions it cannot be construed as extending to a case in which the rights of no other person than those of the petitioner are involved and there is no other question excepting a question of fact in issue. 65 Mad L W 1002 : 1952 Mad W N 826 : 1952-2 Mad L J 646 : 1953.23 Com Cas 68 : ILR (1953) Mad 862 : AIR 1953 Mad 79 (83, 84) (Prs 14, 15) (DB).

—— Art. 133 — Order in question not a final one — Leave cannot be granted also under S. 109 (c), Civil P. C.—When Art. 133 prohibits appeal to Supreme Court where decision is not final order any earlier statutory provision repugnant to that article cannot hold the field any further despite Art. 372. (1951) 2 Mad L J 479 : 64 Mad L W 934 : 1951 Mad W N 811 : AIR 1951 Mad 1051 (1054, 1055) (Pt D) (Pr 6) (DB).

[Overruled on another point in AIR 1957 SC 540].

——Art. 133 — Art. 133 and S. 109 — (C. P. Code (1908), S. 109).

Article 133 (1) (a) is wider in scope than S. 109 (a), Civil P. C. Under S 100 (a) the right of appeal is restricted to a judgment decree or final order passed on appeal. The words "passed on appeal" are omitted from Art 133. An appeal under this Article from an order passed by the High Court in the exercise of its revisional jurisdiction is, therefore, competent. Article 133 (1) (c), however, requires that the order must be a final order though it need not be so under S. 109 (c), Civil P. C. AIR 1949 PC 239 (241), Rel on. ILR (1955) Nag 675 : 1955 Nag L J 468 : AIR 1955 Nag 287 (288, 289) (Pt A) (Prs 4, 9) (DB).

——Art. 133 (1) (a) and (b) — Two clauses are independent and stand on its own terms—Under cl. (b) value of subject-matter in Court of first instance is immaterial.

Unlike paras. (i) and (ii) of S. 110, Civil Procedure Code, sub-clauses (a) and (b) of Art. 133 (1) are wholly independent. Each of the sub-clauses stands on its own terms. AIR 1952 Pat 450, Rel. on. The value of the subject-matter of dispute in the Court of first instance is inmaterial under Art. 133 (1) (b). AIR 1952 Mad 771 (FB), Rel. on. Therefore, the petitioner for leave to appeal can press his case either under sub-clause (a) or sub-clause (b) or alternatively under both. ILR (1965) Cut 623 : AIR 1966 Orissa 89 (92) (Pt A) (Pr 6) (DB).

——Art. 133—Applicability of S. 110 (2) Civil P. C. to property which is in dispute in suit. See C. P. Code (1908), S. 110, Cl. (2). AIR 1957 Orissa 109 (DB).

——Art. 133 — Civil P. C. (1908), S. 109—S. 109 is subject to Art. 133.

The provision in S. 109, C. P. Code is to be read subject to Art. 133 of the Constitution even though that section deals with the same subject-matter. 21 Cut L T 292 : ILR (1955) Cut 25 : A I R 1955 Orissa 71 (72) (Pt A) (Pr 3) (DB).

——Art. 133 (1) (a) and (b)—Final order in revision —Grant of leave (Civil P. C. (1908), Ss. 109 (a) and 115.)

S. 109 Civil P. C., as it now stands, itself shows that it must be read subject to the provisions of Art. 133. Leave to appeal to the Supreme Court can therefore be granted under Art. 133 (1) (a) from the final order of a High Court passed in the exercise of its revisional jurisdiction.

Even if it be assumed that the case does not fall within the purview of Art. 133 (1) (a), it is clearly covered by the provisions of Art. 133 (1) (b) which must be read independently of Cl. (a). 30 Pat 1274 : AIR 1952 Pat 450 (451, 452) (Pt A) (Prs 5, 6) (DB).

——Art. 133 (1) (b)—If overrides, S. 110 and O. 45, R. 3, C. P. Code — Affirming judgment — Leave to appeal — Grant of — Valuation not up to amount required by S. 110, C. P. Code — If bar to grant—Power of High Court.

When there is any conflict between Art. 133 (1) of the Constitution and S. 110 and O. 45, R. 3, C. P. Code, the Constitution will prevail; and leave to appeal to the Supreme Court may be granted under Art. 133 (1) (a) if the High Court is satisfied that there is involved a substantial question of law, though the requirements of S. 110, C. P. Code, as to valuation are not satisfied in the case of a judgment of affirmance. 30 Pat 1274 : A I R 1952 Pat 450 (452, 453) (Pt B) (Pr 7) (DB).

——Art. 133 (1) and Civil P. C. (1908), S. 110—Relative scope and difference between.

Each of the clauses in Art. 133 (1) is marked separately and begins with the conjunction 'that' and they stand in the article as independent entities and not as an alternative to any portion of the next preceding clause. Therefore, many of the observations contained in the earller judgment as to the precise meaning and application of the wording in S. 110, C. P. Code, must now be read subject to this vital difference. 1956 Raj L W 519 : ILR (1956) 6 Raj 531 : AIR 1956 Raj 169 (170) (Pt A) (Pr 4) (DB).

——Art. 133 — Wider powers of appeal conferred under S. 109 (c) — Validity of — Civil P. C. (1908), S. 109 (c) —Validity—See Civil P. C. (1908), S. 109(c). AIR 1955 Raj 208.

——Art. 133—Difference between Art. 133 and C. P. Code (1908), S. 109.

The wording of Art. 133 is in one material respect different from S. 109 of the C. P. Code. Cls. (a) and (b) of S. 109 provide for appeals from any decree or final order, while Cl. (c) provides an appeal from any decree or order. But Art. 133 uses the words 'judgment, decree, or final order' with respect to all the three Cls (a) (b) and (c). Therefore, before leave is granted under any of the Cls. (a), (b) and (c) of Art. 133, the Court has to see that the order from which leave to appeal is prayed for is final. I L R (1954) 4 Raj 646 : 1955 Raj L W 187 : AIR 1954 Raj 127 (128) (Pt A) (Pr 4) (DB).

4. Retrospective effect.

●——Art. 133 — Final Judgment of Kerala High Court restoring decree of Travancore High Court passed before coming into force of Constitution—Appeal—Maintainability.

The preliminary objection as to the maintainability of the appeal on the ground that although the final judgment of the Kerala High Court was passed on 13th December, 1956, it only restored the decree of the majority of the Travancore High Court pronounced on 8th August, 1946, and accordingly, that being a decree passed before the commencement of the Constitution, no appeal would lie under Art. 133 of the Constitution has to be rejected as untenable. Moran Mar Basselios Catholicos v. Paulo Avira. 1958 Ker L T 721 : 1958 Ker L J 874 : ILR (1958) Ker 1340 : AIR 1959 S C 31 (37) (Pt B) (Pr 19).

●——Arts. 133, 135, 136, 395 — Suit filed before Constitution Valuation above Rs. 10,000—Right of appeal — Vested right — Appeal maintainable to Federal Court on date of suit — Subsequent changes in law and abolition of Federal Court —Valuation raised to Rs. 20,000—Maintainability of appeal as of right — (Civil P. C. (1908), Ss. 109, 110)—(Federal Court (Enlargement of Jurisdiction) Act (1947), Ss. 2, 3)—Abolition of Privy Council Jurisdiction Act (1949), Ss. 2, 5, 6) — (Adaptation of Laws Order (1950), Cl. 20). A I R 1951 Mad 1051, AIR 1953 Mad 878 (FB), AIR 1954 Cal 289, AIR 1956 All 321, A I R 1956 All 638, and A I R 1956 Punj 228, Overruled.

Per Majority (Venkatarama Ayyar, J., Contra)—The legal pursuit of a remedy, suit, appeal and second appeal are really but steps in a series of proceedings all connected by an intrinsic unity and are to be regarded as one legal proceeding. The right of appeal is not a mere matter of procedure but is a substantive right. The institution of the suit carries with it the implication that all rights of appeal then in force are preserved to the parties thereto till the rest of the career of the suit.

The right of appeal is a vested right and such a right accrues to the litigant and exists as on and from the date the lis commences and such right is to be governed by the law prevailing at the date of the institution of the suit or proceeding and not by the law that prevails at the date of its decision or at the

date of the filing of the appeal. This vested right of appeal can be taken away only by a subsequent enactment, if it so provides expressly or by necessary intendment and not otherwise. It is erroneous to say that the language of Art. 133 impliedly takes away the right of appeal.

The Constitution by Art. 395 repealed the Government of India Act and thereby abolished the Federal Court. It however, continued the Abolition of Privy Council Jurisdiction Act, 1949, which directed that the Federal Court, in addition to the powers conferred on it by the Federal Court (Enlargement of Jurisdiction) Act, 1947 would have all the appellate powers exercised by the Privy Council. Though the Federal Court (Enlargement of Jurisdiction) Act, 1947 being an Act amending or supplementing the Government of India Act, 1935, was repealed, yet notwithstanding such repeal the provisions of the Act were continued in force under Art. 372 (1) subject to the other provisions of the Constitution. The Adaptation of Laws Order, 1950, modified Ss. 109 and 110 of the Code of Civil Procedure, inter alia, by raising the valuation from Rs. 10,000 to Rs. 20,000 but that provision did not, by virtue of Cl. 20 of the Order, affect any right, privilege, obligation or liability already acquired, accrued or incurred under any existing law. The true implication of the above provision is that the pre-existing right of appeal to the Federal Court continued to exist and the old law, which created that right of appeal also continued to exist, and the Federal Court having been abolished the Supreme Court is substituted for the Federal Court as the machinery for the purpose of giving effect to the exercise of that right of appeal. The old law must govern the exercise and enforcement of that right of appeal. The continuance of the old law, however, is subject to the other provisions of the Constitution.

Art. 133 should be read as covering all judgments, decrees or final orders of a High Court passed after the commencement of the Constitution other than those in respect of which a vested right of appeal existed from before the Constitution. Clause 20 of the Adaptation Order will be meaningless if Art. 133 is not read in a restricted sense.

Article 135 confers on the Supreme Court the same jurisdiction and power with respect to any matter to which the provisions of Art. 133 or Art. 134 do not apply, if the jurisdiction and power in relation to that matter are exercisable by the Federal Court immediately before the Constitution under any existing law. If the position that at the date of the institution of the civil proceeding a right vested in the litigant to appeal to the Federal Court, be accepted, then it becomes difficult to hold that such vested right did not constitute a "matter" in relation to which jurisdiction and powers were exercisable by the Federal Court immediately before the commencement of the Constitution. There is no reason why the operation of Art. 135 should be limited to cases where the right of appeal was not mere potentially but had actually arisen in a concrete form immediately before the commencement of the Constitution.

Where the suit, has been instituted before the date of the Constitution the parties thereto have from the date of the institution of the suit, a vested right of appeal upon terms and conditions then in force and where the judgment sought to be appealed from is a judgment of a reversal and the value of the subject-matter is above Rs. 10,000 the aggrieved party has a vested right of appeal to the Federal Court under the provisions of the old Civil Procedure Code read with the Government of India Act, 1935 and the Federal Court (Enlargement of Jurisdiction) Act, 1947. Such a vested right of appeal is a matter which does not fall within Art. 133 and jurisdiction and powers with respect to such right of appeal was exercisable by the Federal Court immediately before the commencement of the Constitution and consequently the aggrieved party has a right of appeal under Art 135. (1905) A C 369, Foll. A I R 1951 Mad 1051: AIR 1953 Mad 878 (FB); AIR 1954 Cal 289, AIR 1956 All 321; AIR 1956 All 638 and AIR 1956 Punj 228, **Overruled.**

Venkatarama Ayyar, J., (Dissentient).—The correct interpretation to be put on Art. 133 is that it applies to all appeals against judgments, decrees and final orders of the High Court in the territory of India made after the commencement of the Constitution in civil proceedings, irrespective of whether those proceedings were instituted before or after the Constitution. Such an interpretation would furnish a simple, clear and uniform law for the whole of India and that it would also avoid discrimination between suitors who instituted actions prior to the Constitution and those who instituted them after, and between those who have instituted proceedings in Part A States and those who have instituted proceedings in Part B States. In this view, the present petition for leave falls within Art. 133 and the appeal must be held to be incompetent for failure to satisfy the requirements in the matter of valuation of Art. 133 (1) (a). Veeraya v. N. Subbiah Chowdhry. **1957 S C A 495 : (1957) 2 M L J (SC) 1 : 1957 S C J 439 : (1957) 2 Andh W R (S C) 1 : 1957 S C C 399 : 1957 S C R 488 : A I R 1957 S C 540 (553, 554, 560, 562, 563, 564, 577) (Prs 23 to 26, 29, 38, 43, 44, 48, 88).**

● —Art. 133—Art. 133 is prospective.

The language of Art. 133 is prospective, and the judgment, decree or final order from which the appeal is to be taken is that of a High Court established under the Constitution. Thus, it does not apply in respect of a decision given by a High Court on a date prior to the date of establishment of the Supreme Court. Daji Saheb v. Shankar Rao, **1956 S C J 70 : (1955) 2 S C R 872 : 1956 S C A 481 : 58 Bom L R 496 : AIR 1956 S C 29 (30) (Pt B) (Pr 7).**

● —Art. 133—Retrospective effect.

Plaintiff preferred a second appeal to the High Court of Jaipur. The appeal was allowed. The defendant applied for review of this judgment. Meanwhile the Jaipur High Court had become defunct and the review was heard by the Rajasthan High Court as successor to the Jaipur High Court under the High Courts Ordinance and was partially allowed on the 5th of April 1950, and the decree was accordingly amended. It was against this judgment and decree passed after the coming into force of the Constitution of India that the present appeal had been preferred to the Supreme Court by leave of the Rajasthan High Court under Art. 133 (1) (c) of the Constitution.

Held, that the only operative decree in the suit which finally and conclusively determined the right of the parties was the decree passed on the 5th of April, 1950, by the Rajasthan High Court and that having been passed after the coming into force of the Constitution of India the provisions of Art. 133 were attracted to it and it was appealable to Supreme Court provided the requirements of that Article were fulfilled. The Code of Civil Procedure of the Jaipur State could not determine the jurisdiction of Supreme Court and had no relevancy to the maintainability of the appeal. Nathoolal v. Durga Prasad, **1955 S C R 51 : 1954 S C J 557 : 67 Mad L W 641 : 1954 Andh L J (W) (SC) 50 : 1954 S C A 921 : A I R 1954 S C 355 (357) (Pt A) (Pr 9).**

——Art. 133 and Art. 135 — Leave to appeal — Pre-constitutional final order—Art. 133 does not apply—Art. 135 applies—No appeal to Supreme Court lies if such order is passed in revision.

Article 133 of the Constitution does not apply to orders passed in proceedings which commenced before the Constitution came into force. In such a case the matter is governed by Art. 135. If so then no appeal lies to the Supreme Court if the order which is sought to be appealed from is passed not in appeal but in revision. Section 109 (a) and S. 110 of the Civil P. C, which regulate the right of appeal, provide for an appeal to the Supreme Court only from an appellate order of the High Court and not against a revisional order. A I R 1957 S C 540 and A I R 1949 P C 239 and A I R 1928 All 202 and A I R 1934 All 198, Rel. on. **A I R 1963 All 191 (192, 193) (Prs 4, 5) (DB).**

——**Art. 133—Scope—Suit filed before Constitution—Decision reversed by High Court after Constitution—Certificate for filing appeal to Supreme Court.** See Civil P. C. (1908), S. 110. **A I R 1959 All 249 (DB).**

——**Art. 133 — Power of High Court to issue certificate of fitness in case of appeal to Supreme Court—Retrospective scopes of provisions of Ss. 109 and 110, Civil P. C. and Arts. 132 and 133.** See Ibid, Art. 132. **A I R 1957 All 28 (DB).**

——**Arts. 133 and 135 — Suit instituted in 1940 — Valuation of subject-matter of appeal more than Rs. 10,000 but less than Rs. 20,000 Question of vested right of appeal—(Civil P. C. (1908), S. 110).**

In a suit, which was instituted in 1940 and where the valuation of the subject-matter in appeal was more than Rs. 10,000 but less than Rs. 20,000 it was contended on behalf of the appellant that a right of appeal had vested in him when the suit was instituted and hence he had a right of appeal to Supreme Court, irrespective of the provision of the amending Acts passed thereafter.

Held, that as no appeal was pending in the Privy Council or in the Federal Court none could be transferred to the Supreme Court. As no provision was made in the Constitution for cases in which a right of appeal would be deemed to have vested but in which no appeal had actually been filed before the abolition of the Federal Court a right of appeal in such cases would be deemed to have been negatived. Hence as the value of the subject matter of the appeal in this case was below Rs. 20 000 no appeal lay as of right to the Supreme Court. A I R 1953 Mad 878 (FB), Foll. **ILR (1957) 2 All 398 : A I R 1956 All 638 (639) (Pt B) (Pr 3) (DB).**

[Overruled in A I R 1957 S C 540.]

——**Art. 133 — Scope — (Civil P. C. (1908), S. 110)—(Arbitration Act (1940), S. 39).**

A person whose appeal in High Court was decided before the Constitution, has a vested right to file an application for leave to appeal to Supreme Court in accordance with the provisions of the Civil P. C. and the mere fact that the application for leave to appeal to the Supreme Court was filed after the Constitution had come into force does not take away that right. Case-law referred. **ILR (1952) 1 All 876 : AIR 1953 All 509 (510) (Pt B) (Pr 4) (DB).**

——**Art. 133—Applicability.**

When an order in second appeal is passed after the coming into force of the Constitution, the right to appeal to the Supreme Court is governed by the provisions of Art. 133 and not by the provisions of corresponding sections in previous enactments. **A I R 1954 Bilaspur 7 (2) (8) (Pt B) (Pr 2).**

——**Art. 133 (1)—Right of appeal under law at time of institution of suit—When lost—Order after coming into force of Constitution — Applicability of Art. 133 (1) — (Civil P. C (1908), S. 109 (c).) A I R 1951 Him. P. 14, Dissented from.**

The institution of a suit, no doubt, carries with it the implication that rights of appeal then in force are preserved to the parties thereto till the rest of the career of that suit. But this rule is not inflexible, for instance, such right of appeal might be taken away by an enactment with retrospective effect. Again, that right of appeal would be lost if the Court to which an appeal lay at the time of the institution of the suit is later on abolished.

In a suit instituted in 1940, as second appeal was filed before the Ijlas-i alia in the State of Bilaspur. Due to constitutional changes, the Ijlas-i-alia was abolished and its place was taken over by the Judicial Commissioner's Court which dismissed the appeal on 1-6-1951. But a subsequent application for review was allowed and by an order, dated 11-12-1952, the second appeal was directed to be reheard. The other party applied for leave to appeal to the Supreme Court against the order and contended that S. 109 (c), Civil P. C., which was the law at the time of the institution of the suit, governed the application and not Art. 133 (1).

Held, that the right to appeal to Ijlas i-alia which the party had under the law at the time of the institution of his suit was lost when that Court was abolished.

(2) That no provision similar to Art. 374 (4) was made in respect of the pending appeals in final Courts of appeal in Part C States.

(3) That since the order sought to be appealed against was passed after the Constitution came into force the case would be governed by Art. 133 and not by S. 109 (c), Civil P. C.

(4) That Art. 133 did not apply to the order in question which was only an interlocutory order. A I R 1952 Him Pra 14, Diss.; **A I R** 1953 Mad 878 (FB), Rel. on.; A I R 1952 Orissa 141; A I R 1952 Bom 303; A I R 1952 Ajmer 15; **A I R** 1952 Hyd 177 and A I R 1953 Madh Pra 209 (FB), Ref. **A I R 1954 Bilaspur 1 (3) (Prs 6, 8).**

——**Arts. 133 (1), 134 and 135 — Civil P. C. (1908), S. 110 — Right of appeal under S. 110, Civil P. C., arising before Constitution — Right not affected by Art. 133 (1) — (Adaptation of Laws Order, (1950), S. 27).**

In all matters where there was a right of appeal under S. 110, Civil P. C., that right continues in respect of all suits filed prior to the coming into force of the Constitution and there is nothing in Art. 133 (1) of the Constitution by which the litigant is deprived of that right. The position is made still more clear by S. 27 of the Adaptation of Laws Order, 1950, which brings S. 110, Civil P. C., in conformity with Art. 133 (1) by substituting 'Rs. 20,000' in place of 'Rs. 10,000' in the section. The right of appeal already accrued to the party is expressly saved by S. 27 of the Order. Even apart from it, the matter being one in respect of which the Federal Court had jurisdiction, the Supreme Court has jurisdiction to entertain the appeal under Art. 135 which confers upon the Supreme Court a different and wider jurisdiction than that under Arts. 133 and 134. The right to appeal already vested in the party is not therefore lost because of the abolition of the Privy Council, or of the Federal Court or because the matter is not covered by Art. 133 (1). A I R 1941 F C 5 and A I R 1951 S C 253, Disting. A I R 1951 Mad 251 and A I R 1950 Nag 222, Ref. **I L R (1952) Bom 906 : 54 Bom L R 281 : A I R 1952 Bom 303 (305) (Pr 3) (DB).**

——**Art. 133—Retrospective operation— (Interpretation of Statutes.)**

It is true that as soon as a suit is brought the right to prefer an appeal or appeals provided by the law, current at the time, becomes vested in the parties and

such right cannot be taken away except by a new law and except by the express words or the necessary intendment of such law. But in order that the right of appeal may subsist, it is necessary that the conditions under which the right can be exercised should also subsist. It may be that when the judicial system and the hierarchy of the Courts remain the same, the right of an eventual appeal or appeals, accrued at the date of a suit remains unaffected by subsequent changes in the law unless modified expressly or by necessary implication, but when the whole political structure of a country, including the judicial system itself changes and a new Court of final appeal is set up under a new Constitution with a new jurisdiction created for and assigned to it, there can no longer be any question of appealing to such new jurisdiction under the old right, except so far as it may be expressly provided for. Hence where leave to appeal to the Supreme Court is sought after the commencement of the Constitution, there can be no appeal to the Supreme Court, as exercising jurisdiction under Art. 133, except under conditions laid down in that article, even though the suit was brought long before the commencement of the Constitution. **57 Cal W N 933 : A I R 1954 Cal 289 (292) (Pt D) (Pr 13) (DB).**

[Overruled in AIR 1957 S C 540.]

——Arts. 133 and 135—Scope and applicability.

Where the judgment sought to be appealed from was delivered after the commencement of the Constitution and the application for leave to appeal is made thereafter it is Art. 133 which applies and not Art 135 It follows that the valuation limit of Rs. 10,000 is not applicable to such an appeal.

Read in a plain manner Art. 133 would seem to contemplate not any pending proceedings, but only subject-matters. But assuming that proceedings are also contemplated, the operation of the Article is limited to cases where the right of appeal in such proceedings was not a mere potentiality but had actually arisen in a concrete form immediately before the commencement of the Constitution, such as, where an application for leave to appeal had already been made to the Federal Court or when, at least, the decision of the High Court sought to be appealed from, had been given. **57 Cal W N 933 : A I R 1954 Cal 289 (292) (Pt E) (Pr 13) (DB).**

[Overruled in AIR 1957 S C 540.]

——Art. 133—Applicability.

Where the judgment of the Judicial Commissioner's Court is passed after the coming into force of the Constitution of India, appeal to the Supreme Court would be regulated by the provisions of Art. 133 even if the suit giving rise to the petition for grant of certificate to appeal to the Supreme Court was filed before the Constitution came into force A I R 1954 Bilaspur 1 and AIR 1954 S C 355, Rel. on. **AIR 1955 Him Pra 62 (62, 63) (Pt A) (Pr 2).**

——Art. 133 –Effect on suits filed prior to the date of the Constitution coming into force but decreed thereafter.

The language of Art. 133 of the Constitution is quite plain and there is nothing in it which might lead to the conclusion that it was meant to have a retrospective effect. The right of appeal will be governed by the law prevailing at the date of the institution of the suit. **A I R 1952 Him Pra 14 (15) (Pt A) (Pr 3).**

——Art. 133(1) (a)—Applicability—(C. P. Code (1908), S. 110).

Suit filed in Hyderabad State long before coming into force of Constitution when Hyderabad C. P. Code was in force—Suit dismissed—Appeal to Hyderabad High Court allowed after coming into force of Constitution and after Indian C. P. Code was applied to Hyderabad—Valuation of subject matter of suit in Court of first instance on date of institution below Rs. 20 000, but above Rs. 10,000 — Valuation in appeal above Rs 20,000 – Appellant having right of appeal to Judicial Committee of H. E. H. the Nizam according to law in force before Constitution—After Constitution these authorities ceasing to have jurisdiction to hear appeals by virtue of Art. 374 (4) :

Held, that in the absence of any provision in the Constitution authorising H. E H. the Nizam to entertain and dispose of appeal no question of any vested right of appeal arose and the question of leave must be determined according to Art. 133 of the Constitution — Leave cannot be granted under Art. 133 (1) (a as requirement as to valuation is not fulfilled. A I R 1951 S C 217, Rel. on ; A I R 1952 Him Pra 14 and A I R 1951 Orissa 141, Disting. **ILR (1953) Hyd 206 : AIR 1953 Hyd 177 (178) (Pt A) (Prs 9, 10) (DB).**

——Art. 133 (1) (a) –Suit filed in Court in a princely state in 1947 — Value of suit above Rs. 10,000 but below Rs. 20,000 — Appeal to High Court of Madhya Bharat in 1955 decided in 1959—No appeal to Supreme Court.

The suit was instituted on 19th December, 1947, in the Court of the District Judge, Gwalior (then in the princely State of Gwalior. The plaintiff's suit was dismissed on 7th March, 1955 by the District Judge, Gwalior (then in the State of Madhya Bharat, a Part B State). The plaintiff preferred an appeal to the High Court of Madhya Bharat on 14th May, 1955 That appeal was transferred to the High Court of Madhya Pradesh on the reorganization of States on 1st November, 1956 and was decided by it on 31st July, 1959.

Held, that as the valuation of the suit in the Court of first instance was below Rs. 20 000, the petitioner could not be granted a certificate under Art. 133 (1) (a) though it was above Rs. 10,000 because on the date of the suit he had no right of further appeal from the judgment of the High Court of the Princely State to the Federal Court or to the Supreme Court, and his vested right of appeal to the Privy Council of that State came to an end when it was abolished. AIR 1957 S C 540 and AIR 1958 S C 29, Foll. **1959 Jab L J 687 : 1959 M P L J 119 : 1960 M P C 5 : A I R 1960 Madh Pra 247 (2) (248) (Pt A) (Pr 6) (DB).**

● **——Arts. 133 (1), 135 Suit instituted before Constitution – Judgment after commencement of Constitution –Second appeal — Applicability of Arts. 133 (1) and 135—(C P. Code (1908), Ss. 109, 110).**

If a judgment is delivered on a decree or final order is made in a civil proceeding of a High Court after the commencement of the Constitution then the provisions of Art. 133 (1) would directly apply even though the suit from which it originated was instituted before the commencement of the Constitution. There is no justification for construing the words "any judgment, decree or final order" in Art 133, as meaning "any judgment, decree or final order in a suit or other proceeding instituted after the coming into force of the Constitution." Such construction will practically render Art. 133 (1) a dead letter for many years to come.

Further, it is a wrong construction of that expression to say that Art. 133 does not apply to a case when what is meant is that the case does not fulfil the requirements of the Article because the valuation is less than Rs 20,000. Hence it cannot be held that this is a matter to which the provisions of Art. 133 do not apply and therefore Art. 135 will apply.

Held, that Art. 133 (1) applied to the case and the requirement as to valuation must be determined by the provisions of clause (a). A I R 1951 Mad 251, AIR 1952 Mad 81 (FB), AIR 1950 Nag 222, AIR 1951 Pat 612, AIR 1951 Orissa 141 and AIR 1952 Bom 303, Disting. Gundapuneedi Veerana v. Gundapuneedi China Venkanna, **1953 Mad W N 496 : (1953) 2 M L J 317 : 66 Mad L W 645 : ILR (1953) Mad 1079 : AIR 1953 Mad 878 (883, 884) (Pt B) (Prs 18, 19, 23) (FB).**

[Overruled in AIR 1957 S C 540.]

——Art. 133 — Applicability — Value of subject-matter of suit and appeal Rs. 10 000 in regard to judgment delivered prior to the date when the Constitution came into force — Right to leave to appeal to Supreme Court—Suit for redemption—Valuation of subject-matter.

An appeal will lie to the Supreme Court if the value of the subject-matter of the suit and that of the appeal was Rs. 10,000 in regard to judgment delivered prior to the date when the Constitution came into force.

In a suit for redemption it is not correct to state that the property in dispute is the security given for the loan. The subject-matter is the loan for which the security was given. Where the value of such loan is less than Rs. 10,000 leave to appeal to the Supreme Court cannot be granted.

The mere fact that if the loan is not repaid in the time fixed by the decree, the mortgaged property will be sold does not raise any question affecting the security. ILR (1937) All 405 and A I R 1941 Pat 288, Diss. from; 27 Pat 237, Rel. on. 30 M L J 317; 39 Mad 843, Ref.

Therefore the plaintiff cannot take advantage of Art. 133 (1) (b) of the Constitution either. **64 L W 204 : (1951) 1 M L J 210 : AIR 1951 Mad 723 (723, 724) (Prs 3, 5) (DB).**

——Arts. 133, 135—Retrospective effect of Art. 133—(Civil P C. (1908), Pre. S. 110)—(Interpretation of Statutes—Retrospective effect). AIR 1951 Mad 1051, Diss. from.

In a suit commenced before the Constitution but decided in appeal after the Constitution, the right of appeal is not governed by Art. 133 and the limit of Rs. 20,000, mentioned therein but by the Civil P. C. and the limit of Rs. 10,000. Case-Law discussed. **I L R (1953) Nag 822 : 1953 Nag L J 531 : AIR 1953 Nag 313 (313) (Pr 7) (DB).**

——Arts. 133, 135 — Civil P. C. (1908), S. 110—Reversing decision of High Court— Application for leave to Federal Court pending when Constitution came into force—Value of subject-matter more than Rs. 10,000 but less than Rs. 20,000— Art. 133, whether bars appeal to Supreme Court.

An application for leave to Federal Court from a reversing decision of the High Court in respect of subject-matter the value of which exceeded Rs. 10,000 but was less than Rs. 20,000 was pending when the Constitution came into force. It was contended that the valuation being less than Rs. 20,000, Art. 133 of the Constitution barred the appeal to Supreme Court :

Held, (1) Art. 133 was not made retrospective either expressly or by necessary intendment and did not take away the right to appeal to Federal Court which was vested in the party in a pending case.

(2) that the Abolition of Privy Council Jurisdiction Act, 1949, was still on the Statute Book and the jurisdiction of the Federal Court under that Act still vested in the Supreme Court, To that extent Art. 133 did not apply to the case and the jurisdiction being preserved by Art. 135, the appeal to Supreme Court was not barred. **1950 Nag L J 181 : ILR (1950) Nag 830 : AIR 1950 Nag 222 (223) (Pr 12) (DB).**

——Art. 133 — Retrospective operation.

Article 133 has no retrospective operation and therefore will not apply to a suit instituted prior to coming into force of the Constitution. A I R 1951 Orissa 141, Rel. on. **ILR (1957) Cut 215 : 23 Cut LT 152 : AIR 1957 Orissa 109 (110) (Pt B) (Pr 3) (DB).**

——Arts. 133 and 135— Applicability— Application for leave to appeal filed before coming into effect of Constitution — Grant of — Valuation — Rule applicable — Art. 133—If retrospective.

Article 133 of the Constitution has no retrospective operation and does not apply to an application for leave to appeal filed long before the Constitution came into force—Article 135 will govern such a case.

The right of appeal, being a vested right, vesting in the litigant at the time the suit is instituted, cannot be taken away by subsequent alteration of the law, either relating to the form or to the other limitations to the right of appeal, unless the alteration, either expressly or by necessary intendment, is given a retrospective operation. 56 Cal 512 (SB); AIR 1928 All 437 (SB) ; A I R 1943 Pat 245, Ref. **I L R (1950) Cut 663 : 16 Cut L T 242 : A I R 1951 Orissa 141 (142) (Prs 4, 5) (DB).**

——Art. 133 (1) (a)—Vested right of appeal — Whether Constitution takes it away. See Civil P. C. (1908) S. 96. **AIR 1953 Pat 330 (DB).**

——Arts. 133 (1) and 135—Scope—(Civil P C. (1908) S. 110)—(Adaptation of Laws Order (1950), S. 27).

Suit instituted against defendant in 1943—Value of subject-matter in dispute over Rs. 10,000 — Second appeal decided against defendant in 1951 after Constitution of India, came into force—Defendant has the right to appeal if he could make out that a point of law is involved even though the value of the subject matter is not Rs. 20,000 — Art. 133 (1) which prescribes the qualification of Rs. 20,000 is not retrospective and does not take away the right of appeal to the Federal Court under S. 110, Civil P. C. which had vested in the defendant, before the Constitution came into force, on the date of the institution of the suit—As a result of Art. 135 and S. 27, Adaptation of Laws Order, 1950 the Supreme Court has the same jurisdiction as the Federal Court had in the matter. **1953 S L J R 347 : 32 Pat 400 : A I R 1953 Pat 275 (276) (Pt B) (Pr 4) (DB).**

——Art 133—Applicability — Right of appeal accruing before 26-1-1950—Certificate of leave—Conditions of grant. See Civil P. C. (1908), S. 110. **A I R 1951 Pat 612 (DB).**

——Arts. 133, 135—Appeal entertained by Supreme Court under Art. 135—Art. 133 does not apply.

Where the Supreme Court exercises the jurisdiction and powers exercisable by the Federal Court under Art 135 of the Constitution, the requirements of S. 110 of the Code of Civil Procedure have to be fulfilled as to the value or amount and not the requirements of Art. 133 of the Constitution. The Article cannot apply where the right to appeal accrued before the Constitution came into force. Supreme Court Appeal No. 3 of 1949 D/- 4-4 1950, Followed. **30 Pat 438 : A I R 1951 Pat 612 (613) (Pt B) (Pr 7) (DB).**

——Art. 133 (1) (a)— Scope — Suit instituted before Constitution — Judgment after commencement — Limit of pecuniary jurisdiction.

Where the suits were filed before the Constitution but were decided afterwards, the value for purposes of jurisdiction has to be Rs. 20,000 as provided by the Constitution and not Rs. 10,000 as provided by

the old Civil P. C. AIR 1954 S C 355 and A I R 1951 S C 253 and A I R 1958 Mad 878 and A I R 1954 Cal 389, Foll. 58 Punj L R 361 : ILR (1956) Punj 1173 : AIR 1956 Punj 228 (229) (Pt A) (Pr 4) (DB).

[Overruled in AIR 1957 S C 540.]

——Arts. 133 (1) and 135 — Applicability — Suits instituted before Constitution — Vested right of appeal — If affected — (Civil P. C (1908), S. 110).

If a specific Article governs the pecuniary limits of an appeal then Art. 135 will not be applicable. The institution of the suit carries with it the preservation of the vested right of parties in regard to the appeal but with the exception that there is no right of appeal where the right is expressly or impliedly taken away or the Court to which the appeal was to be taken is abolished.

In case of suits filed before the Constitution, when they were filed the final Court of appeal would have been the Federal Court and when this Court was abolished on coming into force of the Constitution the proceedings pending in the Federal Court in regard to appeals stood removed to the Supreme Court but there was no provision made as regards proceedings by way of appeal or otherwise not pending in the Federal Court at the commencement of the Constitution.

Hence in regard to a judgment which is passed after the Constitution came into force the appeal is to be governed by Art. 133 (1) (a) and not by S. 110, Civil P. C., as it existed before the Constitution AIR 1953 Mad 878; AIR 1921 P C 219 and AIR 1929 Mad 381 (FB), Rel. on. 58 Pun L R 361 : I L R (1956) Punj 1173 : A I R 1956 Punj 228 (229, 230) (Pt B) (Prs 4, 5, 6) (DB).

[Overruled in AIR 1957 S C 540.]

——Art. 133 — Retrospective operation.

Article 133 of the Constitution is not retrospective and does not apply to an order passed before the Constitution came into force. ILR (1950) Punj 447 : 53 P L R 84 : A I R 1951 Punj 412 (413) (Pt B) (Prs 6, 7).

——Art. 133 (1) (c)—Retrospective operation—(Civil P. C (1908), Preamble and S. 109).

Where in a suit, filed before the Constitution of India came into force, there is no right of appeal from the decision of the High Court in appeal therefrom according to the law then in force but such right is given by the Constitution for the first time then if the decision of the High Court is given after coming into force of the Constitution, it would be appealable under the Constitution.

A distinction should be drawn between the case where the right o appeal is taken away and the case where a right of appeal has been given Interference with the rights of the parties is clearly of a different nature in the two cases The right of appeal is a positive right and it accrues at the time of the filing of the suit but the absence of the right of appeal cannot be called a right at all. The prohibition of appeal by the law at the time of the institution of the suit does not amount to a substantive or existing right accruing to the parties. It is a mere negation of such rights. If the law therefore chooses to give such a right during the pendency of the case, there is no principle of law which prevents it from doing so. Misc No. 9 of 1951 dated 20th August 1951 (Raj), Foll. AIR 1955 Raj 3 (5) (Prs 9, 10, 11) (DB).

——Art. 133 Applicability—Appeals from decision of Rajasthan High Court after the establishment of the Supreme Court—Applicability of Ijlas-i-Khas Rules of 1939.

With the creation of the Supreme Court, the judgments of the Rajasthan High Court have become appealable to that Court but the conditions necessary for the appeal to lie are also mentioned in the Constitution itself. Unless a case fulfilled the conditions mentioned in the Constitution such judgments could not be made a subject of appeal. The Iilas-i-Khas Rules of 1939 are no longer in force and no leave to appeal can be granted in pursuance thereof. 1951 R L W 31 : AIR 1951 Raj 55 (56) (Prs 8, 9).

——Art. 133 — Decision becoming final prior to Constitution coming into force—Right of appeal given by the Constitution—Effect.

Where the decision given by a High Court has become final before the Constitution of India came into force, the right of appeal given under it cannot affect such finality. AIR 1952 Sau 37 (37) (Pr 2) (DB).

5. "Judgment, decree or final order".

● ——Art. 133—Civil P. C.—Ss. 109, 110 — Judgment decree or order — Decision in appeal under S. 19 (1) (f), Defence of India Act (1939)—(Letters Patent (Nagpur), Cl. 29). See Civil P. C. (1908), S. 109. AIR 1958 S C 947.

● ——Art. 133—Decree of trial Court after remand by High Court passed between date of application for leave to appeal and date of grant—Effect.

Where the High Court, after passing a final order, has remanded the case to the trial Court for proceeding in accordance with law and the decree of the trial Court after remand is passed between the date of an application for leave to appeal to the Supreme Court from the order of the High Court and the date on which leave was granted, the decree of the trial Court even if not appealed against, must, in the circumstances, be taken to be subject to the result of the appeal to the Supreme Court, and cannot be said to be conclusive so as to prevent the Supreme Court from dealing with the appeal and setting aside or modifying the judgment of the High Court and making a fresh order of remand to that Court itself. 10 M I A 203, Applied, Shromani Gurdwara Parbandhak Committee, Amritsar v. Raja Shiv Rattan Dev Singh, ILR (1955) Punj 1108 : (1955) 2 S C R 67 : A I R 1955 S C 576 (582) (Pt C) (Pr 13).

● ——Art. 133 (1)—Judgment or final order — Order that Court-fee paid on memorandum of appeal was sufficient and appeal was maintainable—No final order or judgment within Art. 133 (1). Chief Inspector of Stamps, U. P. v. Panzy Fernandas, Major, 1963 All L J 863 : ILR (1964) 1 All 72 : AIR 1964 All 66 (69, 72, 73, 74, 75) (Prs 8, 27, 28, 31 to 35, 38) (FB).

——Art. 133 (1)—'Judgment, decree or final order'—Meaning of.

The tribunal constituted under the Kanpur Urban Area Development Act is not a civil Court except for purposes of Court-fees. Its order is not a decree; it is an award. The proceeding before the Tribunal partakes of the nature of an arbitration proceeding. An appeal is a rehearing of the original proceeding, and accordingly the appellate proceeding shall ordinarily partake of the character of the original proceeding. The appellate order of the High Court is consequently also an award; and it is not a judgment, decree or final order within the meaning of those expressions in Art. 133. Hence the High Court cannot grant a certificate of appeal to the Supreme Court in such a case. AIR 1958 S C 947 and I L R 40 Cal 21 (P C) and ILR 37 Bom 506 and AIR 1919 Mad 626 (FB), Rel. on. 1961 All L J 258 : 1961 All W R 295 : AIR 1961 All 509 (510) (Prs 7, 8) (DB).

——Art. 133 (1)—Judgment, decree or order—Decision of High Court in appeal against orders of Election Tribunal.

The High Court when dealing with the appeals from the orders of Election Tribunals under S. 116-A, Representation of the People Act, 1951, is not a persona designata but acts in its capacity as a High Court and its judgments decrees and orders in such appeals are judgments, decrees and orders of a High Court within the meaning of Art 133 (1) of the Constitution. A I R 1958 S C 957 Rel. on AIR 1958 S C 947, Disting. 1960 All L J 328 : 1960 All W R (H C) 192 : AIR 1960 All 548 (549) (Pt A) (Pr 8) (DB).

● —Art. 133 — Appeal to Supreme Court—Several matters of controversy in a case—High Court varying decision of the trial Court with respect to some and affirming it in respect of other:— Right of appeal — "Judgment, decree or final order appealed from" — Interpretation of—Distinct matters—Subject-matter of appeal and cross-objections—Effect.

P claimed the estate in dispute as the widow of the predeceased adopted son taken in adoption by a widow of the last male owner alleging the estate vested in him from the date of adoption under a family settlement and custom and filed a suit for such a declaration of title. D, the defendant reversioner disputed the adoption as also the custom and settlement relied on by P.

The trial Court found the adoption to be valid but not the custom or family settlement in support of the title and gave a declaration that P was entitled to get a maintenance allowance of Rs. 3,000 a year and to remain in the house she was living in. D appealed to the High Court against the grant of the declaration for maintenance and P filed cross-objections against the rest of decree. A Bench of the High Court affirming the finding of the trial Court on the question of title to the estate in D and disallowing the grant of the declaration for the maintenance allowance to P allowed the appeal by D and dismissed the cross-objections by P.

P applied for leave to appeal to the Supreme Court; the grounds made no reference to the question of maintenance. P contended that the proposed appeal was in respect of the whole of the matter in appeal in the High Court so that the question of maintenance was also the subject-matter of the proposed appeal; further she had made an application for leave to amend the grounds by inclusion of the claim of maintenance which was disallowed by the High Court. The application for leave to appeal along with the permission petition to amend the grounds was referred to a Full Bench of more than 3 for disposal in view of the conflict of rulings in the matter.

Held: The expression "judgment, decree or final order appealed from" in Art. 133 means not necessarily the judgment, decree, or final order of the High Court in its entirety, but the whole or any portion of it which is the subject-matter of the proposed appeal. The affirmance or variance of the "decision of the Court below" has to be seen in respect of the subject-matter of the proposed appeal. The entire subject-matter of the proposed appeal should be taken up as one whole and as one unit for seeing if there is a variance or affirmance and not be cut up into parts affirming and parts varying.

Hence the contention of the applicant that irrespective of the subject matter of the proposed appeal to Supreme Court, if the judgment .... of the High Court as a whole varied even a part of the decision of the Court below, an appeal will lie as of right, even though the appeal was confined to that part of the decision of the Court below affirmed, is untenable. (Per Majority of the Full Bench).

It is not necessary to construe the expression "judgment, decree or final order appealed from" in conjunction with or as relating to "subject-matter of dispute in the proposed appeal" or to hold that it means the subject-matter of the "judgment, decree or final order appealed from". The expression is to be interpreted independently and with reference to the context and given its plain meaning. The expression "the decision of the Court below in any case...." is to be similarly interpreted to mean the whole decision of the suit by that Court. The significance of the words "in any case" cannot be lost sight of and consequently it is the decision in the suit and not of any matter in controversy that has to be taken into consideration.

It is not possible to decide whether the 'decree of the High Court' affirms or varies the 'decision of the Court below' without comparing the whole decision of the Court below with the decree of the High Court as a whole. (Per P. L. Bhargava, J.)

Right of appeal to Supreme Court — Where there are several matters of controversy in a suit and the High Court varies the decision of the trial Court with regard to one or more of such matters and affirms in respect of other matters then.

(a) if the proposed appeal to the Supreme Court is in respect of the matter varied—in favour of the appellant or against him — he has a right of appeal (subject to the matter being of the required valuation of Rs. 20,000);

(b) if the proposed appeal consists of matters some of which were affirmed and some varied there is again a right of appeal subject to the value of the entire matter in the proposed appeal being not less than Rs. 20,000;

(c) if the proposed appeal be in respect only of the matters concerning which the decree of the High Court affirmed the decision of the Court below there is no right of appeal unless there is a substantial question of law involved ;

(d) the fact that against the decision of the Court below there was an appeal and a cross objection in the High Court is immaterial as only one decree is prepared by the High Court in respect of both, and the principles in (a) (b) and (c) will apply to the composite decree ;

(e) but if there were two appeals from one decree of the Court below then the decree of the High Court in each of the appeals will be separately considered and if the proposed appeals to the Supreme Court arising out of one of such decrees relates to a matter on which the decree ha affirmed the decision of the Court below there will be no right of appeal without a substantial question of law being involved. Rani Fateh Kunwar v. Raja Durbi Jai Singh. 1952 A W R (H C) 398 : 1952 A L J 457 : ILR (1952) 2 All 605 : AIR 1952 All 942 (946, 947, 951, 955) (Pts A, B) (Prs 21, 22, 41, 42, 66, 67) (FB).

[Overruled on another point in A I R 1961 S C 1795.]

—Art. 133 (1)—Judgment, decree or final order—Patents and Designs Act (1911), S. 23-F — High Court hearing appeal under, acts as persona designata — Order passed under S. 23-F not appealable under Art 133 (1).

It is not every decision given by a Court that could be said to be a judgment, decree or final order within Art. 133 (1). Whether it is so or not will depend on whether the proceeding in which it was given came before the Court in its normal civil jurisdiction or de hors it as a persona designata. AIR 1958 S C 947, Rel. on.

The High Court of Calcutta in hearing appeals under S. 23-F, Patents and Designs Act from the decision of the Controller acts as persona designata and the matter does not come to the Court under its normal civil or supervisory jurisdiction. Hence, from an order passed under S. 23-F, no appeal lies to the

Supreme Court under Art. 133 (1). 67 Cal W N 743 : AIR 1963 Cal 433 (438, 439) (Pt C) (Prs 16, 18) (DB).

— Art. 133 (1) — Income-tax Act (1922), S. 66 (2) — Order passed under S. 66 (2), Income-tax Act, cannot be said to dispose of case finally, or by its own force to bind or effect right of parties to such application— Hence such an order cannot be said to be judgment, decree or final order contemplated by Art. 133 (1)— No appeal would lie to Supreme Court from order under S. 66(2) refusing to call upon Appellate Tribunal to state case on a question. Case law discussed. (1962) 46 I T R 383 (Cal).

——Art. 133(1)—"Judgment, decree or final order".

Recovery proceedings under the Punjab Land Revenue Act were taken against the petitioners on a recovery certificate by the Collector in respect of the balance in resale The writ petition filed by the petitioners under Art. 226 was rejected. On a petition under Art. 133:

Held, that the order rejecting the writ petition was not a 'judgment, decree or final order in a civil proceeding" within the meaning of Art. 133(1) and, consequently, the petition under Art. 133 must fail. AIR 1955 Nag 257, Foll. A I R 1957 Him Pra 5 (6, 8) (Prs 3, 7).

— Art. 133 — Judgment on reference under S. 82, Hyderabad Income-tax Act—Application for leave to appeal against — Maintainability. See Ibid, Art. 132. AIR 1956 Hyd 136 (DB).

——Art. 133 — 'Judgment, decree or final order' — Judgment on sales tax reference — (Sales Tax — Cochin Sales-Tax Act (15 of 1121, M. E.), S. 24 (5).)

A 'judgment' delivered under S. 24(5) of the Cochin Sales tax Act is not a 'judgment, decree or final order' as contemplated by Art. 133 of the Constitution. 1957 Ker L J 9 5: 1957 Ker L T 969: (1957) 8 S T C 812: I L R (1958) Ker 191 : A I R 1958 Ker 53 (55) (Pr 7) (DB).

——Art. 133 — Decision of High Court in reference under S 44 (1) of M. P. General Sales Tax Act (1958) —Certificate for appeal cannot be granted. See Ibid, Art. 132. AIR 1965 Madh Pra 253.

——Art. 133 — Suit under Madras High Court Original side Rules, O. 45, R 4 dismissed —Appeal dismissed for default of appearance — Application to restore also dismissed — Dismissal order is neither judgment, decree nor final order.

Where an appeal from an order dismissing a suit by an originating summons under O. 45, R. 4 of the Original Side Rules of the High Court is dismissed for default of appearance in person or by advocate and an application filed under O 41, R. 19 Civil P. C., for restoration of the appeal and for re-hearing is also dismissed, the order dismissing the application is neither a judgment nor a decree nor a final order within the meaning of Art. 133. It is not a judgment or decree because it was not passed in a suit or appeal. It is not a final order as it does not deal with the rights of parties. It is a matter of procedure and not an order passed on the merits. ('52) 65 Mad L W 658: 1952 Mad W N 559: 1952-2 Mad L J 197: AIR 1953 Mad 38 (39) (Prs 1, 2) (DB).

——Art. 133 — Judgment, decree or final order — Decision of High Court leaving suit alive and providing for its trial.

Where the decision of the High Court leaves the suit alive and provides for its trial in the ordinary way it is not a 'judgment, decree or final order' within the meaning of Art. 133 of the Constitution even though an important and vital issue has been decided. Where in a suit for framing fresh scheme regarding management of a mosque brought under S. 92, Civil P. C., by plaintiffs the defendants resisted the suit claiming exclusive right to the management:

Held, that the whole question of the mode of management had still to be worked out and until that was done it could not be said that the rights of the parties had been finally determined and that, therefore, the decision of the High Court could not be regarded as a judgment, decree or order of a final character A I R 1933 P C 58 and A I R 1950 F C 77, Foll. 38 Mys L J 1141 : I L R (1959) Mys 1129 : AIR 1961 Mys 104 (105, 106) (Prs 5 6) (DB).

——Art. 133 (1)—"Judgment, decree or final order" —Test—Judgment in writ petition.

The three words 'judgment, decree or final order' in Art. 133 (1) imply the same amount of finality and if after the order is passed the suit or proceeding is still left alive it cannot be taken to be a judgment, decree or final order; but if on the passing of the order of the High Court the matter is completely sealed and there remains nothing further to be agitated by either of the parties, it is regarded as a final order as contemplated under Art. 133.

Thus where the Court below in a particular case decides the plaintiff's case against him and dismisses the suit on the preliminary ground that it was barred by res judicata or limitation and the High Court confirms the above view, the order is a judgment, decree or final order as it puts the last seal on the case by virtue of the judgment. But if the High Court reverses and remands the case it is not such a "judgment, decree or final order" as contemplated under Art 133 as the suit is still undetermined. A I R 1956 Andhra 47 : 1955 All W R 450, Rel. on. I L R (1957) Cut 27: A I R 1957 Orissa 42 (45, 46) (Pt B) (Prs 11, 12) (DB).

● —Art. 133(1)—Civil P. C. (1908), S. 110—"Judgment, decree or final order"—How not to be interpreted.

The expression 'judgment, decree or final order' used in the last clause of Art. 133 (1) need not be read in conjunction with the expression 'the subject-matter of dispute' used in Clause (e) of that article so as to curtail the right of appeal of the applicant. A I R 1950 Mad 124, Foll.; A I R 1936 Mad 881, Not foll. Kanak Sunder v. Ram Lakhan, 1956 Pat L R 344 : 1956 B L J R 523 : I L R 35 Pat 499 : A I R 1956 Pat 325 (331, 332) (Pt G) (Pr 17) (FB).

——Art. 133 — Judgment, decree or final order in a civil proceeding — Meaning of — Decision of High Court on appeal against award of Tribunal under U. P. Town Improvement Act — No certificate can be granted.

The words 'judgment, decree or final order in a civil proceeding of a High Court' in Art. 133 still have the same meaning, and are subject to the same restrictions as was the case in the days when appeals went to the Privy Council and the Federal Court. A I R 1931 P C 149 and A I R 1958 S C 947, Foll.

It is not open to the High Court to grant a certificate under Art. 133 for an appeal against the decision of the High Court in an appeal under the U. P. Town Improvement (Appeals) Act of 1920 against the award of a Tribunal constituted under the U. P. Town Improvement Act of 1919 as extended to Delhi. 64 Punj L R 377 : A I R 1962 Punj 373 (374, 375) (Pt B) (Pr 6) (DB).

——Art. 133(1)—Judgment, decree or final order.

The words "judgment, decree or final order" connote existence of adjudication by the Court, upon the rights of the parties appearing before it, on the merits of the dispute and do not include an interlocutory judgment. 61 Punj L R 202 : A I R 1959 Punj 58 (60, 61) (Pt C) (Prs 9, 15) (DB).

——Art. 133 — Judgment, decree and final order — Interpretation—Proceedings under S. 13 of Displaced Persons (Debts Adjustment) Act — Stay under S. 34, Arbitration Act, refused — Appeal and Letters Patent Appeal dismissed on ground that order under S. 34 was not final order within meaning of S. 40, Displaced Persons (Debts Adjustment) Act — Order in Letters Patent Appeal held not judgment, decree or final order within Art. 133 — (Arbitration Act (1940), S. 34) — (Displaced Persons (Debts Adjustment) Act (1951), Ss. 13, 40) — (C. P. Code (1908), Ss. 109, 110 and O. 45, R. 2). A I R 1955 N U C (Punj) 5394 (DB).

——Art. 133 — Judgment, decree or final order — Order of High Court under S. 66 (2), Income-tax Act dismissing application for directing Appellate Tribunal of Income Tax to state case — Order is not judgment, decree or final order, within meaning of Art. 133—No leave to appeal against such order to Supreme Court can be granted (Income-tax Act (1922), S. 66 (2)). AIR 1951 S C 14, Rel. on 1952-21 I T R 523 : A I R 1952 Punj 299 (300) (Pr 1) (DB).

——Art. 133 — Order refusing leave to appeal in forma pauperis.

An order of High Court rejecting an application for leave to appeal in forma pauperis is not a judgment, decree or final order within Art. 133 of the Constitution, and as such no appeal lies to the Supreme Court from such an order. I L R (1951) Punj 185 : 53 P L R 19 : AIR 1951 Punj 30.

6. "Judgment".

(a) Orders on petitions under Art. 226.

6. "Judgment".

——Art. 133 — No right of appeal unless rights of parties are finally determined — (Civil P. C. (1908), S. 109.)

There would be no right of appeal under Art. 133 against a judgment unless the rights of the parties have been finally determined.

Hence where the Judicial Commissioner's Court has held that the Civil Court has jurisdiction to try the suit and has directed the trial Court to proceed with the suit in accordance with law the judgment does not finally dispose of the suit between the parties and hence appeal under Art. 133, does not lie. A I R 1933 P C 58 and AIR 1950 F C 77, Rel. on. 1955 A M L J 93 : A I R 1956 Ajmer 16 (16) Pr 5).

● ——Art. 133 (1) — 'Judgment' or 'final order' — Meaning of— Order of High Court in appeal setting side order of trial Court recording compromise — C. P. C. (1908), Ss. 109, 110; O. 23, R. 3; O. 43, R. 1 (m).

Per Beg J.—In order that an order may be declared to be a final order, the following propositions of law stand established :

(1) that an order is final only if it finally disposes of the rights of parties; (2) that the finality of the order must be determined in relation to the suit; (3) that the order cannot be treated to be a final order if the suit is still left alive for the purpose of determining the rights and liabilities of the parties in the ordinary way; (4) that the mere fact that a cardinal point in the suit has been decided or even a vital and important issue determined in the case is not enough to make the order a final one. AIR 1933 P C 58, Foll.

An order of the High Court in appeal reversing the order of the trial Court recording a compromise is neither a judgment nor final order within the meaning of those terms in Art. 133 of the Constitution. The order is an interlocutory order.

A 'judgment' as contemplated in Art. 133 should fulfil the following three conditions :

(1) It should terminate the proceedings in the High Court (2) It should determine the rights and liabilities of the parties. (3) The determination of the rights and liabilities as envisaged in condition No. 2 should be on merits, and should further be final and conclusive.

Held on facts that if this test is applied to the impugned decision, the decision obviously fails to fulfil conditions Nos. 2 and 3 specified above. It cannot, therefore, be treated as a 'judgment' for Art. 133 (1). Savitri Devi v Rajul Devi, I L R (1960) 2 All 917 : 1960 All L J 897 : 1961 All W R (HC) 5 : A I R 1961 All 245 (254, 260, 261) (Prs 37, 38, 73, 77) (FB).

——Art. 133 (1) (a) — 'Judgment' or 'final order' — Decision in appeal upon cardinal issue — Remand— Appeal —C. P. Code (1908), S. 109.

An order comprising the decision of the High Court in appeal upon a cardinal issue in a suit, that issue being one that goes to the foundation of the suit is a judgment' or 'final order' for the purposes of appeal so as to attract the provisions of Art. 133 (1) (a) notwithstanding that there may be subordinate inquiries yet to be made in disposing of the suit and for that purpose the suit has been remanded. (5 M L J 20. Foll.) 1960 All W R (HC) 177 (2) : 1960 All L J 244.

——Art. 133 (1) — 'Judgment' — Reference by Revision Board to High Court — Judgment answering reference—Appeal—(United Provinces Agricultural Income-tax Act (3 of 1948), S. 24.

The expression "judgment" as used in Cl. (1) of Art. 133 means a final declaration or determination of the rights of the parties and does not include a judgment given by the Court in a consultative or advisory capacity and hence no appeal lies to the Supreme Court against a judgment of the High Court answering a reference made to it by the Revision Board under S. 24 of the United Provinces Agricultural Income-tax Act (3 of 1948). A I R 1951 Mad 590 and AIR 1954 Nag 1. Dissented from. AIR 1923 P C 148; AIR 1951 S C 14; AIR 1949 F C 1 and AIR 1950 F C 77, Rel on. 1956 All L J 146 : 1956 All W R (HC) 803 : A I R 1956 All 392 (393) (Pr 5) (DB).

——Art. 133—'Judgment' meaning of — Adjudication should put an end to a suit or proceeding so far as the Court before which it is pending — High Court reversing decision of lower Court and remanding case for fresh disposal — Proceeding in High Court terminated so far as that Court is concerned — Order passed is judgment. See Letters Patent (Mad), Cl. 15. (1962) 2 Andh W R 119 : A I R 1963 Andh Pra 9 (DB).

——Art. 133 — Reference under S. 66, Income-tax Act - Decision on is not judgment within meaning of Art. 133 — Neither Art. 133 nor Ss. 109 and 110, C. P. Code will apply — S. 66-A (2), Income-tax Act is applicable in such cases—Words and phrases—Judgment.

Article 133 does not apply to a decision on a reference under S. 66, Income-tax Act. The word 'judgment' in Art. 133 is used in the sense of final declaration or determination of the rights of parties and a decision on merits and would not cover opinion given by the High Court in its advisory jurisdiction.

That apart, the Income-tax Act makes a provision for the High Court issuing a certificate of fitness for appeal to the Supreme Court under S. 66-A (2) and

that section does not lay down any of the conditions envisaged by Art. 133. The only requirement is that the High Court should feel that the matter is fit one for appeal to the Supreme Court. It is this specific provision that is applicable to matters falling within the ambit of S. 66.

The expression 'so far as may be' in S. 66 (3), Income-tax Act, would not attract the provisions of Ss. 109 and 110, C. P. Code also. It is only in those cases where a certificate of fitness is granted by the High Court and in no other case, would an appeal lie to the Supreme Court. A I R 1952 Bom 479, Rel. on. **ILR (1962) Andh Pra 912 : (1962) 1 Andh W R 184 : (1962) 45 I T R 461 : A I R 1962 Andh Pra 391 (392, 393) (Pt A) (Prs 7, 8, 9) (DB).**

——Art. 133—"Judgment, decree or final order."

An appeal lies to the Supreme Court under Art. 133 if the order complained of finally disposes of the rights of the parties. It should not be an interlocutory order but a final order deciding the rights of the parties. The word 'judgment' in the Article in the context means a final judgment in the sense that it finally decides the rights of the parties. An interim order made pending an appeal cannot be final order. Case-law discussed. 1955 Andh W R 450 : 1955 A L T 439 : AIR 1956 Andhra 47 (49) (Pr 12) (DB).

——Art. 133 (1) — Reference to High Court in income tax proceeding — Decision under Income-Tax Act (1922), S. 66 (5) is not "Judgment"—(Civil P. C. (1908), S. 109).

The word "judgment" used in the Civil Procedure Code and S. 66 (5), Income Tax Act, has the sense of the grounds on which the decision of a Court is based. But the expression "judgment, decree or final order" used in Art. 133 (1) of the Constitution is used in its technical English sense, which means a final declaration or determination of the rights of parties and it also means a decision given on merits. "Judgment, decree or final order" is a compendious expression and each one of the parts of this expression bear the same connotation, viz., that there is an adjudication by the Court upon the rights of the parties who appear before it. "Judgment" must not be read in this context in contradistinction to "decree or final order."

Under S. 66, Income-Tax Act, the High Court has to decide the question and deliver the judgment and the Appellate Tribunal is bound to conform to the judgment. But notwithstanding all this, the jurisdiction of the High Court continues to remain advisory or consultative, and the decision which it gives and the judgment which it delivers is not a 'judgment" within the meaning of Art. 131 of the Constitution. AIR 1923 P C 148; AIR 1925 Cal 598 and AIR 1951 Pat 29 (FB), Rel. on.; AIR 1951 Mad 590, Dissent. **('52) (1952) 22 I T R 150 : 54 Bom L R 609 : ILR (1953) Bom 549 : AIR 1952 Bom 479 (480, 481, 482) (Pt B) (Prs 4, 6) (DB).**

——Art. 133 (1) — Order of High Court in appeal directing return of memorandum of appeal for presentation to proper Court — If judgment or final order.

As a result of the amendment of the Bengal, Agra and Assam Civil Courts Act by W. B. Act 16 of 1957, the pecuniary limit of the District Judge was raised from Rs. 5000 to Rs. 10,000. A Division Bench of the High Court held that the High Court had no jurisdiction to entertain the appeal preferred to it by the heirs of the defendant and directed return of the memorandum of appeal for presentation to the proper Court. An application for certificate of fitness under Art. 133 of the Constitution having been filed against this order;

Held, (i) that the order of the High Court was not a judgment within the meaning of Art. 133 of the Constitution inasmuch as the word 'judgment' did not, unlike the word 'judgment' in Cl. 15 of the Letters Patent apply to any interlocutory order. AIR 1949 F C 1; AIR 1950 F C 77 and AIR 1954 Cal 424, Rel. on.

(ii) that a decision cannot be said to be a final order within the meaning of Art. 133 of the Constitution unless it finally disposes of the rights of the parties on the merits of the case; and the order passed by the High Court could not be said to be a final order. AIR 1920 P C 86; AIR 1933 P C 58 and AIR 1949 F C 1 and AIR 1950 F C 77, Rel. on. **1960 Cal L J 210 : ILR (1960) 2 Cal 617 : 64 Cal W N 52 : AIR 1960 Cal 77 (79, 80) (Pt A) (Prs 7, 9) (DB).**

——Art. 133—Orders that are not final.

The word 'judgment' was not intended to bring in orders not final. The orders which do not terminate the suit or proceeding are not within the contemplation of Art. 133. 58 Cal W N 31 : ILR (1955) 2 Cal 411 : AIR 1954 Cal 424 (429) (Pr 20) (DB).

——Art. 133—"Judgment or final order"—Meaning of.

The judgment or final order that is contemplated by Art. 133 (1) is the judgment or final order that finally disposes of the dispute between the parties so far as the High Court is concerned as contrasted with an interlocutory order or judgment. Dhanalakshmi Vilas Cashew Co. v. President, Cashew Industries Staff Association, **1961 Ker L J 360 : 1961 Ker L T 427 : ILR (1961) 2 Ker 43 : AIR 1962 Ker 1 (3) (Pt A) (Pr 6) (FB).**

——Art. 133—Judgment means final judgment of the Court by which rights and liabilities of the parties to action are finally determined. Madh B L R 1956 (Cri) 542 : 1956 Madh B L J 1324 : AIR 1957 Madh B 47 (49) (Prs 21, 24) (DB).

——Art. 133—Petitioner applying under O. 13 of the Original Side Rules, Madras High Court for construction of a deed of trust—Judge on original side, determining question in favour of the petitioner but High Court in appeal under Cl. 15 of the Letters Patent, not accepting the view — Adjudication is final so far as the High Court is concerned and will be binding on the parties — Decision of the Court is a judgment within Art. 133 and other conditions being satisfied a certificate under Art. 133 (1) (a) and (b) should be issued : AIR 1935 Cal 284 and AIR 1936 P C 318, Rel. on. 1964 Mad W N 128 : 77 Mad L W 82 : (1964) 1 M L J 271 : ILR (1964) 1 Mad 904 : AIR 1964 Mad 423 (424) (Prs 3, 4) (DB).

——Art. 133 — Order which is not final is not also a judgment. (1957) 2 Mad L J 567 : ILR (1958) Mad 117 : 70 Mad L W 960 : (1958) 34 I T R 738 : 1957 Mad W N 650 : AIR 1958 Mad 151 (154) (Pt C) (Prs 7, 8) (DB).

——Art. 133 (1) — Final order—Order in provisional assessment proceeding under Rule 15, Madras Sales Tax Rules — (Sales Tax—Madras General Sales Tax (Turnover and Assessment) Rules (1939), R. 15)—(Sales Tax — Madras General Sales-Tax Act (9 of 1939), S. 12-B).

The provisional assessment proceedings under R. 15 and the order of the High Court under S. 12-B of the Madras General Sales-Tax Act in relation to them, are only in the nature of interlocutory orders in the civil proceedings, that is, the assessment proceedings, even though the claim of the assessee to the deduction under R. 18 (2) was a vital issue therein. It is still open to the assessee to appeal against the final assessment, when the correctness of the interlocutory order can be challenged.

Thus, there can be no finality to the interlocutory order, within the meaning of Art. 133 (1) of the Constitution. Case law Ref.

The order is not a judgment within scope of Art. 133 (1). AIR 1950 F C 77, Rel. on. (1955) 1 M L J 66 : (1955) 6 S T C 72 : AIR 1955 Mad 230 (232, 233) (Pt B) (Prs 9, 10) (DB).

——Art. 133—'Judgment.'

The word 'judgment' in Art. 133 is used in the sense of a decree or order and not in the sense in which it is used in the C. P. Code. AIR 1950 F C 77, Foll. 1953 Mad W N 846 : (1954) 1 M L J 198 : AIR 1954 Mad 406 (409) (Pt B) (Pr 7) (DB).

—— Art. 133 (1)—"Judgment."

It is only a final judgment that falls within the category of judgment referred to in Art. 133 (1) of the Constitution. 1953 Mad W N 261 : (1953) 1 M L J 624 : 66 Mad L W 344 : ILR (1954) Mad 164 : AIR 1953 Mad 727 (728) (Pt B) (Pr 4) (DB).

——Art. 133 — 'Judgment, decree or final order'— Order on application under S. 34, Arbitration Act.

An order on an application under S. 34, Arbitration Act does not finally dispose of the rights of the parties but leaves them to be determined by the Courts in the ordinary way. The order in question does not also come within the scope of the word 'judgment' in Art. 133 (1).

For finding out the meaning of the word 'judgment' in Art. 133 no reliance can be placed on the definition of that word given in S. 2 (9) of the C P. Code. The definition given in C. P. Code can only govern the provisions therein. It is not possible to accept the contention that adaptations were made in Ss. 109 and 110, C. P. Code to carry out the intention of the Constitution and hence the Court must fall back on the definition of judgment in the C. P. Code to ascertain the true meaning of that word in Art. 133 of the Constitution. Such an interpretation amounts to conferring powers on the President to alter the Constitution itself by exercising his power of adaptation. 38 Mys L J 1035 : ILR (1960) Mys 19 : AIR 1961 Mys 98 (99, 100, 101) (Prs 1, 2, 4, 5, 8, 9) (DB).

● **——Art. 133—' Final order"—Test of—S. T. Commissioner not admitting appeal for failure to deposit assessed tax — Application to High Court under Art. 226 of the Constitution for direction to him rejected—Appeal to Supreme Court.**

The test for determining the finality of an order, is whether the judgment or order finally disposes of the rights of the parties. The mere fact that the order decides an important and even a vital issue is by itself not material, unless the decision puts to an end to the suit. The finality must thus be a finality in relation to the suit. Further, a judgment or final order to be appealable to the Supreme Court must affect the merits of the case between the parties by determining some right or liability. Where an appeal was not admitted by the Sales Tax Commissioner on the ground that the appellant had not deposited the assessed tax as required under the proviso to S. 22 (1), C. P. and Berar Sales Tax Act, 1947, and an application made thereupon to the High Court under Art. 226 of the Constitution for a direction to the Commissioner of Sales-Tax to admit the appeal was rejected, the order of the High Court is not an order on merits, that is, with regard to iability to pay the tax, and does not determine any right except the one to prosecute the appeal before the Commissioner of Sales Tax without paying the assessed tax. The right to continue the appeal without paying the tax has nothing to do with the merits of the appeal and therefore the decision of the High Court cannot be regarded as a "judgment' or "final order" within the meaning of Art. 133 of the Constitution and as such is not appealable to the Supreme Court. Hossen Kasam Dada v. State of Madhya Pradesh I L R (1952) Nag 204 : (1952) 3 S T C 289 : AIR 1952 Nag 305 (307) (Pt A) (Prs 8, 10) (FB).

——Art. 133—'Judgment or final order' — Meaning of [C. P. Code (1908), S. 109].

Where the executing Court allowed an objection that the execution proceedings could no longer proceed in view of S. 4 (d), Bihar Land Reforms Act, and accordingly ordered the dropping of the proceedings but the High Court in appeal set aside the order of the executing Court on ground that the objection was not valid and was also concluded by res judicata.

Held, that the order of the High Court was neither a 'judgment' nor a 'final order' within the meaning of Art. 133 of the Constitution. Although a vital issue was determined by the High Court the decision of the High Court did not finally determine the rights of the parties in the execution proceedings. Although there was no specific order of remand made by the High Court the effect of the decision was to keep alive the execution proceedings because the order dropping the execution proceedings was set aside. AIR 1933 P C 58; AIR 1949 F C 1, Foll AIR 1951 Pat 619; (1891) 1 Q B D 734 Ref to 1953 B L J R 623 : 32 Pat 880 : AIR 1954 Pat 241 (241, 242) (Pt A) (Pr 4) (DB).

● **——Art. 133 (1)(c)—Construction—Right of appeal —Essentials—"Judgment, decree or final order in a civil proceeding' — Meaning of—Decision of High Court on reference under S. 21 (3), Bihar Sales Tax Act.**

The two essential requisites of a right of appeal to the Supreme Court under Art. 133 (1) (c) of the Constitution of India are (1) that the appeal should be from any judgment, decree or final order, and (2) that the said judgment, decree or final order must have been passed in a civil proceeding. These two requisites of the Article must be satisfied before a litigant can be held to be entitled to a right of appeal to the Supreme Court.

The decision pronounced by the High Court on a reference under S 21 (3) of the Bihar Sales Tax Act is not a "judgment" within the meaning of Art. 133 of the Constitution. The term "judgment" in Art. 133 has been used in the same sense as in S. 205, Government of India Act (1935), and the dropping of the word "final" before the word "judgment" in the Article does not make any difference Nor is the proceeding in question a "civil proceeding" within the meaning of Art. 133 (1) (c). Hence the High Court will not grant leave to appeal to the Supreme Court against such a decision under Art. 133 (1) (c) of the Constitution. Any judgment which the High Court pronounces in regard to the questions of law referred to it by the Revenue authorities is not a judgment in the technical sense of the terms, but merely a sort of opinion or advice; on those questions of reference the Revenue authorities are governed by and have to mould their order of assessment in the light of the advice so tendered by the High Court. AIR 1949 F C 1; AIR 1951 S C 14, Foll ; AIR 1931 Lah 138 (FB); AIR 1951 Mad 590, Not foll.; AIR 1950 S C 169; AIR 1929 Cal 214, Ref.; AIR 1921 P C 80; AIR 1925 P C 155; AIR 1935 Rang 267 (FB), Rel. on.

(Contra) Shearer, J. — The expression "judgment, decree or final order" is wide enough to cover decisions under S. 21 (5) of the Bihar Sales Tax Act on references under S. 21 (c) just as decisions under S. 66 A of the Income-tax Act.

The words "judgment", "decree" and "order" are not to be construed distributively. Regard must be had to the cummulative effect, and the phrase "any judg-

ment, decree or final order" made in a civil proceeding must be regarded as a single compendious phrase, embracing every decision in a civil proceeding which is not a final but is merely a preliminary or an interlocutory order. Article 133 (1) confers a general right of appeal. Tobacco Manufacturers (India) v. The State, 30 Pat 174 : 2 S T C 73 : 1951 B L R (Pat) 122 : A I R 1951 Pat 29 (37, 38, 40) (Pt B) (Prs 30, 32, 38, 45) (FB).

——Art. 133 — 'Judgment, decree or final order' — Meaning of — 'Judgment' must be taken in same sense as 'decree' in C P. Code — Order overruling claim of privilege for certain documents—Not judgment or final order.

The words 'judgment, decree or final order' as used in Art. 133 connote that the expression 'judgment' must be taken in the same sense as the word 'decree' in the Code of Civil Procedure and must be construed as meaning the declaration of final determination of the rights of the parties. The finality must be a finality in relation to the suit and if after the order the suit is still a live suit in which the rights of the parties have yet to be determined, it will not fall within the purview of Art. 133.

Plaintiff summoning documents from defendant—Latter claiming privilege in respect of such document — Trial Court upholding privilege but High Court on revision varying order of trial Court with reference to some of the documents Held order of High Court was neither a judgment nor a final order. A I R 1950 F C 77 and A I R 1954 Mad 1057 (FB), Rel. on. 62 Punj L R 514: AIR 1960 Punj 487 (487, 488) (Prs 3, 4) (DB).

● ——Art. 133 — "Judgment, decree or final order" —(C. P. Code (1908), S. 109).

For an appeal to be competent under the provisions of Art. 133, there must be inter alia a "judgment, decree or final order," The word "judgment" in the the Article must, in the context, mean something different from the words "decree or final order" which alone were used in Ss 109 and 110 of the pre-Constitution Code of Civil Procedure. Judgment is the adjudication of the proceeding or the suit as the case may be. Final order means an order which finally decides any matter that is directly at issue in the case in respect of the rights of the parties. According to the Constitution an appeal will lie to the Supreme Court if the decision of a Court falls within the words "judgment, decree or final order" and each one of these words has a different connotation. But all of them have reference to adjudication, determination or disposal of a proceeding, suit or rights of the parties. Union of India v. Kanahayalal Shamlal. 59 Punj L R 150 : I L R (1957) Punj 255 : AIR 1957 Punj 117 (121, 122) (Pt C) (Prs 16, 17, 22, 24, 25) (FB).

——Art. 133—Judgment — Meaning of—C. P. Code, S. 109 (b).

The word "judgment" appearing in Art. 133 of the Constitution or in S. 109 (b), C. P. Code, must have same meaning and must be differentiated both from the decree and final order. 54 C W N 874, Ref. I L R (1950) Punj 447 : 53 P L R 84 : A I R 1951 Punj 412 (413) (Pt C) (Pr 7) (DB).

——Art. 133 — Reversal of decision on the plea of limitation.

The reversal by the High Court of the decision of the trial Court on the plea of limitation does not come within the purview of the term 'judgment' because it is not a final decision of the matters in dispute. 1956 Raj L W 461 : I L R (1956) 6 Raj 327: AIR 1957 Raj 173 (174) (Pt B) (Pr 5) (DB).

——Art. 133 'Judgment'—Meaning of.

The word 'judgment' used in Art. 133 cannot be taken in its widest possible sense so as to include every order which terminates a proceeding pending in a High Court. The judgment must partake of the nature of finality attributed to a decree and a final order, when it is used in conjunction with the words 'decree' or 'final order'. A I R 1939 F C 43 and A I R 1949 F C 1, Ref.

When the High Court is dealing under Art. 133, with revision or appeal to the High Court, the judgment according to the C. P Code, is merely a statement given by the Judge of the grounds of the decree or order. In such a case the High Court has to see whether there is a decree or a final order, the judgment containing merely reasons for the decree or order which follows upon it. I L R (1954) 4 Raj 646 : 1955 Raj L W 187 : AIR 1954 Raj 127 (128, 129) (Pt B) (Pr 6) (DB).

● —Art. 133 — Term 'judgment' indicates a final decision on merits of the dispute before the Court—Order setting aside lower Court's decision and sending back case for disposal in accordance with law or rest of pleas raised by defendant — Order is not final nor is it a 'judgment'. Bombay Steam Navigation Co. Ltd. v. Damodar Savailal. 6 Sau L R 144 : A I R 1953 Sau 166 (167, 168, 169, 170) (Pt C) (Prs 6, 7, 8) (FB).

6 (a). Orders on petitions under Art. 226.

——Art. 133 — 'Judgment' and final order'—Test — Order passed in proceedings under Art. 226 of Constitution — Order holding that proceedings under Art. 226 were not appropriate — (Civil P. C. (1908), Ss. 99 (b) and 110).

A certificate under Art. 133 of the Constitution or S. 109 (b) read with S 110 of the Code of Civil Procedure can only be granted in respect of an order passed in proceedings under Art. 226 of the Constitution (1) if the Court treats the order as a judgment, in case it conclusively determines the rights of the parties and is not a mere interlocutory order during the pendency of a case, and (2) if the Court treats it as a final order. A I R 1953 All 647 and A I R 1956 All 457 (FB) Foll; A I R 1949 F C 1; A I R 1958 Mad 151 and A I R 1957 Punj 173 (FB), Rel. on.

Where in proceedings seeking writs against orders of income-tax authorities the High Court held that the proceedings under Art. 226 of the Constitution were not appropriate no rights of the applicant were at all decided.

When the High Court refused to exercise the power on the application of the Applicant, the Court did not, by dismissing that application, adjudicate upon any right of the applicant to obtain a writ from the High Court, A I R 1951 All 746 (FB), Rel. on. A I R 1958 All 153 Expl. and Disting.

In those circumstances the order, against which the application for leave to appeal to Supreme Court under Art. 133 was moved, was not a judgment or a final order. I L R (1958) 2 All 740 : A I R 1958 All 800 (802, 803) (Prs 4, 5, 6, 7) (DB).

——Art. 133—"Judgment"—Meaning of—Order rejecting writ petition.

The word "judgment" in Art. 133 has been used in the sense of a decision finally determining the rights of the parties in the proceeding and not as defined in the Code of Civil Procedure.

A writ petition under Art 226 of Constitution of India was filed on the ground that the Board of Revenue had no power to entertain a second application for review, that S. 2, U. P. Zamindari Abolition and Land Reforms Act could not be given retrospective effect and consequently a review petition could not lie. The High Court rejected the petition.

Held, that the order rejecting the petition amounted to judgment within Art. 133. **1956 All L J 601 : 1956 All W R (HC) 480 : A I R 1957 All 116 (117, 119) (Pt A) (Pr 4) (DB).**

● —Art. 133—Order on application under Art. 226—It is a judgment or final order for purpose of appeal to Supreme Court whether it quashes the order of inferior tribunal or not—Tests applied for interpretation of word 'judgment' in cl. (15), Letters Patent, will equally apply to Art. 133. Southern Roadways (P) Ltd. v. P. M. Veeraswami, 1963 Mad W N 677 : (1964) 1 Mad L J 25 : 77 Mad L W 1 : ILR (1964) 1 Mad 1 : A I R 1964 Mad 194 (196, 197) (Pt A) (Prs 8, 12) (FB).

——Art. 133 (1) (a)—'Judgment'—Meaning — Order refusing to issue writ under Art. 226 is not judgment or final order—(Constitution of India, Art 226).

Unless a decision finally disposes of the rights of the parties it is not a 'judgment'. The mere fact that the order has decided an important and even a vital issue is not by itself conclusive of the matter, unless the decision puts an end to the litigation. The decision or order, in order to be called a judgment, must affect the merits of the controversy between the parties by determining some right or liability.

Ordinarily the extraordinary jurisdiction vested in the High Court under Art. 226 is not meant to declare any rights. A writ under Art. 226 issues only to ensure that the law of the land was being properly administered and the refusal to issue the writ has only the effect of saying that the High Court does not see any irregularity in the administration of the relevant law. Such a decision is not covered either by the word 'judgment' or the phrase 'final order' in Art. 133 (1).

Hence a certificate under Art. 133 (1) cannot be granted against such an order. A I R 1951 Pat 626, Expl., 17 Suth W R 364, Rel. on. **1955 Nag L J 738 : ILR 1955 Nag 704 : A I R 1955 Nag 257 (257, 258) (Prs 4, 5) (DB).**

● **——Art. 133 (1) — Petition for writ of habeas corpus—Decision on, is a judgment or at least final order within Art. 133 (1).** See Ibid, Art. 226. **ILR (1965) 2 Punj 853 : 1966 Cri L J 153 : A I R 1966 Punj 51 (FB).**

● **——Arts. 133, 226 — 'Judgment', decree or final order—Meaning of—Order dismissing petition under Art. 226.**

In Art. 133 (1) of the Constitution of India the words 'judgment, decree and final order' are textually the same as those used in S. 205 of the Constitution Act of 1935.

In order that a decision should fall within the definition of the word 'judgment' or final order' (1) it must finally decide the rights of the parties and the word 'judgment' means a final judgment and not an interlocutory judgment, and by which right to the relief claimed is decided with regard to all matters in issue, and (2) an order is final if it finally disposes of the rights of the parties and if it does not, it is not final even though it may decide a vital issue in the case. The mere fact that the Court refuses to issue a writ or direction under Art. 226 does not take it out of the definition of the words 'judgment, decree or final order' but it will depend upon the facts, circumstances and the nature of decision in each case. Kapur Singh v. Union of India. **59 Punj L R 331 : ILR (1957) Punj 873 : A I R 1957 Punj 173 (182, 186) (Pt C) (Prs 38, 55, 56) (FB).**

7. "Decree."

——Art. 133 — Order of tribunal constituted under Kanpur Urban Area Development Act.

The tribunal constituted under the Kanpur Urban Area Development Act is not a civil Court except for purposes of court-fees. Its order is not a decree, it is an award. The appellate order of the High Court in the case is also an award. **1961 All L J 258 : 1961 All W R (HC) 295 : A I R 1961 All 509 (510) (Prs 7, 8) (DB).**

——Art. 133—Applicability — Hyderabad Land Acquisition Act (9 of 1309-F), Ss. 21 and 53 -Judgment and decree of High Court in a case arising under — Appeal to Supreme Court—Competency.

Where the matter came by way of appeal to the High Court against an award of a Court, the decision is not a judgment, decree or order under the Code of Civil Procedure. The awards passed in land acquisition proceedings under S. 21 of the Hyderabad Land Acquisition Act were not regarded as decrees under the Code of Civil Procedure. Section 54 of the Indian Land Aquisition Act had been amended so as to confer a right of appeal against the decree of the High Court, the award having been treated as a decree by virtue of the provisions of sub s. (2) of S. 26 of the Indian Act. Therefore, the right of appeal is specifically provided under the Indian Act, which is not to be found in the corresponding section, viz., S. 53 of the Hyderabad Act. Where, therefore, the award passed could not be regarded as a decree under the Hyderabad Land Acquisition Act, there could be no appeal to the Supreme Court. ILR 40 Cal 21 (PC) : (1912) ILR 37 Bom 506 : (1954) 17 Cal W N 421 (PC) and A I R 1958 S C 947, Rel. on. **(1960) 2 Andh W R 210 : 1960 Andh L T 785 : ILR (1960) 2 Andh Pra 40.**

——Art. 133 — Question if an order amounts to a decree—Determination of.

To find out whether an order amounts to a decree the definition of 'decree' in S. 2 (2) of the Code must be considered as a whole. **A I R 1963 Cal 515 (518) (Pt A) (Pr 9) (DB).**

——Art. 133— "Decree", meaning of — Finality of order—Test—Suit for rendition of accounts and payment of money — Preliminary decree — Appeal to Supreme Court—Maintainability, (Civil P. C. (1908), Ss. 2 (2), 97, 109).

Under Art. 133 a preliminary decree as well as a final decree is appealable. The word 'decree' which occurs in that Article and in S. 109, Civil P. C., is not qualified by the words "preliminary" or "final".

The test of finality is whether the rights of the parties have been finally determined by the judgment or order and whether the suit is a live suit not for the purpose of working out the details in accordance with the judgment or order but for the purpose of determining the rights of the parties.

In a suit for rendition of accounts after the passing of the preliminary decree, further proceedings in the suit are not proceedings in which the rights of the parties have to be determined. Where, a preliminary decree directs the defendant to render accounts to the plaintiff, and the valuation of the subject matter in the original Court, as well as in the appeal before the High Court was Rs. 21 000 and the decree sought to be appealed from was not one of affirmance of the decree passed by the trial Court.

Held, that the preliminary decree was appealable under Art. 133 and a certificate could be granted. **1956 Madh B L J 3 : ILR (1956) Madh B 171 : A I R 1956 Madh B 151 (151, 152) (Pr 2) (DB).**

——Art. 133 — "Decree", meaning of. See Civil P. C. (1908), S. 2 (2). **AIR 1953 Madh Bha 45.**

● **——Art 133 (1) — C. P. Code (1908), S. 109 and S. 2 (2)—Decree—Each matter decided in suit cannot constitute separate decree.**

A decree is one and must be taken as one unit. Each subject-matter decided by a Court in a suit cannot constitute a separate decree in that suit. 1936 Mad 881; 71 M L J 580, Dissent from. Kanak Sunder v. Ram Lakhan, **1956 Pat L R 344; 1956 B L J R 523 : I L R 35 Pat 499 : AIR 1956 Pat 325 (333) (Pt H) (Pr 22) (FB)**

——**Art 133**—"Decree or final order" – Appeal arising in execution proceeding allowed on ground of limitation—Order of High Court is neither decree nor final order – (Civil P. C. (1908), S. 2 (2) and S. 109). **AIR 1955 N U C (Pat) 1600 (DB).**

——**Art. 133 – "Judgment, decree or final order—Decision on plea of limitation—(Civil P. Code (1908), S. 2 (2), and S. 109).**

The determination by the Court of the plea of limitation in a suit does not amount to a decree, for the term "determination of the rights of the parties" occurring in the definition of the word "decree" in S. 2 (2), C. P. Code, refers to the substantive rights of the parties with regard to the merits of the case and not to other disputes between the parties which are ancillary to the subject-matter of the suit. ILR (1954) 4 Raj 622, Disting. The reversal by the High Court of the decision of the trial Court on the plea of limitation does not come within the purview of the term 'judgment' because it is not a final decision of the matters in dispute in the case. AIR 1939 F C 43 and AIR 1949 F C 1, Rel. on. And while reversing the decision of the trial Court, the decision of the High Court on a question of limitation will not be a final order when the suit is remanded to the trial Court and it is kept alive. **1956 Raj L W 461 : ILR (1956) 6 Raj 327 : AIR 1957 Raj 173 (173 to 175) (Pt B) (Prs 3, 5, 8) (DB).**

8. "Final order".

(a) **Order on application under Art. 226.**
(b) **Interlocutory orders.**
(c) **Order of remand.**
(d) **Orders relating to appointment of receivers.**

8. "Final order."

——**Arts. 133 and 132—Final order, meaning of.**

The expression 'final order' has been given a wider scope so far as Art. 132 is concerned. The word 'final order' when it occurs in Art. 133 is not to be interpreted in terms of the explanation of Art. 132. The absence of any such explanation in Art. 133 and the fact that such an explanation was considered necessary to be added to Art. 132 clearly shows that 'final order' does not ordinarily include an order deciding an issue which, if decided in favour of the appellant, would be sufficient for the final disposal of the case. **AIR 1954 Ajmer 12 (2) (13) (Pt A) (Pr 3).**

——**Art. 133—Final order.**

An order passed by a Court holding that it has jurisdiction to try the suit is not a final order within the meaning of Art. 133. AIR 1952 All 942 (FB)., Distinguished. **AIR 1954 Ajmer 12 (2) (13) (Pt B) (Prs 4, 5).**

——**Art. 133 — Final order — (C. P. Code (1908), S. 109).**

The question whether the decree is executable or not is a preliminary question and does not finally determine the execution case which has to be proceeded with. Case law discussed, **AIR 1953 Ajmer 51 (51) (Pr 4).**

● ——**Art. 133—"Final order" —What constitutes—Conditions—(Civil P. C. (1908), S. 109).**

In order to make an order a final order, three conditions must be satisfied, namely; (1) that it should not be an interlocutory order; (2) that even though it is an order which disposes of the proceedings before a Court finally, it should not be an order which leaves the original proceedings in the Court below alive and (3) that there should be a final determination of the rights of the parties or the order must of its own force affect the rights of the parties. Mohd. Mahmood Hasan Khan v. Government of U. P., **I L R (1946) 1 All 593 : 1956 All L J 679 : 1956 All W R (H C) 706 : AIR 1956 All 457 (458, 459) (Pt A) (Prs 5, 12) (FB).**

● ——**Art. 133—"Final order" — Order refusing to restore an appeal dismissed for default (Civil P. C. (1908), S(109).**

An order refusing to restore an appeal dismissed for default of prosecution though not an interlocutory order is not a final order within the meaning of Art. 133 of the Constitution. The order refusing to revive the appeal did not, standing by itself, affect the rights of the parties. Those rights had been, disposed of by the dismissal of the appeal for want of prosecution ; the order complained of only refused to allow the matter to be reagitated. It is an order relating to procedure and not to the merits of the appeal. (1903) 1 K B 547 : AIR 1951 S C 14 and AIR 1953 Mad 38 Rel. on. Mohd. Mohmood Hasan Khan v .Government of U. P., **1946 All L J 679 : 1956 All W R (H C) 706 : ILR (1956) 1 All 593 : AIR 1956 All 457 (459, 460) (Pt B) (Prs 16, 22, 23) (FB).**

——**Art. 133 — Order refusing leave to sue in forma pauperis — Whether a final order.**

An order granting leave to sue in forma pauperis or an order refusing leave to appeal in forma pauperis is a mere matter of procedure not deciding finally the rights of the parties, and therefore, not a final order within the meaning of Art. 133 of the Constitution. (1963) 1 An W R 249 : **ILR (1963) Andh Pra 881.**

——**Art. 133 (1) (b)—Final order — Order rejecting application under S. 152, C. P. Code—Not a final order—C. P. Code (1908), S. 152.:**

An order of the High Court dismissing an application under S. 152, C. P. Code, is not by itself a final order within the meaning of Art. 133 of the Constitution where no amendment as applied for has been allowed or when the application under S. 152 itself is incompetent and leave to appeal to Supreme Court cannot be granted under Art. 133 of the Constitution. AIR 1923 P C 58 and AIR 1933 All 15 Dist. **(1962) 1 Andh L T 345 : (1962) 1 Andh W R 228 : AIR 1962 Andh Pra 411 (411) (Pr 4) (DB).**

——**Art. 133 (1) — Final order — What is — Suit for dissolution of partnership and accounts — Important and vital issue decided by High Court—Suit still alive as regards other dispute concerning taking of accounts — Order is not final — C. P. Code (1908), S. 109.**

The fact that an important and even a vital issue was decided in the suit does not make the order a final one, if there are still other disputes to be decided in the suit. AIR 1954 Mad 406, Foll.

Held, that although the issue in a suit for dissolution of partnership and accounts decided by the High Court was a very important and vital one, yet there was no finality in relation to the suit, since the suit was still alive as regards the dispute concerning the amount that might be found due on taking of accounts : AIR 1933 P C 58; AIR 1920 P C 86; AIR 1949 F C 1 and AIR 1950 F C 77, Rel. on. **ILR (1961) 2 Andh Pra 401 : 1960 Andh L T 856 : (1961) 1 Andh W R 71 : AIR 1961 Andh Pra 402 (403, 404) (Prs 8, 13) (DB).**

——Art. 133 (1)—"Judgment, decree or final order"—Appeal from judgment in revision— (Civil P. C. (1908), S. 109).

An appeal lies to the Supreme Court under Art. 133 if the order complained of finally disposes of the rights of the parties To put it differently, it should not be an interlocutory order but a final order deciding the rights of the parties. Where, affirming the finding of the Subordinate Judge, the High Court in revision held that the judgment-debtors were entitled to have the decree scaled down by reason of the Madras Agriculturists Relief Amending Act (23 of 1948), but, disagreeing with the Subordinate Judge, it was held that the judgment-debtors were agriculturists and entitled to the benefits of the Act, whereupon the petitioners filed an application for leave to appeal to the Supreme Court against the judgment of the High Court:

Held, that as the result of the judgment of the High Court was to make a final adjudication of rights of the parties it was "final order" and leave to appeal should be granted. **1956 Andh W R 52 : AIR 1957 Andh Pra 538 (539) (Prs 4, 7, 8) (DB).**

——Art. 133 (1)—Final Order — Meaning of — Execution proceedings — Objections to—High Court in second appeal finally disposing of objections—Execution kept alive to be disposed of by executing Court—Not a final order — No leave can be granted.

Where the High Court disposed of certain objections raised by the judgment-debtor in relation to the execution of decree but did not finally dispose of the application for execution and the final determination of the rights in relation to the execution and final disposal of the execution proceeding was still to be made by the executing Court the decision of the High Court is not a final order within the meaning of Art. 133 of the Constitution of India. AIR 1949 EP 222 and AIR 1951 Assam 73 and AIR 1919 Pat 383 and AIR 1933 P C 58 and AIR 1943 Lah 140 (FB), Rel. on. **68 Cal W N 197 : AIR 1963 Cal 524 (530) (Pt A) (Prs 10, 13) (DB).**

——Art. 133 (1) (c)—Final order — Order in execution appointing Receiver for sale of property is not final order — Order in execution, when 'decree'—Civil P. C (1908), Ss. 47, 2 (2).

If the judgment of the appeal Court is merely an order and not a decree, it does not satisfy the test of a final order under Art. 133 of the Constitution An order is final if it amounts to a final decision relating to the rights of the parties in dispute in the civil proceeding If after the order, the civil proceedings still remain to be tried and the rights in dispute between the parties have to be determined, the order is not a final order within the meaning of Art. 133.

Where the proceedings were execution proceedings and nowhere near completion, and by its order the Court had held that execution should proceed by the appointment of a receiver directing him to take possession of the charged assets and sell the same in due compliance with law, so long as the sale does not take place no appeal lies against it under Art. 133 (1) (c). The order made does not determine any question relating to the rights and liabilities of the parties with reference to the relief granted by the decree. The question before the Court was : whether the proceeding of sale was to be conducted in a certain way, namely, by the appointment of a receiver. AIR 1933 P C 58, Relied on.

To find out whether the order amounts to a decree, the definition of 'decree' in S 2 (2) of the Code must be considered as a whole. 1 Cal W N 374 (FB) and ILR 38 Cal 754 and AIR 1914 Cal 149 and AIR 1940 Cal 257 and ILR 34 All 530 and AIR 1920 Pat 249 and AIR 1924 Pat 683 and AIR 1951 Mad 56 (FB) and AIR 1943 Lah 140 (FB) and AIR 1949 E P 22, Rel. on. **AIR 1963 Cal 515 (517, 518, 519) (Pt A) (Prs 8, 9, 13) (DB).**

——Art. 133 (1)—Final order—Patents and Designs Act (1911), Ss. 22, 23 (1)(a)—Application under S. 22 for grant of compulsory licence — Order by Controller requiring applicant to file draft licence for settling terms and conditions on which licence should be granted—Not a final order within Art. 133 (1).

An order is not a final order even if it disposes of the most vital issue before a Court. If the proceedings do not come to an end with the adjudication of the most important issue but there is something still left over for that Court itself to accomplish, the order cannot be a final one within the meaning of Art. 133 (1).

Where on an application under S. 22 of the Patents and Designs Act for the grant of compulsory licence, the Controller, after coming to the conclusion that the applicants had made out a case for the grant of the licence, directed the applicants to file within one month a draft licence setting out the terms and conditions which they considered reasonable, for the purpose of deciding what should be the reasonable terms upon which the licence should be granted as the patentee had refused to co-operate in the matter and before the Controller had an opportunity of considering the matter further, the patentee preferred an appeal to the High Court which upheld the decision of the Controller and the patentee desired to go up to the Supreme Court from the said decision.

Held, that it was doubtful whether the order of the Controller could be described as an order under S 23 of the Patents and Designs Act Even assuming that some order within the ambit of S. 23 of the Act had been made, there was no final order by the Controller within the meaning of Art. 133 1). **67 Cal W N 743 : AIR 1963 Cal 433 (440) (Pt D) (Pr 21) (DB).**

——Art. 133—Order directing return of memorandum of appeal for presentation to proper Court.

Order of High Court directing return of a memorandum of appeal for presentation to proper Court is not a final order within the meaning of Art. 133. A decision cannot be said to be a final order unless it finally disposes of the rights of the parties on the merits of the case. **64 Cal WN 52 : AIR 1960 Cal 77 (78, 79, 80) (Pt A) (Prs 5, 7) (DB).**

——Art. 133—'Final Order'—Order appointing arbitrator—(Words and Phrases—Final Order).

Where the order of the Single Judge sought to be appealed from is made merely for appointment of an arbitrator it having decided no question of right is not a final order and does not belong to the category of orders appealable under Art. 133. **95 Cal L J 160 : AIR 1955 Cal 257 (258) (Pt D) (Pr 6) (DB).**

——Art. 133—'Final Order'—Order of Court making reference to Revenue Court to decide question of tenancy, after deciding certain other issues—Order is not a final order.

Where the High Court in an appeal, after deciding against the defendant the issue regarding the statutory ownership of the suit land claimed by him under the tenancy laws and also deciding against the plaintiff the issue that the lease in question was vitiated by fraud, made a reference to the Mamlatdar to decide on the question whether defendant was a tenant of the suit land and to communicate the results to the Court on the ground that it had no jurisdiction to decide the same, the findings given by the High Court is not a final order within the meaning of Art. 133 of the Constitution. AIR 1955 S C 576,

Distinguished. To be final, the order must be such as puts an end to the litigation of the parties or at all events disposes of substantially the matters in issue between them and it is not sufficient merely to decide an important or even a vital issue in the case. The decision must not keep the matter alive and provide for its trial in the ordinary way. (1891) 1 Q B 734 : (1903) 1 K B 547, AIR 1958 S C 253, AIR 1961 S C 794; (1916) 2 K B 139 47 I A 125; AIR 1924 Bom 383; AIR 1933 P C 58; AIR 1950 F C 77; AIR 1949 F C 1; AIR 1951 M 47, Rel on. It cannot be said that the findings on the two issues and the reference of the issue relating to tenancy, put an end to the litigation between the parties or at all events disposed of substantially the matters in issue between them. It cannot also be said that the findings of the Court left only subordinate or ancillary matters for decision. Therefore the decision of the Court cannot be regarded as a final order within the meaning of Art. 133. **ILR (1964) Guj 388.**

——Art. 133 (1) "Final Order"—"Judgment".

In order to constitute a final order, it is necessary that the order should be one by which the suit or the proceedings is finally disposed of whichever way the decision went The test to be applied is, whether the proceeding is disposed of completely and the case is not kept alive for being dealt with in the ordinary way.

If the order is such as would dispose of the proceeding if decided one way, but would not have that effect if it was decided the other way, the order would not be a final order. The final order must contain a final adjudication of the matter in contest between the parties to the action.

Held on facts, that the order of injunction passed by the trial Court was not an order passed in the suit which was pending in the Asansol Court. It also did not have the effect of disposing of either that suit or the respondent's suit finally. The word 'judgment' read in the context in which it is used in Art. 133 (1) of the Constitution also means a final judgment of the Court by which the rights and the liabilities of the parties to action are finally determined. The order against which the petitioner proposed to file an appeal was neither a judgment, decree nor final order within the meaning of Art. 133 (1) and therefore not appealable. **Madh BLR 1956 (Cr) 542 : 1956 Madh B L J 1324 : AIR 1957 Madh B 47 (48, 49) (Prs 17, 18, 19, 21, 24) (DB).**

——Art. 133 (1) — "Final order" and "decree" — Meaning of. See Civil P. C. (1908), Ss. 2 (2), 109. **AIR 1953 Madh Bha 45.**

——Art. 133 (1)—"Final order."

A notice of filing an award in Court was served on the petitioner. Instead of filing an application to set aside the award within the time prescribed by Art. 158, Limitation Act, the petitioner filed merely an application purporting to be under S. 5 of the Limitation Act for excusing the delay in filing the application to set aside the award—That application was dismissed by the High Court—The petitioner sought leave to appeal to the Supreme Court:

Held, that an order refusing to excuse the delay in filing an application, could not be treated except as a procedural order; though it may have far reaching consequences and adversely affect the right of parties, by itself it could not be held to have decided the rights of parties. Case-law Ref.

Dictum. — The case being otherwise fit under Art. 133 (1) (c) "if in the present case an application to set aside the award had been likewise dismissed on the dismissal of an application to excuse the delay in filing it, we would have held that the petitioner is entitled to appeal to the Supreme Court." **1953 Mad W N 261 : I L R (1954) Mad 164 : (1953) 1 M L J 624 : 66 Mad L W 344 : A I R 1953 Mad 727 (729) (Pt A) (Prs 8, 10) (DB).**

——Art. 133—Final order—Test of.

The test of finality of order is whether the order finally disposes of the rights of the parties on merits. An order is not a final order merely because it goes to the root of the suit viz., the jurisdiction of the Court to entertain it. AIR 1933 P C 58 and AIR 1920 P C 86, Rel. on.

The order under S. 115 Civil P. C. refusing to interfere with the finding of the subordinate Court that the notice of suit under s. 80, Civil P. C., was valid cannot be regarded as a final order, as there is no decision of the rights of the parties on merits. Besides, even on an adverse finding plaintiff is not precluded from bringing a fresh suit on the same cause of action after giving proper notice. AIR 1952 Pat 450, Disting. **ILR (1955) Nag 675 : 1955 Nag L J 468 : A I R 1955 Nag 287 (288) (Pt B) (Prs 5, 7) (DB).**

——Art. 133—Appeal in execution proceeding allowed on ground of limitation - Order of High Court not a final order. AIR 1955 N U C (Pat) 1600 (DB).

——Art. 133—Scope— "Final order", meaning of — Whether explanation in Art. 132 can be applied to understand the term as used in Art. 133. See Ibid, Art. 132. **AIR 1954 Pat 241 (DB).**

——Art. 133 — Appeal in execution — High Court, allowing the objection that the execution proceeding could no longer proceed under the law, setting aside order of executing Court as being not valid and also as concluded by res judicata — Held the order did not amount to a final order as the effect of its order was to keep alive the execution proceedings. **1953 B L J R 623 : I L R 32 Pat 880 : A I R 1954 Pat 241 (241, 242) (Pt A) (Pr 4) (DB).**

● **——Art. 133—Order must finally dispose of rights of parties to be 'final order'.**

An order is final if it finally disposes of the rights of parties. If it does not, it is not final even though it may decide a vital issue in the case. Kapur Singh v. Union of India 59 **Pun L R 331 : I L R (1957) Punj 873 : A I R 1957 Punj 173 (186) (Pt C) (Prs 55, 56) (FB).**

—Art. 133 (1)—'Final order'—Meaning of—Zamindari abolition -High Court directing determination of compensation on basis of individual shares of claimants in Jagir village — Order not final order — Ajmer Abolition of Intermediaries and Land Reforms Act (III of 1955).

Where the High Court by an order holds that for the purposes of the Ajmer Abolition of Intermediaries and Land Reforms Act (1955), the compensation payable to the claimants of a certain Jagir village should be determined on the basis of their individual shares in the village the order is not a 'final order' within the meaning of Art. 133 (1) (a). The decision of the High Court does not finally dispose of the rights of the parties and the Compensation Commissioner would have to embark on an inquiry as to the relevant facts in order to determine the amount of compensation payable to each claimant. The order cannot, therefore, be deemed to have the effect of disposing of all the rights of the parties for compensation under the Ajmer Abolition of Intermediaries and Land Reforms Act, 1955 **1962 Raj L W 606 : I L R (1962) 12 Raj 577 : A I R 1963 Raj 152 (153) (Pr 5) (DB).**

——Art. 133 —'Final order'.

An order in proceedings (in this case, a revision before the High Court) for leave to sue in forma

pauperis, which merely puts an end to the application for permission to sue in forma pauperis, cannot be treated as a final order disposing of the suit on the merits. AIR 1927 Pat 175; AIR 1925 Oudh 548, AIR 1932 Rang 192 (1), Ref. **I L R (1954) 4 Raj 646 : 1955 Raj L W 187 : A I R 1954 Raj 127 (129) (Pt C) (Pr 7) (DB).**

■ ——Art. 133—Order must be final. See Civil P. C. (1908), S. 109 (c). AIR 1953 Sau 166 (FB).

8 (a). Order on application under Art. 226.

——Art. 133 — Proceedings under Art. 226 — Order holding that the proceedings were not appropriate— Held order was neither a 'judgment' nor a 'final order' under Art. 133. **ILR (1958) 2 All 740 : AIR 1958 All 800 (802, 803) (Prs 5, 6, 7) (DB).**

——Art. 133—Final order.

Orders of remand in suits are not final orders as even after the remand the matter remains to be finally decided and the suit remains pending. But where in a case against the order of the Subordinate Judge setting aside the award on the ground that the acquisition proceedings were ultra vires the High Court affirmed the order of the Subordinate Judge and further directed that the whole case relating to the award must go back to the Collector for proceeding with the acquisition according to law its judgment so far as the setting aside the award is concerned finally disposes of the controversy between the parties. As what remains open by the order of the High Court is the acquisition proceeding and not the award it cannot be said that the order is not a final order. **AIR 1959 Assam 196 (196, 197) (Pt A) (Pr 1) (DB).**

——Art. 133 (1)—Final Order — Notice under S. 34, Income-tax Act (1922)—Validity questioned.— High Court holding notice valid — Decision does not amount to final order.

A notice under S. 34 of the Income-tax Act (1922) was issued by the Income-tax Officer to the petitioner. The petitioner objected to the jurisdiction of the Income-tax Officer to proceed against the petitioner but the objection was overruled. He moved again the High Court under Art. 226 but the application was dismissed and the decision was confirmed in appeal by a Division Bench of the High Court. It was against this appellate decision that the petitioner proposed to take a further appeal to the Supreme Court :

Held, that the petitioner was not entitled any more to reopen the question of legality or validity of the notice under S. 34 on the ground that he challenged it in the writ proceedings. But the plea of a final determination of his right to challenge the validity of the notice could not be of any assistance to the petitioner in inducing the Court to hold that the order of the High Court in appeal proposed to be appealed against must be regarded as a final order. Nothing whatever had been done in the proceeding commenced by S. 34 of the Income-tax Act. Only a notice had been issued the validity of which was challenged by the petitioner. It was still open to the petitioner to convince the Income-tax Officer that there had been no under-assessment and it would be perfectly open to him to take any step in aid of his contention before that officer and if need be before the Appellate Officer to establish that no re-assessment was called for. Indeed, the entire proceedings by way of re-assessment remained to be gone through. There had been no consideration at all of the merits of the matter. The merits could not possibly be affected by reason of the decision of the High Court in the writ appeal that the proceedings under S. 34 of the Income-tax Act had been validly initiated. Hence the decision proposed to be appealed from was not a final order within the meaning of Art. 133 of the Constitution. **A I R 1920 P C 86 and AIR 1933 P C 58 and AIR 1943 F C 24 and AIR 1949 F C 1 and A I R 1950 F C 77 and AIR 1952 Nag 305 (FB) and A I R 1961 All 245 (FB) and A I R 1960 Cal 77 and A I R 1954 Cal 424, Rel. on ; A I R 1955 S C 576 and A I R 1961 S C 794 and AI R 1962 S C 12, Disting. (1964) 51 I T R 807 : A I R 1963 Cal 281 (285 to 288) (Pt B) (Prs 15, 17, 21, 25) (DB).**

——Art. 133 — Test of finality — Writ petition to restrain Collector from realising arrears of income-tax due to her husband from petitioner's property — Order dismissing applicaion — If final order or Judgment (Civil P. C. (1908), S. 109),

The test for determining the finality of an order is whether the order has finally disposed of the rights of the parties. An order dismissing a writ petition filed by the petitioner for restraining the Collector from proceeding to attach or sell the petitioner's property for realisation of arrears of income-tax due to her husband, without going into the question of title of the petitioner to the property sought to be attached and directing the parties to take such steps before the Collector as they were entitled to in law, is not a final order within the meaning of Art. 133 of the Constitution, inasmuch as it cannot be said that the order dismissing the writ petition filed by the petitioner has terminated the proceedings taken by the Collector to attach the petitioner's property. Once it is held that an order is not a final order it follows that it is not also a judgment within the meaning of Art. 133. An order which is not final cannot be deemed be judgment. AIR 1954 Cal 424; AIR 1950 Cal 77 and AIR 1954 Mad 406, Rel. on. **1957 Mad W N 650 : 70 Mad L W 960 : (1957) 2 Mad L J 567 : ILR (1958) Mad 117 : (1958) 34 ITR 738 : AIR 1958 Mad 151 (154) (Pt C) (Prs 6a, 7, 8) (DB).**

——Art. 133 (1) — Final order — Meaning of — It is one which leaves nothing more to be done in proceedings and by its own force affects rights of parties — Order granting review and directing rehearing of writ petitions, held not a final order.

Aggrieved by the order passed by the Court in two writ petitions presented by A and B to which C was not a party, in connection with their seniority in Government service, C made an application for review of the order. The Court granted that review and directed the rehearing of the writ petitions. On an application for grant of certificate under Article 133 (1) of the Constitution to enable an appeal against the order of review being preferred :

Held, that since the rights of the parties were by no means affected finally by its own force by the order by which review was granted, it should follow that the order was not a final order within the meaning of Art. 133 (1) of the Constitution and hence a certificate could not be granted. All that was decided was that C who was not made a party to the earlier two writ petitions presented by A and B had been injuriously affected by the order made in those writ petitions and that he was, therefore, entitled to seek review. A final order is one which after it was made not only left nothing more to be done in the proceedings in which that final order was made, but also by its own force affected the rights of the parties to those proceedings. AIR 1951 S C 14 and AIR 1961 S C 794, Rel on. **(1964) 2 Mys L J 402 : AIR 1965 Mys 266 (267) (Prs 7, 8, 10) (DB).**

——Art. 133 (1) (b)—"Final" order—Test of—Summary dismissal of writ petition.

The test for determining the finality of an order is whether the order has finally disposed of the rights of the parties. Where therefore the High Court while

dismissing the writ petition in limine does not decide finally or otherwise any of the rights in dispute between the parties, the order passed by the Court rejecting the writ petition is not a final order within the meaning of Art 133 (1) of the Constitution. AIR 1958 Mad 151 and AIR 1959 Punj 58 and AIR 1958 All 800, Rel. on. **ILR (1959) Mys 1003 : 38 Mys L J 332 : AIR 1960 Mys 261 (264) (Pt B) (Pr 7) (DB).**

——Art. 133 — Order refusing to issue writ under Art. 226—Not a final order. 1955 Nag L J 738 : ILR (1955) Nag 704 : AIR 1955 Nag 257 (257, 258) (Prs 4, 5) (DB).

■ **——Art. 133—Art. 133 (1) (a)—Final order—Test of finality—Applicant assessed to sales tax—Appeal to Commissioner not admitted owing to non-deposit of tax — Application to High Court for direction to admit appeal rejected — Order of High Court not final order — (Sales tax — C. P. and Berar Sales Tax (21 of 1947), S. 22 (1)).**

The test of the finality of an order is whether the judgment or order finally disposes of the rights of the parties. The mere fact that the order decides an important and even a vital issue is by itself, not material, unless the decision puts an end to the suit. The finality must thus be a finality in relation to the suit. Further, the judgment or the order must affect the merits of the case between the parties by determining some right or liability.

A was assessed to a tax of Rs. 58,000 by the Assistant Commissioner of Sale Tax. His appeal before the Commissioner was not admitted as he had not deposited the amount of tax as required by S. 22 (1), C. P. and Berar Sales Tax Act, 1947. A applied to High Court under Art 226 for issuing a direction to the Commissioner to admit the appeal without deposit. The application was rejected. The question was whether the order of the High Court was a final order within Art. 133 (1) (a) so as to enable A to appeal to the Supreme Court.

Held, that the order was not an order on merits as it did not relate to A's liability to pay the tax and hence was not "a final order" within Art. 133 (1) (a) of the Constitution. AIR 1951 S C 14 and AIR 1950 F C 77, Rel. on. AIR 1949 Bom 125, Ref. Hossen Kasam Dada (India) Ltd. Calcutta v. State of Govt. M P. (1952) 3 STC 289 : ILR (1952) Nag 204 : AIR 1952 Nag 305 (307) (Pt A) (Prs 8, 10) (FB).

——Arts. 133 (1) and 226, 227—'Final order'—'Civil proceeding'—(Income-tax Act (1922), S. 23)—(Civil P. C. (1908), S. 109).

The assessees were taxed under S. 23, Income-tax Act, to the amount exceeding Rs. 20,000. Against that order they applied under Arts. 226 and 227 of the Constitution and on dismissal of those applications asked for the certificate under Art. 133 (1) (a) and (b).

Held, (i) that the order finally determined the rights of the assessees to obtain writs. As such it was a final order within the meaning of Art. 133 (1).

(ii) But the nature of proceeding started on writ petitions, being under the machinery of Income-tax Act under which there was no right of suit, it was a revenue proceeding and not a civil proceeding within the meaning of Art. 133. The petitioners could not therefore claim a certificate as of right either under sub-cl. (a) or (b) of cl. (1) of Art 133. **(1955) ITR 70 : ILR 34 Pat 397 : AIR 1956 Pat 175 (176, 177, 178) (Prs 3, 4, 5) (DB).**

■ **——Art. 133—Petition for writ of habeas corpus — Decision on, is at least a final order within Art. 133 (1). Ram Kumar v. District Magistrate. ILR (1965) 2 Punj 853 : AIR 1966 Punj 51 (54, 55, 56, 57, 58) (Pt C) (Pr 8) (FB).**

——Art. 133—Final order.

A decision is final for the purposes of Art. 133, when it decides and disposes of the whole merits of the case, when it settles conclusively all the legal rights of the parties and when it leaves nothing to be further litigated upon. The decision or order must affect the merits of the controversy between the parties by determining some right or liability. Refusal to issue the writ has only the effect of saying that the High Court does not see any irregularity in the administration of the relevant law. AIR 1955 Nag 257 and AIR 1957 Punj 173 (FB), Rel. on. 61 Punj L R 286 : ILR (1959) Punj 538 : AIR 1959 Punj 308 (308, 309) (Pr 3) (DB).

8 (b). Interlocutory orders.

■ **——Art. 133—Final order—Tests.**

Per Beg J.—In order that an order may be declared to be a final order the following propositions of law stand established :

(1) that an order is final only if it finally disposes of the rights of parties (2) that the finality of the order must be determined in relation to the suit (3) that the order cannot be treated to be a final order if the suit is still left alive for the purpose of determining the rights and liabilities of the parties in the ordinary way; (4) that the mere fact that a cardinal point in the suit has been decided or even a vital and important issue determined in the case is not enough to make the order a final one : AIR 1933 P C 58, Foll.

An order of the High Court in appeal reversing the order of the trial Court recording a compromise is neither a judgment nor final order within the meaning of the terms in Art. 133. The order is an interlocutory order. Savitri Devi v. Rajul Devi, **1960 All L J 897 : 1961 All W R (H C) 5 : ILR (1960) 2 All 917 : AIR 1961 All 245 (254, 261) (Prs 37, 77) (FB).**

——Art. 133—Final order—Civil P. C. (1908), O. 22, R. 5 — Order under — Death of a party pending appeal — Court determining legal representatives of party for continuing appeal — Not a final order within Art 133 (1) of the Constitution — Civil P. C. (1908), O 22, R. 5.

The finality envisaged in Art. 133 of the Constitution is a finality in revision to a suit. To attract that article, the rights of the parties involved in the suit or the appeal must be finally disposed of.

Where an order sought to be appealed against is one passed under O 22 R. 5, Civil P C. and it is limited to the purpose of continuing the appeal, it cannot be regarded as either a judgment, decree or final order within the scope of Art. 133 (1) of the Constitution.

The point as to who should be substituted in the place of the deceased party or the purpose of proceeding with the litigation does not affect the ultimate rights and liabilities of the parties. Consequently it could not be postulated that there is any final adjudication on the questions arising in the suit itself. AIR 1920 P C 86; AIR 1933 P C 58 and AIR 1961 All 245, Rel on. **ILR (1963) Andh Pra 661 : (1962) 2 Andh W R 61 : AIR 1963 Andh Pra 15 (17) (Prs 10, 14) (DB).**

——Art. 133 (1)—"Final order".

An appellate order, allowing the appeal and directing the lower Court to entertain an application filed under O. 9, R. 9, Civil P. C., treating it as one under O. 47, R. 1 and to collect court-fees on the

review petition, is not a final order within the meaning of Art 133 (1). It is an incidental order which does not finally dispose of the rights of the parties. AIR 1933 P C 58 and A I R 1958 S C 253 and A I R 1956 Andhra 126, Rel. on I L R (1961) 2 Andh Pra 449 : 1960 Andh L T 901 : AIR 1961 Andh Pra 310 (311, 312) (Prs 2, 5) (DB).

● —Art. 133 — Final order is the order that finally disposes of the dispute between the parties so far as the High Court is concerned as contrasted with an interlocutory order Dhanalakshmi Vilas Cashew Co v President, Cashew Industries Staff Association. 1961 Ker L J 360 : 1961 Ker L T 427 · ILR (1961) 2 Ker 43 : AIR 1962 Ker 1 (3) (Pt A) (Pr 6) (FB).

——Art. 133 (1) (c) — Decision on interlocutory order—Certificate of fitness for appeal—Not a final order.

High Court was moved to certify a case as fit for appeal to the Supreme Court on the sole ground that the Court erroneously interpreted S. 82 of the Representation of the People Act. High Court held that the section did not forbid all the contesting candidates being joined as respondents even when the prayer is confined to a declaration that the election of the returned candidate is void, and that the election petition does not incur dismissal under S. 90 (3) of the Act merely on the ground that the petitioner has joined as respondents not only the returned candidates but also other contesting candidates.

Held, that the decision did not terminate the dispute between the parties and as such it was not a final order or judgment within the meaning of Art. 133 (1) of the Constitution. Any interlocutory finding or order, even if it strikes at the root of the matter, did not fall within the purview of that Article. 1963 M P L J (Notes) 195.

——Art. 133 –Interlocutory order — There can be no finality about the order within the meaning of the article. (1955) 1 Mad L J 66 : (1955) 6 S T C 72 : A I R 1955 Mad 230 (232, 233) (Pt B) (Prs 9, 10) (DB).

——Art. 133 (1) – "Final order" — Arbitration Act, S. 34—Order staying suit —Leave to appeal — Grant of—Right to—Nature of order.

An order of the High Court, directing a suit to be stayed under S. 34 of the Arbitration Act, is not a "final order" within the meaning of Art. 133 (1) of the Constitution and therefore no leave should be granted for appeal to the Supreme Court. An order is final only if it finally disposes of the rights of the parties; the finality must be a finality in relation to the suit. The effect of an order staying a suit under S. 34, Arbitration Act, which is only an interlocutory order, is not finally to dispose of the rights of the parties even though it decides a cardinal issue in the suit and it cannot therefore be said to be "final". AIR 1920 P C 36; AIR 1933 P C 58; A I R 1939 F C 43; AIR 1949 F C 1, Rel. on. 30 Pat 853 : AIR 1951 Pat 619 (620, 621) (Pr 7) (DB).

——Art 133 –'Final order' –Meaning—Order holding that appeal was not time barred — (C. P. Code (1908), S. 109).

The test for determining the finality of an order is whether the order finally disposes of the rights of the parties. The finality must be a finality in relation to the suit. The fact that the order decides a matter and even a vital issue is by itself not material unless the decision puts an end to the suit. A I R 1950 F C 77, Foll. It is not the potentiality of the point at issue to put an end to the legal proceedings that has to be looked into, but the actual order that is made thereon.

Applying this test an interlocutory order of the High Court holding that an appeal was not barred by time and directing that the printing of the record be proceeded with, cannot be regarded as final, for it does not finally dispose of the appeal, although it decides a vital point at issue between the parties. A I R 1951 Punj 30 and A I R 1951 Punj 412, Rel. on. 60 Pun L R 41 : A R 1958 Punj 313 (313) (Prs 2, 3) (DB).

8 (c). Order of remand.

● ——Art. 133 (1) (c) –'Final order' –Meaning of — Remand of case for retrial under S. 151, Civil P. C. —No certificate can be granted.

An order is final if it amounts to a final decision relating to the rights of the parties in dispute in the civil proceeding. If after the order, the civil proceeding still remains to be tried and the rights in dispute between the parties have to be determined, the order is not a final order within the meaning of Art. 133. Where in an appeal against an order refusing to set aside the award the High Court merely remanded the case for de novo retrial in exercise of its inherent powers under S. 151, C. P. Code, holding that there was no proper trial of the petition for setting aside the award, the order of remand is not a final order within meaning of Art 133 (1) (c) of the Constitution.

An observation of the High Court on a question which is directed to be retried cannot be regarded as raising a question of law of great public or private importance justifying grant of certificate under Art. 133 (1) c) Jethanand & Sons v. State of Uttar Pradesh. 1961 S C D 327 : I L R (1961) 2 All 7 : (1961) 3 S C R 754 : 1961 All L J 108 : (1962) 2 Mad L J (SC) 5 : 1962 All W R (HC) 122 : (1962) 1 S C A 387 : (1962) 1 S C J 713 · (1962) 2 Andh W R (SC) 5 : 1961 Andh L T 354 : AIR 1961 S C 794 (796, 797) (Prs 7, 8).

——Art. 133 (1) (b) —Final order—Civil P. C (1908), S. 109.

An order setting aside a compromise decree and directing the trial Court to dispose of the suit on merits is not a final order within Art 133 (1) (b). AIR 1927 Pat 363; A I R 1933 P C 58; AIR 1945 All 401, Rel on.

The addition of the words 'in a civil proceeding of a High Court' in Art. 133 of the Constitution of India has not enlarged the meaning of the words 'final order' occurring in that article and in Sections 109 and 110 of the C. P Code 1951 A M L J 84 : A I R 1952 Ajmer 15 (15, 16) (Pr B) (Prs 6, 8).

—Art. 133 — Order of High Court in appeal comprising its decision on a cardinal issue going to foundation of suit — Order is a "judgment" or a "final order" though suit is remanded fo subordinate enquiries to be made yet for disposing of the suit. 1960 All W R (HC) 177 (2) : 1960 A I L J 244.

——Art 133 –'Final order' — Remand order if final order.

Unless a remand order finally determines the rights of the parties and the case is sent back to the lower Court only to work out the details in accordance with the decision of the Court it cannot be said to be a final order.

Thus where a suit for declaration was dismissed on the ground of res judicata but on appeal the High Court set aside that finding and remanded the case for decision according to law after recording findings on other issues :

Held, that the order of remand did not finally dispose of the rights of the parties and, in the circumstances certificate for leave to appeal to Supreme Court could not be granted. A I R 1933 P C 58; AIR 1950 F C 83; (1891) 1 Q B 734, Rel on 1955 A L J 59 : AIR 1955 All 252 (253) (Prs 4, 5) (DB).

——Art. 133 (1)—Final order — (Civil P. C. (1908), S. 109).

An order can be held to be a final order only if it finally disposes of the rights of the parties in the suit or proceedings. What matters is not the form but the substance. If in substance no rights of the parties are outstanding to be decided in the suit, it cannot be said that a mere pendency of a suit on the file of a Court deprives the otherwise final adjudication of the rights of the parties by the High Court of its finality. Where all the material issues have been decided by the High Court and there is nothing more to be done, after remand, by the trial Court except to pass a decree, the order of the High Court is a final order within the meaning of Art. 133 (1). 69 Mad L W (Andh) 6 : 1956 Andh W R 61 : 1955 Andh L T (Civil) 850 : A I R 1956 Andh 126 (128) (Prs 13, 14) (DB).

——Art. 133 — "Final order" — Order remanding execution application for disposal according to law —Appeal to Supreme Court.

An order of the High Court holding that an application for possession made in execution of a decree was not time barred and remanding the case to the Court that passed the decree for disposal according to law, is not a "final order" within the meaning of Art. 133 of the Constitution of India, and no appeal, therefore, lies to the Supreme Court under that article. By the order the execution proceedings are kept alive in that the question of the delivery of possession in accordance with law has still to be decided by the executing Court. The fact that the High Court has decided an important question of limitation, is not by itself material. 54 C W N 874, Applied. 55 C W N 219 : A I R 1951 Assam 73 (74) (Pr 5) (DB).

——Arts. 133 and 134 (1) – Judgment or final order— Test is final determination of proceeding—Order for retrial is not judgment or final order. See Ibid, Art. 134 (1). A I R 1962 Cal 417.

——Art. 133 — Decree for ejectment passed under Thika Tenancy — Application for revision of decree made after amendment of Act in view of the amended definition of 'thika tenant' — High Court in revision holding that tenant was a 'thika tenant' and remanding case — Held, remand order was not a final order. 58 Cal W N 774 : A I R 1955 Cal 98 (99, 100) (Prs 2, 6) (DB).

——Art. 133 – Order remanding case for decision of question of limitation properly.

The second appellate Court agreed with lower appellate Court on the question of title and reversed its finding on the question of adverse possession and in view that the question of limitation had not been properly decided, remanded the case to the lower appellate Court for disposal after coming to a proper decision on that question. The orders of the Court below were set aside. The High Court directed that 'if the suit is not barred by limitation the plaintiff's suit should be decreed for such damages as may be found admissible in law. If the suit is barred by limitation the plaintiff's suit should be dismissed'. The formal order drawn up on the judgment was an order of remand.

Held, that the order was not a final order. A I R 1954 Cal 424 (432) (Pr 32) (DB).

——Art. 133 (1) — 'Final order' — Remand order— Certificate under Art. 133 (1)—Grant of.

An order of the High Court remanding a suit or application for execution is not a final order within the meaning of Art. 133 (1) of the Constitution of India and no certificate under that Article can, therefore, be granted for appeal to the Supreme Court.

A I R 1955 All 252 and A I R 1957 Raj 173, Foll. 1961 M P L J (Notes) 11.

——Art. 133—Final order—Order of remand.

In a suit in which several issues are raised and on appeal some of the issues are decided and the case is remanded for trial on other issues, the appellate order remanding the case is interlocutory in character even though the issues decided may be important ones. 1953 Mad W N 846 : (1954) 1 Mad L J 198 : A I R 1954 Mad 406 (407, 408) (Pt A) (Prs 2, 5, 6) (DB).

——Art. 133 (1) (c) —"Final order"—Order of remand is not final order—Civil P. C (1908), S. 109 (c).

A remand order passed by the High Court directing the lower Court to rehear certain new issues framed with the consent of both parties is not a final order within the scope of Art. 133 of the Constitution or S. 109, Civil P. C Leave to appeal to Supreme Court cannot be granted in such a case. A I R 1958 Orissa 18; A I R 1950 F C 83 and A I R 1933 P C 58, Rel. on. 27 Cut L T 393 : (1960) 2 O J D 570 : I L R (1961) Cut 128.

——Art. 133 –Trial Court's decision reversed by the High Court on a question of limitation and case remanded to trial Court — Order is not a final order. 1956 Raj L W 461 : I L R (1956) 6 Raj 327 : A I R 1957 Raj 173 (174, 175) (Pt B) (Prs 5, 8) (DB).

● ——Art. 133 (1) (c) —Final order—Remand order— (Civil P. C. (1908), S. 109).

Decision to constitute final order must not keep the matter alive and provide for its trial in ordinary way. A I R 1949 F C 1; A I R 1953 P C 58, Rel. on. Case law Referred.

The term "judgment" indicates a final decision on the merits of the dispute before the Court. Case law, Referred.

Suit for compensation and damages for short delivery dismissed on ground that no notice as required by Cl. (19) of the bill of lading was given to the defendant Navigation Company — In revision, Full Bench holding Cl. (19) void being repugnant to Cl. (8) to Art. 3 of Carriage of Goods by Sea Act, 1925, and setting aside decision, sending back case for disposal in accordance with law on rest of pleas raised by defendant — Case pending — Order of Full Bench is not final, nor is it a "judgment". Bombay Steam Navigation Co., Ltd. v. Damodar Savailal, 6 Sau L R 144: A I R 1953 Sau 166 (168, 169, 170) (Pt C) (Prs 6, 7, 8) (FB).

8 (d). Orders relating to appointment of receivers.

——Art. 133 (1)—'Judgment or final order' — Order in appeal against order directing appointment of receiver—(Civil P. C. (1908), S. 109).

An order made in an appeal filed against an order directing the appointment of a Receiver is not a final order within the meaning of Art. 133 of the Constitution as it does not finally decide the rights of the parties. The order is therefore neither a judgment nor a final order within the meaning of Art. 133 (1) and no appeal lies to Supreme Court. A I R 1950 Mad 215 and A I R 1950 F C 77 and A I R 1956 Andhra 47, Rel. on. 1956 Andh L T 116 : 1956 Andh W R 737 : A I R 1956 Andhra 159 (159) (Pr 5) (DB).

——Art. 133 — Order directing execution to proceed by appointment of receiver to take possession of charged assets and sell them in accordance with law, is not a final order. A I R 1963 Cal 515 (517, 518, 519) (Pt A) (Prs 8, 13).

——Art. 133—Final order.

An order appointing a receiver is not a final order within the meaning of Art. 133. A I R 1950 F C 77;

A I R 1933 Pat 293, Rel. on. A I R 1953 Madh B 204 (205) (Pr 3) (DB).

——Art. 133—Final order—Test of finality—Order appointing or refusing to appoint receiver — (Civil P. C. (1908), S. 109).

The test of finality is whether the order amounts to a final adjudication of the rights of parties, in other words whether it affects the rights of the parties finally in the suit itself. If the decision whichever way it is given will, if it stands, finally dispose of the matter in dispute, it is final. On the other hand, if that decision, if given in one way, will finally dispose of the matter in dispute, but if given in the other will allow the action to go on, then it is not final but interlocutory. (1891) 1 Q B 734, Rel. on.

An order appointing a Receiver is only an interlocutory order and does not affect the merits of the case. Similarly an order refusing the appointment of a Receiver is not a final order. The appointment is in the discretion of the Court and the order does not decide any cardinal point arising for decision between the parties in the suit. 21 Cut L T 292 : I L R (1955) Cut 25 : A I R 1955 Orissa 71 (72) (Pt D) (Pr 4) (DB).

9. Civil proceedings.

See also Ibid, Art. 132.

(a) Proceedings under Art. 226.

(b) Proceeding under Art. 227.

9. Civil proceedings.

See also Ibid, Art. 132.

——Arts. 133 and 132—'Civil proceeding'—Meaning of—Sales tax or Income-tax proceedings — Nature of —Civil in nature and covered by Art. 133 — 'Other proceedings' in Art. 132 does not recognise third category apart from civil or criminal.

Proceedings for the assessment and recovery of income-tax and sales tax are civil proceedings. All proceedings are either civil or criminal. This classification is based on fundamental principles and there is nothing in our Constitution to suggest that they stand modified after 26-1-1950. The words 'other proceedings' in Art 132 were not intended to create a third category of proceeding besides the civil or criminal with no right of appeal to the Supreme Court except in the case covered by Art. 132. A I R 1965 All 106 (111, 113, 114, 115) (Pt B) (Prs 23, 32, 86) (DB).

—— Art 133 (1) — 'Final order in a civil proceeding' —Meaning of 'civil proceeding' — Order passed by High Court in appeal allowing judgment debtor to continue his objection under O. 21, R. 90, Civil P. C., in execution Court is not final order in civil proceeding—1960 All L J 244 held impliedly Overruled. A I R 1933 P C 58 and A I R 1961 S C 794 Foll. I L R (1964) 2 All 409 : A I R 1964 All 49 (49, 50, 51) (Prs 2, 8) (DB).

——Art. 133 (1) (c) — 'Civil proceeding' — Proceedings arising out of election petition — (C. P. Code (1908), Ss. 9 and 109).

The proceedings arising out of an election petition are proceedings of a civil nature and the High Court under Art. 133 (1) of the Constitution can certify such a case to be a fit one for appeal to the Supreme Court.

The expression "Civil Proceeding" has not been defined in the Constitution, and has to be given its ordinary dictionary meaning. A I R 1958 Andh Pra 642, Dissented from; AIR 1952 S C 64 and AIR 1958 S C 698 and A I R 1957 All 505 and A I R 1958 All 821, Disting. and Explained. 1959 All L J 727 : ILR (1959) 2 All 437 : AIR 1959 All 607 (608, 609, 610) (Pt A) (Prs 9, 17) (DB).

——Art 133 — Civil or other proceedings—What is. See Ibid, Art. 132. AIR 1957 All 505 (DB).

——Art. 133 — Words 'Civil proceeding' are wide enough to cover any proceeding of civil nature. AIR 1957 All 28 (32, 33) (Pt B) (Pr 9) (DB).

● ——Art. 133 — Appeal under S. 116-B of the Representation of the People Act (43 of 1951), is a civil proceeding—Applicability of Art. 133 for purposes of appeal to Supreme Court. A I R 1958 Andh Pra 642, Overruled.

An appeal was sought to be preferred to the Supreme Court against the decision of the High Court in an appeal under S. 116 B of the Representation of the People Act. The aggrieved party invoked Art. 133 of the Constitution for a certificate for purposes of the appeal. On the question whether an appeal under S. 116-B of the Act is a civil proceeding for purposes of Art. 133 of the Constitution,

Held, the weight of authority is overwhelmingly in favour of the conclusion that an appeal under S. 116-B of the Representation of the People Act is a 'civil proceeding' within the sweep and range of Art. 133 of the Constitution. Therefore an aggrieved person could invoke Art. 133 provided the other requirements of the Article are satisfied. The aggrieved person, in the instant case, can have resort only to clause (c) of Art. 133 (1) since obviously he does not come under clause (a) or (b). Having regard to the general importance of the question involved, a certificate of fitness should be issued under Art. 133 (1) (c). AIR 1958 Andh Pra 642, Overruled. C. V K. Rao v. Dantu Bhaskara Rao. (1964) 1 Andh W R 9 : (1963) 2 Andh L T 494 : I L R (1964) Andh Pra 95 : A I R 1964 Andh Pra 185 (186, 187, 188) (Prs 5, 8, 9, 17, 24, 25) (FB).

——Art. 133 (1)—'Civil proceeding'—Meaning of.

Ordinarily 'civil proceedings' are proceedings relating to right to property, status of a person or right to an office. 'Proceeding' means, in the ordinary sense the form in which action is brought or defended. The right to election is not a right to property or relating to any status. It is also not a right which could be enforced in a Court of law. Where the question involved is whether the respondent could be declared as elected there is no question of any right of property or status, and the case is not a case arising in a civil proceeding. ILR (1958) Andh Pra 788 : (1958) 2 Andh W R 324 : 1958 A L T 1118 : A I R 1958 Andh Pra 642 (643) (Pt B) (Pr 5) (DB).

[Overruled in AIR 1964 Andh Pra 185.]

——Art. 133 (1)—Civil proceeding — Proceeding involving right to property—Patents and Designs Act (1911), Ss. 23 (1), 23-F—Appeal under S. 23-F from order of Controller granting licence under S. 23 (1) is civil proceeding.

The right of a patentee to the exclusive user of the patent for the period of its protection under the Patents and Designs Act is a right to property. An application for compulsory licence thereof is a process which affects that right to property and consequently an appeal under S. 23-F from the determination of the Controller granting the licence would be a proceeding of a civil nature. 67 Cal W N 743 : AIR 1963 Cal 433 (437) (Pt A) (Pr 14) (DB).

——Art. 133 (1) 'Civil Proceedings' — Meaning of—Civil rights — What are — Apeal to High Court from decision of Election Tribunal under S. 116-A, Representation of the People Act — Is a 'civil proceeding'.

The Constitution nowhere defines what 'civil proceedings' are and, therefore, the Court must examine the nature of the proceedings to find out whether it can be called a civil proceeding or not. If the pro-

ceeding is in aid of establishing a civil right or for disputing one it would be a civil proceeding. The test would be whether but for the provision of any statute the right claimed or denied could be established in a civil Court. Broadly speaking, if the proceedings taken establish or negative a man's office or would affect his right to property of any kind it will be a civil proceeding.

It is difficult to give a comprehensive definition of 'civil rights'. They are not limited to common law rights only and would include inter alia any right to property, reputation, status and office of a person though these may be creatures of statutes.

Although the right to vote or stand at an election may not be a civil right as known to the common law and although the legislature may in its wisdom have thought it best to refer the dispute in connection with an election to a special Tribunal by enacting S. 116 A, Representation of the People Act, the legislature laid down that in hearing appeals from Election Tribunals the High Court was to exercise the jurisdiction vested in it in hearing appeals from the original decrees passed by civil Courts and to that extent desired that the decision of the High Court on appeal should be treated as a decree in appeal from an original decree, passed by a civil Court. The effect of S. 116-A of the Representation of the People Act of 1951 is to attract the provisions of S. 109 of the Code of Civil Procedure and Art. 133 (1) of the Constitution of India with regard to appealability to the Supreme Court.

An appeal from the decision of an Election Tribunal to the High Court under S. 116-A should therefore be treated as a civil proceeding within the meaning of Art. 133 (1) of the Constitution. **A I R 1963 Cal 364 (365, 366, 367) (Pt A) (Prs 5, 6, 8, 9, 12) (DB).**

——Art. 133 — Purchaser of land in possession of cultivating tenants — Suit for eviction by — Revision against order of Revenue Divisional Officer before the High Court—Proceedings in High Court must be regarded as 'civil proceedings' as S. 6-B of the Madras Cultivating Tenants Protection Act itself has expressly provided that the Revenue Divisional Officer shall be deemed to be a Court subordinate to the High Court for the purpose of S. 115, Civil P. C. 1965 Mad L W 819 : 78 Mad L W 736 : (1966) 1 Mad L J 105 : ILR (1966) 1 Mad 623 : A I R 1966 Mad 327 (328, 329) (Prs 7, 8) (DB).

——Art. 133 — Judgment, decree or final order in civil proceeding of High Court—Appeal to Supreme Court - Taxation assessment proceedings—Order of Board of Revenue revising Sales-Tax assessment allowed in appeal by High Court - Not made in a civil proceeding — Application for leave to appeal, not competent—Civil proceedings—What are—Civil and Criminal proceedings—Distinction in Constitution.

The assessee filed an appeal against the order of assessment made by the assessing authority, to the Commercial Tax Officer and filed a revision against the appellate order to the Deputy Commercial Tax Officer. The revision was dismissed. Then the Board of Revenue issued a notice to the assessee proposing to revise the assessment and after overruling the objection of the assessee on the question of limitation revised the assessment. The assessee filed an appeal to the High Court against the order of the Board of Revenue and the High Court allowed the appeal. The State sought to file an application seeking leave to appeal to the Supreme Court of India under Art. 133 of the Constitution. On the question whether the order of the High Court was one passed in a civil proceeding.

Held, a proceeding under a taxing enactment cannot be called a 'civil proceeding', within the scope of Art. 133 of the Constitution and an application for leave to appeal to the Supreme Court from the decision of the High Court allowing an appeal against the orders of the Board of Revenue revising a sales-tax assessment, cannot be sustained. The scheme of the constitutional provision relating to appeals to the Supreme Court rather suggests that the proceedings, capable of being appealed against are susceptible of a bifurcation into two well-defined categories of civil and criminal, mutually exclusive but together exhaustive.

The words 'civil proceedings' in Art. 133 of the Constitution ought not to be understood as any proceeding which are not of criminal nature. The nature of the proceeding whether it is civil or not, cannot be ascertained by merely applying a negative test that the proceeding is not one in relation to a criminal or quasi-criminal proceeding. The nature of the proceeding should have to be determined having regard to the nature of rights of parties involved in a proceeding and not from the nature of the forum in which the rights happen to be decided. The fact that a civil Court is seized of a particular dispute may be a relevant criterion throwing light on the nature of the proceeding, but would not itself be either sufficient or conclusive to hold that such a proceeding is of a civil nature. There cannot be civil proceedings in relation to which the aggrieved subject would have a right to approach a civil forum. So far as the sales-tax is concerned, S. 18 A prohibits the institution of suits arising out of assessments passed under the Madras General Sales Tax Act. The deprivation of a right to attack assessment orders in a civil Court necessarily implies that the statutory rights and obligations arising under the taxing enactment are not of a civil nature.

Assessment proceedings can only be conveniently described as revenue proceedings, to distinguish it from civil proceedings, and they maintain and preserve the same character even in the High Court, either in the shape of prerogative writs or in the form of revision under the provisions of the Constitution. There is no straight and satisfactory formula which can be called in aid to decide the question what a civil proceeding is. A proceeding in a civil Court may normally be civil proceeding. But there may be special statutory rights, which might be permitted to be agitated in a civil forum by special provisions; these rights may not be civil rights and the proceedings pertaining to them would not be civil proceedings. Rights which a municipal Court will enforce at the instance of the citizen or subject may properly be termed civil rights. They consist of the power of acquiring and enjoying property or exercising paternal or marital powers and the like. **I R (1964) 1 Mad 48 : (1964) 1 M L J 342 : (1964) 15 S T C 207 : 77 Mad L W 328 : AIR 1964 Mad 494 (495, 496, 497, 499, 500) (Prs 3, 4, 14, 15, 16, 18, 21) (DB).**

——Art. 133 (1) (c) — Orders under S. 21 (2), Chartered Accountants Act, are not open to appeal to Supreme Court—"Civil Proceedings"—Applicability of S. 109 (c), C. P. Code — (Chartered Accountants Act (1949), S. 21 (2))—(C. P. Code (1908), S. 109 (c)).

Orders passed under S. 21 (2), Chartered Accountants Act are not open to appeal to the Supreme Court; under Art. 133 (1) (c) such orders are not passed in civil proceedings.

There may be proceedings which are neither civil nor criminal within the meaning of Art. 133 and Art. 134 and it cannot be affirmed that every order passed in proceedings other than criminal is open to appeal under Art. 133 as made in civil proceeding Case law reviewed.

Disciplinary proceedings under S. 21, Chartered Accountants Act, are not civil proceedings. Case-law reviewed.

It cannot be said that whatever proceedings come before the High Court must be civil proceedings; 1913 A C 546; 39 Mad 627, Distinguished; Case law Ref.

Section 109 (c), C. P. Code, after its amendment by the Adaptation of Laws Order (1950), is subject to the provisions of Art. 133.

Wide as is the language of S. 109 (c), C. P. Code and Art. 133 (3) it cannot be construed as extending to a case in which the rights of no other person than those of the petitioner are involved and there is no other question excepting a question of fact in issue.

Consequently even if the petitioner has a right of appeal under S. 109 (c) or under Art. 133 (4), it was held that it was not a case for grant of leave to appeal to the Supreme Court. 1953 Cri L J 274 : (1952) 2 M L J 646 : 65 Mad L W 1002 : (1953) 23 Com Cas 68 : ILR (1953) Mad 862 : A I R 1953 Mad 79 (80 to 84) (Prs 2, 5, 11, 13, 14, 15) (DB).

——Art. 133—"Final Order"—Appeal to High Court in execution proceeding — Order of High Court on point of limitation only — Proceeding remanded — Order is not final—Civil P. C. (1908), S 109.

An execution petition was dismissed by the Subordinate Judge on the ground that it was barred by limitation. In appeal against that order the High Court found that the execution petition was in time and remanded the same to the Subordinate Judge to take steps in furtherance of execution. The only question that was decided by the High Court was one of limitation and in that controversy the view taken was different from that of the Subordinate Judge. In an application for leave to appeal to the Supreme Court under Art 133:

Held, that as the order of the High Court did not put an end to all the points in dispute between the parties it was not a final order. AIR 1920 P C 86; AIR 1933 P C 58; AIR 1949 F C 1; AIR 1951 Assam 73; AIR 1943 Lah 140 (FB), Rel. on. AIR 922 Mad 510 (2), held no longer binding decision. **ILR (1953) Mad 65 : 1951-2 Mad L J 479 : 64 Mad L W 934 : 1951 Mad W N 811 : AIR 1951 Mad 1051 (1052, 1053, 1054) (Pt A) (Pr 4) (DB).**

[Overruled on another point in AIR 1957 S C 540].

● **——Art. 133 — Proceedings under S. 23, C. P. and Berar Sales Tax Act — Nature of — They are revenue and not civil proceedings — Applicability of Letters Patent (Nagpur), Cl. (29) and Constitution Art. 133— (Letters Patent (Nagpur), Cl. (29)) See Sales Tax— C. P. and Berar Sales Tax Act (21 of 1947), S. 23. A I R 1954 Nag 1 (FB).**

——Art. 133 -Order of High Court declaring election of petition void.

Per Das J. — The final order passed by the High Court declaring the election of the petitioner to the State Assembly void is an order passed in a civil proceeding of the High Court.

Per Barman J. — An election enquiry is of quasi-criminal nature as its finding on corrupt practices have penal effect. The fact that the High Court has to follow civil procedure as provided in S. 116A of the Representation of the People Act, 1951 does not make the proceeding a civil one. **I L R (1958) Cut 517 : 17 Ele L R 65 : AIR 1960 Orissa 1 (2, 3, 4, 6) (Prs 1, 7, 15) (DB).**

——Art. 133 (1) — 'Civil proceeding'—What are—Claim for recovery of money based on contract.

Simply because a proceeding is not a criminal one, it cannot be taken to be a civil proceeding as contemplated under Art. 133. The Constitution contemplates other miscellaneous proceedings besides civil and criminal, such as, matrimonial, admiralty, etc.

Thus where the petitioner had laid a claim for recovery of a sum of rupees more than a lakh against the State of Orissa on the merger of the ex-State of Mayurbhanj within the State of Orissa on the basis of a contract between himself and the ex-Ruler in the capacity as the Head of the State of Mayurbhanj and the cause of action was that the ex-Ruler had made no contribution towards the capital of the business which was being carried on by the petitioner and which ran into loss of more than two lakhs and a half.

Held, that it was purely a claim in assertion of a civil right, and the proceeding, in enforcement of the civil right. **ILR (1957) Cut 27 : A I R 1957 Orissa 42 (43, 44) (Pt A) (Prs 4, 6) (DB).**

——Arts. 133 and 215 — Proceedings in contempt — Criminal contempt — Leave to appeal under Art. 133 to Supreme Court cannot be granted against conviction for criminal contempt — Distinction between criminal and civil contempt pointed out—(Contempt of Courts Act (1926), S. 2.) ILR (1952) Cut 467 : 1953 Cri L J 1578 : A I R 1953 Orissa 266 (271) (Pt G) (Pr 12) (DB).

● **——Art. 133—'Civil Proceeding' — Interpretation of.**

The expression used in Art. 133 is "a civil proceeding of a High Court" and not the expression "civil cause or matter" which is manifestly of wider import. On its general acceptation, the term "proceeding" means the form in which the action is brought or defended, the manner of intervention by parties, the mode of deciding issues, of opposing judgment and of executing. It follows that the expression "civil proceeding of a High Court" must be interpreted to mean the form of proceeding of the High Court in the exercise of its civil jurisdiction. (1921) 2 A C 570, Disting. Collector of Monghyr v. Maharaja Pratap Singh. **1956 Pat L R 521 : 1957 B L J R 9 : ILR 36 Pat 259 : AIR 1957 Pat 102 (105) (Pt B) (Pr 6) (FB).**

● **——Art. 133 — Decision on reference under S. 21 (3), Bihar Sales Tax Act.**

The decision pronounced by the High Court on a reference under S. 21 (3) of the Bihar Sales Tax Act is not a civil proceeding within the meaning of Art. 133 (1) (c). Tobacco Manufacturers (India) Ltd. v. The State. **30 Pat 174 : 1951 B L R (Pat) 122 : 2 S T C 73 : AIR 1951 Pat 29 (31, 35) (Pts D, E) (Prs 6, 20) (FB).**

9 (a) Proceedings under Art. 226.

● **——Arts. 133, 226—Taxation proceedings—Appeal to Supreme Court from High Court — Infringement of civil rights by taxing Act — Proceeding for relief initiated by way of suit or prerogative writs — Falls within the scope of 'civil proceedings' — Orders of High Court — Appealable to Supreme Court as any other civil proceeding—Income-tax Act (11 of 1922), S. 18 A (6), Fifth Proviso added by Act (25 of 1953) —Penal Interest—Advance tax — Estimated tax less than the statutory percentage — Officer obliged by statute as it stood then to charge penal interest—No levy made at the regular assessment — Conferment of power on officer in prescribed circumstances to waive or reduce interest with retrospective effect— Rectification proceedings—Prescribed circumstances existing in the case of the assessee — Penal interest added in rectification proceedings — Failure to take note of law deemed to be in force—Order illegal and liable to be quashed — Interpretation—Taxing statutes—Proviso enacted with retrospective operation in circumstances prescribed — Prescription made subsequently by rules — Retrospective operation of the rules.**

On the regular assessment of the income made on the assessee by the Officer on 31st March, 1953 in respect of the assessment year 1948-49 it was found that the advance tax paid on estimate made by the assessee was less than eighty per cent of the tax determined in the regular assessment, no charge for penal interest was made under S. 18-A (6) though the Officer was obliged to do so under the law as it stood then. But by Act 25 of 1953 a proviso, giving power to the Officer in circumstances to be prescribed by rules, to waive or reduce such interest, was added to the section with retrospective effect from 1st April, 1952. The prescribed circumstances were made in R. 48 only in December, 1953. On the mistake being pointed out in the assessment of the assessee in rectification proceedings under S. 35 of the Act the Officer added the penal interest in 1956. The revision filed to the Commissioner was dismissed. The assessee applied to the High Court under Art. 226 of the Constitution to quash the proceedings, and the High Court allowed the applications by issuing the writ. On the requisite certificate, the Revenue appealed.

Held, the order of the High Court quashing the proceedings in rectification has to be upheld. A proceeding for relief against infringement of civil right of a person is a 'civil proceeding' within the scope of Art. 133 of the Constitution, even if the infringement be in purported enforcement of a taxing statute and an aggrieved party's right of appeal to the Supreme Court from order in those proceedings is exercisable in the same manner as it would be in the case of a decree, order or judgment, in any other civil proceedings. Where a Revenue Authority seeks to levy tax or threatens action in purported exercise of powers conferred by an Act relating to revenue the primary impact of such an act or threat is on the civil rights of the party aggrieved and when relief is claimed in that behalf it is a civil proceeding, even if relief is claimed not in a suit but by resort to the extraordinary jurisdiction of the High Court to issue writs. Such proceeding does not fall in the 'other proceedings' within the meaning of Article 132 (1) of the Constitution. Further, (held by majority) there was at the date of the original assessment an absolute obligation imposed upon the assessee to pay interest under S. 18-A (6), but by reason of the retrospective operation given to the fifth proviso added to subsection (6) by Act 25 of 1953, the Income-tax Officer was invested with the discretion in prescribed circumstances to reduce or waive interest payable by the assessee, this power of the Income-tax Officer must, in view of the retrospective amendment be deemed in law to have possessed on the date on which the order of assessment was made in the case. Rule 48 as soon as it was framed was to be read along with the proviso and as the proviso is retrospective the rule must also be deemed to be retrospective. There was no absolute power with which the Income-tax Officer was invested to reduce or waive interest; his power could be exercised only in prescribed cases falling within the limits of the authority conferred upon him. The fact that the Income-tax Officer could not in making the assessment have adjusted his approach to the problem before him in the light of those provisions is irrelevant in considering the legality of his order. The order of the Officer which did not take note of the law deemed to be in force must be regarded as defective.

Per Mudholkar, J. — Without further material it cannot be assumed that while making the regular assessment, the Income tax Officer, upon an erroneous view of law, came to the conclusion that he had discretion under S. 18-A (6) to reduce or waive interest and that, therefore, he purported to exercise that discretion. S. A. L. Narayan Row v. Ishwarlal Bhagwandas. (1965) 2 I T J 264: (1965) 57 I T R 149 : (1965) 2 S C J 359 : (1965) 2 S C W R 697 : (1965) 2 S C A 664 : 68 Bom L R 85 : AIR 1965 S C 1818 (1820, 1822, 1823) (Pt A) (Prs 6, 13, 16).

——Art. 133—Proceedings for enforcement of fundamental rights are civil and not extra ordinary in their nature. See Ibid, Art. 226. AIR 1965 All 106 (DB).

——Art. 133—'Civil proceeding'—Proceedings under Art. 226 — Proceedings under Income-tax Act — Nature of.

The more liberal view is that a proceeding under Art. 226 of the Constitution is a civil proceeding within meaning of Art. 133, if it relates to civil rights. But the proceedings for assessment of income-tax are not proceedings relating to a civil right. The liability to income-tax is not a civil right enforceable as such in Court of law. No one can claim it as a civil right that he is not liable to pay the tax. Nor can the State claim that any person is liable to income-tax under the common law relating to civil rights. A proceeding relating to liability to income tax partakes of the nature of a proceeding which has been usually described as a revenue proceeding. There is no provision similar to those in Arts. 133 and 134 for grant of certificate by the High Court in respect of its judgments and orders in other proceedings, i e., proceedings, which are not criminal or civil. AIR 1958 All 621, Rel. on ILR (1960) 1 All 42 : (1962) 44 I T R 574 : 1959 All L J 589 : AIR 1960 All 84 (85) (Pt B) (Prs 4, 5) (DB).

——Art. 133 (1) Civil proceeding — Meaning of— Proceeding under Art. 226 for issue of writ of mandamus—Nature of.

Art. 226 does not confer any jurisdiction of a type which can be classed under a separate head. The Article only confers additional powers on the High Court to issue certain writs, directions and orders of the nature more or less as were issued in England under the different prerogative writs. The conferment is of additional powers and not of a particular kind of additional jurisdiction. It would depend upon the nature of each case, decided under Art. 226 whether it was a civil, criminal or other proceeding. Civil proceedings may be defined as a judicial process to enforce a civil right and includes any remedy employed to indicate that right. AIR 1957 Punj 173 (FB), Rel. on. I L R (1958) 1 All 318 : AIR 1958 All 621 (627, 628) (Pt C) (Prs 28, 30, 31) (DB).

——Arts. 133, 226, 227 — Civil Proceeding — What constitutes—Notices under S. 34 (1) (a), Income-tax Act (1922) — Writ petition under Art. 226 of the Constitution for quashing notices — Proceedings are revenue in nature and not civil.

All proceedings which are not criminal in nature are not necessarily civil proceedings, within the meaning of Art. 133 of the Constitution. As to whether the proceedings initiated by a writ application under Art. 226 or Art. 227 are civil proceedings or not would depend on the nature of those proceedings and the relief sought in those proceedings. The proceedings so initiated could be either civil, criminal or other proceedings. The proceedings relating to liability to pay tax partake the character of a revenue proceeding irrespective of the fact whether the proceedings are those taken under the taxing statute itself or initiated by a writ application under Art. 226 or Art. 227 of the Constitution.

On the language of R. 631 of the Original Side Rules and Rule 16 in Chapter 17 of the Appellate Side Rules themselves the orders made by the High Court on applications under Art. 226 are not decrees. The use of the expression 'as it' or 'as' in both these rules clearly indicates that both these rules bring into existence a legal fiction, and the fiction created is that though the orders made on applications under

Art. 226 are not in fact decrees in exercise of the ordinary original civil jurisdiction they be treated, for the purposes of execution of those orders, as decrees made in exercise of the ordinary original jurisdiction. The fiction cannot be carried further than for the purposes it has been enacted.

The Income-tax Officer, Special Circle, Bombay served on the Phalton Sugar Works Ltd. two notices under S. 34 (1) (a) of the Income-tax Act for the purposes of re-assessing their income for the assessment years 1949-50 and 1950-51, on the ground that he had reason to believe that the income for those years had escaped assessment or had been under-assessed. It was these two notices which were challenged by the Phalton Sugar Works in the Writ Petition before the High Court. The Writ Petition was allowed on 4th August 1962 and the High Court made an order, quashing the aforesaid two notices and also made a further order restraining the respondent (the Income-tax Officer) from taking any steps or proceedings in enforcement, furtherance, pursuance or implementation of any of said notices. The Income-tax Officer, Companies Circle II (3), Bombay, applied for a certificate under Art. 133 (1) (a), (b) and (c) of the Constitution of India.

Held, that a party that claims a certificate under Cl. (1) of Art. 133 or under any one or more of the sub-clauses has to establish that there has been a judgment, decree or final order in a civil proceeding of a High Court. The order made by the High Court on 4th August 1962, would be a judgment, decree or final order within the meaning of Cl. (1) of Art. 133. The assessee sought to get quashed the notices issued under S. 34 of the Income tax Act, and also prayed for an order restraining the Income-tax Officer from taking any action in enforcement of the notices. In other words in the proceedings, a protection was sought against action being taken under the process issued under the Income-tax Act. The proceedings under the Income-tax Act were revenue in nature. The writ proceedings with which the Court was dealing, therefore were revenue in nature. The judgment of the High Court, against which a certificate was sought under Art. 133, was not a judgment in a civil proceeding, and therefore the petitioner was not entitled to the certificate as prayed for. A I R 1951 Pat 29 (FB); A I R 1954 Nag 1 (FB); A I R 1956 Pat 175 and A I R 1960 All 84, Rel. on. **ILR (1965) Bom 76 : (1963) 2 I T J 173 : (1963) 50 I T R 72 : 65 Bom L R 688 : 1964 Mah L J 176 : A I R 1964 Bom 116 (117, 118, 119, 121) (Prs 2, 5, 9, 10) (DB).**

——Art. 133—'Civil proceeding'—Notice under S. 34, Income-tax Act (1922) — Notice attacked as being without jurisdiction in proceedings under Art. 226 of the Constitution — Proceeding under Art. 226 of the Constitution whether 'civil proceedings' — (Quaere). A I R 1963 Cal 281 (285) (Pt A) (Pr 12).

——Art. 133 — Civil proceeding — (Constitution of India, Art. 226 — Hyderabad (Abolition of Jagirs) Regulation (69 of 1358 F), S. 21 (2)).

The question whether it is a civil proceeding or not should be decided taking into view the nature of the proceeding Under the provisions of S. 21 (2), Hyderabad (Abolition of Jagirs) Regulation, claims relating to a jagir or to any share in the income thereof have been made the subject matter of civil litigation. Therefore the term 'civil proceeding' in Art. 133 of the Constitution applies to civil writs issued under Art. 226. **I L R 1953 Hyd 123 : A I R 1953 Hyd 131 (131, 132) (Pt B) (Pr 3) (DB).**

● **——Arts. 133 (1) and 226 — "Judgment or final order"—"Civil proceeding"—Meaning — Order dismissing proceedings under Art. 226 — Whether can be judgment or final order in civil proceeding within Art. 133.**

The "judgment or final order" that is contemplated by Art. 133 (1) is the judgment or final order that finally disposes of the dispute between the parties so far as the High Court is concerned as contrasted with an interlocutory judgment or order. The "civil proceeding" that is contemplated by the article is a proceeding in which some rights to property or other civil rights are involved. It is of no consequence whether such a proceeding is taken in a suit or by way of a writ under Art. 226 of the Constitution. If a right to property or any other civil right is involved in the proceeding, then the proceeding is a civil proceeding, no matter the jurisdiction of the Court invoked is special or extraordinary. AIR 1957 Pat 102 (FB) and A I R 1955 Nag 257, Dissented from. Dhanalakshmi Vilas Cashew Co. v. President, Cashew Industries Staff Association. 1961 Ker L J 360 : 1961 Ker L T 427 : ILR (1961) 2 Ker 43 : A I R 1962 Ker 1 (3) (Pt A) (Pr 6) (FB).

——Art. 133—Writ proceedings — Nature of—'Civil, criminal or other proceedings — Depends upon and takes colour from the proceedings in inferior tribunals — Judgment relating to assessment to income-tax —Not civil proceedings—Leave to appeal to Supreme Court — Not sustainable — Constitution—Substantial question of law as to interpretation of — Supreme Court final authority See Ibid, Art. 132. (1964) 2 I T J 287 : (1964) 54 ITR 293 : (1964) 2 Mad L J 289.

——Arts. 133 and 226 — 'Civil proceedin' — Judgment in writ petition to quash assessment of income-tax or to prohibit authorities from proceeding to make assessment—Not a 'civil proceeding.'

A judgment of a High Court in a writ application seeking to quash assessment orders or to prohibit an Income-tax Officer from proceeding under the machinery of the Income-tax Act in any of its aspects cannot be termed to be judgment in 'civil proceeding' within the meaning of the expression as used in Art. 133 of the Constitution. A I R 1956 Pat 175 and A I R 1951 Pat 29 (FB) and A I R 1958 Mad 151 and A I R 1960 All 84, Rel. on.

There is a well marked distinction between civil and criminal proceedings and when the Constitution itself refers to other proceedings in juxtaposition with civil and criminal proceedings, those words must be given a proper meaning. It is the nature of the proceeding in which the judgment is rendered that can govern the classification of the proceedings as criminal, civil or other proceedings. **(1963) 2 Mad L J 395 : ILR (1964) Mad 620 : (1963) 2 I T J 324 : 76 Mad L W 18 : (1963) 48 I T R 647 : A I R 1963 Mad 190 (191, 192) (Prs 8, 10) (DB).**

——Art. 133 — 'Civil proceedings' — Proceedings under Art. 226—Nature of.

There is no definition of "civil proceeding" in the Constitution. There is no reason why a proceeding under Art. 226 of the Constitution for the enforcement of a right to property for instance, cannot be deemed to be a civil proceeding. Every application under Art 226 of the Constitution cannot be deemed to be a civil proceeding. To give an obvious example an application for a writ of habeas corpus or a writ of prohibition to prevent prosecution of criminal proceedings may not be properly described as civil proceedings, but if the civil rights of a party are affected by an order of the Executive Government or a party feels aggrieved by the adjudication of a special administrative tribunal relating to his rights in a property or other civil right there is no reason why an application by such an aggrieved party should not be deemed to be a civil proceeding. AIR 1957 Pat 102 (FB), Dissented from. A I R 1943 P C 164 and A I R 1947 P C 90, Rel. on. **1957 Mad W N 650 : 70 Mad**

L W 960 : (1957) 2 Mad L J 567 : ILR (1958) Mad 117 : (1958) 34 ITR 738 : A I R 1958 Mad 151 (152) (Pt A) (Pr 3) (DB).

——**Art. 133—'Civil proceedings' — Writ petition to restrain Income tax Department from attaching petitioner's property for arrears of income-tax due to her husband—Nature of.**

A writ petition under Art. 226 of the Constitution praying for the issue of a writ of mandamus to restrain the Income-tax Department and the Collector from attaching or selling the petitioner's property for realisation of arrears of income-tax due to her husband is not a revenue proceeding but a civil proceeding within the meaning of Art. 133 inasmuch as the petitioner is asserting her right to the property standing in her name and seeking relief against any interference with that right. 28 I T R 70 : AIR 1956 Pat 175, Dist. 1957 Mad W N 650 : 70 Mad L W 960 : (1957) 2 Mad L J 567 : I L R (1958) Mad 117 : (1958) 34 I T R 738 : A I R 1958 Mad 151 (153, 154) (Pt B) (Pr 6) (DB).

——**Art. 133 (1) — 'Civil proceeding' — Order under Art. 226—Leave to appeal from—Right to.**

The expression 'civil proceeding of a High Court' in Art. 133 must be interpreted to mean the form of proceeding of the High Court in the exercise of its civil jurisdiction. Further an order rejecting writ petition under Art. 226 is not a 'judgment, decree or final order,' as contemplated under Art. 133.

Again, judging the nature of the proceedings under Art. 226 of the Constitution which is wider than that of a proceeding under Art. 32 it is clear that Art. 133 is not intended to cover proceedings under Art. 226 of the Constitution. A I R 1957 Pat 102 (FB) ; A I R 1955 Nag 257 and A I R 1957 Him Pra 5, Rel. on. AIR 1958 Manipur 5 (6) (Prs 5, 6).

——**Arts. 133 (1) and 226 — Final order in a civil proceeding — Proceeding under Art. 226—Nature of.**

(Obiter). — A proceeding under Art. 226 is not a civil proceeding within the meaning of Art. 133 (1) and the order passed by the High Court in such a proceeding is not a final order as contemplated by Art. 133 (1). 1946 B L J R 444 : (1957) 2 Lab L J 517 : AIR 1958 Pat 26 (27) (Pt B) (Pr 3) (DB).

● ——**Art. 133 (1) (c) — 'Civil proceedings' — Writ proceedings under Art. 226— If 'civil proceedings.' AIR 1951 Pat 626, Overruled.**

The jurisdiction of the High Court under Art. 226 is an extraordinary jurisdiction vested in the High Court not for the purpose of declaring the civil rights of the parties but for the purposes of ensuring that the law of the land is implicitly obeyed and that the various tribunals and public authorities are kept within the limits of their jurisdiction. Hence the proceeding in the High Court for grant of a writ under Art. 226 of the Constitution is not a "civil proceeding" within the meaning of Art. 133 of the Constitution and the petitioner against whom a writ has been issued has no right of appeal to the Supreme Court under that Article. AIR 1951 Pat 626, Overruled. Collector of Monghyr v. Maharaja Pratap Singh. 1956 Pat L R 521 : 1957 B L J R 9 : ILR 36 Pat 259 : A I R 1957 Pat 102 (103, 106) (Pt A) (Prs 2, 3, 9) FB).

——**Art. 133—Writ petitions started against assessment under S. 23, Income-tax Act.**

Held that the nature of proceedings started on writ petitions being under the machinery of Income-tax Act under which there was no right of suit it was revenue proceeding and not a civil proceeding within the meaning of Art. 133. (1955) 28 I T R 70 : 34 Pat 397 : A I R 1956 Pat 175 (176, 177, 178) (Prs 2, 4, 5).

——**Art. 133 (1) (e)—Applicability — Civil proceeding—Failure of police authorities to depute additional police officer under S. 13, Police Act — Application for writ of mandamus under Art 226—Order by High Court rejecting application—Leave to appeal—Grant of—Right to.** See Ibid Art. 132 (1). 1952 Cr L J 1639 : A I R 1952 Pat 386 (DB).

——**Art. 133 (1) — Civil proceeding — Impartible estate under management of Court of Wards — Proceedings for writ of mandamus upon Board of Revenue to withdraw from management — Validity of provisions of Court of Wards Act and Indian Majority Act questioned — Proceeding is civil proceeding under Art. 133 (1) — Letters Patent (Pat.), Art. 31.**

Certain impartible estate in Bihar was under management of the Court of Wards. In a proceeding arising out of an application under Art. 226, Constitution of India for a writ of mandamus upon the Board of Revenue, Bihar, or the State of Bihar to withdraw from the management of the estate, it was contended that the provisions of the Court of Wards Act as also of the Indian Majority Act in so far as they purported to extend the period of minority of a person to 21 years had become void from the date the Constitution came into force, because those provisions were in conflict with Art. 14 of the Constitution. It was also contended that the petitioner had no reversionary or immediate interest in the impartible estate within the meaning of S. 7 of the Court of Wards Act and that the expression "reversionary interest" could not cover the right, if any, available to the petitioner during the lifetime of his father.

Held, that the proceeding in which the above contentions were raised and determined was a civil proceeding of the nature contemplated by Art. 133 (1) : 59 Cal 1289, Disting.; A I R 1951 Pat 29 (FB), Rel on.

Reuben J.—The fact that the proceeding in relation to which this petition has been filed was a proceeding under Art. 226 of the Constitution does not by itself make Art. 133 inapplicable.

The capacity in which the State is empowered to perform the action which is challenged will not determine the nature of the proceeding in which that action is challenged.

The words "a civil proceeding" in Art. 133 should be interpreted in their natural sense as meaning a proceeding of a civil nature. AIR 1951 Pat 626 (627, 628, 629) (Prs 4, 7, 8, 9, 11, 12) (DB).

[Overruled in AIR 1957 Pat 102 (FB).]

● ——**Arts. 133, 132 and 226 — Nature of proceedings under Art. 226 — Order of assessment to sales tax — Writ petition challenging order — Petition allowed and assessment quashed — Order of High Court is judgment, decree or order in a 'civil proceeding' within Art 133 — High Court competent to grant certificate under Art. 133 (1) (c) — Punjab High Court Rules, Vol. V, Chap. 4-F.**

Where a petition under Art. 226 of the Constitution challenging the legality of an assessment made under the Punjab General Sales Tax Act is allowed and the assessment is quashed the order of the High Court on the petition is a judgment, decree or order 'in a civil proceeding' within the meaning of Art. 133 of the Constitution and the High Court has power to issue a certificate of fitness under Art. 133 (c). According to Punjab High Court Rules and Order Vol 5, Chap 4-F petitions under Art. 226 of the Constitution fall into only two categories, namely, habeas corpus petitions which are criminal proceedings, and other petitions for certiorari, etc., which are civil proceedings. The procedure for each category is separately mentioned in F (a) and F (b) respectively. Merely because Art. 132 envisages a third category of proceedings

which may be neither criminal nor civil, it does not in any sense follow that there must be proceedings under Art. 226 of the Constitution also which fall neither in the category of criminal proceedings nor that of civil proceedings. The rules of this Court divide writ petitions under Art. 226 into two categories and there is no reason why that should not be considered exhaustive. A I R 1955 Raj 56, Rel. on. AIR 1954 Nag 1 (FB) Expl. and Dist.; AIR 1956 Pat 175, A I R 1960 All 84, A I R 1957 Pat 102 (FB), AIR 1963 Mad 190, (1964) 54 I T R 293 (Mad) and A I R 1964 Bom 116, Dissented from. It cannot be said that just because a suit is not competent to establish a particular right or to avoid, a particular decision made by a tribunal, a writ petition brought for the purpose of avoiding such a decision cannot be called a civil proceeding. AIR 1957 Punj 173 (FB), Rel. on. A civil right means a right vesting in a person in his capacity as the citizen of a State, and it does not seem to matter whether that right arises out of a statute or otherwise and when a tax is imposed on a citizen and he claims that he is not liable and goes to Court to establish that right, he is asserting a civil right. AIR 1960 All 84, Diss. from. Assessing Authority, Ludhiana v. Mansa Ram, **1965 Cur L J 442 : ILR (1966) 2 Punj 143 : 67 Punj L R 729 : A I R 1965 Punj 459 (461, 462, 463) (Prs 3, 4, 6) (FB).**

——Arts. 133 (1), 226 and 227 — 'Proceeding of civil nature' — Jurisdiction under Art. 226 or Art. 227 invoked—Proceeding whether ceases to be civil.

For determining whether proceedings are of a civil or criminal nature or fall in any special category it is the subject-matter of the proceedings which should be seen. A proceeding which is undoubtedly of a civil nature does not cease to be so because the petitioner has invoked the extraordinary jurisdiction of the High Court under Article 226 or Art. 227 of the Constitution. A proceeding taken for the enforcement of civil right is a civil proceeding, even if the jurisdiction of the Court, which has been invoked, happens to be special or extraordinary. AIR 1957 Pat 102, Diss. from. **61 Punj L R 202 : A I R 1959 Punj 58 (59, 60) (Pt A) (Pr 4) (DB).**

——Arts. 133 (1) and 226—Civil proceeding—Meaning of — (Administration of Evacuee Property Act (1950), S. 10 (27)).

The word "Civil" when prefixed before 'proceeding', 'action', 'suit', 'remedy', or other cognate expression relates to private rights and remedies given to individuals or corporations as members of the community in contradistinction to those which are public and relate to Government. An action, which has for its object, the recovery of private or civil rights, or compensation for their infraction is necessarily a civil proceeding. A civil action is a proceeding in a Court of justice by one party against another, for the enforcement or protection of a private right, or for the redress or prevention of a private wrong. The word "criminal" is used in contradistinction to civil proceedings or actions. The former includes proceedings taken in the name of the State, the end and design of which is the punishment of the criminal; while the latter signifies actions for enforcement of civil rights.

The question in controversy pertaining to the private rights of the contestants relating to the allotment of agricultural land in a proceeding under the Administration of Evacuee Property Act is eminently of a civil nature and an order of the Letters Patent Bench in an appeal from an order of a single Judge passed in relation to such question under Art. 226, is made in a civil proceeding. **61 Pun L R 202 : A I R 1959 Punj 58 (60) (Pt B) (Prs 5, 8) (DB).**

● **——Arts. 133 and 226 — 'Civil proceedings' — Meaning of — Proceedings under Act 37 of 1850 — Dismissal order by President — Writ Petition—Proceedings, if civil—(Public Servants' Inquiry Act 37 of 1850).**

Whether the proceeding in which the Court declines to issue a writ under Art. 226 of the Constitution of India can be regarded as a civil proceeding or not within the meaning of Art. 133, will depend on the facts and circumstances of each case. What a civil proceeding is, may be defined as a judicial process to enforce a right and includes any remedy employed to vindicate that right and covers every step in an action and is equivalent to an action.

To determine the question whether a proceeding is a civil proceeding or not within meaning of Art. 133, one has to see against what wrong is the remedy sought. Where a suit could be brought and the petitioner seeks his remedy by way of a prerogative writ, the proceeding would be civil, but it cannot be that if the suit could not be brought the proceeding would not be civil in nature.

Where the complaint of the petitioner under Art. 226 was that the proceedings which were taken against him under the Public Servants' Inquiry Act (37 of 1850) were vitiated because of certain defects which he pointed out and the High Court has overruled those objections, this amounted to a determination of his civil rights. Even though the proceedings against which the petitioner made an application under Art. 226 of the Constitution of India were merely executive proceedings, one cannot lose sight of the question that the petitioner was agitating the question of his right to remain in service and under S. 9 of the Civil Procedure Code a suit in which the right to property or to office is contested is a suit of a civil nature. Kapur Singh v. Union of India, **59 Punj L R 331 : ILR (1957) Punj 873 : AIR 1957 Punj 173 (180, 181, 182) (Pt B) (Prs 28, 30, 31, 32, 34, 35, 36) (FB).**

——Art. 133—Applicability.

In a proceeding under S. 137, Companies Act, the police started investigation against the petitioners on the basis of a first information report made by the Registrar, Joint Stock Companies. The petitioners applied under Art. 226 of the Constitution to quash the investigation that the police were making in pursuance of the first information report lodged by the Registrar. The application was dismissed by the High Court and thereupon the petitioners made an application under Arts. 132, 133 and 134, Constitution of India for leave to appeal to the Supreme Court.

Held, that the matter was criminal and, therefore, Art. 133 had no application. (1943) A C 147, Ref. **57 Punj L R 332 : I L R (1955) Punj 1345 : A I R 1956 Punj 1 (2, 3) (Pt B) (Pr 4) (DB).**

——Art. 133 (1)—Civil proceeding — Application for writ other than habeas corpus is civil proceeding—High Court Rules and Orders — (Rajasthan High Court Rules, Chapters XXI and XXII).

The question whether a proceeding under Art. 226 of the Constitution is a civil proceeding or not depends upon the nature of the proceeding. **A I R 1953 Hyd 131**, Rel. on.

Under the Rules of the Rajasthan High Court writ proceedings are dealt with in two chapters, namely, Chapter XXI and Chapter XXII. Chapter XXI deals with writs of habeas corpus or with applications under section 491, C. P. Code, while Chapter XXII deals with all writs under Art. 226 of the Constitution other than a writ in the nature of the habeas corpus. It is obvious from this distinction made in the Rules that writs of habeas corpus are criminal proceedings, while all other writs are treated as civil proceedings in this Court. There can be no doubt, therefore, that an application for a writ other than the writ of habeas

corpus challenging the validity of an Act is a civil proceeding. Article 133 (1) will, therefore, apply to such a proceeding AIR 1951 Pat 29, Disting. I L R (1955) 5 Raj 321 : 1955 Raj L W 37 : AIR 1955 Raj 56 (56, 57) (Pt A) (Prs 5, 7) (DB).

9 (b). Proceedings under Art. 227.

——Art. 133 (1)—Civil proceeding.

Merely because one of the points raised before the High Court related to the question of the validity of the assessment to excess profits tax does not make the entire proceeding a revenue proceeding.

Courts which decide disputed rights between subjects or between a subject and the State are Civil Courts. It is true a Certificate Officer or the Board of Revenue adjudicates upon disputes relating to revenue or public demands, but such dispute is nevertheless a civil dispute which arises in proceedings for enforcement of civil rights. Before a Certificate Officer or Board of Revenue the person who is sought to be made liable upon the certificate, in other words, the certificate debtor, raises questions disputing his liability or relating to his liability to pay the amount due on the certificate and these authorities have to adjudicate upon such questions and when the decision of the certificate officer or the Board of Revenue is challenged in a proceeding under Art. 227 such proceeding must be regarded as a proceeding involving a dispute with regard to civil rights of the parties and consequently the proceeding before the High Court is a civil proceeding within the meaning of Art. 133 of the Constitution. AIR 1963 Cal 384, Rel. on. (1964) 54 I-T-R 286 : A I R 1963 Cal 389 (392) (Pt C) (Pr 7) (DB).

●——Art. 133 — Civil proceeding — Meaning of — Nature of jurisdiction under Art. 227—Setting aside order of Election Tribunal—If civil proceeding.

The jurisdiction under Art. 227 is not original jurisdiction and an order of the High Court passed under Art. 227 is an order made in exercise of the revisional jurisdiction of the High Court. The power of revision conferred upon the High Court under Art. 227 is similar in nature to the appellate power of the High Court. The intrinsic quality of the power granted under Art. 227 is the same as appellate power. A I R 1955 Mad 287 and AIR 1953 Cal 636 and ILR 22 Mad 68 and 13 Cal L J 90, Rel. on. AIR 1957 Pat 102, Dist. Where the High Court sets aside, under Art. 227, an order of the Election Tribunal and further orders that the election petition filed by a person should be dismissed for non-compliance of the provisions of S. 117 of the Representation of the People Act the proceeding under Art. 227 involves a dispute with regard to the civil rights of the parties and so the proceeding is a civil proceeding before the High Court within the meaning of Art. 133. AIR 1954 S C 210, Dist. AIR 1954 Mad 340 and AIR 1949 Lah 131 and A I R 1944 Pat 147 and A I R 1935 Mad 673, Rel. on. Budhi Nath Jha v. Manilal Jadav. ILR 38 Pat 298 : AIR 1960 Pat 361 (362, 363, 364) (Prs 5, 6, 7, 8) (FB).

10. High Court.

——Arts. 133 and 366 (14) — High Court — Special Appellate Tribunal under Madras Act (30 of 1956)—Neither a High Court nor a Court — Application for leave to appeal to Supreme Court against its decision not maintainable—Civil P. C (1908), S. 109—'Court of final appellate jurisdiction'.

The power of the High Court under Art. 133 to grant leave to appeal is confined and restricted only to 'judgment, decree or final order in a civil proceeding of a High Court', and not of a Tribunal.

The Special Appellate Tribunal constituted under S. 7 of the Madras Estates (Supplementary) Act (30 of 1956) is neither a 'High Court' within the meaning of Art. 133 of the Constitution, nor 'a Court of final appellate jurisdiction' within the meaning of S. 109, Civil P. C., and as such an application for leave to appeal to the Supreme Court is not maintainable. Section 7 of the Madras Act makes it clear that the Special Appellate Tribunal is not exercising the normal appellate jurisdiction of the High Court. Section 7, sub-s. (2), reinforces this view when it provides and prescribes a procedure for the disposal of the appeal in cases where difference of opinion arises between the judges hearing the appeal. Such a provision would have been wholly unnecessary if the Special Appellate Tribunal were to be treated as the High Court itself in view of the provisions contained in Cl. (36) under the Letters Patent. The character of the tribunal cannot be altered by its personnel which consists of two High Court Judges. An association of judges of the High Court invested with particular powers and jurisdiction outside the ambit of the High Court's jurisdiction cannot be called a High Court. AIR 1955 Mad 1 (FB) and AIR 1958 Mad 433, Rel. on. 1963 Mad W N 288 : I L R (1963) Mad 33 : (1963) 1 Mad L J 127 : 75 Mad L W 536 : AIR 1962 Mad 508 (509, 510) (Pt A) (Prs 3, 5, 6, 7, 10) (DB).

11. Value of subject-matter in Court of first instance—Clause (a).

(a) Court of first instance.

(b) Subject-matter of dispute.

(c) Determination of value.

(d) Applicant for leave, if barred from showing the real value — Estoppel and res judicata.

(e) Subject-matter incapable of pecuniary valuation.

(f) Consolidation.

11. Value of subject-matter in Court of first instance—Clause (a).

●——Art. 133 (1) (a)—Applicability.

Under clause (a) what is decisive is the amount or value of the subject-matter in the Court of first instance and still in dispute in appeal to Supreme Court. If in a proposed appeal there is no claim or question raised respecting property other than the subject-matter clause (a) will apply. Chittarmal v. Pannalal, 1965 S C (Notes) 18 : (1965) 1 S C W R 692 : 1966) 1 S C J 88 : AIR 1965 S C 1440 (1441, 1442) (Prs 5, 6).

——Art. 133 (1) (a) and (b)—Clauses (a) and (b) are mutually exclusive.

The two cls. (a) and (b) of Art. 133 are mutually exclusive and the use of different words in the two clauses would indicate that the framers of the Constitution had in view that "the amount or value of the subject-matter of the dispute" in cl. (a) is not necessarily the same as where the judgment, decree or final order involves, directly or indirectly some claim or question respecting property of the like amount or value. AIR 1957 All 28 (34, 35) (Pt C) (Pr 13) (DB).

——Art. 133 (1) (a) and (b) — Certificate of fitness under, requirements of — Subject-matter of dispute should be Rs. 20,000, or more under cl. (a) — But under cl. (b) property should be of that value.

Where the judgment of the High Court on appeal affirms that of the Court below, in order to entitle the petitioner to the grant of certificate under Art. 133 (1) (a) and (b) of the Constitution of India the Court has to be satisfied first that the value of the subject matter of the dispute in the Court of first instance and still in dispute on appeal was and is Rs. 20,000 or upwards, or that the decree proposed

to be appealed from, involves directly or indirectly a claim or question of the like amount and that the intended appeal involves substantial questions of law.

The requirement of sub-clause (b) of Art. 133 (1) would be satisfied if the property to which the claim or question relates is worth Rs. 20,000 or upwards. While under sub-cl. (a) it is the 'subject-matter of dispute' which should be worth Rs. 20,000 or more, it is the 'property' under sub-clause (b) which is to be of the like value. The word 'property' does not necessarily mean 'the subject-matter of the dispute. Sub clause (b) refers to property which is other than the subject-matter of the dispute, but is affected by the decision in the suit AIR 1956 All 348, Rel. on. **AIR 1962 Cal 583 (586) (Pt A) (Prs 20, 23) (DB).**

——**Art. 133 (1) (b)**—Subject-matter in dispute capable of precise and arithmetical valuation—Valuation less than rupees twenty thousand—Clause (a) and not (b) held applied. See Ibid, Art. 133 (1) (a). **AIR 1962 Orissa 90.**

——**Art. 133 (1) (a) — Value for determination for leave to appeal—(C. P. Code (1908), S. 110).**

Where in the execution proceeding for execution of a decree for Rs. 13 382 the petitioner's (garnishee's) contention that he had paid Rs. 8,000 to the decree-holder is rejected on appeal by the High Court, the petitioner being affected only to the extent of that amount the case does not fall within Art. 133 (1) (a) and, therefore, leave to appeal to Supreme Court cannot be granted. 4 P L J 415, Rel. on. **1953 B L J R 369 : AIR 1953 Pat 377 (378) (Pt A) (Pr 4) (DB).**

——Art. 133—Suit for partition of joint family house —Though value of house exceeds Rs. 20 000 value of plaintiff's share falling below that amount—Plaintiff will not be entitled to leave either under cl (a) or cl. (b). **1951 Raj L W 324 : 1951 B L R (Raj) 11 : ILR (1951) 1 Raj 358 : AIR 1952 Raj 11 (11, 12) (Prs 3, 4) (DB).**

11 (a). Court of first instance.

● ——**Art. 133 (1) (a) — "Court of first instance" — Meaning of—High Court exercising jurisdiction on original side, whether "court of first instance".**

A restricted meaning should not be given to the expression "court of first instance" in Art. 133 (1) (a) to mean only a Court subordinate to the High Court. If against a decision in a matter which comes to the High Court within its original jurisdiction, by internal arrangement an appeal is provided to a fuller or larger Bench of the same High Court, to such a case Article 133 (1) (a) will apply for it is quite possible for the High Court to be the Court of first instance as well as the Court of appeal in the same matter.. Dhanalakshmi Vilas Cashew Co v President, Cashew Industries Staff Association, **1961 Ker L J 380 : 1961 Ker L T 427 : ILR (1961) 2 Ker 43 : AIR 1962 Ker 1 (3) (Pt B) (Pr 8) (FB).**

11 (b). Subject-matter of dispute.

——**Art. 133 (1) (a) — Amount or value of subject-matter of dispute in Court of first instance — (C. P. Code (1908), S. 110 and O. 21, R. 90).**

In execution of a money decree for Rs. 9,716 a house worth more than Rs. 20,000 was attached and sold at auction and purchased by J An objection was raised to the auction sale but it was dismissed. In appeal, the High Court set aside the order of the lower Court and also the auction sale in favour of J. J applied for leave to appeal to the Supreme Court.

Held, that proceedings under O. 21, R. 90 have nothing to do with the subject-matter of the suit in which the decree was passed. They are in respect of sale of proprety which was not the subject-matter of the suit and as such are, in their nature, original proceedings. As the house which was the subject-matter of sale was worth more than Rs. 20,000, J had a right of appeal to the Supreme Court against the order of the High Court. 40 Ind App 140 (PC), Rel. on. **1956 All L J 606 : ILR (1957) 1 All 258 : 1956 All W R (H C) 569 : AIR 1956 All 735 (735, 736) (Prs 4, 6) (DB).**

● ——**Art. 133 — Money decree for Rs. 10,000 — Properties attached — Objection to attachment dismissed - Suit under O. 21, R. 63, Civil P. C.—Decree-holder and judgment debtor made defendants — Suit partly allowed — Appeal by plaintiff to High Court fully decreed — Application for leave to appeal to Supreme Court by decree-holder—Property attached alleged to be worth Rs. 20,000—Held, subject matter of the suit or of the appeal was not the property attached and requirements of S. 110, Civil P. C. or Art. 133 were not fulfilled. Smt. Kishore Devigaru v. Bhaskara Gouta Chorani, 1960 Andh L T 43 : (1960) 1 Andh W R 82 : AIR 1960 Andh Pra 286 (291, 292) (Prs 15, 17, 18) (FB).**

——**Art. 133 (1) (a)—"Subject-matter of the dispute" —Meaning of.**

The phrase "subject-matter of the dispute" mean and can only mean the content of the dispute and therefore as to the magnitude of the monetary value the subject-matter is limited by the dimensions of the dispute and is not necessarily co-extensive with the property to which the dispute appertains. The expression is capable of two meanings but the meaning which appears to be in accord with the true intent of Article 133 (1) (a) is the "content of the dispute". That clause and the next are concerned with limiting the right of appeal in civil proceeding to the cases of and over a stated value on the obvious principle that in order that a dispute may be allowed to go further than the High Court the stake must be sufficiently large. There may be a small dispute with respect to a vast property, affecting only an infinitesimal portion of it or a microscopic interest in it. It would be irrational to hold that the framers of the Constitution intended that even in such cases the value of the dispute should be regarded as the value of the property itself, however small might be the proportion it bore to the actual dispute between the parties. **AIR 1958 NUC 4509 (Cal) (D B).**

[**Overruled** in AIR 1966 Cal 205 (FB)].

——**Art. 133—Subject-matter of dispute—[C. P. Code (1908) S. 110.]**

Under Art. 133 the relevant value is not the value of the suit but the value of the dispute. It is not without significance that whereas the language in S. 110, C. P. Code was and still remains even after the adaptation "the amount or value of the subject-matter of the suit", the language of Art. 133 of the Constitution is "the amount of value of the subject-matter of the dispute." The language of the Constitution appears to be more appropriate and accurate because in any contention between two parties, the value of the subject-matter must be the value of the issue between them and not always the value of the suit which may be different. Thus, if a suit raises an issue between two co-defendants, different from the issue as between the plaintiff and them, then, as between themselves, the value of the dispute will be the value of the issue in which they are interested, inter se. **57 Cal W N 933 : AIR 1954 Cal 289 (292, 293) (Pt H) (Pr 15) (DB).**

[**Overruled** on another point in AIR 1957 S C 540).

——**Art. 133** — Subject-matter of dispute—What is, See Himachal Pradesh (Courts) Order, 1948. Para 3 (i) (b) (ii). **AIR 1963 Him Pra 9.**

——Art. 133 — Value of subject-matter in mortgage suit.

In a mortgage suit the property which is given as security for loan is not the property in dispute. The only property in dispute in such a suit is the loan advanced by the mortgagee to the mortgagor. Madh B L J 1955 H C R 213 ; Madh B L R 1954 Civil 484 : AIR 1955 Madh B 66 (68) (Pr 8) (DB).

——Art. 133 (a)—'Amount or value of subject-matter in dispute'—(C. P. Code (1908), S. 110):

Property belonging to the petitioner was attached by the Collector for recovery of arrears of income-tax due. A writ petition to restrain the Collector from realising the dues from the petitioner's property was dismissed by the High Court without going into the question of title of the petitioner to the attachment to continue and left the petitioner to pursue her remedies available to her at law.

Held, tentatively that even assuming that the property attached was worth more than Rs. 20,000 it could not be said that the subject-matter of the dispute was property sought to be attached. Further that order did not even involve directly or indirectly some claim or question to that property. Therefore, the case did not even satisfy the pecuniary requirements of the Art. 133 (1) (a) of the Constitution. 1957 Mad W N 650 : 70 Mad L W 980 : (1957) 2 Mad L J 567 : ILR (1958) Mad 117 : (1958) 34 ITR 738 : AIR 1958 Mad 151 (154) (Pt D) (Pr 8) (DB).

——Art. 133 –Suit for redemption— Property in dispute is not security given for the loan—Value of loan less than the amount prescribed by law — Leave to appeal cannot be granted. 64 Mad L W 204: (1951) 1 Mad L J 210 : AIR 1951 Mad 723 (723, 724) (Prs 3, 5) (DB).

——Art. 133—Subject-matter of dispute.

In execution of a decree the petitioners applied for delivery of possession of the leased property after the expiry of the period fixed in the decree. The executing Court, without notice to the respondent ordered delivery and this was duly effected on 22-7-1951. The respondent thereupon filed a petition for setting aside the ex parte order and as a consequence to restore possession of the property along with some moveables which were represented to have been fixed by him for better enjoyment of the leased premises. He also contended in that petition that the executing Court had no jurisdiction to order delivery of possession of the property without the permission of the Rent Controller under the House Rent Control Order for the reason that the decree passed in the original suit partook of the nature of eviction of a tenant by the landlords. The petition was dismissed by the trial Court and on appeal by the respondent the High Court upheld the contention of the judgment-debtor. It was against that order that the petitioners sought a certificate to appeal to the Supreme Court.

Held, that the moveables were not the subject-matter of dispute under Cl. (1) (a) of the article. ILR (1954) Mys 504 ; AIR 1955 Mys 35 (36, 37) (Pr 5) (DB).

11 (c). Determination of value.

——Arts. 133 and 135 –Subject-matter in dispute— Determination of value — Principles — (C. P. Code (1908), S. 110).

For the purpose of determining the right to a certificate the value of the subject matter in appeal has to be determined with reference to the market value of the property on the date of the decree of the High Court. Where in another suit there arose an issue in respect of the value of the share in certain property, and the Court, on sufficient enquiry, gave certain finding about the market value of such share, that finding may be accepted for the purpose of the application for certificate to appeal to Supreme Court in the previous litigation, and no further inquiry into the question is necessary. 1958 All L J 845 : AIR 1959 All 249 (251) (Pt B) (Pr 5) (DB).

——Art. 133 (1) — Value of subject-matter in dispute —Suit for possession and mesne profits — Decree directing delivery of possession and ascertainment of mesne profits—Amount of mesne profits which plaintiff may be found entitled to, cannot be taken into account in ascertaining value of dispute under Art. 133. AIR 1962 Cal 583 (586) (Pt C) (Pr 22) (DB).

——Art. 133—Interest after date of suit—[C. P. Code (1908) S. 110].

Post-suit interest cannot be included in the valuation as such interest cannot be said to be the subject-matter of the suit. AIR 1930 P C 44 Foll. 57 Cal W N 933 : AIR 1954 Cal 289 (293) (Pt G) (Pr 16) (DB).

[Overruled on another point in AIR 1957 S C 540.]

——Art. 133 (1)—Value of subject-matter of dispute —Suit for rent—Defence of abatement of rent on ground of diluvion—Value of defence—If can be capitalised.

In a suit for rent of a patni for a certain period, the claim was for Rs. 12,800. The defence was that the patnidars were entitled to an abatement of rent as a portion of the land comprised in the tenure had been lost by diluvion.

Held, that the dispute in the suit was whether or not the plaintiff was entitled to rent for the period claimed, and that as no claim was made as to the future, what was to occur in the future was not and could not be in dispute. It was impossible to capitalise, as it were, the value of the defence and include it in the value of the dispute. The value of the dispute in the suit could not possibly exceed Rs. 12,800 and therefore no leave could be given unless the case fell within Art. 133 (1) (c) of the Constitution. AIR 1951 Cal 409 (410) (Pt A) (Pr 7) (DB).

——Art. 133—Value of subject-matter — Meaning—Value of trees grown on suit land—C. P. Code, S. 110.

Value means the real market-value of the property involved.

In assessing the value of trees grown on land in suit the facts that the trees are situated in a remote and inaccessible part that they could be used only for fuel purposes for which there was no market nearby, that the only means of transport from the land was by mules and that the motor transport was available only in good weather have to be taken into consideration. AIR 1957 Him Pra 9 (10) (Pt B) (Pr 12).

——Art. 133—Value of subject matter. See C. P. Code (1908), S. 109. AIR 1954 Him Pra 81.

——Art. 133—Value of subject-matter in dispute—Determination of. See Civil P. C. (1908), S. 110. AIR 1955 NUC (Hyd) 2362 (DB).

——Art. 133 (1) (a)—Subject-matter of dispute –Suit for recovery of money from partners of firm and also by sale of goods pledged—Applicant made defendant on allegation that in collusion with one of partners he took possession of goods — Applicant alleging that he was bona fide pledgee of goods including goods pledged to plaintiff — Suit decreed — Applica-

tion under Art. 133 — What applicant alleged by way of defence to suit held could not be accepted as subject-matter of dispute. AIR 1952 Kutch 29 (30) (Pt A) (Pr 6).

——Art. 133—Costs are extraneous to subject-matter and are not taken into consideration in determining its value. 1956 Madh B L J 588 : Madh B L R 1956 Civil 86 : ILR (1956) Madh B 192 : AIR 1956 Madh B 145 (150) (Ft D) (Pr 10) (DB).

● ——Art. 133 (1) (a) —Subject-matter of proceedings being renewal of certain motor route permits—Earning from buses by virtue of those permits far exceeding Rs. 20,000 — Value of subject-matter in dispute must be held to be not less than Rs. 20,000 within Art. 133 (1) (a). Southern Roadways (P.) Ltd. v. P. Mathurai Veeraswami, 1963 Mad W N 677 : 77 Mad L W 1 : (1964) 1 Mad L J 25 : ILR (1964) 1 Mad 1: AIR 1964 Mad 194 (200) (Pt B) (Pr 31) (FB).

——Art. 133 — Suit remanded for determination of amount due—Leave to appeal.

Where the High Court remands a suit for determination of the amount due, it cannot be predicated that the amount or value of the subject-matter of the dispute is Rs. 20,000 or upwards and hence no leave to appeal can be granted under the Article. I L R (1952) Mys 376 (DB).

——Art. 133—Valuation of the subject matter — Suit for specific performance of contract to sell — Valuation—Determination. See Civil P. C. (1908), S. 10. AIR 1957 Orissa 109 (DB).

——Art. 133—Value of subject-matter. See Civil P. C. (1908), S. 110. AIR 1955 Punj 144 (DB).

11 (d). Applicant for leave, if barred from showing real value—Estoppel and res judicata.

● ——Art. 133 (1) — Suit for redemption of Otti — Plaintiff not barred by valuation of property given in plaint—Value of property at two material times as found by High Court above Rs. 20,000—Certificate by High Court is properly given. Kunju Kesavan v. M. M. Philip. (1964) 3 S C R 634 : 1963 Ker L J 962 : (1963) 2 Ker L R 238 : (1963) 2 S C W R 275 : AIR 1964 SC 164 (166) (Pt A) (Prs 6, 7).

——Art. 133 (1)—Value of subject-matter in dispute —Suit for declaration of title and possession valued at Rs. 5,500—Defendants alleging that value exceeded Rs. 20,000—Question left undetermined—Estoppel—(C. P. Code (1908), S. 110) — (Court-fees Act (1870), S. 7 (iv) (c) and (v)) — (Evidence Act (1872), S. 115).

In respect of a suit which is not required to be valued according to the real or market value the parties are not precluded from showing, for the purpose of an appeal to the Supreme Court, that the value of the subject matter in the Court of first instance was Rs. 20, 000 or over, where the question of valuation had not been decided at an earlier stage and where the lower valuation put upon the plaint had not involved recourse to a different forum. AIR 1937 Cal 292, Rel. on.

Clause 4 of S. 7, Court-fees Act does not require that the value of the subject matter should be the market value of the property. The plaintiff has to value the relief which he claims when a suit under Cl. 4 (c) is for a declaration with consequential relief. There is no statutory obligation on him to value the suit on the basis of market value of the property in dispute. (Distinction drawn between Cls. (iv) and (v) of S. 7, Court-fees Act.)

A suit for declaration of title and possession of property was valued at Rs. 5,500 and although the defendants in their written statement pointed out that the market value of the property in dispute, far exceeded Rs. 20,000 no issue was framed and no finding was given by the trial Court. The suit was dismissed but in appeal it was decreed and in an application under S. 110, C. P. Code, read with Art. 133 (1) of the Constitution for leave to appeal to the Supreme Court the question was whether, in these circumstances, defendants could be estopped from claiming that the market value of the property which was not ascertained during the course of the litigation, could be determined in order to see whether they can appeal as of right as they claim. In an inquiry directed by the High Court it was revealed that the market value of the subject matter in dispute would not be less than Rs. 30,000.

Held, that there could be no estoppel against the defendants. The plaintiffs were not induced to go into any wrong Court and were not otherwise misled by any act or omission on the part of the defendants. The valuation that plaintiffs adopted was of their own choice. The defendants could not also be said to be approbating and reprobating. They were adhering to their allegation made in the written statement. On general principles they could not be debarred on the strength of the rule of estoppel from showing that the valuation of the subject-matter was such that they could appeal to the Supreme Court as of right. The result of the enquiry was also in their favour. The case was therefore a fit one for appeal to the Supreme Court under S. 110, C. P. Code, read with Art. 133 (1) of the Constitution. AIR 1955 Assam 126 (128) (Prs 7, 8) (DB).

——Art. 133 (1) (a)—Lower valuation in trial Court —Bar to putting up correct valuation—Doctrine of approbate and reprobate—Applicability—(C. P. Code (1908), S. 110).

The correct test to apply Art. 133 is whether the party seeking to vary the earlier valuation for the purpose of an appeal to the Supreme Court had obtained an advantage on the basis of the previous valuation, now said to be erroneous, and where it could reasonably be said that he had obtained an advantage, it would be said that he was trying to approbate and reprobate and he would be precluded from revising the previous valuation. AIR 1937 Cal 292, Foll.

Held, on facts that as the valuation of property on the date of suit in 1947 was over Rs. 20,000 and as it was a common case of both sides that prices of land had increased after the partition of India, it would be safe to say that on the date of the application for leave to appeal, the value of the matter in dispute in appeal was also over Rs. 20,000, and therefore application for certifiate under Art. 133 (1) (a) should be allowed. AIR 1958 Cal 187 (190, 191) (Prs 7, 10, 14) (DB).

——Art. 133 — Valuation of the subject-matter in dispute in the Court of first instance—(C. P. Code (1908), S. 110).

Where the valuation of the suit by the plaintiff is not objected to by the defendant in the trial Court, but on the other hand he adopts the same valuation for the purpose of his own appeal from the trial Court's decree, he cannot subsequently turn round and say that the valuation was much higher for the purpose of securing leave to appeal to the Supreme Court from the decree of the High Court. The prin-

ciple of approbate and reprobate applies to such a case. 1 I A 84, Appl. 57 Cal W N 933 : AIR 1954 Cal 289 (294) (Pt I) (Pr 17) (DB).

[Overruled on another point in A I R 1957 S C 540].

——Art. 133 (1) (b)—Subject-matter of suit—What is—Plaintiff's option to value relief under S. 7 (iv), Court-fees Act—Subsequent alteration without cogent basis — Principles stated. See Himachal Pradesh (Courts) Order (1948), Para. 32 (1) (b) (ii). AIR 1963 Him Pra 9.

■ ——Art. 133 (1) (a)—Civil P. C. (1908), S. 110 and O. 45, R. 3 — Application for leave to appeal to Supreme Court—Certificate of fitness—Valuation of subject-matter in suit and appeal - Valuation adopted in plaint and accepted for appeal by defendant — Party applying for certificate can show higher and real value of subject-matter—He is not precluded from doing so by provisions of S. 11, O. 7, R. 1; O. 8, R. 2 or O. 41, R. 1 (2). Civil P. C. or S. 115 of Evidence Act.

For ascertaining the value of the subject matter in dispute for the purpose of Art. 133 of the Constitution and S. 110, C. P. Code in the Court of the first instance or in the proposed appeal it would be open to any party, be he the plaintiff or defendant to go behind the valuation adopted in the plaint or in the memorandum of appeal, as the case may be, and show the real value of the subject-matter in dispute, except where (1) there has been a judicial adjudication of the correctness of the original valuation in such a way as to attract the principle of the rule of res judicata or (2) where the party making the original valuation or the one adopting it had an option to give that value or the correct value and while exercising the option by giving one of such values he gained for himself an advantage or made the opposite party suffer a detriment. AIR 1957 Cal 292 and AIR 1953 Cal 187 and AIR 1927 Mad 862, Rel. on; S C P Nos. 7 and 8 of 1958 (Mad), Overruled.

Held, on facts (1) that the constitutional (Art. 133 of the Constitution) or statutory (S. 110, Civil P. C.) right of appeal could not be curtailed by an erroneous statement as to valuation by the party seeking a certificate; (2) that O. 7, R. 1 or O. 41, R 1 (2) (Madras), Civil P. C. present no difficulty, for it would be open to any party to show what the real value of the property is. 1 Ind App 317 (PC), Rel. on.; (3) that a valuation simpliciter for Court-fee purposes could not, on principle, be held to preclude him from showing the real value; (4) that O. 8, R. 2, Civil P. C., referred only to a plea relating to the maintainability of the suit and not to one for safeguarding a right of appeal in the possible event of the defendant failing. (5) that the principle of constructive res judicata could not apply to cases where there was no duty on the defendant to contest the value mentioned by the plaintiff. (6) that a mere erroneous valuation either for jurisdictional or fiscal purposes could not amount to a representation on which it could be said that the opposite party would suffer a detriment; (7) that no question of approbate and reprobate could arise, Kuppanna Gounder v. Perumal Gounder, 1961 Mad W N 436 : ILR (1961) Mad 1143 : (1962) 1 Mad L J 65 : 74 Mad L W 460 : AIR 1961 Mad 511 (513, 514, 515, 516, 517, 518) (Pt A) (Prs 2, 5 to 8, 10, 12, 20, 22, 23) (FB).

——Art. 133 (1) (a) and (b) — Amount of value of subject-matter of dispute in Court of first instance—Proceedings for grant of probate contested by petitioner — Application dismissed by Court of first instance but decreed in appeal by High Court—Leave to appeal under Art. 133 — Petitioner not precluded from showing that value of subject-matter in dispute in Court of first instance exceeds Rs. 20,000 although it was shown less in application for grant of probate —Evidence Act (1372), S. 115.

Except in cases of estoppel or res judicata, a party should not be shut out from this right to appeal merely on account of the valuation given in the plaint. If, however, the question of valuation has been raised and decided at an earlier stage or if the opposite party has been led to act upon the valuation given by the party applying for the certificate he cannot be permitted to depart from that valuation.

Where an application for grant of probate is contested by the petitioner and the application is dismissed in the Court of first instance on the ground that the will sought to be probated was not genuine, and effective but is decreed in appeal by the High Court, the petitioner, in an application for leave to appeal to the Supreme Court under Art. 133 (1) (a) and (b) is not precluded from showing that the value of the subject-matter in dispute in the Court of first instance exceeded Rs. 20,000 although it was shown as less than that amount in the application for grant of probate. The valuation was not a matter in respect of which the petitioner while contesting the grant was called upon to express his acceptance or non-acceptance. I L R (1960) Mys 931.

——Art. 133 (1) (a) — Basic principles underlying—Misstatement as to valuation in plaint or memorandum of appeal—Not a bar to consideration of application for determination of value of subject-matter —Exceptions to rule — Value of subject matter means real or market-value — Civil P. C. (1908), O. 45, R. 5.

Two of the basic principles underlying Art. 133 (1) are : (1) The right of appeal to the Supreme Court under Art. 133 (1) of the Constitution is a constitutional right, and cannot be abridged or abrogated by any ordinary legislation, nor can it be circumscribed or whittled down by any consideration extraneous not to be found therein—for example, on the ground of mistake or omission, as a result of some event happening in the meantime, has, by reason of other evidence or procedure ripened into a legal plea open to be raised by the adversary. It is for this reason, therefore, that in a case (i) where there has been a judicial determination of the correctness of the valuation given in the plaint it attracts the principle of res judicata. A I R 1961 Mad 511 (FB) and (1963) 29 Cut L T 28, Rel. on.; (ii) where the petitioner has already obtained an advantage of lower forum whether in the matter of institution of suit or of an appeal on the basis of lower valuation and is thereby hit by the principle of approbation and reprobation, he cannot be permitted to turn round and raise the valuation for the purpose of bringing the case within the specified amount required for appeal to the Supreme Court. (1873) 1 Ind App 84 (PC), Rel. on. But these are exceptions to the general rule. Consequently in a case where these exceptions do not arise for consideration, the general rule shall have its unrestricted application. As such a mere misstatement as to valuation either in the plaint or in the memorandum of appeal cannot and should not operate as a bar to the consideration of any application made for re-determination of the value of the subject-matter, as contemplated under Art. 133 (1) of the Constitution. (2) The 'value of the subject-matter as contemplated under Art. 133 (1) of the Constitution is the real or market-value. It is not any value which may have been stated in the plaint for the requirements of the Court-fees Act or Suits Valuation Act. Each case therefore, has to be judged on its own facts so as to

find out whether the value of the subject-matter as given in the plaint is the real or market-value or is based on considerations quite independent of and without regard to, the real or market-value If, upon investigation, it is found that the value as given in the plaint is the real or market value as contemplated in law, the matter ends there and no further enquiry is called for. But where it is found that the value of the subject-matter as given in the plaint is not the real or market-value, an investigation is called for to determine the real or market-value of the subject-matter, both in the Court of first instance as well as in the Court of appeal — as contemplated by sub-clause (a) of the Art. 133 (1) – unless the case is one which is covered by any of the two exceptions mentioned above. A I R 1955 Assam 126 and A I R 1961 Mad 511 (FB) and A I R 1937 Cal 292 and A I R 1958 Cal 187, Rel. on. **I L R (1965) Cut 623 : A I R 1966 Orissa 89 (92, 93) (Pt B) (Pr 7) (DB).**

——Art. 133 (1) (a) and (b)—Applicability — Suit by trustees for declaration that temple and its properties were private and not public endowment—Plaint giving valuation of Rs. 5,000 for jurisdiction only as fixed Court fee was payable — Suit decreed by trial Court–Reversal of decree—Leave to appeal under Art. 133 (1) with application under O. 45, R. 5 for determining real value of subject-matter of dispute — Clause (a) and not Cl. (b) of Art. 133 (1) applies– Trial Court directed to determine value of beneficiary interest of plaintiff.

The petitioners, who were the marfatdars of a debottar estate and temple brought a suit under S 64 (3) Orissa Hindu Religious Endowments Act (4 of 1939) to set aside the decision of the Endowments Commissioner under S. 64 (1) and for a declaration that the temple and its estate was a private or family endowment. The suit was decreed on contest but the decision was reversed in appeal. The petitioners applied under Art. 133 (1) (a) and Ss. 109, 110, Civil P. C. for leave to appeal to the Supreme Court. They also filed an application under O. 45 R. 5, Civil P. C. for a reference to the trial Court for the determination of the value of the subject-matter of suit. The suit was filed with a fixed Court fee of Rs. 22 as required by law and the valuation of suit for purposes of jurisdiction was stated to be Rs. 5,000. It was claimed by the pet tioners that the real value of the subject-matter in dispute was more than Rs. 20,000 and that, therefore, they were entitled as of right to certificate for leave to appeal either under Cl. (a) or Cl. (b) of Art. 133 (1).

Held, (i) that the application for determination of the value of the subject-matter should be allowed. What had to be determined for the purpose of valuation under sub-cl. (a) of Cl. (1) of Art. 133 was the real or market-value of the beneficiary interest which the plaintiffs claimed to have in the debottar property and the temple. In law 'the value of the action' must mean the value to the plaintiff. (1907) 17 Mad L J 518, Rel on. Since according to the plaintiffs it was the value of the Debottar-Estate that would give the measure of detriment they would be put to, in case the trust was held to be a public trust, what has to be determined for the purpose of valuation under sub-clause (a) of Art. 133 (1) was the real or market-value of the Debottar property on the date of institution of the suit and, thereafter, with reference to the date when the judgment sought to be appealed against was delivered ; (ii) that the mere office of trusteeship may be incapable of valuation. But the beneficiary interest of the family which the plaintiffs claimed to have in debottar property was not incapable of valuation. A I R 1962 Orissa 90, Dist. ; (iii) that the subject-matter in dispute being only the beneficiary interest of the petitioners in the Debottar Estate and there being no claim made respecting any property other than that subject-matter, Art. 133 (1) (b) was not attracted. Under Art. 133 (1) (b) the property respecting which the claim or question arises, must be property in addition to or other than the subject-matter of the dispute. If, in a proposed appeal, there is no claim or question raised respecting property other than the subject matter, clause (a) will apply ; if there is involved in the appeal a claim or question respecting property of an amount or value not less than Rs. 20,000 in addition to or other than the subject-matter of dispute, clause (b) will apply. **A I R 1965 S C 1440, Rel. on. I L R (1965) Cut 623 : A I R 1966 Orissa 89 (93, 94, 95) (Pt C) (Prs 11, 12, 13, 14, 15, 16) (DB).**

——Art. 133 (1) (a) — Value of subject-matter in dispute—Determination—Application by plaintiff for leave to appeal to Supreme Court—Actual valuation made in plaint a strong piece of evidence against plaintiff—Plaintiff precluded from showing that his valuation was erroneous. AIR 1961 Mad 511 (FB), Dist. AIR 1962 Orissa 159 (161) (Prs 8, 9, 10) (DB).

——Art. 133 — Leave to appeal to Supreme Court — Valuation for purposes of appeal — Applicant offering to show that valuation was well above Rs. 20,000/. — Value already determined at a lesser amount by trial Court on contest—Held principle of res judicata applied.

The plaintiff brought a suit for declaration of title and permanent injunction against the defendants — He gave a low valuation for the purpose of paying low court-fee and the entire litigation proceeded on that basis. His valuation was challenged by the defendants in their written statement. The Stamp Reporter pointed out that the valuation was low. The Court gave notice to both parties and ultimately fixed the valuation at Rs. 7,500/. The plaintiff himself understood this order to mean that the valuation of the suit lands was fixed at Rs. 7,500/- and paid court fee accordingly. In an application by the plaintiff under Art. 133 of the Constitution for leave to appeal to the Supreme Court he wanted that the High Court should direct the lower Court to hold an enquiry to ascertain the valuation of the subject-matter in dispute, both in the Court of first instance and in appeal with a view to enable him to show that the valuation is well above the limit of Rs. 20,000/- fixed in Art. 133 of the Constitution.

Held that there was already a decision by the lower Court on the question of valuation of the suit lands in the presence of the parties on contest, who accepted the same, and consequently the principle of res judicata would apply. The plaintiff would not therefore be permitted now to say that the valuation of the property in dispute was in excess of Rs. 20,000/- as to entitle him to ask for leave to appeal to the Supreme Court. A I R 1954 Cal 289; A I R 1958 Cal 187; A I R 1961 Mad 511 (FB), **Ref. 29 Cut L T 28 : ILR (1962) Cut 897.**

11 (e). Subject matter incapable of pecuniary valuation.

——Art. 133 (1) — Value of subject-matter — Question of joint mutavalliship — subject-matter is incapable of pecuniary valuation– Question relates to office and not to wakf properties — Civil P. C. (1908), Ss. 110 and 109 (c).

Whenever a right for joint mutavalliship or joint trusteeship is involved in a suit, the pecuniary value of it would be incapable of valuation. In such a case though the properties involved are worth more than Rs. 20,000/-, the question involved viz. the

question of mutavalliship, relates only to the office and not to the properties. That being so, the petition for leave to appeal to the Supreme Court is not maintainable as it does not satisfy the requirements of Art. 133 (1) (a), (b) or (c) of the Constitution. AIR 1953 Mad 968 and S C P 28 of 1960 (Mad), Foll. **1965 Mad W N 260 : 78 Mad L W 563 : (1965) 2 Mad L J 482.**

——Art. 133 (1), (1) — C. P. Code (1908), S. 110 (1) —Value of subject-matter of the dispute.

Where in a suit for a declaration that the plaintiff is validly appointed trustee of certain mosque and that the appointment of the defendant was void and inoperative, there is an ancillary prayer for recovery of possession of properties and sums of money on a rendition of accounts, and a prayer for a permanent injunction restraining the defendant and his men from interfering with the plaintiff's right to manage the mosque and its endowments, the essential subject-matter of the suit is the post of trusteeship of the mosque and nothing more. If it is found that the plaintiff is the validly appointed trustee, then automatically the other reliefs follow. As the subject-matter of the dispute is clearly the trusteeship and not any property and it is incapable of valuation, paragraph (1) of S. 110, C. P. Code, and subclause (a) of Art. 133 (1). of the Constitution do not apply. A I R 1916 Mad 985, Rel. on. Case law referred. **1953 Mad W N 483 : 66 Mad L W 654 : (1953) 2 M L J 276 : A I R 1953 Mad 968 (968, 969) (Prs 1, 2, 3) (DB).**

——Art. 133 (1) (a) — Notice under Administration of Evacuee Property Act — Dispute not of any right to property but of jurisdiction — Administration of Evacuee Property Act (1950), S. 7 (1).

Where in a writ petition against the order of the Assistant Custodian directing issue of notice under S. 7 (1) of the Administration of Evacuee Property Act, what was in dispute was not any right to property, but a question whether the Assistant Custodian had jurisdiction to issue such notice in view of the provisions of S 7-A inserted by the Amendment Act of 1954, and the High Court decided that the Assistant Custodian had such jurisdiction, the question being incapable of any valuation the petitioner is not entitled to a certificate under Art. 133 (1) (a) of the Constitution. Although the facts relied by the Department for issue of notice under S. 7 (1) are disputed they will be the subject of adjudication by the Assistant Custodian It is only when the findings are adverse that the land or property will be declared evacuee property. The decision in the writ petition therefore does not directly or indirectly affect the petitioner's right to any property. **1959 Raj L W 188 : ILR (1959) 9 Raj 410 : AIR 1959 Raj 106 (106, 107) (Prs 2, 5) (DB).**

11 (f). Consolidation.

——Art. 133 —Consolidation—"Same judgment". See Civil P. C. (1908), O. 45, R. 4. **A I R 1956 Nag 276 (DB).**

——Art. 133 (1) — Leave in connected appeals — (C. P. Code (1908), S. 110).

Suits involving substantially the same questions for determination and decided by the same judgment can be consolidated. And if leave to appeal has to be granted in the appeal arising out of one of such suits then leave ought to be granted in the other appeal as well arising out of the other suit. **1953 B L J R 375 : A I R 1953 Pat 380 (382) (Pt C) (Pr 5) (DB).**

12. Amount or value of subject-matter in dispute on appeal.

——Art. 133 (1) (a) — Final order in revision as to amendment of decree — Valuation of — (C. P. Code (1908), S. 110).

Where the subject-matter of the dispute in a case was the "question of amendment of decree" which was not capable of an exact valuation, and the valuation of that question was put by the party in revision in High Court tentatively at the sum of Rs. 10,000

Held, that that valuation should be accepted as correct in determining the question of the amount or value of the subject matter of the dispute, within the meaning of Cl. (a) of Art. 133. **A I R 1957 All 28 (34, 35) (Pt H) (Pr 13) (DB).**

—— Art. 133 — Amount or value of subject-matter still in dispute in appeal - Computation of - Right of appeal to Supreme Court — (C. P. Code (1908), S. 110).

Suit for accounts — Valuation in appeal to High Court was Rs 19,431-0-5—Appeal partly allowed and decree of lower Court enhanced by Rs. 109-9-9 — Cross-objection allowed to the extent of Rs. 655.

Held, that for purposes of computing the value of the subject-matter left in appeal, the two sums, viz., Rs. 19,431-0-5 and Rs. 655 have to be added and the sum of Rs. 109-9-9 have to be deducted from the total. As the amount thus arrived at is less than Rs. 20,000 the appellant had no right of appeal to the Supreme Court. **ILR (1957) 2 All 398 : AIR 1956 All 638 (639) (Pt A) (Pr 2) (DB).**

[Overruled on another point in A I R 1957 S C 540].

——Art. 133 (1) (a) — Valuation of subject matter in dispute on appeal — Suit for compensation on breach of contract — Compensation being claimed in the shape of loss of profits — Necessary expenses must be deducted from gross profits for valuation of subject-matter See Civil P. C. (1908), S. 110 Para 1. **(1964) 1 Andh L T 305 : AIR 1965 Andh Pra 13 (DB).**

——Art 133 (1) (a) — C. P. Code (1908), S. 110, Para. 1—'Amount or value of subject-matter still in dispute on appeal' — Portion of subject-matter in relation to which no prejudice suffered cannot be taken into account.

The amount or value of the subject matter still in dispute on appeal would be determined by the effect of the judgment appealed from as to what extent, having regard to the reliefs claimed by the plaintiff the appellant defendant is prejudiced or has suffered detriment, on the date of the judgment. The petitioner in assessing the value of the subject matter still in dispute on appeal cannot take into account that portion of the subject matter in relation to which he has suffered no prejudice. Otherwise, the expression 'subject-matter still in dispute' would have no meaning. The value of the subject-matter has to be determined by reference to the subject-matter which is actually the subject-matter of proposed appeal to the Supreme Court : AIR 1960 Andh Pra 286 (FB), Expl. and Foll.; A I R 1961 S C 1795, Foll. (1964) 1 Andh L T 305 : A I R 1965 Andh Pra 13 (15, 16) (Pt B) (Pr 6) (DB).

——Art. 133 — Money decree for Rs. 10,000/- — Properties attached - Objection to attachment dismissed —Suit under O. 21 R 63 by objector partly allowed — His appeal to High Court however fully decreed — Application for leave to appeal to Supreme Court by

decree-holder — Held that though property attached is alleged to be worth Rs. 20,000/ requirements of S. 110, Civil P. C. or Art. 133 were not fulfilled because the property attached was not the subject-matter of the suit or of the appeal. 1960 Andh L T 43 : (1960) 1 Andh W R S2 : AIR 1960 Andh Pra 286 (291, 292) (Prs 15, 17, 18).

——Art. 133 (1) (a) — Valuation of proposed appeal in a proceeding started before Rent.Control for standardization of rent.

The contractual rent between the landlord of a premise and his tenant was Rs. 350 per month. On an application by the tenant his rent was reduced on standardization to Rs. 143 12-0 Thus the difference between the two amounts was Rs. 206-4-0, that being the measure of the owner's monthly loss. If the annual loss was computed on the basis of monthly loss and such loss capitalised on the basis of twenty years' purchase the resultant figure would exceed the limit of Rs. 20,000. In an application made by the landlord under Art. 133 (1) to the High Court for a certificate for the purpose of going up to the Supreme Court :

Held, that even if in certain circumstances it might in future be possible for the landlord to apply for a revision of the rent, which revision might result in his favour, yet it would not be right to take notice of uncertainties and refuse to proceed on the basis of the existing facts and that the proposed appeal satisfied the valuation test as given in Art. 133 (1) (a). ('56) 60 Cal W N 927.

——Art. 133—Valuation of the subject-matter in dispute on appeal (C. P. Code (1908), S. 110.)

What both the Constitution and Code of Civil Procedure contemplate is the value of the subject-matter of the dispute or, in other words, the value of the proposed appeals. There is no such thing as the value of an application, nor is the requirement of procedure, if not also of law, is satisfied by merely saying that the valuation exceeds the statutory limit. It is always necessary that in the body of the petition the petitioner should say how he reaches the valuation which he has put at the top of the petition and the valuation must be always an exact figure and not merely that it is above a certain sum. 57 Cal W N 933 : AIR 1954 Cal 289 (291) (Pt A) (Pr 10) (DB).

[Overruled on another point in AIR 1957 S C 540.]

——Art. 133 (1) — "Amount or value of subject-matter in appeal"—(C. P. Code (1908), S. 110).

The expression "amount or value of the subject-matter in dispute" in Art. 133 (1) does not mean the amount or value of the subject-matter of all disputes between the parties. The true scope of the expression is indicated by the words "on appeal" which follow, and therefore the true test is, what is really in stake in the appeal itself.

Where the plaintiff is asking for an immediate payment of such amount as may be found due to him on an account being taken and under the decree sought to be appealed from such amount is Rupees 31,443-15-6 and the defendant's case is that he is not liable to render accounts at all and therefore he is not liable to make any cash payment to the plaintiff, the subject-matter of the dispute in the proposed appeal is the whole sum of Rs. 31,443 15-6 and that being so, cl. (a) of Art. 133 (1) of the Constitution is satisfied. AIR 1953 Cal 509 (512) (Pr 12) (DB).

——Art. 133 (1)—Value of subject-matter in appeal —Value of plaintiff's share must be considered — Civil P. C, S. 110.

Under Cl. (a) or Cl. (b) of Art. 133 (1) the value of the subject matter of dispute in appeal will be the value of the plaintiff's share and not the value of the entire joint property in dispute. A I R 1944 P C 65 and AIR 1952 Raj 11, Rel. on. A I R 1957 Him Pra 9 (10, 11) (Pt C) (Pr 13).

——Art. 133 (1) (a) and (b)—Need to satisfy requirement of clause (b) as alternative to restriction in clause (a).

A certificate can be claimed under any one or more of the three paras (a), (b) and (c) principally or in the alternative and it is not necessary to satisfy requirements of para (b) as an alternative to the restriction "the amount or value of the subject-matter still in dispute on appeal is and was not less than twenty thousand rupees" in clause (a). AIR 1951 Pat 177, Ref. to. A I R 1952 Kutch 29 (30, 31) (Pt B) (Pr 7).

——Art. 133—High Court setting aside decree in suit valued on Rs. 49,693 — Leave to appeal to Supreme Court granted as of right. See Civil Procedure Code, S. 109 1963 M P L J (Notes) 98.

——Art. 133 (1) (a)—Requirement of—Value of subject-matter of dispute on appeal need not be more than Rs. 20,000 on date of suit.

Article 133 (1) (a) does not require that the value of the subject-matter of the dispute on appeal should have been more than Rs. 20,000, on the date of the suit in the Court of first instance. The requirements of the sub-clause will be satisfied if the value of the subject-matter of the dispute in the Court of first instance was over Rs. 20,000 and the value of the subject matter of the dispute on appeal is more than Rs. 20,000. Different words were used in Art. 133 (1) (a) of the Constitution to convey the same meaning as in S. 110, C. P. C. AIR 1951 Mad 723 and AIR 1954 Cal 289 and 59 Cal W N 681 and AIR 1960 Andh Pra 286 (FB), Disting.

Per Jagadisan, J. : — The point of time with reference to which the value of the subject-matter of the dispute in the Court of first instance is to be determined, is the commencement of the suit and the point of time for determination of the value of the subject-matter in dispute on appeal is the date of the decree or order from which the appeal is made. A I R 1931 P C 125 and AIR 1941 Pat 255 and AIR 1920 All 202, Rel. on. (1964) 1 Mad L J 7 : I L R (1964) 1 Mad 133 : A I R 1964 Mad 314 (314, 315, 317) (Pt A) (Prs 3, 14) (DB).

——Art. 133 —Value of subject-matter in dispute—Determination—Actual valuation made in plaint is a strong piece of evidence against the plaintiff—Plaintiff precluded from showing that his valuation, was erroneous. AIR 1962 Orissa 159 (161)(Prs 8, 9 10) (DB).

——Art. 133 — Certificate of fitness to Supreme Court—Valuation of subject-matter in dispute in appeal before Supreme Court.

Held on facts that the amount of costs and interest awarded by the trial Court should be taken into account for the purose of the valuation of the appeal to the Supreme Court. Hence the valuation of the subject-matter of the dispute before the Supreme Court was over Rs. 20,000 and hence the requirement of valuation under Art. 133 of the Constitution was satisfied. A I R 1941 Pat 255 (FB), Rel. on. A I R 1961 Pat 100 (100, 101) (Pr 1) (DB).

——Art. 133 (1) (a) — Valuation — Subject-matter in dispute for appeal to Supreme Court must be not less than Rs. 20,000 —Value of subject-matter in dispute in Judicial Commissioner's Court not material. A I R 1964 Tripura 23 (25) (Pt B) (Pr 5).

13. Clause (1) (b)—General.
(a) Illustrative cases.

13. Clause (1) (b) — General.

● **——Art. 133 (1) (a) and (b)—Conditions attracting application of two sub-clauses.**

To attract the application of Art. 133 (1) (b) it is essential that there must be, besides other conditions, a judgment involving directly or indirectly some claim or question respecting property of an amount or value not less than Rs. 20,000. The variation in the language used in Cls (a) and (b) of Art. 133 (1) pointedly highlights the conditions which attract the application of the two clauses. Under Cl. (a) what is decisive is the amount or value of the subject-matter in the Court of first instance and 'still in dispute' in appeal to the Supreme Court, under Cl. (b) it is the amount or value of the property respecting which a claim or question is involved in the judgment sought to be appealed from. The expression 'property' is not defined in the C. P. Code but having regard to the use of the expression 'amount' it would apparently include money. But the property respecting which the claim or question arises must be property in addition to or other than the subject-matter of the dispute. If in a proposed appeal there is no claim or question raised respecting property other than the subject-matter, Cl. (a) will apply; if there is involved in the appeal a claim or question respecting property of an amount or value not less than Rs. 20,000 in addition to or other than the subject-matter of the dispute Cl. (b) will apply. It cannot be said that a judgment dealing with a claim to money alleged to be due from an agent for price of property belonging to the principal sold by the agent either directly or indirectly involves a claim or question respecting property which is sold. Chittarmal v. Shah Pannalal Chandulal, (1965) 1 S C W R 692 : AIR 1965 S C 1440 (1441, 1442) (Prs 5, 6).

——Art. 133 (1)—Clauses (a) and (b) are mutually exclusive. AIR 1957 All 28 (34, 35) (Pr 13) (DB).

——Art. 133 (1) (b)—Applicability—Of the like amount or value' Expression qualifies 'property' —(Civil P. C. (1908), S. 110).

The phrase "of the like amount or value" coming immediately after the word property "in Art. 133 (1) (b) qualifies the said word. If the property to which claim or question relates is worth Rs. 20,000 the requirements of this sub clause are satisfied. While under sub-Cl. (a) it is the "subject-matter of the dispute" which should be worth Rs 20,000 or more, it is the "property" under sub-Cl. (b) which is to be of that value. The word "property" does not necessarily mean the "subject-matter of the dispute". It has been interpreted to mean some property which may be other than the subject-matter of the dispute which may be affected by the decision in the suit.

Held on facts, that although the right of tenancy which the applicant claims may be worth less than Rs. 20,000 he is certainly laying claim to possession over the building of the cinema house, which was worth considerably more than Rs. 20,000. Therefore, the case does involve directly a claim in respect of property worth Rs. 20,000 and it satisfies the requirements, of sub Cl. (b) of Art. 133 (1) of the Constitution. AIR 1923 Bom 23 (1) and AIR 1945 Bom 113 Rel. on; AIR 1923 Lah 286 (2), Dissented from. **1956 All L J 196 : 1956 All W R (H C) 819 : AIR 1956 All 348 (349) (Prs 5, 6, 7) (DB).**

——Art. 133 (1) (b)—Involves claim or question affecting property of the value of Rs. 20,000 or upwards—Interpretation of.

The word property in Art. 133 (1) (b) of the Constitution of India has reference to property other than the property which is the subject matter in dispute. Therefore, even if the claim for ejectment may be of the value which is less than Rs. 20,000 the test laid down in Art. 133 (1) (b) is satisfied, if the property from which the tenant is sought to be ejected is of the value of Rs. 20,000 or upwards. A I R 1956 All 348 and AIR 1917 Cal 496, Rel. on. **AIR 1963 Cal 13 (16) (Pt A) (Pr 12) (DB).**

——Art. 133 (1) cl. (b)—Applicability—Decision not affecting claim or property other than claim or property in dispute—Grant of leave.

In order to come under Cl. (b) it is necessary for the petitioner to prove that the decision complained of affects directly or indirecly some claim or question respecting property which is not the subject-matter of the suit. Unless the decision affects a claim or property other than the claim or property in dispute, clause (b) does not come into operation. Otherwise, the provisions of cl. (a) of Art. 133 (1) would be rendered altogether nugatory. AIR 1916 Mad 985 and 50 Cal W N 255 and AIR 1925 P C 159, Rel. on. **AIR 1961 Cal 537 (539) (Pt A) (Pr 4) (DB).**

——Art. 133 (1) (b)—Grant of certificate—Valuation —Value of claim involved and and not value of property is the determining factor.

The petitioner will be entitled to obtain a certificate, under clause (b) of Art. 133 (1), if he can show that the order of Court involves, directly or indirectly, some claim or question, respecting property, additional to, or other than, the actual subject-matter, in dispute, and that the value of such claim or question is Rs. 20,000 or more. It is the value of the claim or question, involved, in the decree or order, and not only the value of the property, which is the determining factor, under clause (b).

Where as a result of the order of the High Court the petitioner had to remove the unauthorized structures and to restore possession of the portion encroached upon, to the respondent.

Held, that the mere fact that the building of the petitioner was worth Rs 20,000 could not lead to the inference that he would suffer detriment to the extent of that amount, by the order of the High Court. As the petitioner had failed to prove that the value of the claim involved, was Rs. 20,000 or more, he was not entitled to get a certificate under clause (b). **AIR 1965 Him Pra 23 (24, 25) (Pt B) (Pr 5).**

——Art. 133 (1) (b)—Applicability—Right of appeal —If dependant on value of property in dispute.

Before sub-clause (b) of Art. 133 (1) can come into play the judgment, decree or final order must involve a claim or question respecting property additional to the subject-matter in dispute and secondly, the total amount or value of the claim or question respecting such other property and of the subject-matter in dispute must be not less than Rs. 20,000. Where the value of the tenancy rights claimed in the disputed property is less than Rs. 20,000, the petitioner will have no right to file an appeal to the Supreme Court by virtue of Art. 133 (1) (b), although the value of the property in dispule was more than Rs. 20,000 A I R 1956 All 348, Not foll.; A I R 1941 Oudh 407 and AIR 1942 Oudh 174 and A I R 1923 Lah 286 (2) and AIR 1918 Mad 632 and AIR 1934 Rang 292 and A IR 1918 Mad 985; AIR 1930 P C 44 Rel. on. **AIR 1961 Him Pra 27 (29, 30) (Pt A) (Prs 15, 16).**

——Art. 133 (1) (a) and (b), Preamble — Construction Principle of—Certificate under Art. 133 (1) (b) when cannot be granted—(Interpretation of Statutes) —(C. P. Code (1908), Pre., Ss. 109, 110).

The accepted principle of construing statutes is that two provisions regulating the same subject should be construed to be consistent with each other. And if this be true of an ordinary statute, it is equally true of such a ruling instrument as the Constitution.

While in Art. 133 (1) (a) the words "the amount or value of the subject-matter of the dispute" are used in Cl. (b) the words used are "involves directly or indirectly some claim or question respecting property of the like amount or value." If the Courts are to construe the words "involves directly or indirectly" in Art. 133 (1) (b) as authorising appeal in cases where the subject-matter of dispute in the Court of the first instance is less than Rs. 20,000 the words "the amount or value of the subject-matter of the dispute in the Court of first instance" in Art. 133 (1) (a) would become nugatory.

Such a construction of the Constitution cannot be accepted and therefore the proper interpretation of the two clauses is that the words "involves directly or indirectly" in Art. 133 (1) (b) should not be read as including the actual subject-matters in dispute in cases, unless they cannot be valued at all.

Where it is not urged that there is any other matter which cannot be assessed in money or it affects some other property whose valuation is not less than Rs. 20,000, indeed the application for leave did not ask for leave on the latter ground, the argument that the applicant should be given a certificate under Art. 133 (1) (b) because of the valuation of the subject-matter in appeal is not less than Rs. 20,000 even though the valuation may not have been in the Court of the first instance, fails.

Held, however, that the value of the properties at the time of the institution of the suit was not less than Rs. 20,000 and consequently the applicants were entitled to a certificate under Art. 133 (1) (a). Case law discussed. **ILR (1955) Hyd 478 : AIR 1955 Hyd 209 (210, 211) (Prs 8, 10) (DB).**

——Art. 133 (1) (b)—Not applicable when suit is for money.

Clause (b) of Art. 133 (1) has no application where the suit is for money and the plaintiff seeks in appeal precisely the same relief both in kind and quantity as in the court of first instance. 21 Ind Cas 783, Rel. on. **1956 M B L J (H C R) 635.**

——Art. 133 (1) (b)—Order of High Court involving directly claim respecting property worth Rs. 20,000 —Case also involving substantial question of law as to interpretation of Constitution, particularly of Art. 19 (1) (b) and Art. 31 (2)—Applicant's right to certificate under Art. 133 (1) (b). See Ibid, Art. 132 (1). AIR 1953 Mad 475 (D B).

——Art. 133 (1) (b) — Under Cl. (b) value of subject-matter in Court of first instance is immaterial. See Ibid, Art. 133 (1) (a). I L R (1965) Cut 623 : A I R 1966 Orissa 89 (DB).

——Art. 133 (1) (b) — Applicability — (C. P. Code (1908), S. 110).

Second paragraph of section 110, C. P. Code, which corresponds to Art. 133 (1) (b) of the Constitution is meant to apply only to cases involving some claim or question to or respecting property other than that in respect to which the claim is brought and which may be taken into account therewith in making up the appealable value, or that it may possibly also apply to cases involving claims incapable of a money valuation such as claims to easements and the like. AIR 1916 Mad 985; AIR 1918 Pat 566, Rel. on. **1953 B L J R 369 : A I R 1953 Pat 377 (378) (Pt B) (Pr 4) (DB).**

——Art. 133 (1) (b) — Jurisdiction—Order passed in exercise of civil revisional jurisdiction — Appeal to Supreme Court—Leave—Grant of—Right to.

Under Art. 133 (1) (b) of the Constitution leave to appeal may be granted from a final order of the High Court passed in exercise of its revisional jurisdiction in a civil proceeding particularly when the order is one of reversal and the dispute is with respect to property not less than Rs. 20,000. AIR 1928 All 202; 13 C L J 688; A I R 1938 Pat 465; AIR 1951 Pat 177, Ref. AIR 1949 P C 239, Rel. on. **30 Pat 1274 : A I R 1952 Pat 450 (452) (Pt A) (Prs 5, 6) (DB).**

——Art. 133 (1) (b) — Applicability — Suit not for specific property but lands which would be affected by result of suit specified — Rs. 10,000 put as notional rather than real value — Plaintiff held not precluded from showing that suit directly or indirectly affected property of value of Rs. 20,000 or above—(Civil P. C. (1908), S. 110).

Held, on facts that the suit was not at all capable of precise valuation from the pecuniary point of view and therefore, such valuation as the plaintiffs put upon it was plainly notional rather than real. The mere circumstances that the plaintiffs valued their suit for jurisdictional purposes at the sum of Rs. 10,000 should not be allowed to stand in the way of their showing that the suit directly or indirectly affected the property of the value of Rs. 20,000 or over. It was case of this character where the subject matter of dispute was not a sum of money or a specific price of property but was something which was incapable of a precise or arithmetical valuation and which would therefore fall outside the ambit of cl. (1) (a) of Art. 133, that Cl. (b) thereof was intended pre-eminently to apply. Where in such cases the applicant succeeds in showing that the judgment of the High Court would affect directly or indirectly some claim of question relating to property of the requisite value, namely, Rs. 20,000 or over, he would be entitled to obtain leave as a matter of right independently of clause (a) or clause (c) provided of course where the judgment of the High Court is one of affirmance with that of the Court below, the High Court further certifies that the appeal involves some substantial question of law. **1956 Raj L W 519 : I L R (1956) 6 Raj 531 : A I R 1956 Raj 169 (170, 171) (Pt B) (Pr 6) (DB).**

——Art. 133 — Civil P. C., S. 110, Para. 2 — "Some claim or question to or respecting property" — See Civil P. C. (1908), S. 110. AIR 1953 Raj 36.

13 (a). Illustrative cases.

——Art. 133 (1) (b)—Applicability—'Involves directly or indirectly' — Suit to have adoption declared—Suit is not covered by Art. 133 (1) (b).

Where in a suit brought by the plaintiff he seeks a declaration as to his adoption by the defendant, there is no claim as to any property (which in this case, was of the value of one lakh rupees or any declaration as to his right to any inheritance. Such a case, therefore, does not fall within the purview of Art. 133 (1) (b) of the Constitution. **1955 A M L J 12 : AIR 1956 Ajmer 15 (15) (Pr 5).**

——Art. 133 (1) (b)—Claim involved in appeal.

Where certain improvements are stated to have been made on the mortgaged property, and indirectly a claim to property worth more than twenty thousand rupees is involved in the appeal the petition for leave to appeal satisfies the requirements of Art. 133 (1) (b) of the Constitution. **A I R 1954 Ajmer 53 (1) (53) (Pt A) (Pr 2).**

——Art. 133 (1) (b)—Applicability—Plaintiff claiming emoluments amounting to less than Rs. 20,000.

Where the case of the plaintiff was that he was compulsorily retired at the age of 55 whereas he was entitled to continue in service upto the age of 60 and he claimed the emoluments for the period of 5 years which in all amounted to Rs. 18,000 the case is not covered by Art. 133 (1) (b). I L R (1959) 1 All 767 : AIR 1959 All 685 (685, 686) (Pt A) (Pr 3) (DB).

——Art. 133—Claim for share not invoking partition —Question is not one with respect to whole property —(Civil P. C. (1908), S. 110).

A claim to a one-fourth share in certain property will not become a question respecting the whole of that property if the establishment of the plaintiff's claim does not involve partition. A I R 1944 P C 65, Rel. on. 1955 All W R (HC) 724 : AIR 1956 All 321 (322) (Pt A) (Pr 2) (DB).

[Overruled on another point in AIR 1957 S C 540.]

——Art. 133 (1) (b) — Valuation of subject-matter—Dismissal of Civil Servant — High Court refusing to quash order—Leave to appeal.

Where the High Court in the exercise of its jurisdiction under Art. 226 refuses to quash an order of dismissal of a Civil Servant, leave to appeal to Supreme Court against that order cannot be granted under Art. 133 (1) (b) because even assuming that the petitioner ultimately succeeds in his appeal to the Supreme Court, that does not vest any right in him to claim any amount of the value of Rs. 20,000. A I R 1960 Andh Pra 194 (195) (Pt A) (Prs 3, 4) (DB).

——Art. 133—Value of subject-matter in mortgage-suit — Decree does not involve claim to or question respecting security—(C. P. Code (1908), S. 110).

The mortgage itself is an immoveable property or an interest in immoveable property; but in a mortgage suit the property which is given as security for loan is not the property in dispute, nor is a decision that the mortgage property be sold in case of non-payment of the mortgage money one involving a claim to or a question respecting the security. The only property in dispute in such a suit is a loan advanced by the mortgagee to the mortgagor and the mere fact that if the loan is not repaid in the time fixed by the decree the mortgaged property will be sold does not raise any question affecting the security. A I R 1949 Pat 448, Rel. on; 50 Cal W N 255; AIR 1954 Cal 289, Disting. Madh B L R 1954 Civil 484 : M B L J 1955 H C R 213 : AIR 1955 Madh B 66 (68) (Pt A) (Prs 8, 9) (DB).

——Art. 133 (1) (b)—Applicability—Suit for redemption of mortgage—Suit dismissed by lower Court as time-barred — High Court reversing the decision — Application for leave to appeal to Supreme Court by purchaser from mortgagee—Mortgage-amount though less than 20 thousand, purchase-price of purchaser more than 20 thousand — Leave to appeal would be granted. A I R 1960 Andh Pra 286 (FB) and A I R 1957 Orissa 109, Rel. on; A I R 1949 Pat 448 and A I R 1951 Mad 723, Disting. 1965 Jab L J 766 : 1965 M P L J 787 : AIR 1966 Madh Pra 92 (94, 95) (Prs 7, 10) (DB).

——Art. 133 (1) (b)— Reversioner's suit challenging adoption and alienation—Suit decreed by trial Court but dismissed in appeal by High Court —Succession depending upon validity of adoption —Suit property worth Rs. 68,000 — Reversioner's held, entitled to certificate for leave to appeal to Supreme Court.

The suit property was an estate of one G of the value of Rs. 68,000. He executed a will in and by which he provided, after creating a series of life estates, that the estate should go over to the puthra pouthra santhathies of his daughter R or her heirs or to her husband S and his santhathi. R adopted the second defendant. Under the will he was entitled to inherit the estate of G as puthra pouthra santhathi of R or the santhathi of S. His succeeding to the estate of G entirely depended on the factum and validity of adoption. In suit by the plaintiffs, reversioners of G challenging adoption and alienation, the trial Court and the High Court in appeal held that there was a factum of adoption, but there was difference of opinion in regard to the validity of adoption. In application by the plaintiffs for leave to appeal to Supreme Court :

Held, that if the required permission was not granted to the plaintiffs they would stand to lose estate worth about Rs. 68,000. The application came within the provisions of Art. 133 (1) (b) of the Constitution. Further, if the application was not granted the claim or question respecting the property involved in judgment would become res judicata or have the effect of estopping the plaintiffs from claiming the rights or agitating the same question in respect of such property in future litigations. I L R 6 Mad 192 and A I R 1928 Mad 1294 and A I R 1956 Raj 169 and A I R 1952 Kutch 29, Foll.

Hence the plaintiffs were entitled to get a certificate for leave to appeal to Supreme Court. ILR (1965) 1 Mad 361; AIR 1966 Mad 197 (200, 201) (Pr 7) (DB).

——Art. 133—Attachment of property by collector for recovery of arrears of income-tax — Writ petition to restrain collector from petitioner's property dismissed — Question of petitioner's title to attached property not gone into and petitioner left to pursue remedy available at law — Held order did not even involve directly or indirectly some claim or question to that property. (1957) 2 Mad L J 567 : ILR (1958) Mad 117 : 70 Mad L W 960 : (1958) 34 I T R 738 : AIR 1958 Mad 151 (153, 154) (Prs 6, 8) (DB).

——Art. 133—Applicability of Cls. (b) and (c).

A dispute arose between an assessee and the Income-tax department, not as regards the amount assessed as payable by the assessee but, as to whether the department could collect it immediately treating the assessee as a defaulter or, should postpone the collection because the assessee was entitled to the benefit of the bar under the proviso to S. 45, Income-tax Act. The assessee claimed there was a restriction by the law obtaining in Ceylon under which he was not allowed to remit his foreign income into the taxable territory during the relevant period, and hence the department had no jurisdiction to treat him as a defaulter. But as it was admitted before the High Court that the restriction imposed by the Government of Ceylon was not absolute, but that remittances could be made if a proper case was made out for such remittances the High Court passed an order allowing an opportunity to the assessee to prove to the satisfaction of the Commissioner of Income-tax that he made bona fide efforts to remit the foreign income into the taxable territory and that notwithstanding such efforts he was not successful, and asked the department to stay its hand for a period of two months for that purpose.

Held, (1) that clause (1) (b) had no application to the case, as there was no dispute directly or indirectly regarding the amount of the tax which the assessee was bound to pay and that the question whether the tax should be paid immediately or should be postponed to a future date was not one that was capable of valuation. A I R 1953 Mad 968, Rel. on.

(2) That on the facts stated there was no substantial question of law involved which would justify the High Court in certifying that the case was a fit one for appeal to the Supreme Court. A I R 1954 Mad 879 (880) (Prs 1, 2) (DB).

—Art. 133—Fact that mortgaged property will be sold if loan is not paid within the time fixed by the redemption decree does not raise any question affecting the security — Hence Art. 133 (1) (b) cannot be invoked by plaintiff. 64 Mad L W 204: (1951) 1 Mad L J 210: AIR 1951 Mad 723 (723, 724) (Prs 3, 5) (DB).

—Art. 133 — Applicability—Subject-matter of dispute — Claim respecting property — Certificate of fitness.

In execution of a decree the petitioners applied to the trial Court for delivery of possession of the leased property after the expiry of the period fixed in the decree The executing Court, without notice to the respondent, ordered delivery and this was duly effected on 22nd July 1951. The respondent thereupon filed a petition for setting aside the ex parte order and, as a consequence to restore possession of the property along with some movables which were represented to have been fixed by him for better enjoyment of the leased premises. He also contended in that petition that the executing Court had no jurisdiction to order delivery of possession of the property without the permission of Rent Controller, under the House Rent Control Order, for the reason that the decree actually passed in the original suit partook of the nature of eviction of a tenant by the landlords. That petition was dismissed by the trial Court, and on appeal by the respondent the High Court upheld the contention of the judgment-debtor. It was against that order that the petitioners sought a certificate to appeal to the Supreme Court.

Held, (1) that the movables were not the subject-matter of dispute under Cl. (1) (a) of the Article.

(2) Under Cl. (1) (b) it is the 'rights and claims' which should be worth Rs. 20,000 and not merely the property to which the rights and claims relate. The case did not fall under Cl. (b) of Art. 133, since the claim or question involved was not shown to be worth more than Rs. 20,000. The controversy about the lease of the immovable property was finally set at rest by an affirming judgment of the High Court in regular appeal holding that the judgment-debtor should deliver the property after 1st May, 1951. All that the judgment-debtor claimed was that the decree for eviction could not be enforced by a civil Court without the express permission of the House Rent Controller. The final order sought to be appealed from did not involve a dispute relating to the property of the value of Rs. 20,000 or more.

(3) It was not a case fit for appeal under Cl. (c) of Art. 133 on the ground that the decision involved a substantial point of law touching the interpretation of the Constitution itself. No conflict did exist on 22nd July 1951 between the C. P. Code and T. P. Act and the House Rent Control Order. Section 4 C. P. Code gives a local Act, local validity and the special procedure therein prescribed validity within its own sphere the result being that the special procedure prescribed in the House Rent Control Order should be followed in preference to the provision in the C. P. Code. The other Act, viz., the Central T. P. Act could not be deemed to have been in force in the State in or about July, 1951, when the execution proceedings involved in the dispute took place. Even otherwise the case was not of sufficient private importance to both the parties in the sense in which it was generally understood so as to deserve consideration on that ground. No other case of the nature giving rise to conflict had arisen during the short interval between 1st April, 1951 and 16th August, 1951 of the alleged repugnancy of the local law before it received the assent of the President. I L R (1951) Mys 423, Rel. on; A I R Commentary on Constitution of India cited. **I L R 1954) Mys 504: AIR 1955 Mys 35 (36, 37, 38) (Pt A) (Prs 5, 6, 7, 8) (DB).**

—Art. 133—Dispute relating to beneficiary interest in debo tar property—No claim made respecting any other property — Cl (b) does not apply.

Where the subject-matter in dispute is only the petitioner's beneficial interest in the Debottor Estate and there is no claim made respecting any property other than that subject-matter Art. 133 (1) (b) is not attracted. Under Art. 133 (1) (b) the property respecting which the claim or question arises must be property in addition to or other than the subject-matter of the dispute. If in a proposed appeal there is no claim or question raised respecting property other than the subject-matter cl. (a) will apply. ILR (1965) Cut 623: **A I R 1966 Orissa 89 (94, 95) (Pt C) (Pr 15) (DB).**

—Art. 133 (1) (b) — Valuation to be determined with reference to property right — Landlord and tenant—Suit for ejectment—Suit held barred by rent control legislation and dismissed by High Court—Leave to appeal to Supreme Court—Valuation.

The words 'like amount or value' in Art. 133 (1) (b) qualify not merely the word 'property' occurring immediately before them, but the entire expression 'some claim or question respecting property' and the valuation must be determined with reference to the property right of the appellant in respect of which prejudice has been caused to him by the judgment appealed against. AIR 1949 Pat 448 and AIR 1950 E P 195 and AIR 1960 Andh Pra 286, Foll.; AIR 1956 All 348 and AIR 1928 Bom 23 (1), Not foll.

Held, that the detriment to the plaintiff arising out of the judgment of the High Court was the deprivation of his right to actual occupation of the disputed house for a period of five years from the date of commencement of Orissa Act 31 of 1958. It was open to the landlord, during the lifetime of the Act, to take steps under the Act for evicting the tenant, and even if the total valuation be calculated on the basis of the income by way of rent for a period of nine years, from 1955 to 1963, it would be far below the limit of Rs. 20,000 fixed in sub-cl. (b) of Art. 133 (1). Leave to appeal, therefore, could not be granted. AIR 1943 All 238, Applied. **I L R (1962) Cut 163: 28 Cut L T 159: (1962) 4 O J D 297: AIR 1962 Orissa 154 (155, 156, 157) (Pt A)(Prs 5, 6, 7, 8, 9) (DB).**

—Art. 133 (1) (b)—Applicability and scope—Claim regarding reinstatement in service — If one respecting property—(Civil P. C. (1908), S. 110).

For the purpose of the application of Art. 133 (1) (b) the judgment of the High Court must involve directly or indirectly some claim or question respecting property of more than Rs. 20,000 Where the claim of the workers before the tribunal was a claim for reinstatement in service with or without compensation for the days they were out of employment, the claim cannot be said to be one respecting 'property' and Art. 133 (1) (b) is not applicable. **1956 B L J R 444: (1957) 2 Lab L J 517: AIR 1958 Pat 26 (27) (Pt A) (Pr 2) (DB).**

—Art. 133 (1) (b) — Writ application with respect to jagir whose annual income exceeded Rs. 20,000—Case held fell under Art. 133 (1) (b).

Where a writ application (other than Habeas Corpus) challenging the validity of the Rajasthan Land Reforms and Resumption of Jagirs Act, 1952, was with respect to a jagir, the annual income of which was well over Rs. 20,000:

Held that while there may be doubt as to the valuation of the subject-matter of the dispute in the High Court, for the dispute was about the validity of the Act and it may not be possible to value the subject-matter of the dispute in money, there is no doubt that the judgment of the High Court involved directly or indirectly a question respecting property of the value of Rs. 20,000 and over. In this view of the

matter, Art. 133 (1) (b) applied to the case. I L R (1955) 5 Raj 321 : 1955 Raj L W 37 : AIR 1955 Raj 56 (57) (Pt B) (Prs 8, 9) (DB).

——Art. 133—Suit for partition of joint family house —Value of house exceeding Rs. 20,000 but value of plaintiff's share below that amount—Leave cannot be had either under Cl. (a) or Cl. (b). 1951 R L W 324 : 1951 B L R (Raj) 11 : I L R (1951) 1 Raj 358 : AIR 1952 Raj 11 (11, 12) (Prs 3, 4) (DB).

14. Grant of leave to appeal.

(a) Clause (c) applies only to "judgment, decree, or final order."

(b) Questions must be of great public or private importance.

(i) Questions that are of great public or private importance.

(ii) Questions that are not of importance.

(c) Questions on which there is conflict of decisions.

(d) Leave, if can be granted to both parties.

(e) Leave with conditions.

(f) Effect of granting leave to appeal.

14. Grant of leave to appeal.

●——Art. 133—Application for leave to High Court —Construction. See Supreme Court Rules (1950), O. 13, R. 2. AIR 1964 S C 215.

●——Arts. 133 (1) (c) and 134 (1) (c) — "Fit one for appeal"—Certificate of fitness for appeal—Exercise of discretion.

The Supreme Court has general powers of judicial superintendence over all Courts in India and is the ultimate interpreter and guardian of the Constitution. It has a duty to see that its provisions are faithfully observed and, where necessary, to expound them. In the case of clause (c) both of Art. 133 (1) and Art. 134 (1), the only condition is the discretion of the High Court but the discretion is a judicial one and must be judicially exercised along the well-established lines which govern these matters. If it is properly exercised on well-established and proper lines, then there would be no interference except on very strong grounds. But if, on the face of the order, it is apparent that the Court has misdirected itself and considered that its discretion was fettered when it was not, or that it had none, then the superior Court must either remit the case or exercise the discretion itself. Nar Singh v. State of Uttar Pradesh, 1954 Mad W N 741 : (1954) 2 Mad L J 122 : 1954 S C J 570 : 1954 All W R 547 : 1954 All L J 438 : 1954 S C A 642 : 1955 S C R 238 : 1954 Cri L J 1167 : AIR 1954 S C 457 (459) (Pt B) (Pr 6).

——Art. 133 (1) (c) — Certificate of fitness — (Civil P. C. (1908), S. 109).

The mere fact that the question involved is of considerable public importance is not sufficient to warrant the granting of a certificate under Art. 133 (1) (c) when there is no substantial question of law involved. AIR 1956 Ajmer 70 (71) (Pt C) (Pr 4).

——Art. 133 (1) (c) — House destroyed by fire — Ground floor partly rebuilt only some of arches remaining intact utilized in reconstruction—Two entirely new floors added — Question whether new construction was "mere improvement or structural alteration" for fixing standard rent — Both Courts deciding construction to be mere improvement and fixing rent accordingly — Recurring loss to applicant, though amount involved small — Certificate granted under Art. 133 (1) (c). 1953 A M L J 8 : AIR 1958 Ajmer 10 (11) (Prs 4, 7).

——Art. 133 (1) (c)—Certificate of fitness—Suit under O. 21, R. 63, Civil P. C.—Temporary injunction under O. 39, R. 1 granted against defendant during pendency of suit — Injunction not unjustified in the circumstances — Leave to appeal to Supreme Court against order granting injunction — Case held not fit one for appeal under Art. 133 (1) (c) — Civil P. C. (1908), S. 109. AIR 1950 Ajmer 58 (59) (Prs 1, 4).

——Art. 133 (1)— Certificate of fitness — Decision of High Court in writ proceeding holding that order of reversion of petitioner was invalid on basis of a Railway Board's circular—Mere fact that case involves interpretation of Railway Circular which affects a large number of persons does not entitle petitioner to a certificate unless he is further able to show that some common principle of law governing such cases is involved. I L R (1964) 1 All 397 : AIR 1964 All 125 (126, 127) (Pt C) (Pr 4) (DB).

——Art. 133—Amount involved small — (C. P. Code (1908) S. 109).

If the amount involved in the appeal is small it would be oppressive if the Court granted leave and involved the respondent in the cost of contesting the case in the Supreme Court. 4 Moo Ind App 353 (PC), Foll. 1957 All L J 880 : 1957 All W R (H C) 880 : AIR 1958 All 322 (Pr 3) (DB).

——Art. 133 (1) (c)—"Certify"—Meaning of.

The term certify used in Art. 133 is a strong term. The High Court must be convinced of the substantiality of the point of the fitness of the case before it can certify under Art. 133. AIR 1959 Andh Pra 359 (360) (Pt C) (Pr 2) (DB).

——Art. 133 (1) — Scope — Grant of certificate — Discretion of High Court.

No doubt, sub-clauses (a) and (b) of clause (1) of Art. 133 indicate cases where the party becomes entitled to leave to appeal as of right when certain facts and conditions are found to exist but the same cannot be said of sub-clause (c) for it is a case where the grant of certificate depends mainly on the discretion of the High Court which is to be exercised judicially. Unless the Court is satisfied that the case involves matters or questions of importance and considerable difficulty which ought to be finally decided by the highest Court of the land the High Court would withhold its land from granting a certificate. The term 'certificate' used in the article is a strong term requiring the High Court to be satisfied of the fitness of the case for an appeal to the highest Court of the land. 1959 Andh L T 61.

——Art. 133 (1) (c)—Grant of leave should be dealt with on facts and circumstances of case.

The question of grant of leave to appeal to the Supreme Court must be dealt with on the facts and circumstances of each case. It is neither possible nor desirable to crystallise the rules relating to the exercise of the Court's discretion in the matter under Art. 133 (1) (c). A I R 1944 F C 23, Foll. ILR (1955) 7 Assam 399 : A I R 1956 Assam 1 (2) (Pt B) (Pr 5) (DB).

——Art. 133 — Certificate of fitness. See Civil P. C. (1908), S. 109. A I R 1955 N U C (Assam) 2309 (DB).

——Art. 133 (1) (c) — Applicability — Latter part of Cl. (c) applies only to Cls. (a) and (b) — Jurisdiction of High Court is very wide — No hard and fast rules as to how discretion should be exercised — Certain considerations illustrated. AIR 1955 N U C (Bhopal) 5852.

——Art. 133 — Petition for grant of certificate.

The scope of a review petition and that of a petition for grant of certificate under Art. 133 of the

Constitution are not identical. A I R 1954 Bilaspur 7 (2) (8) (Pt A) (Pr 2).

——Art. 133 — Substantial question of law—Exercise of discretion under S. 33, Industrial Disputes Act (1947) — Interference by Appellate Tribunal on the ground that if discretion had been vested in it, it would have exercised it differently. See Industrial Disputes (Appellate Tribunal) Act (1950), S. 7. A I R 1954 Bom 342 (DB).

——Art. 133 (1) — Civil P. C. (1908), S. 100 — Question of fitness has no connection whatever with question of 'substantive question of law' — Art. 133 cannot be compared with S. 100, Civil P. C. ('64) 68 Cal W N 379.

——Art. 133 (1) — Applicability — Conditions for invoking Art. 133 (1) — Circumstance that case has not been before two Courts including High Court, no bar.

In order that Art. 133 (1) may be invoked it is not necessary that there should be two Courts, namely the Court of first instance and a Court sitting on appeal which would be the High Court. Sub-clauses (a), (b) and (c) are clearly disjunctive and the words 'and where the judgment, decree or final order appealed from affirms a decision of the Court immediately below in any case other than a case referred to in sub-cl. (c)' go to show that where the High Court certifies under sub-cl. (c) that the case is a fit one for appeal to the Supreme Court, the other considerations will not apply. The High Court is competent to grant a certificate under any of the sub-clauses (a), (b) and (c) and the effect of the portion quoted is that where the High Court certifies under clause (a) or (b) in a matter where the judgment, decree or final order in appeal is of an affirmative nature, the appeal involves some substantial question of law. A case may be fit one for appeal to the Supreme Court quite apart from the question as to whether it involves a substantial question of law. 67 Cal W N 743 : A I R 1963 Cal 433 (437, 438) (Pt B) (Pr 15) (DB).

——Art. 133 (1) (c) — For applicability there need not have been Court of first instance—Judgment of Revenue Board affirmed by High Court—Certificate can be granted.

The whole object of incorporating the paragraph after cl. (c) in Art. 133 (1) is to provide that it is only in cases where the decision of the Court immediately below is affirmed by any judgment, decree or final order or a High Court in a civil proceeding, that it is necessary for the High Court to further certify in addition to the certificates as to valuation test that the appeal involves some substantial questions of law. This paragraph further makes it abundantly clear that it has no application to a case coming under cl. (c) of Art. 133 (1). The words 'in any case other than a case referred to in sub-cl. (c)' make that clear. For the purpose of attracting the provisions of Art. 133 (1) (c) it is not a condition precedent to the applicability of that clause that there has to be a Court of first instance in the case of a regular Court before the provisions contained in Art. 133 (1) (c) can be availed of or invoked. If the judgment of the High Court affirms the decision of the Revenue Board certificate can be granted under Art. 133 (1) (c). A I R 1955 S C 830, Rel. on. (1964) 54 I T R 288 : A I R 1963 Cal 339 (391, 392) (Pt B) (Pr 6) (DB).

——Art. 133 — Certificate of fitness — Principles of natural justice — Supersession of Municipal Committee under S. 238, Punjab Municipal Act, without notice—Validity—Fitness of case for appeal—(Municipalities—(Civil P. C. (1908), S. 109).

The Punjab Municipal Act, as it stands, while making it obligatory for the Government under S. 16 to give prior notice to a member before removing him has not made a similar provision in the case of the supersession of the entire Committee under S. 238 of the Act. This may be a lacuna in the law, which obviously, can be remedied only by the Legislature. But this cannot make the case a fit one for appeal. The Court has to administer the law as it stands and it is not possible to go beyond the scope of the statute by having recourse to notions of principles of natural justice. A I R 1956 Him Pra 25 (25, 26) (Pt A) (Prs 2, 3).

——Arts. 133 and 226 — Remedy by suit—Dismissal of application under Art. 226 — Expensiveness of remedy—Ground for leave to appeal.

Where a writ petition under Art. 226 is disposed of summarily on the ground that the matter involved can be gone into only in a regular suit after recording the evidence of the parties, the fact that a regular suit would mean considerable expenditure of money would not entitle a petition for leave to appeal to succeed. AIR 1956 Him Pra 25 (25, 26) (Pt B) (Pr 3).

——Art. 133 — Certificate of fitness. See Civil P. C. (1908), S. 109 (c). A I R 1954 Him Pra 81.

● ——Art. 133 (1) — "An appeal shall lie to the Supreme Court"—(Civil P. C. (1908), S. 109).

The expression "an appeal shall lie to the Supreme Court" as used in S. 109, Civil P. C. or in Art. 133 of the Constitution of India means in the context of those provisions no more than this; that if a person has obtained the requisite certificate, he can go to the Supreme Court in appeal and the Supreme Court shall have jurisdiction to entertain the appeal. A distinction has to be drawn between "the power of appeal to the Supreme Court" and "the authority of the High Court to grant leave to do so". That expression has no reference at all to the grant or refusal of leave to appeal under those provisions. From the fact a person acquires a right of appeal to the Supreme Court after having obtained a certificate under sub-clause (c) of clause (1) of Art. 133 it cannot reasonably be inferred that he is entitled to claim that leave to appeal under this sub clause must be given to him as a matter of right. A I R 1927 P C 242, Expl. AIR 1952 Punj 103 (FB), Criticised. Udayabhan v. Firm Shankar Lal, I L R (1952) Madh B 536 : A I R 1953 Madh B 209 (214) (Pt E) (Pr 13) (FB).

——Art. 133 (1) (a) and (b) — Order on Originating Summons under O. 13, of the Original Side Rules of Madras High Court construing a deed of trust—Finality — Appellate judgment in Letters Patent Appeal not one of affirmance—Certificate of fitness for appeal to Supreme Court can be granted.

Under O. 13 of the Original Side Rules of the Madras High Court an application by Originating Summons can be made for construction of a trust deed without an administration of the trust. The determination in the application is "final" so far as the Court is concerned and will be binding on the parties, nothing is left for determination in the Originating Summons. A decree follows the judgment. The judgment will be one coming under Art. 133 of the Constitution of India. Where the judgment was taken on appeal under Cl. 15 of the Letters Patent wherein the judgment was not one of affirmance a certificate under Art. 133 (1) (a) and (b) of the Constitution will issue. 1964 Mad W N 128 : (1964) 1 Mad L J 271 : 77 Mad L W 82: ILR (1964) 1 Mad 904 : AIR 1964 Mad 423 (424) (Prs 3, 4) (DB).

——Art. 133 (1), Cls. (a), (b) and (c) — Difference between Cls. (a) and (b) on the one hand and Cl. (c) on the other.

The difference between Art. 133 (1) (a) and (b) on the one hand and Art. 133 (1) (c) on the other is

fairly obvious. A certificate under sub-cls. (a) and (b) of Art. 133 (1) may be obtained as of right if the conditions specified therein are fulfilled. But the granting of a certificate under Cl. (c) would be completely and solely at the discretion of the High Court. 1964 Mad W N 38 : ILR (1964) 1 Mad 685 : (1964) 2 Mad L J 853 : (1964) Mad L J (Cri) 582 : A I R 1964 Mad 166 (167) (Pt A) (Pr 4) (DB).

——Art. 133 –Consent order—Leave to appeal.

Where an order passed on a petition under Art. 226 was based on admission by the petitioner of the necessary facts from which the order followed as an inevitable result :

Held, that the order was, for all practical purposes a consent order and that a certificate for leave to appeal could not be granted under Art. 133 against the order. 23 Cut L T 245 : I L R (1957) Cut 328 : AIR 1958 Orissa 18 (19, 20) (Pt B) (Prs 6, 8) (DB).

——Art. 133 — Ground which should have been pressed but was not pressed before the High Court from whose judgment leave is sought — No leave can be granted on such ground. A I R 1955 Pat 447 (4-5) (Pt B) (Pr 7) (DB).

——Art. 133—Scope — Leave to appeal to Supreme Court —Grant of — Fit case — Issue of writ under Art. 226 —Exercise of discretion—If excluded from category of fit cases for appeal.

Although the granting of a writ under Art. 226 of the Constitution is a matter of discretion with the High Court, it does not follow that the matter of the exercise of discretion is not a fit case for appeal to the Supreme Court under Art. 133. Every discretional power is exercised judicially and it cannot be held that no leave can be granted for appeal to the Supreme Court under Art. 133, where the High Court has declined to exercise its discretionary power. Each case has to be considered on its merits and cases involving the question of the issue of a writ under Art. 226 have been held to be fit ones for appeal to Supreme Court. A I R 1952 Pat 463 (465, 466) (Pt A) (Pr 5) (DB).

■ ——Art. 133 (1) (c) — Certificate of fitness for appeal—Case held not a fit one for appeal to Supreme Court.

In writ petition by certain panchas of a Gram Panchayat against their removal from office under S. 102 (2) of the Punjab Gram Panchayat Act, the single Judge found that the orders were made by the Director of Panchayats without issuing any show cause notice to those panchas and without any enquiry worth the name and that those orders were glaringly defective. In the Letters Patent Appeal therefrom, the Government took up the position that an enquiry was actually made by the appropriate authority. The Letters Patent Bench upheld the decision of Single Bench observing that no such contention was raised before the Single Bench. The attention of the Bench was not drawn to certain endorsements alleged to mean that the panchas were called upon to show cause. In application for certificate under Art. 133 (1) (c).

Held, that the fact that the attention of the Bench was not drawn to these endorsements did not furnish a valid ground for certifying the case to be a fit one for appeal to the Supreme Court. State of Punjab v. Bijey Singh, A I R 1964 Punj 109 (110) (Prs 6, 7) (FB).

——Art. 133—Award by Tribunal constituted under U. P. Town Improvement Act, 1919 — Decision of High Court in appeal against award under U. P. Town Improvement (Appeals) Act, 1920—High Court cannot grant certificate under Art. 133 to appeal against the decision. 64 Pun L R 377 : A I R 1962 Punj 373 (374, 375) (Pt B) (Pr 6) (DB).

——Art. 133 (1) (c) — Certificate of fitness — Deposit of security — High Court's power to reduce amount or dispepse with it — High Court Rules and Orders (Punjab), Vol 5, Chap. 8-A, R. 3 — Civil P. C. (1908), O. 45, R 7 (1) (a)—Supreme Court Rules (1950), O. 12 R. 1-A. I L R (1961) 2 Punj 412 : 63 Punj L R 455 : AIR 1961 Punj 397 (398) (Pr 6) (DB).

——Art. 133 (1) (c)—Substantial question of law — Question of expenses likely to be incurred by respondent in defending appeal—Consideration of.

When a case involves the decision of a substantial question of law and when that decision is likely to affect a large number of persons the High Court would not be justified in declining to grant a certificate of fitness on the ground only that some expenditure is likely to be incurred by the respondent. The venue of appeals has now been shifted from London to New Delhi and a person who was unable to defend an appeal in the Privy Council owing to the enormity of expenditure may find little or no difficulty in defending it in the Supreme Court. 61 Pun L R 38 : A I R 1959 Punj 192 (193) (Pr 3) (DB).

——Art. 133—Money value of matter in dispute very small—Leave should not be granted.

Where the money value of the subject matter in dispute is only about Rs. 60, on that ground alone, it can be said to be not a fit case in which leave to appeal should be granted. 4 Moo Ind App 353 (PC), Rel. on. 1955 Cri L J 747 : AIR 1955 Vin Pra 17 (19) (Pt D) (Pr 11).

14 (a). Clause (c) applies only to "judgment, decree or final order."

■ ——Arts. 133 (1) (c), 132 (1)—'Civil proceeding' — Proceeding taken for recovery of tax is civil proceeding —Income-tax proceeding—Writ petition—High Court can grant certificate for appeal to Supreme Court.

Proceedings before the High Court on a petition under Art. 226, in the matter of recovery of Income-tax are 'civil proceedings' within the meaning of Art. 133 (1) (c) and the High Court has power to issue the certificate under Art. 133 (1) (c). The power to issue a certificate under Art. 133 may be exercised only in respect of a judgment, decree or final order of a High Court in a civil proceeding and the order passed by the High Court disposing of the petition filed by the assessee for the issue of a writ under Art. 226 is a judgment. If rights of the tax payer are infringed in a manner not warranted by the statute a proceeding to obtain relief whether it is from the tribunal set up by the taxing statute, or from the civil Court would be regarded as a civil proceeding. A civil proceeding is one in which a person seeks to enforce by appropriate relief the alleged infringement of his civil rights against another person or the State, and which if the claim is proved would result in the declaration, express or implied of the right claimed and relief such as payment of debt, damages, compensation, delivery of specific property, enforcement of personal rights, determination of status etc. There is under the Constitution a right of appeal to the Supreme Court with special leave from the adjudications of all Courts and tribunals (except tribunals constituted by or under laws relating to Armed Forces). The infringement of civil right may be in purported enforcement of a taxing statute. Section 66 A (2) of the Income Tax Act 1961 under which an appeal lies to the Supreme Court from any judgment delivered on a reference made under S. 256 of the Act in any case which the High Court certifies to be a fit one for appeal to the Supreme Court is not an exception to that rule. Where a revenue authority seeks to levy tax or threatens

action in purported exercise of powers conferred by an Act relating to revenue, the primary impact of such an act or threat is on the civil rights of the party aggrieved and when relief is claimed in that behalf it is civil proceeding even if retief is claimed not in a suit but by resort to the extraordinary jurisdiction of the High Court under Art. 226. A proceeding taken for recovery of a tax is not "other proceeding" under Art. 132 (1) but such a proceeding is a civil proceeding within the meaning of Art. 132 (1). Narayan Row v. Ishwarlal Bhagwandas, (1965) **2 S C W R 697 : (1965) 2 S C A 634 : 68 Bom L R 85: (1965) 57 I T R 149 : (1965) 2 S C J 359 : (1965) 2 I T J 264 : A I R 1965 S C 1818 (1820, 1822, 1823) (Pt A) (Prs 6, 13, 16).**

● **—Art. 133 — 'Judgment' — Questions of law referred to High Court under S. 108 (1) of Saurashtra Income-tax Ordinance — No certificate for leave under Art. 133 can be granted.**

The questions of law which were referred for the decision of the High Court under S. 108 (1) of the Saurashtra Income-tax Ordinance were in the exercise of its advisory or consultative jurisdiction and the provisions of the Constitution in regard to the certificate for leave to appeal to the Supreme Court could not therefore in terms apply, and no certificate for leave to appeal against the judgment of the High Court could be granted. Commr. of I.-T. v. Patel & Co., (1959) 37 ITR 412 : AIR 1960 S C 278 (286) (Pt A) (Pr 7).

——Art. 133 (1) (c)—Final order—(Tenancy Laws—Calcutta Thika Tenancy Act (2 of 1949), S. 28).

By reason of the form in which sub-clause (c) of Art. 133 (1) has been expressed, it is no longer possible for a High Court to grant leave to appeal to the Supreme Court in any case in which the order sought to be appealed from is not a final order.

The original decree for ejectment was passed before the Thika Tenancy Act came into force. After the enactment of the Act, the tenant made an application under S. 28 for a rescission of the decree and the Munsif, dealing with the application by reference to the definition of 'thika tenant' as it then stood, held that the tenant was not a thika tenant at all. In revision the High Court held, in view of the amendments which had in the meantime came into force, that the tenant was a thika tenant and remanded the case.

Held, that the order of remand was not a final order and that therefore no leave under Art. 133 (1) (c) could be granted. **58 Cal W N 774 : AIR 1955 Cal 98 (99, 100) (Prs 2, 6) (DB).**

—— Art. 133 — Scope — Certificate under clause (c) cannot be given in respect of order which is not final—'Final order,' meaning of—Provisions in Civil P. C. (1882) considered—Scope and applicability of S. 109, Civil P. C (1908) — Purpose and scope of adaptation—(Civil P. C. (1908), S. 109).

Under clauses (a) and (b) of S. 595 of the Civil P. C. of 1882 an appeal lay to the Privy Council from 'any final decree' but under cl. (c), an appeal lay from 'any decree', if the High Court certified the case to be a fit one for appeal. The decrees appealable under each of the three clauses were separately described and in the case of those appealable under clause (c), no qualifying word was used. By S. 594, 'decree' was defined as including 'judgment and order'.

The effect of those several provisions was that under clauses (a) and (b) of S. 595, an appeal lay from any final decree, final judgment or final order, but in order to be appealable under cl. (c), a decree or judgment or order was not required to be final.

The Code of 1908 maintained the method of giving a description of the appealable orders in each clause and also the difference between the first two clauses and the third. Under cls. (a) and (b) of S. 109 of that Code, an appeal lay from 'any decree or final order', while under cl. (c), an appeal lay from 'any decree or order' provided the High Court certified the fitness of the case for appeal. The decree or order was not required to be final.

Article 133 of the Constitution has adopted a new description of appealable decrees and orders and a new method of applying it to the three clauses. The difference which is material is that for decrees or orders appealable under all the three clauses, a common expression, 'judgment decree or final order', has been used and it has been placed at the beginning of Art. 27 so as to govern all the clauses. The distinction which marked cl. (c) in this regard under the Codes of 1882 and 1908 has thus been removed. In order to be appealable under any of the clauses of Art. 133 (1), the decision must be a 'judgment, decree or final order' and not any the less so under (c).

The effect of the changes is this clauses (a) and (b) of Art. 133 (1) do not contemplate orders which do not terminate suit or proceeding. By use of words 'judgment, decree or final order' nothing more than 'decree or final order' has been included.

In view of the fact that the expression 'judgment, decree or final order' is applicable equally to all the three clauses of the Article, no separate argument under cl. (c) is possible. If the expression 'judgment, decree or final order' does not cover an order which is not final in the sense of not terminating the suit or proceeding, no certificate can now be given under cl. (c) for an appeal from such an order. The only scope for the application of cl. (c) which is now left is that, under it, a certificate can be given in cases where there is a decree or final order fit for appeal, but the valuation requirement is not satisfied.

The word 'judgment' was not intended to bring in orders, not final. The orders which do not terminate the suit or proceeding are not within the contemplation of that article. Case law referred.

Section 109 (c), Civil P. C., does not prevail over Art. 133 (1).

The second appellate Court agreed with the lower appellate Court on the question of title, but reversed its finding on the question of adverse possession and, in the view that the question of limitation had not been properly decided, remanded the case to the lower appellate Court for disposal after coming to a proper decision on the question. The orders of the Courts below were set aside. "If", the High Court directed, "the suit is not barred by limitation, the plaintiff's suit should be decreed for such damages as may be found admissible in law. If the suit is barred by limitation, the plaintiff's suit must be dismissed." The formal order drawn up on the judgment was an order of remand :

Held, that the order was not a final order.

Article 135 has no application to the right of appeal from decrees or orders in a suit. To such a matter Art. 133 applies.

It is impossible to hold that the jurisdiction contemplated by Art. 135 is a jurisdiction to entertain appeals from judgments, decrees or orders which fall outside Arts. 133 and 134 upon those Articles being applied.

Scope of Art. 135 considered.

Purpose and scope of adaptation of Ss. 109 and 110, Civil P. C., discussed. **58 Cal W N 31 : ILR (1955) 2 Cal 411 : AIR 1954 Cal 424 (426, 427, 429, 430, 431, 432) (Prs 2, 6, 7, 8, 20, 24, 25, 30, 32) (DB).**

——Art. 133 (1) (c)—"Case" in cl. (c) has reference to judgment, decree or final order.

The preamble portion as worded in Art. 133 (1) is applicable to the word "case" in sub-cl. (c). Thus the word "case" has reference to the judgment, decree or final order. It is only such cases as are contemplated earlier, either a judgment, decree or final order, that can come within the operation of sub-cl (c). ILR (1953) Mad 65 : 1951-2 Mad L J 479 : 64 Mad L W 934 : 1951 Mad W N 811 : AIR 1951 Mad 1051 (1054) (Pt B) (Pr 5) (DB).

[Overruled on another point in AIR 1957 SC 540].

14 (b). Questions must be of great public or private importance.

(i) Questions that are of great public or private importance.

(ii) Questions that are not of importance.

14 (b). Questions must be of great public or private importance.

——Art. 133 (1) (c) — Certificate of fitness — (Civil P. C. 1908), S. 109 (c)).

Under cl. (c) the appeal depends solely on the discretion of the High Court. The discretion is, however, to be exercised on accepted principles of justice, equity and good conscience. The certificate of fitness under cl. (c) is intended to meet special cases. The question involved must be of some general or public or private importance. At the same time, if the question is one of private importance, it will not be a fit case under this clause if the points of law are not substantial. AIR 1957 All 28 (36, 37) (Pt J) (Pr 17) (DB).

——Art. 133 (1) (c) — Grant of leave to appeal — Question of law—Necessity of—Wide discretion of High Court.

Clause (c) of Art. 133 (1) does not require that there must of necessity be questions of law before leave to appeal may be allowed under this clause. A question of general importance may be one of fact and if it can be found to be of general importance it will fall within the purview of cl. (c) of Art. 133 and afford ample justification for allowing leave. Under cl. (c) the discretion of the Court is very wide. It is for the Court deciding the case to certify that the case is a fit one for appeal. The Constitution has designedly not placed any restrictions in express terms on the powers of the Court in this regard. ILR (1955) 7 Assam 399 : AIR 1956 Assam 1 (2) (Pt A) (Pr 4) (DB).

——Art. 133 (1) (c) — Certificate of fitness — Point involved not of great public or private interest—Whether the fact that there is substantial question of law is sufficient to issue a certificate of fitness. See Civil P. C. (1908), S. 109 (c). AIR 1953 Assam 21.

——Art. 133 (1) (c)—Certificate of fitness for appeal —When can be granted — Tests for decision — Conflict of views on question of law settled by Privy Council decision — Certificate cannot be granted, though question is of public importance.

For a case to fall under Art. 133 (1) (c) the following requirements are necessary. The question of law involved must be one of great public importance. By this it is meant that the question must be capable of arising frequently in Courts and must involve many parties in litigation. The second test would be that the question involved affects the rights of parties substantially in the sense that apart from mere details regarding procedure in trials substantial property rights or other personal rights of citizens are involved.

But, merely because the question involved is held to be a question of great public importance, a litigant is not entitled as of right to a certificate under Art. 133 (1) (c) unless he further satisfies that the case is a fit one for appeal to the Supreme Court. A litigant is entitled to a certificate if, for example, he is able to satisfy that the law on the subject is not well settled or that there are differing views of the various High Courts which need reconciliation by a pronouncement by the Supreme Court.

Where conflict of views on a question has been settled by a Privy Council decision, the certificate of fitness for appeal cannot be granted although the question involved is of great public importance and also affects the rights of parties substantially. 76 Mad L W 80 : (1963) 1 Mad L J 209 : AIR 1963 Mad 222 (224) (Pr 8) (DB).

—Art. 133 (1) (c) — Scope — Question of general importance but not of sufficient importance to respondent—Leave—Grant of.

It is in the discretion of the High Court to certify under Art. 133 (1) (c) that the case is a fit case for appeal. In such cases it is not improper to consider whether the question is equally important to both parties. After so considering the High Court may refuse to certify the fitness of the point in issue, though it appears to be one of general importance, if it is not of sufficient importance to the respondents to warrant the High Court in putting them to the expense of an appeal to the Supreme Court. AIR 1923 Mad 232 (FB), Foll. 1960 Mad W N 419 : 73 Mad L W 343 : AIR 1960 Mad 509 (510) (Prs 3, 4) (DB).

——Art. 133 (1) (c)—Certificate—Leave to appeal to Supreme Court—Grant of—Conditions for.

To justify the grant of a certificate of fitness for appeal to the Supreme Court under Art. 133 (1) (c) of the Constitution the wording of which is in exactly the same terms as S. 109 (c), Civil P. C., the existence of a substantial question of law arising between the parties which might be sufficient for purposes of S. 110, Civil P. C., is not enough. The case must be one involving questions of public importance or one in which there may be important precedents governing numerous other cases or in which, while the dispute is not expressly measurable in money, it is of great public or private importance, by "private importance" being meant importance to both parties to the litigation and not only to one of them. AIR 1934 All 58; AIR 1921 P C 25; AIR 1936 Rang 65; AIR 1944 F C 24 (2); AIR 1924 Mad 231; AIR 1947 Lah 304 (FB); AIR 1950 Mad 215, Rel. on. ILR (1951) Mys 423.

——Art. 133 (1) (c)—Certificate of fitness—When to be granted—(Civil P. C. (1908), S. 109).

The power vested on the High Courts under Art. 133 (1) (c) of the Constitution should be sparingly used to meet particularly hard cases. There may be cases where the point in dispute is not measurable in money, and yet the decision may have far-reaching results. But if there is no such point of great public or private importance, no certificate will be granted. 21 Cut L T 292 : I L R (1955) Cut 25 : A I R 1955 Orissa 71 (73) (Pt E) (Pr 5) (DB).

——Art. 133 (1) (c)—Certificate of fitness—Questions of law of wide public and private importance involved — Leave granted — (Constitution of India, Arts. 362 and 363)—Orissa Merged States (Laws) Act (4 of 1950), S. 7 (h)—Tenancy Laws—Orissa Tenants' Protection Act (3 of 1948), S. 2 (c) and (g). AIR 1955 N U C (Orissa) 3972 (DB).

——Art. 133 (1) (c)—Question merely academic—No leave to appeal under Art 133 (1) (c) can be granted. 63 Pun L R 212 : A I R 1961 Punj 383 (385) (Pt D) (Pr 10) (DB).

——Art. 133 (1) (c) — Certificate of fitness — Question of private importance, meaning of.

A question of private importance means a question of private importance to both parties to the litigation

and not only to one of them. Hence where the question involved is one of private importance to one of the parties to the litigation only, the case is not a fit one for appeal to the Supreme Court. 28 Ind App 11 (PC) and A I R 1923 Mad 232, Foll. 58 Punj L R 361 : I L R (1956) Punj 1173 : A I R 1956 Punj 228 (230) (Pt C) (Pr 7) (DB).

[Overruled on another point in AIR 1957 S C 540.]

——Art. 133 (1) (c) — Applicability — Test — Point whether S. 25-A, Income-tax Act contemplates physical division—Decision thereon — Case if fit for appeal to Supreme Court—Civil P. C. (1908), S. 109 —Income-tax Act (1922), S. 25-A.

The test to determine whether the case falls within Art. 133 (1) (c) of the Constitution of India is to see whether the point involved is of great public or private importance and is of such nature that a decision thereon might result in a precedent governing numerous cases.

The point whether before an Income-tax Officer can pass an order under S. 25 A of the Income-tax Act, there must be a physical division of the joint Hindu family property, is of such a nature that a decision thereon will result in a precedent governing numerous cases. That being so, the case comes within Art. 133 (1) (c) of the Constitution of India and S. 109 (c) of the Code of Civil Procedure. (1950) 18 I T R 1011 : ILR (1950) Punj 363 (DB).

——Art. 133—Income-tax Act, Ss. 66-A (2), 66, 10 (2) (15) — Certificate of fitness — Substantial question of law not sufficient — Question must be one of great public or private importance — Question whether lease money paid to Government for land taken on lease in connection with lime-business amounted to capital expenditure or revenue expenditure within S. 10 (2) (15) — Held certificate should be granted. See Income-tax Act (1922), S. 66-A (2). A I R 1964 Raj 277.

● ——Art. 133 (1) (c)—Certificate under — Requirements—Civil P. C. (1908), S. 109 (c).

If a case involves a question of great public or private importance, certificate for leave to appeal under Art. 133 (1) of the Constitution, and S. 109 (c), Civil P. C. can be given, even though the valuation is less than that prescribed by clauses (a) and (b) of Art. 133 (1) of the Constitution of India, and S. 110 of the Civil P. C,, and the point in dispute is measurable by money. Case-law discussed. Gulab Bai v. Manphool Bai, 1953 Raj L W 129 : I L R (1952) 2 Raj 755 : A I R 1953 Raj 42 (44, 45) (Pt A) (Pr 13) (FB).

● ——Art. 133 (1) (c)—Mere existence of substantial question of law—Civil P. C. (1908), S. 109 (c).

A mere existence of a substantial question of law is not sufficient to give the High Court jurisdiction to give leave to appeal under S. 109 (c), Civil P. C.; the question must also be of great public or private importance. What is a question of general public or private importance would depend on the facts of each case. But if the decision of the question is likely to form a precedent and affect numerous cases, that may be a reason for holding that the question is a matter of great public importance. Gulab Bai v. Manpnool Bai, 1950 Raj L W 129 : I L R (1952) 2 Raj 755 : A I R 1953 Raj 42 (45) (Pt C) (Pr 18) (FB).

——Art. 133—Leave by High Court—Special circumstances must be shown to exist — Value of suit small —Question involved only one of facts — No question of any public importance involved—Leave to appeal refused. A I R 1955 N U C (Tripura) 4365.

14 (b) (i). Questions that are of great public or private importance.

——Art. 133 (1) (c) — "Questions of general and public importance"—(Elections — Representation of the People Act (1951), Ss. 77 and 123 (6)) — (Civil P. C. (1908), S. 109).

The questions such as (i) when an appeal to vote in favour of a candidate or to refrain from voting in favour of the other can be said to be an appeal made on the ground of "religion or community"? (ii) Whether Mahatma Gandhi's photograph can be called a national symbol? and (iii) Whether the omission by the candidate himself to keep and maintain accounts as provided by S. 77 of the Representation of the People Act was a corrupt practice, as defined by S. 123 (6) of the Act are questions of general and public importance within the meaning of Art. 133. 1959 All L J 727 : I L R (1959) 2 All 437 : A I R 1959 All 607 (610, 611) (Pt C) (Prs 20, 22, 23, 24) (DB).

——Art. 133 (1) (c)—Question of general importance —Whether second review application lies to Board of Revenue—Importance of question.

The question whether the Board of Revenue has power to entertain a second application for review raises a question of general importance and is covered by Cl. (c) of Art. 133 (1). 1956 All L J 601 : 1956 All W R (H C) 480 : A I R 1957 All 116 (117, 119) (Pt B) (Pr 4) (DB).

——Art. 133 (1) (c)—Question of general importance —Validity of S. 20, U. P. Zamindari Abolition and Land Reforms Act (1 of 1951).

The question of validity of S. 20, U. P. Zamindari Abolition and Land Reforms Act raises question of general importance and is covered Cl. (1) of Art. 133 (1). 1956 All L J 601 : 1956 All W R (H C) 480 : A I R 1957 All 116 (119) (Pt C) (Pr 4) (DB).

——Art. 133 (1) (c) — Certificate of fitness — Civil P. C. (1908), S. 109 (c) — (Himachal Pradesh) States Courts Act (1943), S. 34.

The point raised on benalf of the petitioners in the second appeal was that the provisions of the Himachal Pradesh (Courts) Order, 1948, were not applicable, and that under the Civil Procedure Code neither a second appeal nor a revision was competent. This contention was however repelled, and it was held that the case was governed by the Himachal Pradesh (Courts) Order, and that under the provisions of that Order the second appeal was maintainable. Held, that this was a question of public importance affecting the litigants of the State of Himachal Pradesh. That being so, the case should be certified as fit for appeal to the Supreme Court. A I R 1952 Him Pra 14 (16) (Pt B) (Pr 4).

——Art. 133 (1) (c) — Case whether fit for appeal— Test indicated — Question whether Kalambandi is statute or rules having the force of law — Question held of considerable importance — Case held fit for appeal — (Civil P. C. (1908), S. 109). A I R 1955 N U C (Madh B) 2400 (DB).

——Art. 133 — Question of frequent occurrence and considerable importance—Leave to appeal to Supreme Court granted for authoritative decision of the question.

On a reference under S. 66-A (2) of the Income-tax Act the High Court held that an order under R. 68 by the Income-tax Officer cancelling renewal of registration was not appealable under S. 30 (1) of the Act. Leave to appeal to the Supreme Court was sought.

Held, that the question decided was of frequent occurrence and of considerable importance and it was desirable that there should be an authoritative pronouncement on the question. 1963 M P L J (Notes) 175.

——Art. 133 — Reference under Income-tax Act— Decision involving interpretation of S. 10 of Income-

tax Act — Question substantially affecting rights of parties — Leave to appeal to Supreme Court granted —Income-tax Act (1922), Ss. 10 and 66-A (2).

Held, that the decision of the High Court raised an important question as to the interpretation of S. 10 (5) (b) of the Income-tax Act and Paragraph 2 with Proviso and Explanation of Taxation Laws (Part B States) (Removal of Difficulties) Order, 1950. The question decided substantially affected the rights of the parties. **1962 M P L J (Notes) 283.**

——Arts. 133 (1) (c) and 329 (b) — Order of High Court declaring election to State Legislature void on ground of corrupt practice — Fit case for granting leave to appeal to Supreme Court — Order whether passed in civil proceeding — Question as to interpretation of S. 123 (7) (f) —Representation of the People Act — (Representation of the People Act (1951), Ss. 116-A and 123 (7) (f).)

Where the High Court in appeal declares the election of the petitioner to the State Legislative Assembly void, and the petitioner seeks leave to appeal to the Supreme Court to maintain his election on the ground that a question as to the true interpretation of S. 123 (7) (f) of the Representation of the People Act is involved, it is a fit case for grant of leave under Art. 133 (1) (c) of the Constitution.

Per Das, J.—There is no doubt that the final order passed by the High Court declaring the election of the petitioner to the State Assembly void is an order passed in a civil proceeding of the High Court. Accordingly, it satisfies the condition as laid down under Art. 133 (1) of the Constitution. In this view of the law, Art. 329 (b) would not oust the jurisdiction of the High Court under Art. 133. Where the question of law involved is the true interpretation of S. 123 (7) (f) of the Representation of the People Act, there is an important question of law involved in the case, and the petitioner is entitled to leave to appeal to the Supreme Court under Art. 133 (1) (c).

Per Barman, J.—The petitioner, is proposing to file the appeal to the Supreme Court with a view to maintain his election. This is a distinguishing feature which is a complete answer to arguments on Art. 329 (b) operating as a bar. A I R 1955 S C 233, Rel. on.

An election enquiry is of quasi criminal nature, inasmuch as its findings on corrupt practices have penal effect.

The fact that the High Court has to follow civil procedure as provided in S. 116-A does not make the proceeding a civil one. **I L R (1958) Cut 517 : 17 E L R 65 : A I R 1960 Orissa 1 (2, 3, 4, 5, 6) (Prs 1, 3, 4, 7, 9, 10, 15) (DB).**

——Art. 133 (1) (c) — Certificate of fitness — Hindu widow remarrying according to Kerwa form of marriage—Question whether she can be regarded as widow after such marriage—Question fit for grant of leave to appeal, under S. 109 (c). See Civil P. C. (1908), S. 109 (c). A I R 1965 Punj 32.

——Art. 133 (1) (c)—Order dismissing application for writ of certiorari under Art. 226, Constitution of India against Income-tax Officer — Leave to appeal granted under S. 109 (b) and (c). See Civil P. C. (1908), S, 109 (b) and (c). A I R 1955 N U C (Punj) 5983 (DB).

14 (b) (ii). Questions that are not of importance.

——Art. 133—Observation of High Court on question directed to be retried.

An observation of the High Court on a question which is directed to be retried cannot be regarded as raising a question of law of great public or private importance justifying grant of certificate under Art. 133 (1) (c). Jettan and Sons v. State of U. P. **1962 All W R (H C) 122 : (1962) 1 S C J 713 : 1961 Andh L T 354 : 1961 S C D 327 : (1962) 2 Andh W R (S C) 5 : (1961) 3 S C R 754 : I L R (1961) 2 All 7 : 1962 All L J 108 : (1962) 2 Mad L J (S C) 5 : A I R 1961 S C 794 (796) (Prs 7, 8).**

——Art. 133 (1), Cl. (c)—Certificate of fitness —Question of public or private importance — Covenant for pre-emption — First transferee taking free of claim of pre-emption due to pre-emptor refusing offer of property to him—Question whether covenant for pre-emption can be enforced against subsequent transferees — Case not fit for grant of certificate under Cl. (c). 11 Mad L J 56 (PC) and AIR 1921 P. C. 25, Rel. on. AIR 1961 Cal 537 (539) (Pt B) (Pr 5) (DB).

——Art. 133 (1) (c)—Grant of leave under—Question if pleadings amount to admission.

Whether the pleadings as drafted amounted to an admission or not, cannot be said to be a point of any great public or private importance and is not the sort of question which would entitle the High Court to certify that as a fit case for appeal. It could not also be possibly said that the case involved a substantial point of law under Art. 133 (1) (c) of the Constitution. **AIR 1951 Cal 409 (410) (Pt B) (Pr 9) (DB).**

——Art. 133 (1) (c) — Certificate of fitness — [C. P. Code (1908), Ss. 109 and 115.]

High Court in revision holding that petitioner failed to show that the lower appellate Court failed to exercise jurisdiction vested in it by law—Revision dismissed — Basis for opening case on merits before High Court not made out—Case on merits not therefore decided by High Court — Application under Art. 133 (1) (c)—Question before Supreme Court would be whether lower appellate Court failed to exercise jurisdiction—This is not a point of great public or private importance — Question held did not also involve substantial question of law though the mere existence of a substantial question of law would not be sufficient to give the High Court jurisdiction to grant leave to appeal under Art. 133 (1) (c) on the ground of fitness of the case for appeal to the Supreme Court—Fitness of the case must be considered with regard to the point or points that will arise for determination before the Supreme Court, and not with regard to the point or points which will not arise there but which may arise in the High Court or in the Courts below if on a disagreement with the decision of the High Court the Supreme Court were to remand the case. **AIR 1954 Him Pra 24 (25, 26) (Prs 7, 8).**

——Art. 133—Certificate of fitness — Question as to provision of law governing a second appeal.

The question whether a second appeal is governed by one statute or another does not depend upon the construction of any of their provisions, but upon the value of the subject matter of the suit or the property directly involved in the appellate Court's decree. This again depends on the construction of the judgment of the appellate Court and that of J. C's Court in the second appeal. These may be questions of law, but not of such importance as to justify the grant of a certificate that it is a fit case for appeal to the Supreme Court. **AIR 1951 Kutch 90 (91) (Pr 4).**

——Art. 133 (1) (c)—Certificate of fitness— Question only of academic importance — Case not fit for appeal to Supreme Court.

A case is not fit for appeal to the Supreme Court if the question to be agitated is one which is only academic at the particular stage though it may assume importance at a subsequent stage. At the stage of adjudication of a person as insolvent neither the Insolvency Court nor the appellate Court is required to say what the effect of the adjudication order would

be on the annulment proceedings and it is unnecessary for the transferees to take an appeal to the Supreme Court from the decision of the High Court in appeal on such a point at that stage. High Court will not grant a certificate of fitness under Art. 133 (1) (c) in such a case. **1961 Jab L J 102 : 1961 M P C 203 : 1961 M P L J 976 : A I R 1961 Madh Pra 172 (173) (Pr 10) (DB).**

——Art. 133 (1) (c) — Certificate of fitness—Question if gifted property was separate or joint property is one of fact and is not of any public importance — (Civil P. C. (1908), S. 109). **AIR 1955 NUC (Manipur) 4553.**

——Art. 133—No repugnancy between central law and local Act—Case also not of sufficient private importance to parties — Certificate of fitness not granted.

Held, it was not a case fit for appeal under Cl. (C) of Art. 133 on the ground that the decision involved a substantial point of law touching the interpretation of the Constitution itself. No conflict did exist on 22-7-1951 (date on which an ex parte order was made in execution directing respondent to deliver the property) between the Civil P. C. and T. P. Act and the House Rent Control Order. S. 4, Civil P. C. gives a local Act local validity and the special procedure prescribed therein validity within its own sphere the result being that the special procedure prescribed in the House Rent Control Order should be followed in preference to the provision in the C. P. Code. The other Act viz., the Central T. P. Act could not be deemed to have been in force in the State in or about July, 1951 when the execution proceedings involved in the dispute took place. Even otherwise the case was not of sufficient private importance to both the parties in the sense in which it was generally understood so as to deserve consideration on that ground. No other case of the nature giving rise to conflict had arisen during the short interval between 1-4-1951 and 16-8-1951 of the alleged repugnancy of the local law before it received the assent of the President. **1LR (1954) Mys 504 : A I R 1955 Mys 35 (37) (Pt A) (Prs 7, 8) (DB).**

——Art. 133 (1) (c) — Question whether Art. 142 or 144 of Limitation Act applies — Case fit for leave—Civil P. C (1908), S. 109 (c).

The question as to whether Art. 142 or Art. 144 of the Limitation Act applies, cannot be said to be such an important question of law as to fulfil the test of 'fitness' for granting leave. **(1960) 2 O J D 570 : 27 Cut L T 393 : ILR (1961) Cut 128.**

——Art. 133 (1) (c)—Election Tribunal refusing permission to amend particulars regarding allegations of corrupt practice — High Court on appeal holding that Tribunal was justified in refusing to allow applicant—appellant to furnish particulars after expiration of period of limitation prescribed for filing election petitions.

Held, that appellant was not entitled to get leave under Art. 133 (1) (c). **63 Pun L R 212 : A I R 1961 Punj 383 (384) (Pt B) (Pr 5) (DB).**

——Art. 133 — Wagering transaction — Tests — No question of general importance. See Civil P. C. (1908), S. 110. **ILR (1961) 11 Raj 735.**

——Art. 133 (1) (c) — Matter of general public importance—What is.

Whether or not the Miscellaneous Rules made by the Rewa Darbar in 1930 were made under the Rewa Forest Act 1927, is not a matter of general public or private importance. **1955 Cri L J 747 : A I R 1955 Vin Pra 17 (19) (Pt B) (Pr 9).**

14 (c). Questions on which there is conflict of decisions.

——Art. 133 (1) (c)—Question of general importance.

Held, that there being difference of opinion between the High Courts as to whether an unregistered partition deed can be admitted in evidence for a collateral purpose and the interpretation of the words 'collateral purpose' and as to whether in the particular circumstances of the case, the putting in possession of the co-sharers of the property allotted to each one of them can be considered as a collateral purpose, the question was of general importance. (Certificate under Art. 133 (1) (c) was granted). **A I R 1954 Ajmer 55 (56) (Prs 3, 4, 5).**

——Art. 133 (1) (c) — Case involving question as to jurisdiction of High Court to issue writ — Point covered by Supreme Court decision and decisions of the High Court—No certificate. **I L R (1964) 1 All 397 : AIR 1964 All 125 (127) (Pt E) (Pr 7) (DB).**

——Art. 133 (1) (c)— Applicability— Case involving interpretation of Fundametnal Rule affecting large number of cases—If fit one for appeal.

Where the case involved the interpretation of Fundamental Rule 56 which is equivalent to R. 2046 (2) (c) of the Indian Railway Establishment Code the plaintiff contending that he was entitled as of right to continue in service upto 60 years and the Union of India contending that he was entitled to continue in service upto 55 years and thereafter at the option of the Government and there are rulings of the High Court in favour of the Union of India, while a certain decision of the Supreme Court gives countenance to the view of the applicant, and the interpretation of the rule will affect a large number of persons, the case is a fit one for appeal to the Supreme Court under Art. 133 (1) (c). **ILR (1959) 1 All 767 : A I R 1959 All 685 (686) (Pt B) (Prs 4, 6) (DB).**

—— Art. 133 (c) — S. 109 (c) — High Court holding view different from other High Court — No ground. See Civil P. C. (1908), Section 109 (c). **AIR 1953 Assam 70.**

——Art. 133 (1) (c)—Difference of opinion on question of law between different High Courts — If ground for grant of leave.

The certificate of fitness cannot be issued for questioning either findings of fact or of questions of law which are not of general or public or private importance. AIR 1953 Assam 70 and AIR 1952 Pat 386 and A I R 1950 Mad 215 and A I R 1953 Raj 51 (FB), Rel. on. Where there is a divergence of opinion between two or more High Courts on a question of law and there is no authoritative pronouncement of the highest Court of the land on that question, a case involving such a question is a fit one for being certified under Cl. (1) (c). AIR 1951 Mad 969 (FB), Foll. **A I R 1961 Him Pra 27 (30) (Pt B) (Prs 18, 21).**

——Art. 133 (1) (c)—Certificate of fitness for established legal principles.

Where the various matters that arose for decision were questions of fact which were decided in accordance with relevant well-established legal principles, the Court is justified in refusing to certify the case as fit one for appeal to the Supreme Court. **A I R 1957 Him Pra 27 (28, 29) (Prs 8, 9).**

——Art. 133 (1) (c) — Decision of High Court based purely on construction of statute having due regard to agreement between parties — High Court differing from views of another High Court on such interpretation of statute—It is not a fit case for granting certificate under Article. **A I R 1965 Ker 211 (212) (Pr 11) (DB).**

——Art. 133 (1) (c)—Fit case for appeal to Supreme Court – Conflict of decisions—Decision affecting many trapsactions.

Where a decision introduces a conflict of decisions and is not supported by any decided authority and it is likely to affect transactions in many immovable properties in the State concerned, it would be a fit case for appeal to the Supreme Court and a certificate to that effect can be issued. **AIR 1951 Kutch 77 (79) (Pr 13).**

——Art. 133 (1) (c)—Certificate of fitness — Divergent views of various High Courts — Question of great private or public importance Questions whether income-tax assessment orders are admissible in evidence—Fit for grant of certificate under Art. 133 (1) (c).

The scope of an application for leave to appeal to the Supreme Court under Art. 133 (1) (c) is limited to the question whether a substantial question of law of great private or public importance arises and whether having regard to all the circumstances of the case it is a matter worthy of consideration by the Supreme Court to lay down any authoritative precedent binding on all the Courts. A conflict of judicial decisions on the question of law amongst the various High Courts or an interpretation of Statute affecting the rights of a section of the public or a question of procedural or substantial law which arises frequently may be considered as a good ground for leave : AIR 1964 Mad 166, Rel. on.

Whether Income-tax Act (1922), S. 54 operates as a bar as regards admissibility of assessment orders in evidence is a question on which there is a conflict of judicial opinion and is one which is still not finally decided by the Supreme Court. Hence the question is fit for granting certicate under Art. 133 (1) (c). **ILR (1964) Cut 412 : A I R 1965 Orissa 9 (10, 11) (Prs 6, 9) (DB).**

● **——Art. 133 (1) (c)—Certificate of fitness—Difference of opinion on interpretation of S. 5 (2) (a) (v) of Bihar Sales Tax Act— Civil P C., 1908, S. 109 — Sales Tax—Bihar Sales Tax Act (6 of 1944), Ss. 5 (2) (a) (v) and 21 (3).**

Reuben and Das JJ., in the Order of Reference. If Art. 133 can be applied to an opinion given by the High Court on a reference under S. 21 (3), Bihar Sales Tax Act (6 of 1944), leave to appeal to the Supreme Court under Cl. (1) (c) should be given when three Judges of the High Court have expressed differing views regarding the interpretation of S. 5 (2) (a) (v) of the Act and the amount of Rs. 2,96,15,000 is involved. Tobacco Manufacturers (India Ltd.) v. The State. **ILR 30 Pat 174 : 2 S T C 73 : A I R 1951 Pat 29 (35) (Pt E) (Pr 20) (FB).**

——Art. 133 (1) (c) — Decision by High Court not contrary view—Leave cannot be allowed.

Where the High Court held that the charges of corrupt practices under the Representation of the People Act being quasi criminal in character, allegations relating thereto must be sufficiently clear and precise to bring home the charges to the candidates and also held that the ingredients of the particular corrupt practice had to be proved by the Election Petitioner and the burden, at no stage, fell on the returned candidate to disprove any of the ingredients thereof:

Held, that as no contrary view was taken in any decision on this question no leave could be granted under Art. 133 (1) (c) : AIR 1960 Madh Pra 362, Ref. **63 Pun L R 212 : A I R 1961 Punj 383 (384) (Pt A) (Pr 4) (DB).**

● **——Art. 133 (1) (c)—Law settled—No leave.**

Even though the point in dispute is measurable in terms of money, and the valuation is less than the minimum amount, it is open to the High Court to grant a certificate under Art. 133 (1) (c) if the High Court is of the opinion that the question involved is of general public importance. But where even though the point is of general public importance if the law is settled by a decision of the highest Court it would not be proper to grant a certificate under Art. 133 (1) (c). Phoolchand v. Badri Prasad. **1953 Raj L W 185 : I L R (1952) 2 Raj 768 : AIR 1953 Raj 51 (52) (Pt B) (Prs 3, 4) (FB).**

[**Held Overruled** on another point by A I R 1954 S C 349 as interpreted in **AIR 1959 Raj 135.**]

● **——Art. 133 (1) (c) — Question of great public or private importance — Point of res judicata — Civil P. C. (1908), S. 109 (c).**

It is not possible to lay down definitely that a mere divergence of opinion on any point among the various High Courts would be sufficient to make a question one of general importance. That matter would have to be decided on the importance of the question itself and not merely on the divergence of views of the various High Courts about it. But the fact that various High Courts have differed on a certain question may have an important bearing on arriving at the conclusion whether the question is of general public or private importance or not. Generally speaking, a point of res judicata may not be said to raise question of great public or private importance, but sometimes it may raise such questions. The question whether the decision of a Court of lower jurisdiction would be res judicata in the second suit which is triable only by a Court of higher jurisdiction by virtue of arrears of rent having been allowed to accumulate is of general public importance because suits for arrears of rent and ejectment are very common, and the decision of the Supreme Court on this issue, when there is divergence of opinion among the various High Courts, would settle the law as the question has so far not been considered either by the Privy Council or by the Supreme Court : Case-law discussed. Gulab Bai v. Manphool Bai, **ILR (1952) 2 Raj 755 : 1953 Raj L W 129 : A I R 1953 Raj 42 (45, 46) (Pt B) (Prs 24, 25, 26) (FB).**

——Art. 133 (1) (c)—Certificate of fitness—Substantial question of law—Court merely applying principles contained in Supreme Court decisions.

The petitioner can get leave under Art. 133 (1) (c), if the Judicial Commissioner's Court certifies that there is a substantial question of law of general importance on which an authoritative pronouncement has to be given by the Supreme Court. Where though the Court has dealt with various questions of law in deciding the case it has only applied the principles contained in the Supreme Court decisions the Court cannot certify the case to be fit for appeal to the Supreme Court. **A I R 1964 Tripura 23 (25) (Pt C) (Pr 7).**

14 (d). Leave, if can be granted to both parties.

——Art. 133—Cross appeal or cross objection—Right of — Leave granted to one of parties Other party whether automatically entitled to leave—Pecuniary valuation not satisfied—Effect—(Civil P. C. (1908), Ss. 109, 110, O. 41, R. 22).

Neither the provisions of Art. 133 of the Constitution nor S. 109 or 110, Civil P. C., contemplate a right to file a cross appeal or cross objection and there would be no jurisdiction to introduce into these provisions this right. Leave will not be granted to a party if the provisions as to pecuniary valuation are not satisfied, merely because one of the parties to the appeal was granted leave and a part of the decree in

appeal in the High Court is attacked in the appeal before the Supreme Court, if a common question is not involved in both the matters. (1957) 1 Andh W R 212 : ILR (1957) Andh Pra 144 : AIR 1957 Andh Pra 852 (354) (Prs 10, 12) (DB).

——Art. 133 (1) (c) — Leave granted to one party — Leave to other party as matter of course. ILR (1956) Hyd 782 : AIR 1957 Hyd 24 (26) (Pt C) (Pr 11) (DB).

——Art. 133 (1) (c) — One party granted leave — Opposite party whether entitled to leave.

The High Court decided that an order of the Ruler of the former Gwalior State levying on the Gwalior Sugar Co., a cane cess of one anna per maund on all sugar cane purchased by the Company was an executive order and not a law under Art. 265 of the Constitution and that the order could not justify the imposition of the cess on the company after 26th January 1950. The State of Madhya Bharat applied for leave to appeal and leave was granted.

Subsequently the Company applied for leave to appeal to the Supreme Court on the ground that the High Court did not consider the point whether in view of its finding that the Durbar order was an executive order, any amount of cess for a period before 26th January 1950 could at all be collected after that date.

Held, that as the State of Madhya Bharat had been granted leave to appeal, the company might also be granted leave to appeal to the Supreme Court. A I R 1954 Mad 876 ; (1955) 2 Mad L J 401, Rel. on. I L R (1955) Madh Bha 361 : Madh B L J 1955 H C R 1364 : A I R 1955 Madh B 210 (211, 212) (Pt A) (Prs 3, 5) (DB).

——Art. 133 (1)—Leave granted to one party— Leave to other parties, if can be granted.

When leave is granted to one party to appeal to the Supreme Court against any decree, leave cannot be withheld from other parties seeking to appeal from the same decree although it may be that, had they individually applied for leave, their applications would have been rightly dismissed for failure to comply with the requirements of Art. 133 (1) (a) or (b). This category of cases would fall within the scope of Art. 133 (1) (c) as being made fit cases for appeal to the Supreme Court by reason of one party to the appeal having been granted leave. In such a case, it is not necessory that the High Court should certify that each appeal sought to be filed against the appellate decree involves a separate substantial question of law.

Where there is scope for the contention that there is a common question in controversy, which would be applicable to the entire case, it will be inequitable to grant leave in respect of a portion of the subject-matter and refuse it in respect of the remaining part, and in such cases nothing would prevent the Court from treating the case as a fit one for appeal to the Supreme Court under clause (1) (c) of Art. 133. But it cannot be laid down as a general proposition of law that in all cases, when leave is granted to one of the parties to appeal to the Supreme Court, the other parties also are entitled to leave as a matter of course, even though their applications could not be entertained under Art. 133, clause (1), sub-clauses (a) and (b). 1954 Mad W N 508 : 67 Mad L W 541 : I L R (1955) Mad 786 : (1955) 2 Mad L J 401 : A I R 1954 Mad 876 (877, 878) (Prs 5, 10) (DB).

14 (e). Leave with conditions.

——Art. 133 (1)—Leave subject to condition.

Where the point in issue appears to be one of general importance but not of sufficient importance to the proposed respondent to warrant the High Court in putting him to the expense of an appeal to the Supreme Court, permission will be granted for leave to appeal to the Supreme Court subject to the condition that the respondent will get his taxed costs incurred in the Supreme Court in any event from the petitioners. AIR 1923 Mad 232, Rel. on. (1953) 1 Mad L J 630 : 66 Mad L W 347 : AIR 1953 Mad 743 (744) (Pr 1) (DB).

14 (f). Effect of granting leave to appeal.

● ——Arts. 133, 136 — Scope — Powers of Supreme Court—Proper certificate granted—Scope of appeal not restricted to certificate.

Under Art. 133, the certificate issued by the High Court in the manner prescribed therein is a pre-condition for the maintainability of an appeal to the Supreme Court. But the terms of the certificate do not circumscribe the scope of the appeal ; that is to say, once a proper certificate is granted, the Supreme Court has undoubtedly the power, as a Court of appeal, to consider the correctness of the decision appealed against from every standpoint, whether on questions of fact or law. A successful party no doubt can question the maintainability of the appeal on the ground that the certificate was issued by the High Court in contravention of the provisions of Art. 133, but once the certificate was good, the provisions of Art. 133, did not confine the scope of the appeal to the certificate. The Supreme Court can exercise an unrestricted power of reviewing the judgment of the High Court in the case of a certificate hedged in with conditions by resorting to its power under Art. 136 of the Constitution. A. Raghavamma v. A. Chenchamma. (1964) 1 S C A 593 : (1964) 2 S C R 933 : A I R 1964 S C 136 (142) (Pt A) (Prs 8, 9).

——Art. 133—Leave to appeal—Grant of—Effect. See Ibid, Art. 132. AIR 1957 All 505 (DB).

15. Decree of affirmance.

(a) Variation in extraneous or consequential matters.

15. Decree of affirmance.

● ——Art. 133 (1) (b) — Judgment of affirmance — Proceedings under S. 12 (1) (d), Hindu Marriage Act —City Civil Court granting decree of annulment to husband — Decree set aside on appeal and case remanded for finding on question whether wife was pregnant at time of marriage—Finding that she was not so pregnant—Finding affirmed by High Court—High Court's judgment is one of affirmance.

One of the requirements of cl. (1) of Art. 133, is that in a case other than the one referred to in sub-cl. (c) the appeal must involve a substantial question of law where the judgment appealed from affirms the decision of the Court immediately below. Where the City Civil Court has granted a decree for annulment of marriage to the husband under S. 12 (1) (d) of the Hindu Marriage Act but High Court in appeal dismissed the petition, strictly speaking the judgment of the High Court cannot be regarded as judgment of affirmance of the City Civil Court. But where the High Court remanded an issue whether the wife was pregnant at the time of the marriage and the finding of the City Civil Court on the issue was that she was not so pregnant and this finding was affirmed by the High Court, the decree of the High Court must substantially be regarded as one of affirmance. No doubt, technically, the High Court's decision is not one of affirmance because it has reversed the decree of the City Civil Court. But the Court must have regard to the substance of the matter, the basis of the original decree of the City Civil Court had disappeared after it gave a contrary finding to the one rendered by it earlier on the crucial fact concerning the wife's

pregnancy before her marriage. The High Court having accepted that finding there can be no escape from the position that the Supreme Court have a case where upon the crucial question of fact, there are concurrent findings. Mahendra Manilal Nanavati v. Sushila Mahendra Nanavati. (1965) S C D 95 : (1965) 1 S C J 788 : 1965 M P L J 509 : 1965 Mah L J 365 : (1964) 7 S C R 267 : 66 Bom L R 681 : AIR 1965 S C 364 (413) (Pt J) (Pr 238).

● ——Art. 133 (1)—Decree of affirmance– High Court varying decree of trial Court in favour of party intending to prefer appeal to Supreme Court is not decree of affirmance—Variance in matter of costs only, does not make it decree varying trial Court's decree —But variance in matter of interest makes appellate decree one of variance —Variance because of concession by party or by consent of parties does not make appellate decree one of variance. AIR 1952 Mad 771 (FB), 8 Cal W N 294 (FB), AIR 1959 Andh Pra 20, AIR 1952 All 942 (FB), AIR 1952 Assam 134 (FB), AIR 1929 Bom 359, AIR 1949 Bom 164, AIR 1954 Cal 618, AIR 1959 Mys 112 and AIR 1953 Nag 249, Overruled.

If the appellate decree passed by the High Court makes a variance in the decision of the trial Court the said decree cannot be said to affirm the decision of the trial Court under Art. 133 (1) of the Constitution. AIR 1925 P C 60, Foll.

The clause 'appealed from' is merely a descriptive clause and it describes the decree as one from which the appeal arises. If that be so, in determining the character of the decree it would be necessary to take the decree as a whole and enquire whether it is a decree of affirmance or not.

If the word 'decree' in the first part of the relevant clause means not a part of the decree but the whole of the decree, then the word 'decision' must likewise mean the entire decision of the trial Court.

Where appellate decree confirms the decree of the trial Court but merely makes variation in regard to the order as to costs, such variation does not affect the character of the appellate decree which in law is a decree of affirmance. But the variation with regard to the award of interest before the date of the decree, which is a part of the dispute, would affect the character of the appellate decree.

Where the appellate Court makes a variation in the decision of the trial Court either because a concession has been made in that behalf or the variation has been obtained by parties by consent or a part of the subject-matter covered by the decree has been withdrawn, such variation does not affect the character of the appellate decree. Variation or affirmance by the appeal Court should be an act of adjudication. I L R 25 All 109 (P C), Rel. on; AIR 1952 Mad 771 (FB), 8 Cal W N 294 (FB), AIR 1959 Andh Pra 20, AIR 1952 All 942 (FB), AIR 1952 Assam 134; AIR 1929 Bom 359, AIR 1949 Bom 164; AIR 1954 Cal 618 and AIR 1959 Mys 112 and AIR 1953 Nag 249, Overruled; AIR 1957 Cal 543, Ref.; AIR 1957 Punj 117 (F B) and AIR 1926 Pat 325 (F B), Approved. Tirumalachetti Rajaram v. Tirumalachetti Radhakrishnayya Chetty, (1962) 2 S C R 452 : (1962) 1 S C A 68 : (1962) 1 S C J 568 : (1962) 1 Mad L J (S C) 248 : (1962) 1 Andh W R (S C) 248 : 1961 All L J 841 : AIR 1961 S C 1795 (1797, 1798, 1799, 1800, 1801) (Pt A) (Prs 4, 5, 7, 10, 14).

● ——Art. 133—Decree of affirmance. See Civil P. C. (1908), S. 110. AIR 1953 S C 521.

——Art. 133 (1)—Order of affirmance.

An order which does not judicially discuss the matter in issue is not to be considered an order of affirmance. It is therefore not necessary for the petitioner to satisfy the Court that any substantial question of law is involved. AIR 1952 Madh B 149 (F B) and AIR 1914 P C 66 : 27 M L J 17, Foll. AIR 1955 Ajmer 17 (17) (Pr 4).

● ——Art. 133 — Several matters of controversy in case — High Court varying decision of trial Court with respect to some and affirming it in respect of others—Right of appeal.

The affirmance or variance of a decision of the Court below has to be seen in respect of the subject matter of the proposed appeal. The entire subject-matter of the proposed appeal should be taken up as one whole and as one unit for seeing if there is variance or affirmance and not be cut up into parts affirming and parts varying. Hence the contention that irrespective of the subject-matter of the proposed appeal to the Supreme Court, if the judgment of the High Court as a whole varied even a part of the decision of the Court below an appeal will lie as of right even though the appeal was confined to that part of the decision of the Court below affirmed is untenable. (Per majority of the Full Bench).

The expression "the decision of the Court below in any case" is to be interpreted to mean the whole decision of the suit by that Court. The significance of the words "in any case" cannot be lost sight of and consequently it is the decision in the suit and not of any matter in controversy that has to be taken into consideration. It is not possible to decide whether the decree of the High Court affirms or varies the decision of the Court below without comparing the whole decision of the Court below with the decree of the High Court as a whole. Fateh Kunwar v. Durbijay Singh, 1952 All W R (H C) 398 : I L R (1952) 2 All 605 : 1962 All L J 457 : A I R 1952 All 942 (951) (Pt B) (Prs 41, 42) (FB).

[Overruled on another point in AIR 1961 S C 1795.]

——Art. 133 (1) — Decree of affirmance — Suit for partition of various items — Variation in favour of appellant in respect of portion of certain item — Effect—(Civil P. C. (1908), S. 110).

Held, on facts that as item 10 in the suit for partition in respect of which there was a variation in favour of the appellant was made the subject-matter of the proposed appeal, the decree was not one of affirmance within the meaning of Art. 133. AIR 1952 Mad 771 (FB), Foll.

(2) That items 1 to 10 being the subject-matter of the suit and that items 1, 4 and 10 being the subject-matter of the appeal, the value of the said subject-matter was more than the prescribed amount. The applicant had, therefore, complied with the conditions laid down in Art. 133 of the Constitution and was, therefore, entitled as of right to appeal to the Supreme Court. AIR 1959 Andh Pra 20 (21) (Prs 3, 4).

[Overruled in AIR 1961 S C 1795.]

——Art. 133 (1)—Decree of affirmance—Same decision by trial Judge and High Court but based on different reasonings — Decision of Court below is affirmed.

Although the reasonings given by the trial Judge and the Division Bench of the High Court are not on the same lines, it cannot be said that the judgment delivered by the Division Bench is not a judgment of affirmance when the conclusion of both is the same. AIR 1961 S C 795, Rel. on. AIR 1964 Cal 335 (339) (Pt B) (Pr 10) (DB).

——Art. 133 (1) — Judgment of affirmance.

If a person has a particular claim or a case in regard to one of the matters involved in a suit and he succeeds only in part in the trial Court or fails there altogether, but in the Appellate Court he succeeds entirely, then such variation of the trial Court's

decree in his favour cannot be made a ground for asserting that the judgment is not a judgment of affirmance. But where the variation in the intending appellant's favour falls short of his total claim as regards the particular matter concerned, the judgment which he will submit to the superior Court for review, including, as it must, that part which has varied the trial Court's decree will not be a judgment of affirmance but will be a judgment partly of affirmance and partly of modification.

The intending appellant's case before the trial Court was that there should be no partition at all and necessarily no accounting. The trial Court did not accept his case and made an order for accounts in a somewhat stringent form. The Appellate Court modified the rigour of the order for accounts, but it still maintained the order and the resultant position was that the intending appellant's case that there should not be any accounting at all was not yet fully conceded. He therefore took a ground against even the modified order for accounting.

Held, that whether a judgment like that in the present case is or is not a judgment of affirmance, is a matter at least of doubt and where there is doubt the Court would resolve it by deciding in favour of the appellant and granting him leave. 58 Cal W N 726 : AIR 1954 Cal 618 (619, 620) (Prs 9, 10) (DB).

[Overruled in AIR 1961 S C 1795.]

——**Art. 133 (1) (a) — Judgment of affirmance — "Judgment, decree of final order appealed from" —Meaning of.**

The expression "judgment, decree or final order appealed from" used in Art. 133 of the Constitution does refer to the part of the decree or order or judgment which is the subject-matter of the proposed appeal and does not of necessity refer to the decree or order in its entirety passed in the case. Thus, a judgment is one of affirmance where the High Court on appeal agrees with the view of the trial Court that the adoption made by the defendant petitioner was not proved and leave to appeal is sought in respect of this matter, though the plaintiff's suit which was dismissed by the trial Court has been decreed by the High Court. **I L R (1956) Hyd 782 : A I R 1957 Hyd 24 (25) (Pt B) (Prs 6, 7) (DB).**

——**Art. 133 (1) (a)—Decree of affirmance—Test for determination - (Civil P. C. (1908), S. 110).**

The test laid down for determining as to whether the decree of the High Court could be regarded as one of variance is as to whether the High Court has differed from the lower Court on a principle. If having found an error in the calculation made by the trial Court or because of the fact that the trial Court omitted a particular item the High Court seeks to substitute a different figure for each item of work or items of work it cannot be regarded as varying the decree of the lower Court. But if the plaintiff's claim is a money claim which is decreed by the trial Court as to a certain part and then on appeal decreed by the appellate Court as to a larger part but still not fully decreed the appellate Court's decision would not be regarded as a decision of affirmance. **I L R (1956) Hyd 577 : AIR 1956 Hyd 145 (145) (Prs 3, 4) (DB).**

——**Art. 133 (1) (a) — Leave to appeal under—High Court affirming decree of lower Court—(Civil P. C. (1908), S. 110).**

If there are two appeals in the High Court from one decree of the lower Court, then the decree of the High Court in each of the appeals will be separately considered and if the proposed appeal to the Supreme Court arising out of one of such decrees relates to a matter on which that decree has affirmed the decision of the Court below, there will be no right of appeal without a substantial question of law. AIR 1952 All 942, Rel. on. Case-law referred. **ILR (1955) Hyd 39 : A I R 1955 Hyd 216 (218) (Pr 10) (DB).**

——**Art. 133 (1) (c)—Decree of of affirmance—(Civil P. C. (1908), S. 110).**

The words "appealed from" qualify and limit the scope of the meaning of the expression "judgment, decree or final order". In conjunction with the words "judgment, decree or final order" they connote, not the judgment, decree or final order of the High Court in its entirety but that part which is intended to be challenged in the appeal to the Supreme Court. On this interpretation of the expression "judgment, decree or final order appealed from affirms the decision of the Court immediately below" the principle that emerges is that where the decision is partly maintained and partly reversed, the decree is deemed to be one of affirmance, when the subject-matter of the appeal to the Supreme Court is confined to that part of the decree which affirms the decision of the lower Court. 1956 Madh B L I 588 : Madh B L R 1956 Civil 86: ILR (1956) Madh B 192: AIR 1956 Madh B 145 (147) (Pt A) (Pr 3) (DB).

——**Art. 133 (1) (c) — Decree of affirmance—(Civil P. C. (1908), S. 110).**

Where the direction given by the High Court to the trial Court was only in the matter of working out the details in accordance with the preliminary decree for partition and did not make any change in the rights of a person declared by the preliminary decree nor did it set aside or vary any finding of the trial Court on a point whether a particular item of property was liable to partition, the variation in the manner of working out the details in accordance with the preliminary decree cannot be taken as one making the judgment of the High Court a judgment of variance for the purposes of Art. 133 (1). **1956 Madh B L I 588 : Madh B L R 1956 Civil 86 : ILR (1956) Madh B 192 : A I R 1956 Madh B 145 (150) (Pt E) (Pr 10) (DB).**

●——**Art. 133 (1)—Decree of affirmance—Rejection of appeal by a Special Bench preferred against the decision of a Division Bench—Decision of Court immediately below—Substantial question of law.**

Where a Special Bench of the High Court of Madhya Pradesh dismissed an appeal preferred against the decision of a Division Bench of the Court on the ground that no such appeal lay, and the appellant applied for leave to appeal to the Supreme Court against the order of rejection the points for decision were whether the order of dismissal in the case was one of affirmance of the decree of Court below and whether there was a substantial question of law :

Held : The order of the Special Bench dismissing an appeal, against the decision of a Division Bench, on the ground that no appeal lay under S. 25 of the High Court Act cannot be an order which affirmed the decision of the Division Bench. The expression "affirms the decision of the Court immediately below" implies that the High Court has judicially dealt with the decision of the Court below and upheld it. On the rejection of an incompetent appeal as such, the decision of the Court below is not affirmed thereby. AIR 1914 P C 66, Foll ; A I R 1932 All 312; I L R 20 All 367 and A I R 1933 Lah 690, Disting.

A question of law involving difference of opinion is a substantial question of law. The question of law in the case was whether a decree or order passed by a Division Bench of the High Court, final and conclusive under M. B. High Court Ordinance, is appealable under S. 25 of the High Court Act. The real

question involved was one of construction of S. 2 (6) of the High Court's Act, the scope and purpose of which is fairly debatable. AIR 1927 P. C. 252, Ref. to.

(Per Kaul, C. J. and Chaturvedi, J.) Further the decision sought to be challenged before the Special Bench was not one of the Court "immediately below". The decision of a Division Bench of the High Court is the decision of the High Court itself and therefore the last portion of Art. 133 (1) will not apply. Gulabchand Gambhirmal v. Kudilal Govindaram. Madh B L J 1955 H C R 1271 : A I R 1952 Madh B 149 (150, 151, 152) (Prs 4, 6, 7, 14) (FB).

——Art. 133 (1)—Decree of affirmance — Land Acquisition case — Variation in decree by High Court in favour of applicant—Effect.

Where certain principles have to be applied and the principles given in the Court of first instance are not the principles which are applied by the appellate Court and are not the principles which the applicant claimed, the judgment cannot be called one of affirmance. Valuation of the land compulsorily acquired was made at a particular rate and on certain principles. The applicants asked that some other principles and some other rate should be applied. The High Court did not accept the contention of the applicants and found a rate which was between the rate granted and that asked for.

Held that the variation showed that the old rate was not applicable, and to that extent the judgment could not be treated as one of affirmance. A I R 1925 P C 60, Rel. on. 1958 M P L J 146 : 1958 M P C 101 : 1958 Jab L J 105 : A I R 1958 Madh Pra 235 (236) (Pr 4) (DB).

——Art. 133— 'Decree of affirmance' — (Civil P. C. (1908), S. 110).

When more subject-matters than one are comprised in a suit the applicant is under S. 110, Civil P. C. or Art. 133, Constitution of India, entitled to appeal against the whole extent of his failure even though the variation is in respect of one of those subject-matters whether that variation is to his advantage or to his detriment. Even accepting this liberal view there is another factor to be taken into consideration which may have the effect of ruling out the applicant's right to a certificate. Where the proposed appeal is directed against defendants 1 and 2 and not against defendant 3 and the variation in the lower Court's decree is in respect of the matter in dispute between the plaintiff-applicant and defendant 3, who however does not figure as a party in the proposed appeal at all, then it is against reason and principle to allow the applicant to point at some one outside the purview of the proposed appeal and seek leave against others when the decision as between the applicant and the latter (i. e., defendants 1 and 2) has been affirmed by the High Court. There is nothing in the language of Art. 133 of the Constitution to warrant the applicant having such a right. A I R 1936 Mad 381 Rel. on. 37 Mys L J 97 : I L R (1958) Mys 878 : AIR 1959 Mys 112 (114) (Prs 8, 9) (DB).

[Overruled in AIR 1961 S C 1795].

——Art. 133 (1)—Affirmance—Meaning of.

When the decree of the High Court affirms the decree of the lower Court on some points and modifies it in favour of the appellant on other points then leave to appeal to Supreme Court from that part of the decree which affirms the decree of the lower court cannot be given unless it involves a substantial question of law. 1953 Nag L J 390 : ILR (1953) Nag 784 : AIR 1953 Nag 249 (Pt B) (Prs 6, 7) (DB).

[Overruled in AIR 1961 S C 1795].

——Art. 133 (1) — Judgment of affirmance — Substantial question of law.

Where the judgment of the High Court is a judgment of affirmance, the petitioners are not entitled as a matter of right to a certificate for leave to appeal unless the High Court is satisfied also that there is involved in the case a substantial question of law. There is no modification of the judgment of the trial Court by the High Court where the decree of the trial Court is not in accordance with its judgment and the High Court corrects the mistake. AIR 1957 Pat 6 (7) (Prs 3, 4) (DB).

● —Art. 133 (1)—C. P. Code (1908), S. 110—Judgment of affirmance—Meaning of 'affirmance.'

The judgment of the High Court will be one of affirmance if it has affirmed the actual decision of the Court immediately below even when it has based its decision on grounds different from those given by the latter Court. I L R 25 All 109 (PC), Foll. Kanak Sunder v. Ram Lakhan. 1956 Pat L R 344 : 1956 B L J R 523 : I L R 35 Pat 499 : A I R 1956 Pat 325 (328) (Pt A) (Pr 7) (FB).

● —Art. 133 (1) — Civil P. C (1908), S. 110 — "Decision"—Meaning of.

The word 'decision' in Art. 133 (1) is equivalent to the word 'decree' In other words, the word 'decision' embraces the final determination of the Court on all the claims put forward in controversy between the parties in a suit or a proceeding I L R 25 All 109 (PC), Foll Kanak Sunder v. Ram Lakhan, 1956 Pat L R 344 : 1956 B L J R 523 : I L R 35 Pat 499 : AIR 1956 Pat 325 (328) (Pt B) (Pr 8) (FB).

● —Art. 133 (1)—Civil P. C. (1908), S. 110—"Appealed from"—Meaning of.

The expression 'appealed from' means the appeal is preferred against a decree or an order. There is no appeal from an item of a decree or that of an order. A I R 1926 P C 93, Foll. Kanak Sunder v. Ram Lakhan. 1956 Pat L R 344 : 1956 B L J R 523 : I L R 35 Pat 499 : A I R 1956 Pat 325 (328) (Pt C) (Pr 8) (FB).

● —Art. 133 (1) — Civil P. C. (1908), S. 110 — Decree of affirmance — Test to find out whether decree is one of affirmance.

If the word 'decision' be equivalent to 'decree' and 'appealed from' conveys the sense that the appeal is preferred from the whole of the decree or order, then the test to find out whether the judgment, decree or final order of the High Court is one of affirmance or reversal is to see whether it, taken as a whole, affirms or reverses the decision of the Court immediately below in regard to the claims in controversy taken as a whole. Kanak Sunder v. Ram Lakhan. 1956 Pat L R 344 : 1956 B L J R 523 : I L R 35 Pat 499 : AIR 1956 Pat 325 (328, 339) (Pt D) (Prs 8, 44) (FB).

● —Art. 133 (1) (a) — Civil P. C (1908), S. 110 — Decree of affirmance — Variation by High Court in portion of decree — Grant of leave to appeal as of right.

Where there has been a variation of a portion of the decree of the Court below in favour of the proposed appellant, he is entitled as of right to go in appeal to the Supreme Court even against the other portion of the decree on which the two Courts are in agreement, provided the proposed appeal satisfies the requirements of valuation; it is immaterial whether the variation is in favour of or to the prejudice of the proposed appellant. A I R 1936 Pat 553, Overruled; A I R 1941 Pat 269 (FB), Appr; AIR 1952 Mad 771 (FB) and Agarwala J. in AIR 1952 All 942 (FB), Dissented from.

Per Das C. J. — "I have still some doubt in my mind if the test laid down in A I R 1941 Pat 269, is quite correct. Speaking personally, I am inclined to agree with Rajamannar C. J., in the principles which he laid down in A I R 1952 Mad 771 (774) (FB) and for the reasons given by him. Even applying those principles the petitioner in this case is entitled to a certificate. The present case also comes within the principles laid down by Agarwala J., who laid down four principles at 951 of A I R 1952 All 942 (FB), and the present case comes under principle (b) laid down by him. Kanak Sunder v. Ram Lakhan. **1956 Pat LR 344 : 1956 B L J R 523 : I L R 35 Pat 499 : A I R 1956 Pat 325 (329, 338, 340) (Pt E) (Prs 11, 39, 41, 42, 47) (FB).**

——Art. 133 (1) — "Affirms the decision" — (Civil P. C. (1908), S. 110).

If the decree of the Court below has been varied, no matter to what extent, the decree cannot be one of affirmance. Thus where a decree passed by the High Court is in favour of several other persons besides the original plaintiffs of the suit, the decree passed in the suit cannot be deemed to be a decree of affirmance AIR 1950 Mad 124; A I R 1933 Pat 262; A I R 1932 All 65 (SB), Rel on. **1953 B L J R 375 : AIR 1653 Pat 380 (382) (Pt B) (Pr 5) (DB).**

——Art. 133 (1) — Single Judge of High Court varying judgment of lower Court — Judgment of Single Judge upheld by Division Bench in L. P. Appeal — Final Judgment cannot be deemed to be that of Single Judge.

Where a Single Judge of the High Court varies the judgment of the lower court and in Letters Patent appeal that judgment is upheld by a Division Bench and an appeal is proposed to be taken to the Supreme Court, the judgment of the Division Bench is a judgment affirming the judgment of the Court below and it cannot be contended that the final judgment must be deemed to be that of the Single Judge which is one of variance. **61 Punj L R 747 : ILR (1959) Punj 2204 : AIR 1960 Punj 32 (32) (Pr 3) (DB).**

● **——Art. 133 — 'Decree of affirmance' — (Civil P. C. (1908), S. 110).**

If an appeal can lie only against a decision as a whole, and not against a part of the decision, it is obvious that the judgment of the High Court would be a judgment of affirmance only if it confirms and ratifies the decision as a whole and not if it confirms and ratifies the decision on certain points and modifies in others. Hence if a judgment is partly in favour of a party and partly adverse to him and he appeals from the portion which is adverse, the judgment of the appellate Court cannot be regarded as a judgment of affirmance if it modifies the decision under appeal in favour of the appellant. AIR 1951 Punj 313. **Overruled;** 8 Cal W N 294. Diss. Union of India v. Kanahayalal Shamlal. **59 Punj L R 150 ILR (1957) Punj 255 : AIR 1957 Punj 117 (120, 121) (Pt A (Prs 8, 11) (FB).**

——Art. 133 — Decree of affirmance. See Civil P. C. (1908), S. 110. AIR 1955 NUC (Sau) 4076 (DB).

15 (a). Variation in extraneous or consequential matters.

● **——Art. 133 — Variance in matter of costs only — Decree in question is not one varying trial Court's decree — But variance in matter of interest makes appellate decree one of variance.** Rajaram v. Radhakrishnayya, **1961 All L J 841 : (1962) 1 S C J 568 : (1962) 1 S C A 68 : (1962) 1 Mad L J (S C) 248 : (1962) 1 Andh W R (SC) 248 : (1962) 2 S C R 452: AIR 1961 S C 1795 (1799) (Pt A) (Pr 7).**

——Art. 133 (1) (b) — Decree of variance — (Civil P. C. (1908), S. 110).

A decree of variance must be one where there is variation in the substantive relief in respect of the whole or part of a party's claim. AIR 1927 Pat 379 and AIR 1928 Pat 190, Rel. on.

The trial Court in a suit for ejectment passed a decree in favour of the plaintiff. No express direction was however, given in the decree about the plaintiff being entitled, if the defendant did not remove the materials within the time fixed by the Court, to have them removed through Court. Further, the decree did not specifically mention that the plaintiff was to obtain possession over the materials if they were not removed by the defendant within the time fixed. In the judgment it was ordered that the defendant was to remove the constructions within six months, but as in the judgment there was no direction as to what would happen if the defendant failed to comply with this direction, the decree passed in pursuance of the judgment was also silent about it.

In the appeal the High Court affirmed in substance the decree but differed from it in two respects. Firstly, the ambiguity in the decree of the court below was removed by inserting in the decree a clause to the effect that if the defendant failed to remove the materials within the time fixed the plaintiff was to have the liberty to have the materials removed through the agency of the Court. Secondly, the time fixed for the removal of the materials by the trial Court was enlarged from six months from the date of the trial Court's decree to one year from the date of High Court's decree.

There was no other variation in the decree as passed by the High Court. The dispute in the case affected property over the value of Rs. 20,000.

Held, such a variation might very well be termed as incidental or consequential. As regards the second variation, namely the mention of the right of the plaintiff to get the materials removed through the agency of the Court if the defendant failed to do the same himself, it could not be said to be a variation at all. This was in reality the clarification of what was implicit in the judgment of the trial Court. Therefore, no variation in substance was made by the High Court and the applicant, could not claim that he was entitled to appeal to the Supreme Court as a matter of right. **AIR 1955 All 680 (682, 683) (Pt A) (Prs 7, 8) (DB).**

——Art. 133 (1) (c) — Decree of affirmance — Civil P. C. (1908), S. 110.

Costs are not taken into consideration and are treated as extraneous to the subject-matter of the suit and a variation in the matter of costs does not make the decree of the appellate Court a decree of variance. AIR 1953 S C 521, Foll. **1956 Madh B L J 588: Madh B L R 1956 Civil 86 : ILR (1956) Madh B 192 : AIR 1956 Madh B 145 (150) (Pt D) (Pr 10) (DB).**

——Arts. 133 and 226 — Civil P. C. (1908), S. 110 — Decree of affirmance — High Court quashing orders of Tribunal in writ appeal — Reference in appeal that all appeals before Tribunal will get revived — Not a decree at variance.

A reference to Art. 133, Constitution and S. 110, Civil P. C. shows that affirmance or variation must be in relation to the subject-matter in dispute in the proceeding the final order in which is sought to be taken in appeal to the Supreme Court. Any variance with reference to extraneous matters or on matters consequential on the final order therein will not be sufficient to take the case out of the class of orders of affirmance. The directions as to the disposal of the matters by the Appellate Tribunal on the quashing are extraneous to the subject-matter of the writ proceedings and relate to the consequences of the quashing.

Hence where the High Court quashes the orders of the Tribunal in a writ appeal and there is a reference in the judgment that all the appeals before the Tribunal will get revived, such reference will not make the decision in the writ appeal one of variance on the ground that even the appeals from which no writ appeals were filed would get revived. The expression of a different view in the appeal as to the consequences flowing from the particular adjudication on the merits of the dispute between the parties in the writ petitions cannot make the decision in the appeal one of variance with that of the first Court as required under Art. 133 (1) (c) of the Constitution. 77 Mad L W 439 : 1964 Mad W N 342 : ILR (1965) 1 Mad 498 : AIR 1965 Mad 478 (479, 480) (Prs 3, 5) (DB).

●——Art. 133—Affirmance—Meaning of.

If the requirements of pecuniary valuation are satisfied an appellant is entitled as of right to leave to appeal to the Supreme Court if the decree of the Court of first instance is modified substantially by the decree of the High Court where the matter in respect of which it has been modified is a matter in dispute before the Supreme Court irrespective of the fact whether the modification is in favour of the applicant or not although no substantial question of law is involved. But if the modification is in respect of a matter not comprised in the subject-matter still in dispute on appeal to the Supreme Court the applicant is not entitled to leave as of right. Subba Rao v. Chelamayya, 1952 Mad W N 664 : 65 Mad L W 825 : (1952) 2 Mad L J 365 : ILR (1953) Mad 1 : AIR 1952 Mad 771 (774, 776) (Pt A) (Prs 14, 22) (FB).

[Overruled in AIR 1961 S C 1795.]

16. "Court immediately below."

● —Art. 133 (1) — 'Court immediately below' — and 'Court subordinate to High Court' —Distinction —Single Judge of High Court is a "Court immediately below" a Bench hearing Letters Patent appeal against his decision — Appeal from decree of affirmance—Certificate that decision involves a substantial question of law necessary. A I R 1959 All 10, Overruled.

A single Judge of a High Court is a "Court immediately below" a Bench hearing an appeal against his judgment under the Letters Patent. Where the judgment of such Bench affirms the judgment of the single Judge, an appeal under Art. 133 (1) will not be competent unless the High Court certifies that the decision appealed from involves a substantial question of law. A I R 1963 S C 1279, Foll.; 23 Ind App 102 (P C) Rel. on; 45 Cal W N 1002, Approved : AIR 1959 All 10, Overruled.

The expression "Court immediately below" as used in Art. 133 (1) of the Constitution does not mean "Court subordinate to High Court". A "Court subordinate to High Court" is subject to the superintendence of the High Court, whereas a Court immediately below is the Court from whose decision the appeal has been filed. Durga Prasad v. Banaras Bank, Ltd., I L R (1963) 2 All 703 : (1964) 1 S C R 475 : (1963) 1 Com L J 245 : (1963) 1 S C J 519 : (1963) 33 Com Cas 625 : A I R 1963 S C 1322 (1323) (Prs 3, 4).

● —Art. 133 (1) (a) and (b)— "Court immediately below"— Meaning of — Expression does not mean "Court subordinate" — Difference in meaning of these expressions —Single Judge of High Court is Court immediately below Division Bench hearing Letters Patent Appeal — Judgment reversed in L. P. appeal — Appeal to Supreme Court with certificate under Art. 133 (1) (a) and (b) is competent. AIR 1944 Lah 458 (FB) and AIR 1962 Andh Pra 346, Overruled.

The words "Court immediately below" occurring in Art. 133 (1) of the Constitution of India cannot be equated with the words "Court subordinate" used in S. 115 of Civil P. C. A Court subordinate to the High Court is a Court subject to the superintendence of the High Court, whereas a Court immediately below is the Court from whose decision the appeal has been filed.

Clause 10 of the Letters Patent (Lahore) confers an unqualified right of appeal to the High Court from the judgment of a Single Judge. There is nothing in the context to support the plea that the expression "Court immediately below" includes a Judge of the High Court trying a proceeding in exercise of original jurisdiction i. e., sitting as a Court of first instance. S. 110 of Civil P. C. is, in material terms, identical with Art. 133 of the Constitution of India. There is nothing in the phraseology used or the context which justifies the view that the expression "the Court immediately below" is used in S. 110 of Civil P. C. or in Art. 133 (1) of the Constitution in two different senses, according as the Court is trying a proceeding in exercise of its original jurisdiction and in exercise of its appellate jurisdiction. The expression "Court immediately below" in Art. 133 (1) must, therefore, mean the Court from the decision of which an appeal has been filed to the High Court, whether such Court is a Single Judge of the High Court, or a Court subject to the superintendence of High Court. Thus, where the judgment of the High Court delivered in a Letters Patent Appeal filed against the appellate judgment of a Single Judge of the same High Court in a suit brought under the provisions of the Companies Act, involves some claim or question respecting property of the value exceeding twenty thousand rupees and the judgment of the Singh Judge is reversed, an appeal preferred to the Supreme Ceurt with certificate granted by the High Court under Art. 133 (1) (a) and (b) is competent. 23 Ind App 102 (P C), Rel. on ; A I R 1928 Lah 537 and A I R 1932 Lah 121 (2) and A I R 1956 Nag 276, Approved ; Observation in A I R 1916 Cal 973 held obiter ; A I R 1944 Lah 458 (FB) and A I R 1962 Andh Pra 346, Overruled. Ladli Parshad Jaiswal v. Karnal Distillery Co., Ltd., Karnal, 1963 Comp Cas R 48 : (1964) 2 S C J 12 : (1964) 1 S C R 270 : (1933) 2 Andh L T 228 : (1963) 33 Com Cas 593 : AIR 1963 S C 1279 (1285 to 1288) (Pt A) (Prs 12, 13, 17).

——Art. 133 (1)— Scope.

Under Art. 133 (1) a certificate that the appeal involves a substantial question of law is only necessary when "the judgment, decree or final order appealed from affirms the decision of the Court immediately below. The judgment, decree or final order appealed from is necessarily the judgment, decree or final order of the High Court, and the conclusion would appear to be irresistible that the phrase "the Court immediately below" must refer to a Court which is below the High Court. No real distinction can be drawn between a Judge sitting singly in the exercise of original jurisdiction and in the exercise of appellate jurisdiction ; in either case he is exercising a function which is directed to be performed by the High Court. It is logically untenable to hold that the High Court is not one Court and, if that be so then 'the Court immediately below' within the meaning of Cl. (1) of Art. 133, must be a Court other than the High Court. A I R 1916 Cal 973, Rel. on ; A I R 1944 Lah 458 (FB), Dissented from. 1958 All W R (HC) 661 : 1958 All L J 563 : ILR (1958) 2 All 657 : AIR 1959 All 10 (11) (Prs 2, 6) (DB).

[Overruled in AIR 1963 S C 1322].

——Art. 133 (1)—Last paragraph —Applicability.

Per M. L. Chaturvedi, J. : Where the court of first instance in the case is the High Court itself, the last paragraph of Art. 133 (1) has no application. That

paragraph only applies where the judgment, decree or final order appealed from affirms the decision of the court immediatly below the High Court. The paragraph would not apply where the High Court does not affirm the decision of the court below it nor would it apply to a case where the question of affirming or not affirming the decision does not arise at all. ILR (1958) 1 All 318 : AIR 1958 All 621 : (625) (Pt B) (Pr 11 (DB).

——**Art. 133 (1)—'Court immediately below'**— Single Judge of High Court sitting in appeal — Not a Court immediately below Letters Patent Appeal Bench of same High Court —Order of adjudication as insolvent by District Judge — Reversal by single Judge - Letters Patent Appeal Bench restoring order of District Judge —Judgment one of affirmance of the court immediately below it viz. of the District Judge - View of the District Judge about the Petitioner having committed an act of insolvency within the meaning of S 6 (e), Prov. Insol. Act—No substantial question of law involved. Provincial Insolvency Act (1920), S. 6 (c) — Letters Patent (Andhra), Cl. (15) — Civil P C (1908). S. 110. A I R 1916 Cal 973 ; A I R 1944 Lah 458 (Majority view), A I R 1959 A l 10, Foll. A I R 1959 Mad 391, I L R 23 (1898) Cal 918 (P C), A I R 1961 S C 181, Dist.; A I R 1956 Nag 276 — Dissented from. **I L R (1962) Andh Pra 1044 : (1962) 1 Andh W R 46 : (1962) 1 Andh L T 213 : A I R 1962 Andh Pra 346 (349, 350) (Prs 22, 25, 26).**

[Overruled in A I R 1963 S C 1279].

——**Art. 133 (1) (a) — "Court", meaning of — Rent Controller is not Court.**

The word 'Court' in Art. 133 (1) (a) does not cover any body or tribunal which is not a Court within the meaning of the Code of Civil Procedure or the civil Courts Act and, therefore, it does not cover the Rent Controller functioning under the West Bengal Premises Rent Control Act. A I R 1949 Mad 741, Rel. on. ('56) 60 Cal W N 927.

● —**Art. 133—Decision of Division Bench—Appeal against — Dismissal by Special Bench, hearing appeal.**

Where a Special Bench of the High Court of Madhya Pradesh dismissed an appeal preferred against the decision of a division bench of the Court on the ground that no such appeal lay and the appellant applied for leave to appeal to the Supreme Court against the order of rejection.

Held, that the decision sought to be challenged before the Special Bench was not one of the court "immediately below". The decision of a Division Bench of the High Court is the decision of the High Court itself and therefore the last portion of Art. 133 (1) will not apply (Per Kaul C. J. and Chaturvedi J.) Gulabchand v. Kudilal, Madh B L J 1955 H C R 1271 : **A I R 1952 Madh B 149 (152) (Pr 14) (FB).**

——**Art. 133 (1) — "Court immediately below" — Decision of Single Judge of High Court — Letters Patent Appeal—Civil P. C. (1908), S. 110.**

Where a decision of a Single Judge of a High Court is a decision on an original petition and the Letters Patent appeal is filed against it, the Single Bench is the 'Court immediately below" the larger Bench. A I R 1956 Nag 276, Foll.; A I R 1916 Cal 953 ; A I R 1959 All 10 ; A I R 1959 Mad 391 ; A I R 1944 Lah 458, Not foll. **1962 Jab L J 253 : 1961 M P L J 982.**

——**Art. 133 (1)—'Court immediately below'—Refers to Court which is subordinate to High Court—Decision of subordinate Judge reversed in appeal by a single Judge of High Court but restored by a Division Bench on Letters Patent Appeal — Judgment is one of affirmance.**

The expression 'Court immediately below' in Art. 133 (1) as well as in S. 110, Civil P. C., refers to a Court which is subordinate to the High Court. The decision of a single Judge of a High Court on the appellate side which is reversed by a Division Bench of the same Court under the Letters Patent is not a decision of the 'Court immediately below' within the meaning of Art. 133 (1) of the Constitution of India. Hence, if the judgment of the Division Bench in Letters Patent Appeal has restored the judgment of the subordinate Judge reversing that of the single Judge the judgment is one of affirmance within the meaning of Art. 133 (1) of the Constitution. A I R 1916 Cal 973 and A I R 1959 All 10, Rel. on ; A I R 1956 Nag 276, Diss. from. **75 Mad L W 480 : A I R 1962 Mad 490 (491, 492) (Prs 3, 4) (DB).**

——**Art. 133 (1) — Scope — "Court immediately below"—Meaning of—High Court on Original Side presided over by single Judge — If 'Court below' High Court on 'Appellate Side' — "Substantial question of law"—Question of law well settled—Ground of appeal raising such—Leave to appeal—Interpretation of Statutes—Meaning of words — "Harmonious construction".**

For the purposes of Art. 133 (1), the High Court on the Original Side, presided over by a single Judge, is the Court immediately below the High Court on the Appellate Side. I L R 23 Cal 918 (PC); (1941) 45 Cal W N 1002, Rel. on. This does not, however, entail the consequence that the High Court in the Original Side is a Court subordinate to the High Court on the Appellate Side or that the Orders passed by the High Court on the Original Side are liable to be revised or otherwise interfered with in the exercise of the revisional or supervisory jurisdiction of the High Court under Art. 227 of the Constitution or S. 115, Civil P. C. A I R 1953 S C 7 and A I R 1957 Mad 582, Followed.

Obiter :—The High Court when presided over by a single Judge and exercising its appellate jurisdiction is not a Court immediately below the Division Bench of the High Court to which an appeal may be preferred from the appellate judgment of the single Judge. A I R 1959 All 10 and A I R 1956 Nag 276, Diss. from.; A I R 1916 Cal 973 and A I R 1944 Lah 458, Followed.

When both the Courts below have found that a compromise entered into by a Hindu father was a bona fide compromise of disputed claims and was binding on his son and that he was precluded from raising an issue which was left undecided by agreement of parties who compromised the suit, it must be held that there is no substantial question of law within the meaning of Art. 133 (1) of the Constitution. **1959 Mad W N 369 : 72 Mad L W 354 : (1959) 2 Mad L J 300 : I L R (1959) Mad 762 : A I R 1959 Mad 391 (392, 393) (Pt A) (Prs 4, 6, 9) (DB).**

——**Art. 133—Scope—"Immediately below" — Decision of single Judge of High Court whether that of a Court "immediately below".** See Civil P. C. (1908), S. 110. **A I R 1956 Nag 276 (DB).**

17. Substantial question of law.

(a) **Findings based on settled law.**
(b) **Question of law involving difference of opinion.**
(c) **Questions of fact.**
(d) **Procedural matters.**
(e) **Incorrect application of law.**
(f) **Construction of documents.**
(g) **Admissibility of documents in evidence.**
(h) **Other cases.**

17. Substantial question of law.

——Art. 133 (1) (c) — Substantial question of law— (Civil P. C. (1908), S. 110).

Where a petition is under Cl. (1) (c) of Art. 133, it is necessary for the petitioner to show that the appeal involves some substantial question of law. Where the question is of great public importance, but there is no divergence of views among High Courts, it cannot be held that a substantial question of law is involved. A I R 1956 Ajmer 71 (72) (Pt D) (Pr 6).

——Art. 133 (1) (b) — Substantial question of law— (Civil P. C. (1908), S. 110).

The mere fact that a question of law is involved is not sufficient to satisfy the requirements of Art. 133 in the case of concurrent judgment. The question of law involved in the appeal must be a substantial one. A question of law will not be substantial merely because much is at stake on the answer to it. A substantial question of law must be a question of law in which the pros and cons are about evenly balanced. The application of well defined principles to a particular set of facts is not a question of law which can fairly be described as substantial. **A I R 1957 All 28 (35, 36) (Pt I) (Prs 14, 16) (DB).**

——Art. 133 (1) (c)—Substantial question of law.

The term 'certify' used in Art. 133 is a strong term. The High Court must be convinced of the substantiality of the point or of the fitness of the case before it can certify under Art. 133. It is only when there are some complexities of law involved in the case requiring an authoritative interpretation by Supreme Court that a certificate of fitness should be ordinarily granted. The point of law involved should be one of difficulty or of great importance. **A I R 1959 Andh Pra 359 (360) (Pt C) (Pr 2) (DB).**

——Arts. 133 and 132 — High Court's decision involving State Legislature's competence to validate its act under statute made by Parliament — Question of the construction of S. 31-A of the Minimum Wages Act, 1948 introduced by the Amending Act of 1961 is substantial question of law fit for leave to appeal to Supreme Court. 1962 M P L J (Notes) 279.

——Art. 133 (1)—Substantial question of law—What is—Expression 'civil proceeding' also includes any right to property, declaration of status by statutes — Madras Cultivating Tenants Protection Act (25 of 1955), S. 6 (B)—Proceeding before High Court is a civil proceeding under S. 115 Civil P. C.

If a question of law is fairly arguable, when there is room for difference of opinion on it, or when the Court thought it necessary to deal with that question at some length and discuss alternative views then the question would be a substantial question of law and that if the question was practically covered by the decision of the highest Court or the general principles to be applied in determining the question are well settled and the only question was of applying these principles to the particular facts of the case, it would not be substantial question of law. AIR 1962 S C 1314 and AIR 1951 Mad 989 (FB), Rel. on.

A proceeding by the landlord against the tenant for eviction by enforcing the provisions of the Cultivating Tenants Protection Act is a civil proceeding. In every proceeding (other than criminal) at some stage or other or all the points in controversy may have to be adjudicated upon with reference to the provisions of one or more statutes and it is impossible to accept the contention that merely because the decision necessitates or involves an interpretation of the provisions of a statute and their application the proceeding, would cease to be a civil proceeding, as though a civil proceeding would comprehend only disputes involving questions of personal law having no connection with any statutory enactment. The meaning of the expression 'civil proceeding' in Art. 133 is not limited to common law rights only but would include any right to property, declaration of status though these may be creatures of statutes. AIR 1965 S C 1818, Ref.

Section 6 (B) of the Madras Cultivating Tenants Protection Act expressly provides that the Revenue Divisional Officer shall be deemed to be a Court subordinate to the High Court for the purpose of S. 115, Civil P. C. and his orders shall be liable to revision by the High Court under the provisions of that section. Therefore, the proceeding before the High Court is a civil proceeding and the same is disposed of by High Court under S. 115, Civil P. C. The statute itself regards and declares the Revenue Divisional Officer as a Court subordinate to High Court and the proceeding in the High Court is a civil proceeding within the meaning of S. 115. AIR 1958 S C 947, Dist.

In revision against the order of Revenue Divisional Officer in eviction proceeding by the landlords under the Madras Cultivating Tenants Protection Act in respect of landed properties exceeding Rs. 20,000 in value the High Court held that a subsequent purchaser would be entitled to obtain an order for eviction even though the ground of eviction may be the arrears of rent accrued due to the prior vendor and though the Revenue Divisional Officer passed a rolled up order it did not render his order illegal. On petition by tenants for grant of leave to appeal to Supreme Court.

Held, that the tenants were entitled to a certificate under Art. 133 (1) (b) and (c). **1965 Mad W N 319 : (1966) 1 Mad L J 105 : 78 Mad L W 736 : I L R (1966) 1 Mad 623 : AIR 1966 Mad 327 (328, 329) (Prs 5, 7, 8) (DB).**

——Art. 133 (1) (c)—Certificate of fitness for appeal — Leave cannot be granted because impugned judgment is erroneous in law—Substantial question of law—Order of compulsory retirement of Government servant quashed under Art. 226, on ground that there was breach of constitutional provision — Leave to appeal on ground that decision was not in accordance with law in view of recent decision of Supreme Court—Officer concerned unable to avail himself of writ to get into office on account of his superannuation — Case held not fit for leave to appeal.

The scope of an application for leave to appeal to the Supreme Court under Art. 133 (1) (c) of the Constitution is limited to question whether a substantial question of law of great private or public importance arises and whether having regard to all the circumstances of the case it is a matter worthy of consideration by the Supreme Court to lay down an authoritative precedent binding on all the Courts. The Court dealing with an application for leave is not a Court of appeal sitting in judgment over the judgment from which leave is asked for. It is now fairly well settled that a case giving rise to a question of law of great public or private importance would normally be considered fit for leave being granted. It is equally well settled that it is not every question of law, however, important it may be, between the parties inter se, that would necessarily attract the discretion of the Court to grant the necessary certificate. What is a substantial question of law can never be exhaustively laid down by any Court. A conflict of judicial opinion on a question of law, amongst the various High Courts, or an interpretation of statute: affecting the rights of a section of the public, or a question of procedural or substantive law which arises frequently, may be considered as good

grounds for leave. No formula can be devised to decide what is and what is not a substantial question of law. The language of Art. 133 (1) (c) is indeed very wide and it seems that even if there is a substantial question of law involved in the case the Court might yet refuse leave having regard to other facts and circumstances arising in the case.

The respondent Officer filed a writ petition under Art. 226, to quash the disciplinary proceedings against him. The question raised in the proceedings under Art. 226 was whether a Government servant could be found guilty on mere suspicion, however, strong it might be, and whether a proceeding in which suspicion took the place of legal evidence would not amount to violation of Art. 311 of the Constitution. The High Court took the view that there was a breach of the constitutional provision having regard to the manner in which the proceeding culminated against the officer and issued a writ. On appeal, the issue of writ was confirmed. The State of Madras praved for leave to appeal to the Supreme Court from that judgment. The entire argument was to the effect that the decision was not in accordance with law in view of a recent decision of the Supreme Court. The respondent Officer had by that time already reached the superannuation age and the order of writ could not avail him to get into the office again. Held, that the case was not a fit one for leave to appeal under Cl. (c) of Art. 133 (1). **(1966) 2 Lab L J 17 : ILR (1964) 1 Mad 685 : (1964) 2 Mad L J 353 : 1964 Mad L J (Cr) 582 : AIR 1964 Mad 166 (167) (Pt B) (Prs 6, 7) (DB).**

● **——Art. 133—Substantial question of law—Meaning and test of, for grant of, leave to appeal to the Supreme Court.**

It cannot be said that any question of law a decision on which may affect materially the rights of the parties is a substantial question of law.

It is neither possible nor useful to attempt to exactly define terms like "substantial", "reasonable" and "just and equitable". Ultimately it resolves itself into their meaning that the Court considers to be substantial, reasonable or just and equitable.

When a question of law is fairly arguable, when there is room for difference of opinion on it, then such a question would be a substantial question of law. If the Court thought it necessary to deal with a question of law at some length, and discuss alternative views which can be taken on the point, then such a question would be a substantial question.

When a point of law is practically covered by a doctrine of the highest Court, say like the Privy Council or the Supreme Court, then it would not be a substantial question. If the general principles to be applied in determining a question are well settled a mere application of such principles would not involve a substantial question of law. When a particular set of facts can lead to alternative findings in law, then a substantial question of law would be involved. If the principle to be applied or the point of law arising in the case is not well established then certainly there would be a substantial question of law. If there is conflict of judicial opinion among the High Courts and there is no direct decision of the highest Court on any question of law, then that would be a substantial question of law, though the decisions of the particular High Court of which leave is sought might have been uniform on the question. That fact may be a very good ground for dismissing a second appeal if the lower Courts had followed the rulings of the High Court, but for an application for leave to appeal to the Supreme Court, the very fact of divergence of opinion among the High Courts is conclusive evidence of the existence of a substantial question of law.

Any question of law affecting the rights of parties would not by itself be a substantial question of law. An important or difficult question would of course be a substantial question; but even if a question is not important or difficult, if there is room for reasonable doubt or difference of opinion on the question then it would be a substantial question of law within the meaning of Art. 133 of the Constitution of India. Case-law discussed, Subba Rao v. Veeraju. **(1951) 2 Mad L J 222 : 1951 Mad W N 630 : I L R (1952) Mad 264 : 64 Mad L W 711 (2) : AIR 1951 Mad 969 (972, 973) (Prs 7, 8, 9, 11) (FB).**

——Art. 133—Substantial question of law.

Any question of law affecting the rights of parties would not by itself be a substantial question of law. An important or difficult question would of course be a substantial question; but even if a question is not important or difficult, if there is room for reasonable doubt or difference of opinion on the question, then it would be a substantial question of law within the meaning of Art. 133 of the Constitution of India. A I R 1951 Mad 969 (FB), Rel. on. **ILR (1955) Nag 675 : 1955 Nag L J 468 : A I R 1955 Nag 287 (288, 289) (Pt C) (Pr 8) (DB).**

——Art. 133 — No doubt over point of law raised — Point also not affecting merits of the case — Case whether involves substantial question of law. See Bengal, Agra and Assam Civil Courts Act (1887), S. 38 (2). **A I R 1953 Orissa 298 (DB).**

——Art. 133—Substantial question of law—Meaning of. See Civil P. C., S. 100. **AIR 1951 Punj 313 (DB).**

——Art. 133—Substantial question of law — Established principle of law applied to facts of case. See Ibid, Art. 134 (1) (c). **1953 Cri L J 1581 : A I R 1953 Sau 170 (DB).**

17 (a). Findings based on settled law.

● **——Art. 133 (1) (a) — Civil P. C. (1908), S. 110 — Substantial question of law—What is.**

The proper test for determining whether a question of law raised in the case is substantial would be whether it is of general public importance or whether it directly and substantially affects the rights of the parties. If the question is settled by the highest Court or the general principles to be applied in determining the question are well settled and there is mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law. A I R 1951 Mad 969 (FB) and A I R 1927 P C 110, Rel. on.

Held, that the construction of the Managing Agency agreement was not only one of law but also it was neither simple nor free from doubt. In the circumstances, the High Court was in error in refusing to grant the appellant a certificate under Art. 133 (1) (a) that the appeal involved a substantial question of law. Chuninal v. Mehta & Sons, Ltd. **65 Bom L R 267 : 1963 M P L J 449 : 1963 Mah L J 457 : (1962) Supp 3 S C R 549 : (1961-62) 21 F J R 478 : (1962) 1 Lab L J 656 : AIR 1962 S C 1314 (1318) (Pt B) (Prs 6, 7).**

——Art. 133 (1) (c)—Substantial question of law.

Where there is no difference of opinion among the High Courts on a point of law, the mere fact that there is no decision by the local High Court does not make the question a substantial question of law. **A I R 1955 Ajmer 16 (16) (Pt B) (Pr 4).**

——Art. 133—Substantial question of law — Consent decree for maintenance creating charge on certain properties — Whether executable without recourse to fresh suit to enforce charge — Question is not one which can be passed on to Supreme Court for further consideration. **68 Cal W N 197 : A I R 1963 Cal 524 (530) (Pt B) (Pr 14) (DB).**

——Art. 133—Substantial question of law (Civil P. C. (1908), S 110).

A stale question regarding the validity of a patni sale, which is concluded by a series of decisions of the Privy Council is not a substantial question of law. 57 Cal W N 933 : A I R 1954 Cal 289 (295) (Pt K) (Pr 20) (DB).

[Overruled on another point in AIR 1957 S C 540].

——Art. 133 (1) (c) — Substantial question of law — What is—Suit against Government and its contractor —Notice under S. 80, Civil P. C. given to Government — Principle that period of notice should be excluded from limitation for suit against all defendants—Application of that principle to case held did not raise any substantial question of law. A I R 1951 Mad 969 (FB) and A I R 1962 S C 1314, Rel. on. A I R 1964 Him Pra 17 (19) (Pt A) (Pr 9).

——Art. 133 — Substantial question of law — Question of interest—(Civil P. C. (1908), S. 110).

Where the only point that arose for determination was whether the trial Court was justified in depriving the plaintiffs of interest and considering that the plaintiffs had been kept out of their money for several years and that they claimed interest at a reasonable rate, namely, six per cent. per annum, the appellate Court was of the opinion that they should not have been deprived of interest :

Held, that application of well-established legal principles to the question of interest, did not involve any substantial question of law. A I R 1956 Him Pra 65 (68) (Pt E) (Pr 22).

——Art. 133 (1) (c) — Substantial question of law — (Civil P. C. (1908), S. 110 (c)).

The question whether the Hyderbad Money Lenders Act is applicable to the facts of a particular case is not a substantial question of law either of public or private importance and leave cannot be granted under Art. 133 (1) (c) or under S. 110 (3), Civil P. C. ILR (1953) Hyd 206 : A I R 1953 Hyd 177 (178) (Pt C) (Pr 11) (DB).

——Art. 133 (1) (c) — Substantial question of law — (Civil P. C. (1908), S. 110.)

As the question whether succession to the self-acquired properties of a deceased father is by inheritance or by survivorship is concluded by the Supreme Court decision in 'Arunachala's case', A I R 1953 S C 495, it cannot be maintained that it is a substantial question of law. 1956 Madh B L J 588 : Madh B L R 1956 Civil 86 : ILR (1956) Madh B 192 : AIR 1956 Madh B 145 (149) (Pt B) (Pr 8) (DB).

——Art. 133 (1) (c)—Certificate of fitness — Findings of High Court based on settled law — Held, no substantial question of law was involved and no certificate under Art. 133 (1) (c) could be granted. 1959 Jab L J 687 : 1959 M P L J 1191 : 1960 M P C 5 : A I R 1960 Madh Pra 247 (2) (249) (Pt B) (Pr 9) (DB).

——Art. 133 (1) (c) — Substantial question of law — Interpretation of document—Civil P. C., S. 110.

The question of interpretation of a document, no doubt, is a question of law, but any question of law, affecting the rights of parties substantially would not by itself be a substantial question of law. Where the principles of law on a point are well settled, the application of those principles to a particular set of facts cannot be said to be substantial question of law. A I R 1956 Manipur 31 (32) (Pt B) (Pr 8).

——Art. 133—Substantial question of law.

The propriety of the appointment of a Receiver is by no means a substantial question of law as the principles governing the appointment of Receivers are too well established. 21 Cut L T 292 : ILR (1955) Cut 25 : A I R 1955 Orissa 71 (72) (Pt C) (Pr 4) (DB).

17 (b). Question of law involving difference of opinion.

——Art. 133 (1) (a)— 'Involves a substantial question of law'— Constitution of India, Art. 102 — Office of profit—Firm appointed as auditors of Life Insurance Corporation of India, Durgapur Projects Ltd., and Hindustan Steel, Ltd.—Partner of such firm whether holds offices of profit—Held to be substantial question of law.

Held, that although the Supreme Court decisions in AIR 1958 S C 52 and AIR 1958 S C 937, contain exposition or the relevant principles, the legal position of the petitioner with regard to the different companies and corporation bearing on the question as to whether it amounts to an office of profit within the meaning of Art. 102 of the Constitution is one of general public importance, and, as such it would be just and proper to grant the petitioner a certificate to the effect that the case involves a substantial question of law and is a fit one for appeal to the Supreme Court under Art. 133 (1) of the Constitution of India. AIR 1963 Cal 364 (365, 369) (Pt B) (Prs 4, 21) (DB).

——Art. 133—Substantial question of law.

In order that a question of law might be said to be substantial, there should be scope for doubt or difference of opinion in the decision proposed to be appealed from. A I R 1962 Cal 583 (586, 587) (Pt B) (Pr 24) (DB).

——Art. 133—Substantial question of law—Question as to constitutional validity of statute based upon speculative agreement, cannot be regarded as substantial question of law.

Held, that S. 52-A, Sea Customs Act, made no distinction between a citizen and a non-citizen. It was intended to bring within the mischief of the section every one who might contravene its provision. That being the true position, the argument advanced by the petitioner, that S. 52 A was bound to be declared ultra vires if the attack upon it came from a citizen was more or less of a speculative character, and proceeded upon an assumption which could not be made by the Court. The question raised therefore, could not be pronounced to be substantial in any sense of the term.

The contention regarding Art. 14 could not be considered to be substantial or at any rate, such as could be held fit to be agitated before the Supreme Court. AIR 1962 Cal 308 (309, 310) (Pt A) (Prs 13, 14, 15, 16, 17) (DB).

——Art. 133—Substantial question of law—Question of mens rea.

In order that it may be regarded as a substantial question of law, there must be some justification for the contention that the view taken of the section is, at least, such as can be taken on the language in which the provision has been couched.

In a case such as section 52-A, Sea Customs Act where the statute by express words absolute and peremptory in this import, rules out intention or knowledge that is mens rea, the question as to the absence of knowledge or intention on the part of the accused who was punished for its contravention does not involve a substantial question of law. AIR 1962 Cal 308 (310) (Pt B) (Pr 19) (DB).

——Art. 133 (1) (c) — Substrantial question of law— (Civil P. C. (1908), S. 110).

The question whether a person's right to a share in his grandfather's property was in any way affected by the severance in status of his father, is no doubt a

question of law but on the clear language of the provisions of Ss. 22, 23, 24 and 26, Special Marriage Act, there can be no room for reasonable doubt for difference of opinion on the question. That being so the question whether with the severance of father's status as a member of the undivided family his son also ceased to be a member of the family is not a substantial question of law even if the point is not covered by any authority. **1956 Madh B L J 588 : Madh B L R 1956 Civil 86 : ILR (1956) Madh B 192 : AIR 1956 Madh B 145 (150) (Pt C) (Pr 9) (DB).**

——Art. 133—Substantial question of law — Contention finding support in Supreme Court decision but not accepted by High Court—Held involved substantial question of law.

Held, that the contention that the principle of the right of appeal being a vested right is not applicable to appeal within the High Court itself finds ample support in the decision of the Supreme Court in National Sewing Thread Co. Ltd v. James Chadwick and Brothers. AIR 1953 S C 357. The limits within which the rule of the right of appeal being a vested right accruing to party at the commencement of the action have also been pointed out in G. Veeranna v. G. C. Veykanna. AIR 1953 Mad 878 (FB) and AIR 1954 Cal 289. This contention (which was raised before the High Court but was not accepted) involves a substantial question of law and if other conditions are satisfied leave will be granted. **1956 Madh B L J 523 : Madh B L R 1955 (Civil) 115.**

——Art. 133—Substantial question of law—Decision of the Judge in revision — Appeal — Maintainability (M. B. High Court of Judicature Act 8 of 1949), S. 23—(Civil P. C. (1908), Ss. 109, 115).

The question whether on the language of S. 23, M. B. High Court of Judicature Act an appeal can lie to a Division Bench against a decision of a Single Judge in revision under S. 115, Civil P. C., is not substantial question of law within the meaning of Art 133 (c). It is not a reasonably debatable question. AIR 1952 Madh B 149, Dist. Civil Misc. Case No. 46 of 1953 Madh B. Foll. **Madh B L R 1954 Civil 484 : Madh B L J 1955 H C R 213 : AIR 1955 Madh B 66 (68) (Pt B) (Pr 10) (DB).**

● ——Art. 133—Question of law involving difference of opinion.

A question of law involving difference of opinion is a substantial question of law. The question of law in the case was whether a decree or order passed by a division bench of the High Court, final and conclusive under M. B. High Court Ordinance, is appealable under S. 25 of the High Court Act. The real question involved was one of construction of S. 2 (6) of the High Court Act, the scope and purpose of which is fairly debatable, Gulabchand v. Kudilal, **Madh BLJ 1955 HCR 1271 : A I R 1952 Madh B 149 (150, 151, 152) (Prs 4, 6, 7, 14) (FB).**

——Art. 133—Substantial question of law—Construction of proviso to S. 83 (1) of Representation of the People Act and R. 94-A of Conduct of Election Rules (1961), is a substantial question of law.

As different High Courts have taken a different views on the question where the proviso to S. 83 (1) of the Act and R. 94-A are mandatory so as to preclude an enquiry into the allegations of corrupt practices when the election petition was not accompanied by an affidavit sworn before the prescribed authority as required by S. 83 and R. 94 A, the question of the construction of the proviso to S. 83 (1) and R. 94 A clearly becomes a substantial question of law rendering the case a fit one for appeal to the Supreme Court. AIR 1962 S C 1314, Foll. **1964 Jab L J 549 : 1964 M P L J 893 : AIR 1965 Madh Pra 15 (17) (Pt B) (Pr 5) (DB).**

——Art. 133 — Substantial question of law — Case governed by Art. 48, Limitation Act—Question of onus as to starting point—Divergent views of different High Courts — No decision of Supreme Court or of Privy Council—Question held was substantial question of law—(Limitation Act (1908), Art. 48) — (Civil P. C. (1908), Pre. S. 110)—(Precedents). AIR 1956 Pat 526 (527, 528) (Pt B) (Pr 4) (DB).

——Art. 133 (1) (c) — Substantial question of law — Dispute as to when right to sue accrued.

Held, on facts that the possession of the land was taken by the Military on the condition express or implied that compensation would be settled and paid later on. Therefore it was possible to urge that the right to sue arose, when the Military Authorities refused to pay, and not on the date of recommendation by the political Minister of the State Government about the compensation which was subject to approval of the Military Authorities and therefore not final. If therefore the running of the period of limitation is to be computed from the date of refusal to pay, then that date cannot be taken to be earlier than the date on which the Military Authorities sanctioned the amount treating it as a refusal to pay anything more, and the same came to the knowledge of the plaintiff the owner of the lands. That date would be sometime in 1949 at the earliest. If this view finds favour then plaintiff's claim was clearly not time barred on the date he instituted this suit. Thus a complicated question of law has arisen between the parties on the decision of which will depend the decision of the claim.

The value of claim in dispute being not less than Rs. 20,000 and a substantial question of law having been involved in the appeal a certificate under Art. 133 could be issued. I L R 34 Cal 470, Disting. **AIR 1957 Tripura 52 (54, 55) (Prs 18, 21).**

17 (c). Questions of fact.

● ——Art. 133—Question of fact or law—Finding as to change over of sovereignty or completion of act of State—Nature of.

A finding as to change-over of sovereignty or completion of an act of State, is not a finding of fact pure and simple. The question essentially is what inference in law should be drawn from the facts proved or admitted relating to the change over of sovereignty. State of Saurashtra v. Jamadar Mohamad Abdulla, **(1962) 3 S C R 970 : (1962) 2 S C J 70 : (1962) 2 S C A 605 : AIR 1962 S C 445 (450) (Pt A) (Pr 12).**

● ——Art. 133—Inference from proved facts cannot be a question of law—Concurrent finding on question is conclusive.

The inference from the facts and circumstances proved that there was not or there was consent of the successful candidate to the corrupt practice as required by S. 100 (1) (b) of the Representation of the People Act, 1951, cannot be a question of law. Hence the concurrent finding of the High Court and the Election Tribunal to the effect that there was no such consent either express or implied concludes the matter and it cannot be contended in the appeal before the Supreme Court that there was such consent. Sarat Chandra Rabha v. Khagendranath Nath, **(1963) 1 S C J 796: I L R (1961) 13 Assam 1: (1961) 2 S C A 326 : (1961) 2 S C R 133 : AIR 1961 S C 334 (337, 338) (Pt B) (Pr 7).**

● ——Art. 133—Substantial question of law—Findings of fact—(Words and Phrases). See Industrial Disputes (Appellate Tribunal) Act (1950), S. 7. **AIR 1957 S C 376.**

■ —Art. 133—Question of law.

Upon the concurrent findings of fact arrived at by the Courts below no question of law arises. Shamrao v. Dominion of India, (1955) 27 I T R 30 : AIR 1955 S C 249 (251, 252) (Pt C) (Pr 5).

—Art. 133 (1) (c) — Substantial question of law — Whether instalments are or are not heavy — (Debt Laws — Bombay Money Lenders Act (31 of 1947), S. 24).

Whether the instalments as fixed by the Court under S. 24 are or are not heavy in view of the circumstances of the judgment-debtor is obviously a question of fact. What the circumstances of the judgment-debtor are, is also a question of fact to be determined on the evidence in each particular case. The questions, therefore, do not involve substantial questions of law. AIR 1955 Ajmer 16 (17) (Pt D) (Pr 6).

—Art. 133 (2)—Substantial question of law—Particular condition whether amounts to a clog on redemption is a question of fact — [T. P. Act (1882), S. 60]—[Civil P. C. (1908), S. 110]. AIR 1954 Ajmer 53 (1) (53) (Pt B) (Pr 3).

—Art. 133 (c)—Civil P. C. (1908), S. 109 (c)—Question of sufficient cause within S. 5, Limitation Act is a pure question of fact. See Civil P. C. (1908), S. 109 (c). AIR 1953 Assam 70.

—Art. 133 (1)—Substantial question of law—Question of construction of judgment.

Held, that the question of status of a tenant i. e., whether a particular tenant was a monthly tenant, and if so on what terms and conditions based on a construction of judgment is really a question of fact, and cannot be regarded as a question of law, far less a substantial question of law. AIR 1934 P C 112 and AIR 1938 Cal 724, Rel. on. AIR 1963 Cal 13 (17) (Pt C) (Pr 14) (DB).

—Art. 133 (1) (c) — Substantial question of law — What is—Suit for damages on account of death due to neglect of duty on part of defendant—Finding as to contributory negligence—Question is of fact only.

In a suit for damages, a finding, as to contributory negligence, depends upon the facts and circumstances of a particular case and is a question of fact only. Such a finding does not involve the determination of any substantial question of law. AIR 1933 All 214, Rel. on. AIR 1964 Him Pra 17 (19) (Pt B) (Pr 10).

—Art. 133—Question of fact — (Civil P. C. (1908), S. 110).

The application must show that some substantial question of law, as opposed to substantial question of fact, is involved for decision. AIR 1956 Him Pra 65 (67) (Pt D) (Pr 18).

—Art. 133—Question whether reasonable opportunity of being heard under Art. 311 was given—Question of fact.

The question whether the petitioner who was removed from service was or was not given a reasonable opportunity at the two stages is a question of fact depending on the facts, circumstances and nature of the inquiry held against the applicant and on his replies thereto. That being so, the case cannot be certified under Art. 133 (1) (c) as a fit one for appeal to the Supreme Court for the purpose of canvassing the question of fact. 1957 Jab L J 728 : AIR 1957 Madh Pra 226 (227) (Pt A) (Pr 2) (DB).

—Art. 133—Applicability of Cl. (c) — Substantial question of law.

A dispute arose between the assessee and the income-tax department as to whether the department could immediately collect the tax assessed treating the assessee as a defaulter or should postpone the collection because he was entitled to the benefit of the bar under the proviso to S. 45, Income-tax Act. The assessee claimed that there was restriction by law in Ceylon under which he was not allowed to remit his foreign income into taxable territory during the relevant period and hence the department had no jurisdiction to treat him as defaulter. But as it was admitted before the High Court that the restriction was not absolute and remittances could be made if a proper case was made out for such remittances the High Court passed an order allowing an opportunity to the assessee to prove to the satisfaction of the Commissioner of Income-tax that he made bona fide efforts to remit the foreign income into the taxable territory and that notwithstanding such efforts he was not successful and asked the department to stay its hand for a period of two months for that purpose.

Held, that on the facts no substantial question of law was involved which would justify the Court in certifying that the case was a fit one for appeal to Supreme Court. AIR 1954 Mad 879 (880) (Prs 1, 2) (DB).

—Art. 133 (1) (c)—Question of fact — High Court on appeal from decision of Election Tribunal holding that a person was not agent of the successful candidate and there was no evidence in support of the allegation of agency.

Held, that this being a finding of fact could not furnish a ground for leave to appeal to the Supreme Court under Art. 133 (1) (c). 63 Pun L R 212 : AIR 1961 Punj 383 (385) (Pt C) (Pr 7) (DB).

—Arts. 133, 134 (1) (c), 136 — Certificate of fitness under Art. 134 (1) (c)— AIR 1951 Hyd 71, Dissented from.

The considerations which apply to the granting of special leave by the Supreme Court under Art. 136, are different from the considerations which apply to the High Court granting leave under Art. 134 (1) (c). In order that the High Court may grant a certificate under Art. 134 (1) (c), there must be similar considerations present which apply to civil cases under Art. 133 (1) (c). These considerations are that some clear departure from the requirements of justice has taken place or some disregard of legal principles has occurred or some failure of the principles of natural justice has taken place, or there is some question of law of general public importance arising in the case. If these considerations do not arise the High Court will not grant a certificate under Art. 134 (1) (c) merely on the ground that the Supreme Court might come to a different decision.

Where the questions involved in the appeal before the High Court were really questions of fact, and the Judges held that the evidence of the eye-witnesses was not reliable, and therefore acquitted the accused persons and it could hardly be said that exceptional and special circumstances existed in the case that substantial and grave injustice had been done and that the case in question presented features of sufficient gravity to warrant a review of the decision.

Held that a certificate could not be granted. 1954 Cri L J 1677 : 1955 Raj L W 331 : I L R (1955) 5 Raj 64 : AIR 1954 Raj 271 (272) (Prs 3, 4) (DB).

—Art. 133 (1) (a) and (b) — Grant of certificate—Suit for partition of joint family house — Value of plaintiff's share less than Rs. 20,000.

Where in a suit for partition, of a joint family house the value of the plaintiff's share is less than Rs. 20 000, the plaintiff is not entitled to a certificate under Art. 133 (1) (a) or (b) of the Constitution, although the value of the house is more than Rs. 20,000. Where the High Court has confirmed the decree of the Court below the plaintiff will not be

entitled to a certificate even if the value of his share is not less than Rs. 20,000, unless he can further show that the appeal involves some substantial question of law. The fact that the High Court has gone wrong in appraising the evidence, which was produced, and coming to certain conclusions of facts on that evidence, is no substantial question of law and the plaintiff is not entitled to any certificate under Art. 133 (1) of the Constitution. I L R (1951) 1 Raj 358 : 1951 Raj L W 324 : AIR 1952 Raj 11 (11, 12) (Prs 3, 4) (DB).

17 (d). Procedural matters.

——Art. 133 (1)—Substantial question of law—Splitting up of reference by Industrial Tribunal—Matter is of procedure — Certificate cannot be granted—Industrial Disputes Act (1947), Ss. 10, 15.

Where more than one headings of dispute are included in the reference to the Industrial Tribunal, there is no implied direction that, in no event, the Tribunal should split up the headings, and dispose them of one after another. The manner and the sequence in which the headings of the dispute are to be taken up for consideration is left to the Tribunal itself. It is a matter of procedure pure and simple. Where the High Court in appeal holds that such a step taken by the Tribunal was procedural, fair and reasonable and acquiesced in by the parties themselves the appeal does not involve a substantial question of law. **1962 Jab L J 253 : 1961 M P L J 982.**

17 (e). Incorrect application of law.

——Art. 133 (1) (c)—Substantial question of law.

A certificate for leave to appeal to the Supreme Court under Art. 133 (1) (c), Constitution of India would not be granted unless a substantial question of law of great public or private importance was involved. A case is not made out for grant of a certificate under Art. 133 (c) even if the Court has erred in not relying on the plaintiff's admission. AIR 1954 Him Pra 24, Rel. on. **AIR 1955 Him Pra 62 (62, 63) (Pt B) (Pr 2).**

——Art. 133 (1) (c)—Incorrect application of law.

Incorrect application of principles of law is not a sufficient ground to conclude that the case is a fit one for appeal to the Supreme Court as involving a substantial question of law of such general application as to require the highest Tribunal of the realm to adjudicate upon. Case law Rel. on. **ILR (1954) Mys 504 : AIR 1955 Mys 35 (37) (Pt B) (Pr 8) (DB).**

17 (f). Construction of documents.

● **——Art. 133—Civil P. C. (1908), Ss. 100 and 110—Question of law—Construction of document.**

The construction of a document of title or of a document which is the foundation of the rights of parties necessarily raises a question of law. Chunilal U. Mehata v. C. S. & M. Co. Ltd., **65 Bom L R 267 : 1963 M P L J 449 : 1963 Mah L J 457 : (1962) Supp 3 S C R 549 : (1961-62) 21 F J R 478 : (1962) 1 Lab L J 656 : A I R 1962 S C 1314 (1316) (Pt A) (Pr 2).**

——Art. 133 — Question if pleadings amount to admission—Not a question of substantial point of law. AIR 1951 Cal 409 (410) (Pt B) (Pr 9) (DB).

——Art. 133 — Substantial question of law—Assessment of evidence—(Civil P. C. (1908), S. 110).

Where the value of the testimony of witnesses is assessed in accordance with well-defined legal principles, the findings based on their testimony are findings of facts and not of law. **AIR 1956 Him Pra 65 (67) (Pt B) (Pr 15).**

——Art. 133 (1) (c)—Difficult and substantial question of law — Construction of document—Whether a deed purporting to be a mortgage, but having effect of outright sale requires registration — Decision on—Leave to appeal—Civil P. C., S. 110.

A question whether a document stated to operate as a mortgage but disclosing an out and out sale deed required registration could not be deemed to be a question involving a difficult or substantial question of law when the terms of the document were quite clear and there was concurrent finding of both the lower Courts on the point. A I R 1955 Nag 287 and AIR 1955 Him Pra 62 and A I R 1955 N U C (Manipur) 4552, Rel. on. **AIR 1956 Manipur 31 (32) (Pt A) (Pr 6).**

——Art. 133 — Substantial question of law—Suit for damages in respect of underground trespass over mining rights — Determination of boundary line dependent on deeds of settlement, maps and lease—Construction of, held raised substantial question of law—(Civil P. C. (1908), S. 110). AIR 1956 Pat 526 (527) (Pt A) (Pr 3) (DB).

17 (g). Admissibility of documents in evidence.

——Art. 133 — Substantial question of law—(Civil P. C. (1908), S. 110).

Where the Chopta produced by the plaintiffs was admitted in evidence and its admissibility had not been questioned by the defendant :

Held, that the case did not involve substantial question of law on the ground that the document was a suspicious document. A I R 1942 Mad 368, Disting. **A I R 1956 Him Pra 65 (66, 67) (Pt A) (Pr 12).**

——Art. 133 — Substantial question of law—Rejection of application under O. 41, R. 27, Civil P. C.—(Civil P. C. (1908), S. 110, O. 41, R. 27).

Where the appellate Court expressed the view that the production of the document in question was not necessary for the purpose of disposing of the appeal, the rejection of the application under O. 41, R. 27, would not amount to a substantial question of law. Therefore no certificate can be granted on this score. **AIR 1956 Him Pra 65 (67) (Pt C) (Pr 17).**

——Art. 133 (1) — Substantial question of law—(Registration Act (1908), Ss. 171 (b) and (2) (vi) and 49.)

A compromise decree directed that the decree-holder should be given a portion of the suit lands "with the stipulation that if title to the same or any part thereof is found defective or any part thereof is found to have been settled or any other defect is found, then lands of equal area and quality out of Sch. D. lands (not subject-matter of the suit) will be given to decree-holder by proper documents and on failure, or if Sch. D lands be not found sufficient for purpose, then the decree-holder will be compensated at Rs. 2,000 per acre of bakasht lands."

The compromise decree though compulsorily registrable under S. 17 (1) (b) read with S. 17 (2) (vi) was not registered. The question involved in the proposed appeal to the Supreme Court was whether the default clause regarding the monetary compensation in the decree could be looked into or enforced by reason of want of registration of the decree sought to be executed.

Held, that the question involved was a substantial question of law within the meaning of Art. 133 (1). **AIR 1955 Pat 447 (449) (Pt A) (Prs 6, 8) (DB).**

——Art. 133 (1)—Substantial question of law—(Civil P. C. (1908), S. 110).

(Obiter) ; The question regarding the non-admissibility of a document in evidence is a substantial question which will entitle the petitioner to have a certifi-

cate. A I R 1937 P C 69, A I R 1942 Mad 368; A I R 1929 Mad 827; A I R 1927 P C 110, Ref. 1953 B L J R 375 : AIR 1953 Pat 380 (382, 383) (Pt D) (Pr 6) (DB).

17 (h). Other cases.

● ——**Arts. 133, 136**—Substantial question of law — Testamentary disposition by a Hindu in favour of female heir—Question relating to nature of interest created in her favour held involved substantial question of law — (Civil P. C. (1908), S. 110), Nathoo Lal v. Durga Prasad, 1954 S C J 557, 67 Mad L W 641 : 1955 S C R 51 : 1954 S C A 921 : AIR 1954 S C 355 (357) (Pt B) (Pr 10).

——**Art. 133** (1) — Substantial question of law — Mention of relief in notice under S. 80, Civil P. C. if necessary is substantial question of law of general importance—(Civil P. C. (1908), S. 80). AIR 1955 N U C (Ajmer) 5483.

——**Arts. 133 (1) (c), 132—Substantial question of law —Vesting of legal character as Speaker—Declaration if necessary.**

The question whether a declaration was or was not necessary to vest the legal character of the Speaker of the State Legislative Assembly in the petitioner, is a substantial question of law and he is entitled to a certificate under Art. 133 even if not under the provision of Art. 132. AIR 1955 Ajmer 40 (40) (Pr 2).

——**Art. 133 (1) (c)** — Substantial question of law — Order under S. 24, Bombay Money Lenders Act — Order fixing time limit within which to pay whole decree amount — Order does not involve substantial question of law — (Debt Laws — Bombay Money Lenders Act (31 of 1947), S. 24). AIR 1955 Ajmer 16 (17) (Pt C) (Pr 5).

——**Art. 133** (1) — Substantial question of law — Partner of firm appointed as authorised Controller by Government — Appointment later on quashed by Court as illegal — Question as to liability of such person as partner to pay sales tax on sale transactions made by him as authorised Controller, is substantial question of law. AIR 1965 All 106 (109, 110) (Pt A) (Prs 9, 10, 11) (DB).

——**Art. 133 (1) (c)— Substantial question of law — Question concerning interpretation of S. 97, Representation of the People Act, 1951.**

The question whether, in an election petition for declaring election to be void under S. 100 (1) (d) (iii), Representation of the People Act, 1951, the opposite party (the returned condidate) could be allowed to adduce evidence in support of his allegation that some of his votes had also been improperly rejected and some of the petitioner's votes had been improperly accepted, without taking that as a ground in his recriminations under S. 97 of the Act, raises a question of substantial and general importance of a recurring nature and it is a fit case for appeal to the Supreme Court under Art. 133 (1) (c). 1960 All L J 328 : 1960 All W R (HC) 192 : AIR 1960 All 548 (549, 550) (Pt B) (Pr 9) (DB).

——**Art. 133**— Civil P. C. (1908), Ss. 109 (c), 110 — Substantial question of law — Inference as to legal nature of property— See Civil P. C. (1908), S. 109 (c). AIR 1953 All 129.

——**Art. 133—Substantial question of law.**

The point whether the Court has jurisdiction to go into the question of the validity of the acquisition proceeding in a reference is a matter of substantial importance. Similarly the question whether in view of S. 23 of the Requisitioning and Acquisition of Immoveable Property Act, 1952, an acquisition order will be deemed to be valid, even if it is irregular is of sufficient general importance to warrant the issue of a certificate under Art. 133 (1) (c). A I R 1959 Assam 196 (196, 197) (Pt B) (Pr 1) (DB).

——**Art. 133 (1) (c)—Questions of public importance —(Indian Independence Pakistan Courts (Pending Proceedings) Act, 1952).**

The questions relating to the validity and the effect of the Indian Independence Pakistan Courts (Pending Proceedings) Act, 1952, have wide public importance. They are questions of law. A I R 1944 All 273 (F B), Foll.

Thus the questions, whether the Indian Independence Pakistan Courts (Pending Proceedings) Act, 1952, was intended to have any retrospective effect and that in any case it may be applied to pending proceedings; and that the Act itself was ultra vires inasmuch as it offended against certain provisions contained in the Constitution, had to be decided in order to dispose of the case. AIR 1953 Assam 101 (102) (Pt A) (Pr 5) (DB).

——**Art. 133 (1) (c)—Substantial question of law — Court in execution combining reliefs under S. 51 (b) and S. 51 (d), Civil P. C. — No substantial question of law.**

Held, that no case had been made for the Supreme Court to examine the principles applicable to a case where a decree-holder asks for the assistance of the executing Court by the appointment of a receiver to sell the charged assets. The decree-holder might have made out a better case for the relief asked for and if any objection had been taken to that course the Court might have given the parties an opportunity of using further affidavits on that point. This question which was never canvassed before the executing Court was raised before the Division Bench in appeal probably because no other loophole could be found in the order. A I R 1962 S C 1314, Applied. A I R 1963 Cal 515 (520) (Pt B) (Pr 19) (DB).

——**Art. 133 (1)—Substantial question of law—Order under S. 17 (c), West Bengal Act 12 of 1956, striking out defence —It can be challenged in appeal from ejectment decree.**

The question whether an order striking out the defence under S. 17 (3) of the West Bengal Act 12 of 1956 which has been confirmed in revision can be challenged in an appeal from the final ejectment decree under the provisions of S. 105 of the Code of Civil Procedure is a substantial question of law within the meaning of Art. 133 of the Constitution. AIR 1963 Cal 13 (16, 17) (Pt B) (Pr 13) (DB).

——**Art. 133 (1)—Substantial question of law—Question whether particular construction is premises within S. 2 (f), West Bengal Act (12 of 1956).**

The question whether a particular construction made by the landlord on the vacant site let out to a tenant is premises, within the meaning of S. 2 (f), West Bengal Premises Tenancy Act, 1956, is a substantial question of law. A I R 1963 Cal 13 (17) (Pt D) (Pr 15) (DB).

——**Art. 133 (1) (c)**—Certificate of fitness—Held form in which relief was granted did not raise any substantial question of law justifying grant of leave — (Civil P C. (1908), S. 109). A I R 1955 N U C (Cal) 4509 (DB).

——**Art. 133 (b) — Civil P. C., S. 110 — Substantial question of law.**

S died leaving him surviving widow R, daughter A and plaintiffs who were sons of A. A propounded a will by S of his entire estate in her favour and obtained probate. But in appeal the will was held as forged. While second appeal in Privy Council was pending R and A executed two settlement deeds. By one R relinquished her claim in lieu of monthly maintenance. By another A got absolute title. Question whether properties could be dealt with in that

manner by A and R with effect of arrangement being binding upon plaintiffs as reversioners is a substantial question of law. AIR 1953 Cal 282 (282, 283) (Pt A) (Pr 2) (DB).

——Art. 133 (b) — Civil P. C., S. 110 — Substantial question of law.

A mortgage was executed to pay off earlier mortgage. Earlier mortgage was not for legal necessity. Question whether later mortgage could be regarded as justified by legal necessity is a substantial question of law. AIR 1953 Cal 282 (283) (Pt B) (Pr 3) (DB).

——Art. 133 (1) (c) — Substantial question of law — Question, whether defendant respondent, against whom, suit has been partly decreed can, in appeal by plaintiff appellant, urge under O. 41, R. 22, Civil P. C. which if accepted would necessitate total dismissal of suit is a substantial question of law. A I R 1965 Him Pra 23 (24, 25) (Pt A) (Prs 4, 5).

——Art. 133—Substantial question of law — Suit in name of dissolved firm — Maintainability — (Civil P. C. (1908), S. 110, O. 30, R. 1).

The firm must still be deemed to be alive for the purpose of the recovery of a sum which was found due at the time when the firm was taken over by the new firm and the previous accounts were gone into and settled. Consequently, the suit could not fail on the ground that a suit in the name of a dissolved firm was not maintainable. And in such a case it cannot be held that the decision involves a substantial question of law. A I R 1956 Him Pra 65 (66) (Pt F) (Pr 11).

——Art. 133 — Question before Supreme Court whether lower appellate Court failed to exercise jurisdiction—Not a substantial question of law. AIR 1954 Him Pra 24 (25) (Prs 7, 8).

——Art. 133—Substantial question of law— Compulsory retirement. See Ibid, Art. 132. AIR 1955 NUC (Madh B) 3733.

——Art. 133—Substantial question of law. See Workmen's Compensation Act (1923), S. 30. A I R 1954 Madh B 59.

——Art. 133 (1) (b) and (c) — Purchaser of lands in the possession of cultivating tenants—Question whether the purchaser can rely on arrears of rent prior to his purchase as a ground for eviction of the tenants under the Madras Cultivating Tenants Protection Act (25 of 1955) and the nature of the order that can be passed by the Court in such a case — Decision of High Court in revision—If involves substantial questions of law — Proceedings before High Court — If 'civil proceedings' — Leave to appeal to Supreme Court—Grant of.

Where certain lands, worth more than Rs. 20,000 in value in the possession of cultivating tenants who defaulted in the payment of rents, is sold to a purchaser—the vendor also assigning the arrears of rent due from the tenants to such purchaser—the question whether the purchaser can rely on the arrears accrued due prior to the purchase as a ground for eviction of the tenants under the Madras Cultivating Tenants Protection Act (25 of 1955) and the question whether in such a case the Court in the suit for eviction, can pass a rolled up order determining the arrears and ordering eviction if the amount is not paid within the time allowed by it or whether the Court should first pass an order determining the arrears and give some time for the payment thereof before passing an order for eviction, are substantial questions of law and from a decision of the High Court on those questions, in a revision petition against the order of the Revenue Divisional Officer, leave to appeal under Art. 133 (1) (b) of the Constitution of India should be granted. In any event it will be a fit case for appeal to Supreme Court under Art. 133 (1) (c). Section 6-B of the Madras Cultivating Tenants Protection Act expressly provides that the Revenue Divisional Officer shall be deemed to be a Court subordinate to the High Court for the purpose of S. 115 of the Civil Procedure Code. Thus, the statute itself regards and declares the proceedings in the High Court as 'civil proceedings'. (1966) 1 Mad L J 105 : 1965 Mad W N 319 : 78 Mad L W 736 : I L R (1966) 1 Mad 623 : AIR 1966 Mad 327 (328, 329) (Prs 5, 7, 8) (DB).

——Art. 133 — Substantial question of law — Interpretation of statutory rule — (Sales Tax — Madras General Sales Tax (Turnover and Assessment) Rules (1939), R. 18 (2)).

An interpretation of a statutory rule itself involves a substantial question of law.

Rule 18 (2) of the Madras General Sales Tax (Turnover and Assessment) Rules came up for interpretation for the first time before the Madras High Court in T R. C. Nos. 25 and 26 of 1954 and a few days later the principle of that decision was applied in T. R. C. Nos. 51 and 52 of 1953. So far there had been no authoritative pronouncement by the Supreme Court on the scope of rule 18 (2):

Held, that the interpretation of statutory R. 18 (2), especially one imposing a tax liability raised a substantial question of law. (1955) 1 Mad L J 66 : (1955) 6 S T C 72 : A I R 1955 Mad 230 (232) (Pt A) (Pr 7) (DB).

——Art. 133 (1) (c) — Substantial question of law — Retrospectivity of Act - Expression 'tenant' occurring in Orissa Rent Control Act (31 of 1958), so drafted as to give some retrospective effect to Act— Controversy only with regard to extent of retrospectivity — Interpretation of expression 'tenant' held did not raise substantial question of law of such far reaching private or public importance as to justify grant of certificate. ILR (1962) Cut 163 : 28 Cut L T 159 : (1962) 4 O J D 341 : A I R 1962 Orissa 154 (156) (Pt B) (Prs 9, 9a) (DB).

——Art. 133 (1) (c) — Question whether law of preemption is repugnant to fundamental rights. See Ibid, Art. 132 (1). AIR 1951 Vind Pra 88.

18. Clause (2).

——Arts. 133 (1) and (2) and 131 — Certificate under Art. 133 — Questions relating to interpretation of Constitution—If can be raised. See Ibid, Art. 132 (1). AIR 1958 All 621 (DB).

——Arts. 133 (1) and (3) and 132 (1)—Scope.

Article 133, Cl. (3) permits any party appealing to the Supreme Court under Cl. (1) of Art. 133 to urge as a ground in such appeal that a substantial question of law as to the interpretation of the Constitution has been wrongly decided. A I R 1953 Assam 101 (102) (Pt C) (Pr 7) (DB).

——Art. 133 (1) (c) — Validity of Bengal Public Demands Recovery (Validation of Certificates and Notices) Act (West Bengal Act 11 of 1961) sought to be questioned—Act held valid by High Court after considering various entries in Legislative Lists of the Constitution—Case involving payment of very large sum to Income-tax department by private firms — Question held involved substantial question of law. AIR 1927 P. C. 110, Rel. on. (1964) 54 I T R 286 : AIR 1963 Cal 389 (391) (Pt A) (Prs 4, 5) (DB).

——Arts. 133 and 132—Leave to appeal - Substantial question of law regarding interpretation of Constitution—Finding that denial of legal help to public servant to defend himself was tantamount to denial of reasonable opportunity — Not a substantial ques-

tion of law—No question of interpretation of Art. 311 involved. See Ibid, Art. 132. **AIR 1962 Orissa 105.**

——**Art. 133 (1) (c)** — Proceedings under Art. 226 — Infringement of fundamental right — Questions involved whether right claimed is a fundamental right and if so Art. 226 imposes a duty on Court in addition to conferring power — Questions whether substantial question of law are of wide public importance. See Ibid, Art. 132 (1). **AIR 1952 Pat 23 (DB).**

19. Judgment of single Judge of High Court.

● —**Art. 133** — No appeal lies to Supreme Court under the Article from judgment of Single Judge of High Court. Management of Hindustan Commercial Bank Ltd., Kanpur v. Bhagwan Dass, (1965) 1 Lab L J 466: (1965) 10 Fac L R 168 : AIR 1965 S C 1142 (1143) (Pt B) (Pr 3).

● ——**Arts. 133, 136** — Decision of single Judge in second appeal – Appeal to Supreme Court will not normally lie and this is evident from Art. 133 (3) — Remedy by way of Letters Patent not availed of—No unqualified rule that special leave under Art. 136 should not be given or where it has been given it should be revoked can be laid down. Balakrishna Iyer v. Ramaswami Iyer, **(1964) 1 S C W R 535 : (1965) 1 S C J 235 : (1965) 1 Mad L J (SC) 10 : (1965) 1 Andh W R (SC) 10 : (1964) 7 S C R 49 : AIR 1965 S C 195 (197, 198) (Prs 7, 8, 9).**

● ——**Arts. 133 (3) and 136 — Judgment of Single Judge of High Court in second appeal — Practice of Supreme Court in granting Special Leave—No leave unless provisions of S. 100, Civil P. C., are contravened.**

Under Art. 133 (3) of the Constitution no appeal lies to the Supreme Court from the judgment, decree, or final order of one Judge of a High Court, and it has been the consistent practice of the Supreme Court not to encourage applications for Special Leave against the decisions of the High Courts rendered in second appeals; but in cases where the petitioners for Special Leave against the second appellate judgments delivered by a single Judge of the High Court are able to satisfy the Supreme Court that in allowing a second appeal, the High Court has interfered with questions of fact and has thus contravened the limits prescribed by S. 100 of the Code of Civil Procedure, it is not easy to reject their claim for Special Leave. Madamanchi Ramappa v. Muthaluru Bojjappa, **(1963) 2 S C W R 107 : (1964) 1 Andh L T 1 : 1964 S C D 358 : (1964) 2 S C R 673 : AIR 1963 S C 1633 (1634) (Pt A) (Pr 1).**

——**Art. 133 (3)** – Single Judge dismissing writ petitions following earlier Division Bench decisions—Earlier Division Bench Decision already before Supreme Court under leave granted by the Division Bench—Leave to appeal from decision of single Judge if can be granted under Art. 132. See Ibid, Art. 132. **AIR 1960 Andh Pra 628.**

——**Art. 133 (3)** – Order of Single Judge — Appeal to Supreme Court — Application for leave—Maintainability.

A certificate for leave to appeal to the Supreme Court against the order of a Single Judge of the High Court cannot be granted under Art. 133 in view of the clear bar contained in its sub-cl. (3). **95 Cal L J 160 : AIR 1955 Cal 257 (258) (Pt B) (Pr 3) (DB).**

● ——**Art. 133** — Right of appeal under Article in cases heard by a single Judge of High Court. See Ibid, Art. 225 **AIR 1952 Pat 341 (SB).**

——**Arts. 133 (3) and 136 (1)** –Applicability—Order of Single Judge is not subject to Letters Patent appeal —Remedy of aggrieved party is to approach Supreme Court for leave under Art. 136 (1). **AIR 1955 N U C (Punj) 4025.**

20. Concurrent findings of fact.

● —**Art. 133** — Question whether on facts found a transaction is a mortgage by deposit of title deeds is a mixed question of fact and law—Concurrent finding of both Courts below vitiated on account of fact that they missed the importance of a particular document bearing on the question — Supreme Court interfered by examining the evidence afresh. Nathan v. Maruthi Rao, **(1964) 6 S C R 727 : (1964) 2 S C J 671 : (1964) 2 Mad L J (S C) 162 : (1964) 2 Andh W R (SC) 162 : (1964) 2 S C W R 122 : AIR 1965 S C 430 (436) (Pt B) (Pr 13).**

● ——Art. 133 (1) (b) — Proceedings for annulment of marriage under S. 12 (1) (d), Hindu Marriage Act —Supreme Court will not interfere with the concurrent finding that wife was not pregnant at time of marriage except in exceptional cases.

Per Mudholkar, J. – When in proceedings under S. 12 (1) (d), Hindu Marriage Act, there is a concurrent finding of fact of the High Court and also the City Civil Court that the wife was not pregnant before her marriage, the Supreme Court will not in appeal under Art. 133 (1) (b) interfere with the finding, merely on the ground that another view of the evidence adduced in the case commends itself to the Supreme Court, specially when the finding is based on appreciation of evidence, unless it is shown that the finding is vitiated by an error of law or procedure or unless it is shown that important and relevant evidence has been overlooked or misconstrued. AIR 1960 S C 100 and AIR 1959 S C 781 and AIR 1959 S C 960 and AIR 1955 S C 249, Relied on. Mahendra Manilal Nanavati v. Sushila Mahendra Nanavati, **(1965) S C D 95 : (1965) 1 S C J 788 : 1965 M P L J 509 : 1965 Mah L J 365 : (1964) 7 S C R 267 : 66 Bom L R 681 : AIR 1965 S C 364 (413) (Pt I) (Pr 238)**

● —**Arts. 133 and 136 — Concurrent findings of fact – Practice of Supreme Court — Supreme Court would not interfere unless there are exceptional circumstances — Fact that Supreme Court does not agree with reasons given by High Court for such finding is no ground for interference**

In an appeal the Supreme Court will not ordinarily interfere with the concurrent findings of the Courts below on questions of pure fact and review the entire evidence unless there are exceptional circumstances justifying a departure from the normal practice. Even if the Supreme Court did not agree with the reasons given by the High Court for arriving at the concurrent finding of fact, viz, that there was a transaction of sale it could not be said that there was an exceptional circumstance justifying interference with the finding. Kurapati Venkata Mullayya v. Thondepu Ramaswami & Co., **(1963) 2 S C J 483 : (1963) S C D 785 : (1963) 2 Andh W R (S C) 110 : (1963) 2 Mad L J (SC) 110 : 1963 Supp 2 S C R 995 : AIR 1964 S C 818 (820, 821, 822) (Pt B) (Prs 9, 11, 12).**

● ——Art. 133—**Powers of Supreme Court—Concurrent findings of fact—Supreme Court will not interfere except in exceptional cases.**

Art. 133 does not in any way limit the scope of an appeal provided a proper and valid certificate is issued by the High Court thereunder. The Supreme Court has undoubtedly the power to review the concurrent findings of fact arrived at by the lower Courts in appropriate cases. But it has been a long standing practice of the Privy Council not to interfere with such findings based upon relevant evidence, except under extraordinary and exceptional circumstances.

The same practice has been adopted and followed by the Supreme Court since its inception. AIR 1950 S C 172 and AIR 1951 S C 177 and AIR 1953 S C 235

and AIR 1957 S C 286 and 1959 Cri L J 1223 ; AIR 1959 S C 960 and AIR 1959 S C 31 and AIR 1960 S C 100. Rel. on. A. Raghavamma v. Chenchamma, (1964) 1 S C A 503 : (1964) 2 S C R 933 : AIR 1964 S C 136 (142, 143) (Pt B) (Prs 11, 12).

● ——Art. 133—Powers of Supreme Court — Concurrent findings of fact—Interference—Held that finding by the Courts below that a masonic lodge had acted in good faith in the matter of complaint against one of its members was a concurrent finding of fact—It was the practice of the Supreme Court not to interfere ordinarily with concurrent findings of fact. ILR (1958) Mys 786, Affirmed. T. P. Daver v. Lodge Victoria No. 363, S C Belgaum, (1964) 1 S C A 402 : (1964) 1 S C R 1 : (1963) 2 S C J 465 : 1963 S C D 772 : (1963) 2 Andh W R (S C) 100 : (1963) 2 Mad L J (SC) 100 : AIR 1963 S C 1144 (1149) (Pt B) (Pr 17).

——Art. 133 — Concurrent finding of fact — Interference — Practice of Supreme Court — Finding of High Court without considering relevant evidence.

Normally the Supreme Court is reluctant to interfere with a concurrent finding of fact of the Courts below (viz., whether the consideration for the arbitration agreement was withdrawal and non-prosecution of criminal complaint) but where the judgment of High Court showed that it had not considered the relevant evidence bearing on the point and its conclusion rested mainly on certain erroneous considerations the Supreme Court interfered with that finding after examining the evidence for themselves : AIR 1954 Orissa 234, **Reversed.** V. Narasimharaju v. V. Gurumurthy Raju, (1963) 3 S C R 687 : (1965) 2 S C J 539 : 1962 S C D 963 : 29 Cut L T 1 : 1963 All W R (H C) 35 : 1963 All Cr R 25 : (1963) 1 Ker L R 97 : (1963) 1 Andh L T 102 : (1963) 1 S C A 257 : AIR 1963 S C 107 (113) (Pt B) (Prs 20, 21).

——Art. 133—Finding of fact by authority appointed under Payment of Wages Act, 1936—Its correctness or propriety cannot be challenged by petition under Art. 227—Point however considered on merits by the High Court and the finding confirmed—Point cannot be taken before Supreme Court also in the appeal. See Ibid, Art. 227. (1963) 1 Lab L J 267 (SC).

● **——Art. 133—Corrupt practice at election—Consent of successful candidate—Concurrent finding on.**

The concurrent finding of the High Court and the Election Tribunal, to the effect that there was no consent of the successful candidate, either express or implied, to the corrupt practice, concludes the matter. and it cannot be contended in appeal before the Supreme Court that there was such consent. Saratchandra v. Khagendranath. (1961) 2 S C R 133 : (1961) 2 S C A 326 : AIR 1961 S C 334 (337, 338) (Pt B) (Pr 7).

● **——Art. 133—Question of fact—Insanity.**

Where the two Courts below had reached opposite conclusions on the fact of lunacy, the Supreme Court looked into the evidence in the case, and heard arguments, in deciding the question. R. Muthammal v. Sri Subramaniaswami Devasthanam, 1960 Mad W N 243 : 1960 S C J 963 : (1960) Mad L J (SC) 64 : (1960) 2 S C R 721 : (1960) 2 Andh W R (SC) 64 : AIR 1960 SC 601 (603, 604) (Pt B) (Pr 7).

● **——Art. 133—Concurrent finding of fact — Practice of Supreme Court is not to interfere—Mistaken inference from documents unless there is misconstruction of documents is no less a finding of fact.**

Ordinarily a concurrent finding that the deity was not family deity in which the public had no interest, and that the properties given to the deity constituted a religious and charitable endowment of a public nature is a finding of fact not open to further scrutiny by the Supreme Court under Art. 133. A mistaken inference from document is no less a finding of fact, if there is no misconstruction of the documents. Narayan Bhagwantrao v. Gopal Vinayak, 1960 S C J 263 : (1960) 1 S C R 773 : (1960) 2 S C A 153 : AIR 1960 S C 100 (104) (Pt A) (Pr 8).

● **——Art. 133—Concurrent finding of fact—Practice of Supreme Court.**

The concurrent finding of the three Courts to the effect that the appellants are not hereditary tenants is essentially one of fact and when it is not vitiated by any error of law, the Supreme Court accepts it according to its usual practice, Bhinka v. Charan Singh, 1959 All Cr R 337 : 1959 All L J 557 : 1959 All W R (HC) 440 : 1959 Cri L J 1223 : (1959) Supp (2) S C R 798 : 1960 S C J 892 : AIR 1959 S C 960 (963, 964) (Pt C) (Pr 9).

——Arts. 133, 136 — Concurrent finding of fact — Usual practice of Supreme Court is to accept it. Kherulal Parakh v. Mahadeodas Maiya, (1959) 2 Andh W R (S C) 81 : (1959) 2 Mad L J (S C) 81 : (1959) 2 S C A 342 : 1959 S C J 878 : (1959) Supp (2) S C R 406 : AIR 1959 SC 781 (784, 785) (Pt C) (Pr 6).

● **——Art. 133—Finding of fact—Interference.**

Lower Courts taking different views of evidence — Held there being no concurrent findings Supreme Court will allow appellant to place entire evidence of appellant's witnesses in support of his contentions. Asiatic Steam Navigation Co., Ltd. v. Arabinda Chakravarti, (1959) Supp (1) S C R 979 : 1959 S C A 581 : 1959 S C J 815 : AIR 1959 S C 597 (600, 601) (Pt A) (Pr 8).

● **——Art. 133—Concurrent finding on a consideration of all relevant circumstances by appropriate authorities under Imports and Exports Control Act,** 1947. See Ibid, Art. 32. **AIR 1957 SC 478.**

● **——Art. 133—Concurrent finding of fact—Entries in Wajib-ul-arz — Inference from — Interfrence — (Civil P. C. (1908), S. 112).**

The Supreme Court does not normally go behind a concurrent finding of fact. The question whether from the Wajib-ul-arz entries an inference of surrender or reliquishment of a sovereign right by Government can be properly drawn is not a pure question of fact, depending as it does on the true scope and legal effect of those entries. Raja Rajender Chand v. Mst. Sukhi, I L R (1957) Punj 819 : 1957 S C J 119 : 1957 S C A 251 : 1956 SCR 889 : AIR 1957 S C 286 (293) (Pt C) (Pr 14).

● **——Art. 133—Concurrent finding of fact—Interference.**

The question whether a particular proceeding was collusive or not is essentially a question of fact and where both the Courts below have answered it in the negative on a careful consideration of the record it will not be interfered with in appeal before the Supreme Court. Nagubai Ammal v. B Shama Rao, 1957 M P C 150 : 1956 S C A 959 : 1956 S C J 655 : I L R (1956) Mys 152 : 1956 Andh L T 1029 : 1956 S C C 321 : 1956 S C R 451 : AIR 1956 SC 593 (598, 601) (Pt F) (Prs 13, 20).

● **——Art. 133** — Concurrent finding of fact that alienation by Hindu widow was not a prudent act of management cannot be interfered with by Supreme Court when the view taken by the lower Courts on evidence was proper. (Civil P. C. (1908), S. 100). Kalishankar Das v. Dhipendra Nath, 1954 Mad W N 769 : (1954) 2 M L J 351 : (1954) S C J 670 : 67 Mad L W 776 : 1955 S C A 309 : 1955 S C R 467 : AIR 1954 S C 505 (508, 509) (Pt C) (Pr 6).

● ——**Art. 133—Certificate by High Court—Effect.**

If the High Court grants the certificate prescribed by Art. 133 it will have the effect of permitting an appeal to the Supreme Court and it will not entitle the appellant to challenge the concurrent findings of fact if he is otherwise not entitled to do so. A certificate will not interfere with the discretion of the Supreme Court to decide what matters are concluded by findings of fact and what matters can legitimately be raised in the appeal. Fateh Kunwar v. Durbijai Singh, 1952 All W R (H C) 398 : I L R (1952) 2 All 605 : 1952 All L J 457 : AIR 1952 All 942 (957, 958) (Pt E) (Pr 8) (FB).

[Overruled on another point in AIR 1961 S C 1795].

——Art. 133 (1) (c)—Question of fact—Concurrent findings—Interference.

The Supreme Court would not ordinarily interfere with concurrent findings on pure questions of fact and review the evidence for the third time unless there are exceptional circumstances justifying departure from this normal practice. AIR 1956 Manipur 31 (32) (Pt C) (Pr 9).

——Art. 133 — Concurrent findings of fact — Substantial question of law of great importance must exist for granting leave. AIR 1955 N U C (Manipur) 4552.

21. Practice and procedure.

(a) Form and contents of application for leave.

(b) Application to whom to be made.

(c) Stay.

(d) Interference with findings of fact.

(e) New plea.

21. Practice and procedure.

● ——**Art. 133 — Discretion properly exercised by High Court after a consideration of facts of case—Supreme Court will not interfere. See Ibid, Art. 132. A I R 1965 S C 1531.**

● ——**Art. 133—Supreme Court—Arguments on facts — Details of, given in judgments of High Courts would normally be regarded as correct — Allegation that many arguments on facts brought before High Court Judges were not considered by them—Practice of making such allegations deprecated. Bashiruddin Ashraf v. Bihar Sunni Majlis-Awagf, 1965 B L J R 381 : (1965) 2 S C W R 101 : 1965 B L J R 381 : A I R 1965 S C 1206 (1208) (Pt B) (Pr 7).**

● ——**Art. 133 — Suit by executors of will of one R that certain property sold by wife of R formed part of his estate and wife was merely benamidar for R—Court holding that property belonged to sons of R as joint family property and they were entitled to possession — Sons not parties to the suit—Decision confirmed in appeal to High Court — Appeal to Supreme Court—Contention that as sons of R were not parties to the suit no decree directing executors to deliver possession to sons of R could be passed — Held, that though sons were not parties to the suit, as the executors acquired no title to the property in the suit, interference with the decree of the High Court by Supreme Court was not called for. R. Viswanathan v. Rukr-ul Mulk Syed Abdul Wajid, (1963) 3 S C R 22 : A I R 1963 S C 1 (44) (Pt S) (Pr 96).**

● ——**Art. 133 — Applicability — Exercise of discretion properly by High Court — Supreme Court will not interfere with such discretion. Devendra Pratap Narain Rai Sharma v. State of U. P., 65 Bom L R 267 : 1963 M P L J 449 : 1963 Mah L J 457 : (1962) Supp 3 S C R 549 : (1962) 2 S C J 282 : (1962) 1 Lab L J 266 : 1962 All 437 : ILR (1960) 1 All 636 : A I R 1962 S C 1334 (1337) (Pt D) (Pr 12).**

● ——**Art. 133 — Preliminary issue in suit raising question of vires of Act—State impleaded as party to appeal — Certificate of appeal to defendant against finding on issue—Death of plaintiff pending appeal—Action personal to plaintiff — Maintainability of appeal. See Ibid, Art. 132. A I R 1958 S C 253.**

● ——**Art. 133 (1) (c)—Powers of interference—Decision of Deputy Collector under S. 20, Minimum Wages Act—Application under Art. 226 — Objection to jurisdiction of Deputy Collector on ground that the determination involved complicated question of law — Supreme Court refused to entertain objection since High Court under Art. 226 and also Supreme Court in appeal arrived at the same conclusion as did the Deputy Collector, whatever infirmities might have attached to the Collector's orders. Alison v. B. L. Sen, 1957 S C A 280 : 1957 S C J 268 : (1957) 1 Lab L J 472 : (1956-57) 11 F J R 466 : 1957 S C R 359 : 1957 M L J (Cr) 175 : A I R 1957 S C 227 (231) (Pt B) (Pr 16).**

● ——**Art. 133 (1) (c) — Powers of Supreme Court — Appeal against order under Art. 226 — Interference.**

Proceedings by way of certiorari under Art. 226 are "not of course". The High Court has the power to refuse the writ if it is satisfied that there was no failure of justice, and in appeals which are directed against the orders of the High Court in applications under Art. 226 the Supreme Court can refuse to interfere unless it is satisfied that the justice of the case requires it. But where it is not so satisfied it will not interfere. Alison v. B. L. Sen, (1956-57) 11 F J R 466 : 1957 S C A 280 : 1957 S C J 268 : (1957) 1 Lab L J 472 : 1957 S C R 359 : 1957 M L J (Cr) 175 : A I R 1957 S C 227 (231) (Pt C) (Pr 17).

● ——**Art. 133—Special leave granted under—Procedure to be followed. See Supreme Court Rules (1950), O. 13, R. 8. A I R 1955 S C 464**

——**Art. 133 — Order against which leave to appeal is sought becoming infructuous — Application misconceived.**

Order of single Judge of High Court appointing arbitrator — Death of arbitrator — Application for leave to appeal to Supreme Court—Order appointing arbitrator held became infructuous—Application for leave held was misconceived. **95 Cal L J 160 : AIR 1955 Cal 257 (258) (Pt E) (Pr 9) (DB).**

——**Art. 133 (1) — Appeal under Arts. 132 (1) and 133 (1)—Applicability of O. 45, Civil P. C. to — Power of High Court to cancel certificate for appellant's failure to comply with O. 47, R. 7. See Ibid, Art. 132 (1). A I R 1952 Mad 94 (DB).**

——**Art. 133 (1) — Deliberate withdrawal of application for certification of fitness — Applicant, if can be permitted to press it again. See Civil P. C. (1908), S. 151. A I R 1955 N U C (Mys) 1840.**

——**Art. 133 — Application for leave to appeal on behalf of Government — Presentation by clerk of Advocate General—If according to law. See Ibid, Art. 132. A I R 1952 Raj 180 (DB).**

21 (a). Form and contents of application for leave.

● ——**Art. 133 (1) — Application for certificate — Contents — Prayer in general terms — Sufficiency—(High Court Rules and Orders — Allahabad High Court Rules, Chap. 23, R. 26).**

The plain meaning of O. 45, R. 3 (1), Civil P. C., in its application to a petition under Art. 133 (1) is that the petition in addition to stating the grounds of appeal must contain a prayer which clearly states the provision or provisions of that article under which a certificate is asked for. A prayer in general terms for

a certificate under Art. 133 does not comply with the rule. S C A. No. 68 of 1957, dated 15th November 1957 (All). Approved. District Board, Allahabad v. S. Tahir Hussain, 1959 All L J 358 : ILR (1959) 1 All 636 : A I R 1959 All 572 (573) (Pr 5) (FB).

——Art. 133 — Form of application to High Court. See Ibid, Art. 132. A I R 1956 Manipur 33.

21 (b). Application to whom to be made.

——Art. 133 — Certificate of fitness —Certificate under Art. 132 (1) granted by judge dealing with case — Necessity for making application under Art. 133 to Bench dealing with applications for leave — Duty of Bench when application for leave is made — Application under Art. 133 not accompanied by certificate under Art. 132 — Maintainability of application. See Ibid, Art. 132. AIR 1961 Cal 527 (DB).

● ——Art. 133 1) (c) — Application under—To whom to be made — Practice in Calcutta High Court under Calcutta High Court Rules. See Ibid, Art. 132. A I R 1961 Cal 521 (S B).

——Art. 133 (1) (c) — Application for certificate under — Should be made according to the Rules and practice of the Calcutta High Court to the Bench taking up Supreme Court matters. ILR (1959) 2 Cal 117 (DB).

21 (c). Stay.

● ——Arts. 133 and 136 — Appeal against order dismissing writ petition under Art. 226 challenging vires and applicability of Punjab Resumption of Jagirs Act, 1957 — Adjudication of rival claims to compensation amount will be wholly foreign to its scope—Supreme Court cannot give direction in judgment for staying payment of part amount for specified period though it had granted interim stay till disposal of appeal. A I R 1952 S C 12, Rel. on. Amarsargit Singh v. State of Punjab, 64 Pun L R 842 : (1962) Supp 3 S C R 346 : AIR 1962 S C 1305 (1313, 1314) (Pt D) (Prs 21, 22).

——Art. 133 — Power of stay execution or operation of order passed by High Court. See Ibid, Art. 132. AIR 1957 All 505 (DB).

——Art. 133 — Stay proceedings pending appeal to Supreme Court. See Civil P. C. (1908), O. 45, R. 13 (d). AIR 1953 Assam 159 (DB).

——Art. 133 (1) — Application for leave for grant of certificate — Execution of decree can be stayed pending disposal of application—Civil P. C. (1908), O. 45, R. 13 (2). AIR 1955 All 589, Rel. on. ILR (1960) Mys 931.

21 (d). Interference with findings of fact.

● ——Art. 133 — Supreme Court will not examine evidence at large specially when the High Court and the Court below have drawn identical conclusion from it. See Supreme Court—Practice. AIR 1965 S C 1549.

● ——Arts. 133 and 136 — Appeal against order in writ proceedings —Appreciation of affidavit evidence — Interference with finding of fact — Practice of Supreme Court — Decision of High Court that impugned order was invalid on ground of personal bias — Matters to be considered in appreciating evidence.

On a writ petition challenging the order of the Minister passed under S. 68-D (2), Motor Vehicles Act, 1939, the High Court, on the affidavit evidence, came to the conclusion that the Minister was incompetent to deal with the matter on ground of his personal bias, and that, therefore, the order should be set aside. The High Court, however, granted a certificate of fitness for appeal to the Supreme Court.

Held, that the question before the High Court being one of appreciating the affidavit evidence, normally the Supreme Court would be reluctant to interfere with the findings of fact recorded by the High Court on such affidavit evidence but when, as in the present case the result of the finding of fact as to bias affects the status of a person holding a high public office in the discharge of his duties as a quasi-judicial tribunal, the question about his bias needs to be carefully examined before an adverse verdict is pronounced against him. The Court must always enquire on which side the probabilities lie and must scrutinise the affidavits very critically to determine which of them deserves to be believed. Naturally, in dealing with such a question of fact in appeal, the Supreme Court is normally inclined to attach importance to the findings of fact recorded by the High Court itself.

Held, that the High Court was not in error in coming to the conclusion that the Minister for Transport who dealt with the schemes for nationalisation under S. 68-D (2) of the Act was incompetent to deal with them on ground of personal bias and that no case had been made out for its interference. Andhra Pradesh State Road Transport Corporation, Hyderabad v. Sri Satyanarayana Transports (P.), Ltd., Guntur, (1965) 2 S C W R 186 : (1965) 2 S C A 305 : A I R 1965 S C 1303 (1306, 1307, 1309, 1310) (Pt B) (Prs 11, 15, 24).

● ——Arts. 133, 136 — Supreme Court — Finding of fact by lower Courts — Supreme Court will not allow finding to be challenged in appeal before it. Kanwar Singh v. Delhi Administration, 1965 (2) Cri L J 1 : (1965) 1 S C W R 896 : (1965) 2 S C J 115 : 1965 S C D 630 : 1965 Mad L J (Cri) 435 : 1965 Cur L J 366 : AIR 1965 S C 871 (874) (Pt D) (Pr 8).

● ——Art. 133 — Finding as to factum of adoption by lower Courts — Interference in appeal by Supreme Court — See Hindu Law — Adoption. A I R 1964 S C 136.

● ——Art. 133 — Powers of Supreme Court—Power to consider evidence on record.

Though High Court had formulated the two questions, viz., (1) assuming the sale in favour of the plaintiff to be real whether the sale was intended by the transferor to defeat or delay creditors, and (2) assuming the sale was voidable under S. 53 (1) of the Transfer of Property Act whether the plaintiff was a bona fide purchaser in good faith, as distinct and separate questions. In the discussion which followed it did not keep these two points separate. Further there were some statements or assumptions made in the judgment of the High Court which were entirely not warranted by the facts.

Held, that in view of this, the Supreme Court would itself consider the entire evidence on the record and arrive at its own conclusions on such evidence in record to the two issues; and if it became necessary to arrive at any finding as regards the reality of the sale, it would remand the appeal to the High Court for the matter being considered since the High Court had expressly reserved the consideration of that question. C. Abdul Shukoor Saheb v. Arji Papa Rao, (1964) 1 S C J 168 : (1964) 1 Mad L J (SC) 49 : (1964) 1 Andh W R (SC) 49 : (1963) Supp (2) S C R 55 : AIR 1963 S C 1150 (1154) (Pt B) (Pr 9).

● ——Art. 133 — Interference with finding of fact — Practice of Supreme Court — Finding of authority hearing objections to scheme under S. 68 F, Motor Vehicles Act that there was due service of notice on objectors, affirmed by High Court in writ proceedings — Finding being one of fact will not be interfered with in appeal to Supreme Court Sobhraj Odharmal v. State of Rajasthan, (1963) 2 S C J 188 : 1963 S C D 410 : (1963) Supp 1 S C R 99 : A I R 1963 S C 640 (643, 644) (Pt A) (Pr 9).

■ —Art. 133 — Finding of fact recorded by High Court—Supreme Court normally does not enter upon a reappraisal of evidence — Supreme Court however entered upon a review of evidence on which the findings were founded because another High Court on the identical issue had arrived at a different conclusion R. Viswanathan v. Rukn-ul-Mulk Syed Abdul Wajid. (1963) 3 S C R 22 : A I R 1963 S C 1 (41) (Pt Q) (Pr 81).

■ —Art. 133—Findings of fact—Interference—ILR (1957) Ker 104 (FB), Reversed on facts.

Ordinarily the Supreme Court would not go behind the findings of fact by the final Court of facts but where the conclusion of the High Court is based partly on a misreading of the evidence and partly on the non-advertence to important material evidence bearing on the question and the probabilities of the case the Supreme Court would interfere with the findings by examining the evidence. I L R (1957) Ker · 104 (FB). Reversed on facts: Moran Mar Basslios Catholicos v. Paulo Avira, 1958 Ker L J 874 : 1958 Ker LT 721: ILR (1958) Ker 1340 : AIR 1959 SC 31 : (49, 50, 51) (Pt G) (Pr 42).

■ —Art. 133 — Question of fact. See Civil P. C. (1908), S. 112. AIR 1958 SC 512.

■ —Art. 133—Finding of fact — Interference. See Civil P. C. (1908), S. 112. AIR 1957 SC 743.

■ —Art. 133—Finding of fact — Interference—Arts. 226 and 227—(Industrial Disputes Act (1947), (S. 2 (s).

The question whether the relationship between the parties is one as between employer and employee or between master and servant is a pure question of fact. The decision of the Industrial Tribunal on a question of fact which it has jurisdiction to determine is not liable to be questioned in proceedings under Art. 226 of the Constitution and the Supreme Court entertaining an appeal from the decision of the High Court, should also not interfere with that finding of fact. Dharangadhra Chemical Works, Ltd. v. State of Saurashtra, (1956-57) 11 FJR 439 : 1957 SCJ 208 : (1957) S C A 216: (1957) 1 Lab LJ 477: 1957 SCR 152 : AIR 1957 SC 264 (268, 269, 270) (Pt C) (Prs 17, 19, 24).

21 (e). New plea.

■ —Art. 133—New plea by respondent—Plea of considerable importance—Supreme Court may deal with it. See Ibid, Art. 136, (1965) 2 SCJ 741 : (1965) 2 I T J 657 : AIR 1966 SC 249.

■ —Art. 133 (1)—New point—Application by G under S. 18, Land Acquisition Act (1894) for reference to Court—Subsequent devolution of interest of G in Government—Government applying for reference under S. 30 of Act of 1894—Contention that as interest of G devolved on Government, it may be held that Government was in substance brought on record in place of G in reference under S. 18—Contention not raised in Lower Court or in High Court—Contention not allowed to be raised for the first time before Supreme Court—Civil P. C. (1908), O. 1, R. 10 (Per Subba Rao J. in dissenting judgment). Dr. G. H. Grant v. State of Bihar, (1965) 2 S C W R 365 : (1965) 2 SCJ 404: (1965) 2 Andh W R (SC) 29 : (1965) 2 Mad L J (S C) 29 : (1965) 2 SCA 801 : AIR 1966 S C 237 (241, 244) (Pt B) (Prs 8, 20).

■ —Art. 133—Applicability —Appeal from order on writ petition — New objection — Objection not raised in High Court—Whether can be raised in appeal before Supreme Court. See Ibid, Art. 226. AIR 1965 SC 1763

■ —Art. 133—New plea — Plea depending upon further investigation of facts—Not allowed for first time in appeal before High Court and Supreme Court. See Civil P. C. (1908), S. 98. AIR 1965 S C 1752.

■ —Art. 133—New point—Plea never advanced at any stage of proceedings for assessment—Plea will not be entertained in appeal before Supreme Court. Government of Andhra Pradesh v. Guntur Tobaccos Ltd. (1965) 16 S T C 240 : (1965) 1 S C WR 494 : 1965 S C D 691 : (1965) 2 Andh L T 87 : AIR 1965 S C 1396.

■ —Art. 133—New point before Supreme Court—Question of fact and law not advanced before lower Courts— Question cannot be allowed to be raised for the first time before the Supreme Court. Indore Malwa United Mills v. State of M. P., (1965) 1 S C J 670 : (1965) 55 ITR 736: (1965) 35 Com Cas 274 : (1965) 1 I T J 614 : AIR 1965 S C 1272 (1274) (Pr 5).

■ —Art. 133—New plea relating to question of fact.

Where the appellant had not alleged in its plaint or at any stage of the proceedings in the trial Court that part of the land in suit consisted of beds of tanks and therefore did not come within the definition of ryoti land.

Held, that it was not fair to allow this fresh contention relating to a question of fact to be raised at the stage of appeal before the Supreme Court even though in some of the records of rights certain land was described as poromboke. Sri Athmanathaswami Devasthanam v. K. Gopalaswami Ayyangar. (1964) 3 S C R 763 : (1964) 1 M L J (SC) 42 : (1964) 1 Andh W R (S C) 42 : (1964) 1 S C J 105 : 1964 S C D 540: AIR 1965 S C 333 (340) (Pt A) (Pr 4).

■ —Art. 133—New point—It would not be proper to permit the appellant to make out an entirely new case at the stage of appeal to Supreme Court. Devji v. Magan Lal R. Atharna. (1965) 1 S C J 530 : (1964) 7 S C R 564 : 1964 6 L J R 770 : (1964) 1 S C W R 654 : AIR 1965 S C 139 (140) (Pt A) (Pr 6).

■ —Art. 133—New plea.

Plea regarding constitutional validity of order under Art. 14—Pleadings in that respect before High Court in writ proceeding were of vaguest character—Determination of plea involving amendment of pleadings and investigation of necessary facts — Supreme Court refused to entertain the plea and remand the case for determination of that issue—Party given liberty to file fresh writ petition for challenging order on that ground. State of Rajasthan v. Ram Saran (1965) 1 Lab LJ 103 : (1964) 2 S C R 982: AIR 1964 SC 1361 (1365, 1366) (Pt C) (Pr 11).

■ —Art. 133—New plea.

In the appeal before the Supreme Court arising out of a suit for specific performance of a contract, the plea that it was not a fit case in which specific performance of contract should be enforced by the Court was not allowed to be raised for the first time when it was not specifically raised in the High Court and the necessary facts were not pleaded in the pleadings. Chandnee Widya Vati Madden v. Dr. C. L. Katial. 66 Punj L R 138 : (1963) 2 S C W R 215 : (1964) 2 S C R 495 : (1964) 2 S C J 824: A I R 1964 S C 978 (980) (Pt B) (Pr 5).

■ —Art. 133—Civil P. C. (1908), S. 100—Plea of mixed question of fact and law—Plea raised for first time in Supreme Court—Not allowed. Narasimham v. State of Orissa. (1963) Supp 1 S C R 750 : (1963) S C D 263 : 29 Cut LT 223 : AIR 1963 S C 1227 (1233) (Pt C) (Pr 17).

■ —Art. 133—Appeal in income-tax cases—Question not arising out of order of Tribunal—Question

cannot be raised in Supreme Court in appeal—Income-tax Act (1922), S. 66.

The jurisdiction of the High Court under S. 66 of the Income tax Act being advisory, they are concerned to give their opinion on questions which fairly arose out of the order of the Tribunal, and were in fact raised and referred. A question which does not arise out of the order of the Tribunal, cannot be raised in the Supreme Court in appeal from the judgment of the High Court in the Income-tax reference, as it could not be raised in the High Court. Kishinchand Chellaram v. Commr. of I. T., Bombay. (1962) 46 I T R 640 : (1962) 32 Com Cas 1046 : (1963) 1 ITJ 5 : 1963 Com Cas Rep 70 : (1963) 2 S C R 268 : (1963) 1 S C J 153 : AIR 1963 S C 390 (393) (Pt B) (Pr 10).

● —Arts. 133, 136 —:New plea—According to settled practice of Supreme Court appellant, except in exceptional circumstances, is not entitled to raise a plea for the first time at the hearing in Supreme Court. Kalan Singh v. State of U. P. (1963) 1 S C J 50 : 1962 Supp (2) S C R 76 : ILR (1962) 1 All 906: 1962 All L J 525 : AIR 1962 S C 1183 (1187, 1188) (Pt B) (Pr 12).

● —Art. 133—New plea—Respondents not relying upon a ground in their statement of case—Supreme Court refused to consider same. Joginder Singh v. Deputy Custodian General of Evacuee Property. 63 Pun LR 735 : (1962) 2 S C R 738 : AIR 1967 S C 145 (148) (Pt D) (Pr. 11).

● —Art. 133—New plea—Plea that suit was barred under O. 9, R. 9 Civil P. C. though raised in trial court no issue framed and no evidence let in that behalf—Appellant cannot raise the question before Supreme Court. Kesor Singh v. Balwant Singh. (1962) Supp (1) S C R 325 (S C).

● —Art. 133—New Plea—Practice of Supreme Court.

Held, that the question as to the effect of the rules framed in 1941 under S. 241 of the Government of India Act was never raised or argued before the High Court and therefore the Supreme Court would not entertain any plea depending for its adjudication on notifications said to be issued by the Government from time to time, raised for the first time in appeal, when such notifications have never been brought to its notice, Gian Singh v. State of Punjab. (1962) 3 S C R 515 : (1962) 1 S C J 641 : AIR 1962 S C 219 (223) (Pt. B) (Pr 9).

● —Arts. 133 and 134—New point—Point not urged before High Court will not be permitted to be raised as matter of course and save in exceptional cases. Bhagwati Saran v. State of U. P. 1961 S C D 273 : I L R (1961) 1 All 740 : (1961) 3 S C R 563 : 1961 (2) Cr L J 24 : (1961) 2 S C J 217 : 1961 Mad L J (Cr) 485 : AIR 1961 S C 928 (930) (Pt A) (Pr 6).

● —Art. 133—New plea involving question of fact—Not raised before High Court—Supreme Court refused to allow it to be raised in appeal filed before it on certificate of fitness—If open. Kesari Singh v. State of Rajasthan. (1961) 1 S C J 254 : (1961) 2 S C R 47 : AIR 1961 S C 432 (439, 440) (Pt E) (Pr 31).

● —Arts. 133, 226—New plea—Plea not raised by appellant in his petition under Art. 226 not allowed to be raised for first time in appeal. Associated Cement Co. Ltd. v. P. D. Vyas, (1960) 1 Lab L J 563 : 1960 Nag L J 473 : 62 Bom L R 563 : 1960 M L J (Cr) 804 : 1960 S C J 1269 : (1960) 2 M L J (SC) 107 : (1960) 2 An W R (SC) 107 : (1960) 2 S C R 974 : AIR 1960 S C 665 (668, 669) (Pt C) (Pr 9).

● —Art. 133—New plea.

At the hearing of the appeal, the appellant attempted to show that properties attached to Sansthan were granted to him, impressed with service of the deity. But that was not the case he had made out either before the District Court under the Charitable and Religious Trusts Act or in the plaint filed in this case :

Held, that it was not open to him now to change his plea with regard to his ownership, and the case must be decided only on the contention that the properties were private. Narayan Bhagwantrao v. Gopal Vinayak, 1960 S C J 263 : (1960) 1 S C R 773 : (1960) 2 S C A 153 : AIR 1960 S C 100 (108) (Pt E) (Pr 22).

● —Art. 133 — New plea — Practice of Supreme Court — Question of fact. See Civil P. C. (1908), S. 112. AIR 1958 S C 239.

● —Art. 133 — New plea — Question of fact. See Ibid, Art. 132. AIR 1958 S C 86.

● —Art. 133—New point.

Point whether certain contract notes were not contracts for sale and purchase of securities within the purview of S. 6, Bombay Act (8 of 1925) not raised in Courts below — Supreme Court however allowed it to be raised by the appellant in view of the terms of the contract notes and the admission of the respondent in her petition. Jugal Kishore v. Goolbai, (1955) 2 S C R 857 : 1956 S C A 499 : 58 Bom L R 486 : (1956) S C J 64 : A I R 1955 S C 812 (815) (Pt A) (Pr 5).

● —Arts. 133, 136 — Practice — Appeal — New plea.

Certain aspect of the case not raised by respondent in his grounds of appeal to High Court or in the appeal filed for the respondent in the Supreme Court—When issues were framed in trial Court counsel for both parties expressly stating that there was no other point in dispute and that they gave it up if a mention of it was made in the pleadings—Held, under the circumstances it was too late to allow the point to be raised in the arguments before Supreme Court. Wali Singh v. Sohan Singh, A I R 1954 S C 263 (266) (Pt B) (Pr 6).

● —Arts. 133, 136—Supreme Court Practice—New plea—Question of law — Not raised in statement of case—Would not be allowed to be raised.

It is the usual practice of the Supreme Court not to allow parties to take points which are not even taken in the statement of case before the Court. Ganeshi Ram v. District Magistrate, (1961) 2 Lab L J 690 : (1961-62) 21 F J R 113 (SC).

● —Art. 133—Supreme Court Practice—New point — Point taken in the petition but not argued before the High Court—Would not be allowed to be raised—Judgment of High Court elaborately dealing with the points raised by parties—Assumption is that point sought to be raised was not argued before the High Court. Ganeshi Ram v. District Magistrate, (1961-62) 21 F J R 113 : (1961) 2 Lab L J 690 (SC).

—Art. 133 (1) (c)—New plea—Plea not taken in the leave application or its grounds, cannot be allowed at stage of arguments. ILR (1964) 1 All 397 : AIR 1964 All 125 (126, 127) (Pt B) (Pr 4) (DB).

—Art. 133 — New plea — Point not raised before High Court at time of hearing of writ petition not allowed at stage of leave application ILR (1964) 1 All 397 : A I R 1964 All 125 (127, 128) (Pt F) (Pr 9) (DB).

—Art. 133 (c)—Civil P. C. — S. 109 (c) — Question not raised in suit, appeal and second appeal — See Civil P. C. (1908), S. 109 (c). AIR 1953 Assam 70.

——Art. 133 — Point not raised in lower Court — Leave cannot be granted.

Leave to appeal cannot be given to a party under Art. 133 (1) (c) for the purpose of raising a point for the first time after the case disposed of. A I R 1940 Mad 810 and AIR 1953 Assam 101, Ref. 1955 Cr L J 747 : AIR 1955 V P 17 (19) (Pt C) (Pr 10).

22. Limitation.

——Art. 133—Limitation—'Application for leave to appeal' referred to in S. 12, Limitation Act (1963) does not exclude 'application for certificate of fitness' contemplated by Art. 132 of Limitation Act (1963) — Application for leave to appeal under Art. 133 (1) (a) of the Constitution — Benefit of S. 12 (2) and (3) can be availed of. See Limitation Act (1963), S. 12. A I R 1965 Cal 630 (DB).

——Art. 133 — Appeal — Limitation Act (1908), Art. 179—Applicability - (C. P. Code (1908), Ss. 109, 110 and O. 45, R. 2)—(Supreme Court Rules, (1950), O. 10, R. 1).

Where the right of appeal is given by the Constitution, and given by way of defining the jurisdiction of the Supreme Court, the procedure for preferring and prosecuting such appeals is laid down in the C. P. Code. In so far as the Code also contains provisions relating to the right of appeal and in so far as Ss. 109 and 110 lay down in what cases an appeal shall lie, there may be a duplication. That, however, does not involve the consequence that appeals contemplated by Art. 133 of the Constitution are not governed by the Code. An appeal to the Supreme Court from a judgment, decree or order passed in a civil proceeding, is an appeal under the C. P. Code as well. Article 179 of the Limitation Act applies by its language directly to appeals to the Supreme Court from judgments, orders or decree passed in Civil Proceedings. 62 Cal W N 155 : AIR 1958 Cal 296 (296, 297) (Prs 2, 4, 5, 6) (DB).

——Art. 133—Leave to appeal—Limitation—Starting point—Date of signing cost sheet.

In computing the period of limitation for the purpose of an application for leave to appeal to the Supreme Court against a judgment of the High Court passed in its revisional jurisdiction, the date on which the cost sheet was signed by the Assistant Registrar cannot be taken as the starting point of limitation, nor can the period between the date of the judgment and the date on which the cost sheet was signed be deducted. The cost sheet is not a decree within the meaning of R. 8 (4) of Ch. VI of the Rules of the Appellate Side of the Calcutta High Court. ILR (1954) 1 Cal 438 : 56 C W N 562 : A I R 1953 Cal 13 (15) (Prs 10, 11) (DB).

——Arts. 133 and 227 (2) (b) - Application for leave to appeal to Supreme Court — Limitation — [C. P. Code (1908), O. 45, R. 3].

Chapter 8-A, Vol. V of the Rules and Orders of the Punjab High Court contains rules framed by the High Court regarding appeals to His Majesty in Council. Rules in Ch. 9 were framed by the High Court regarding appeals to the Federal Court. There is neither any authority nor any rule showing that any one of these chapters has been made applicable to appeals to the Supreme Court. In view of this, rule which is laid down in A I R 1950 E P 195 at p. 198 becomes inapplicable. Hence, there is no force in the contention that there is no proper application made within the time allowed by the Limitation Act for leave to appeal to the Supreme Court. 55 Pun L R 512 : A I R 1954 Punj 65 (65, 66) (Pr 6) (DB).

ARTICLE 134

SYNOPSIS

(Constitution of India, Art. 134)

1. Scope of the Article.
2. Special leave and certificate of fitness — Distinction.
3. "Judgment, final order or sentence."
4. Clause (1) (a).
5. Certificate of fitness for appeal — Clause (1) (c).
   - (a) Certificate of fitness—Guiding principles.
     - (i) Substantial question of law.
     - (ii) Questions of great public or private importance.
     - (iii) Questions of fact.
     - (iv) Delay—Whether a ground.
   - (b) Certificate of fitness —When not granted.
   - (c) New point — Whether can be raised at the stage of application under this sub-clause.
   - (d) Powers of High Court.
   - (e) Who can apply.
   - (f) Appeal against acquittal.
   - (g) Proceedings for contempt of Court.
   - (h) Habeas corpus applications.
6. Proviso to cl. (1) (c)—Rules of High Court.
7. Bail.
8. Powers and duties of Supreme Court on appeal.
   - (a) Concurrent finding of fact —Interference.
   - (b) New point — Whether can be allowed to be raised for the first time before Supreme Court.
9. Laches and limitation.

1. Scope of the Article.

——Arts. 134 (1) and 136 — Appeal on facts.

Per Venkatarama Ayyar, J. — Art. 134 (1) confers a right of appeal to the Supreme Court in certain cases, in terms unqualified on question both of fact and of law, and if the scope of an appeal under Article 136 is to be extended likewise to questions of fact, then Art. 134 (1) would become superfluous. It is obvious that the intention of the Constitution in providing for an appeal on facts under Art. 134 (1) (a) and (b) was to exclude it under Art. 136. Aher Raja Kihma v. State of Saurashtra, 1956 Mad W N 665 : (1956) S C J 243 : 1956 Cr L J 426: (1956) 1 Mad L J (S C) 135 : 1956 S C A 440 : 9 Sau L R 109 : (1955) 2 S C R 1285 : 1957 Andh L T 92 : 1956 All W R (Sup) 60: AIR 1956 S C 217 (225, 226) (Pt F) (Pr 31).

——Art. 134 — Proceedings not covered by Art. 133 or 134—Remedy is under Art. 136 - Proceedings like proceedings before Election Tribunals are not within purview of either Art. 133 or Art. 134. See Ibid, Art. 136. AIR 1956 Ajmer 40 (1).

——Art. 134 — Applicability — Proceedings under Legal Practitioners Act.

Article 134 applies only to criminal proceedings and not to proceedings under the Legal Practitioners Act which are more administrative in character and concern merely the maintenance of the discipline among the officers of the Court. 1956 Cr L J 358 (1) : AIR 1956 Ajmer 40 (1) (40) (Pt A) (Pr 1).

——Arts. 134, 132 and 133—Scope of.

Articles 132 and 134 have to be taken together. Art. 132 was intended to confer a right of appeal in every case whether civil or criminal (or other proceeding) if the case involved a substantial question of law as to the interpretation of the Constitution. Article 133 intended to confer a right of appeal against

any judgment, decree or final order of a High Court in a civil proceeding. Similarly Art. 134 was intended to confer a right of appeal against any judgment, final order or sentence of a High Court in a criminal proceeding.

The words of Art. 134 used are not 'criminal proceedings in a High Court' or 'criminal proceeding before a High Court'. There the word 'of' can only refer back to the phrase 'any judgment, final order or sentence' and not to the word 'proceeding'.

Where on an appeal against the order of acquittal, the High Court remanded the case for retrial, and the accused applied for a certificate that it is a fit case for appeal to the Supreme Court; Held, that the order of the High Court was not a 'final order' within the meaning of Art. 134 and the applicant was not entitled to the certificate. **1953 A M L J 130 : 1954 Cr L J 540 : AIR 1954 Ajmer 18 (1) (18) (Prs 4, 5, 7).**

——Art. 134— Scope — Order in proceeding that is neither civil nor criminal—Appeal to Supreme Court, when lies. See Ibid Art. 132. **AIR 1957 All 505 (DB).**

——Art. 134—Appeals to Supreme Court—Procedure for obtaining leave under Art. 132—Scheme under Art. 132 and Arts. 133 and 134 as regards appeals to the Supreme Court is different. See Ibid, Art. 132. **AIR 1961 Cal 527 (DB).**

——Arts. 134 and 20 (2)—Scope — No conflict exists between Articles — Article 134 recognising right of appeal from acquittal does not give way to Art. 20 (2)— Section 417, Criminal P. C. conferring right of appeal against acquittal is not ultra vires of Art. 20 (2) of Constitution—(Criminal P. C. (1898), S. 417).

There is no conflict between Art. 134 and Art. 20 (2) of the Constitution necessitating preference being given to Art. 20 (2). An accused cannot be said to have been convicted or acquitted, as a result of a judgment passed in the course of 'prosecution and punishment,' if that judgment is still open to appeal to a Court of higher jurisdiction and it has been held under S. 403, Criminal P. C., corresponding to Art. 20 (2). that an appeal is not a second trial but only a continuation of the trial in the Sessions Court. It also follows that the institution of an appeal under S. 417, Criminal P. C. by the Government against an acquittal is not tantamount to the prosecution and punishment of an accused for same offence more than once and hence S. 417, Criminal P. C. which confers the right of appeal is not ultra vires of Art. 20 (2) of the Constitution. AIR 1914 Mad 258, Ref. to. **1952 Cri L J 1720 : AIR 1952 Him Pra 81 (85, 86) (Pt B) (Pr 11).**

——Arts. 134 and 372 and Criminal P. C. (5 of 1898), Ss. 195 and 476-B—High Court directing prosecution under S. 193 of the Penal Code—No automatic right of appeal to the Supreme Court.

The expression 'the Court to which appeals ordinarily lie' in section 195 (3) of the Criminal P. C. has reference to a higher Court to which an unrestricted right of appeal against the decisions of an inferior Court is provided. Merely because of the restricted and limited right of appeal to the Supreme Court under Art. 134 (1) of the Constitution, it cannot be said that the Supreme Court of India is a Court of criminal appeal against the decisions of the High Court in criminal matters. So, where the High Court orders the prosecution of two Sub-Inspectors for an offence under S. 193 of the Indian Penal Code there is no automatic right of appeal to the Supreme Court under S. 476-B of the Criminal P. C. against the order. The right of appeal in criminal matters to the Supreme Court is exclusively governed by Art. 134 of the Constitution.

[On the facts, it was held that there was no question of public or private importance and not even a question of law involved and leave was refused against the order of the High Court. But it was certified that this order involved a substantial question of law as to the interpretation of Arts. 134 (1) and 372 of the Constitution.] Case-law reviewed. **1951 Mad W N 825 : 1951 Mad W N (Cri) 245 : ILR (1952) Mad 638 : (1951) 2 M L J 503 : 1952 Cr L J 61 : 64 L W 929 : AIR 1951 Mad 1060 (1062, 1063, 1064) (Pts A B) (Prs 4, 5, 6, 8, 9) (DB).**

——Arts. 134, 133, 135 and 372 —Article 372 read with Art. 135 does not retain right of appeal where Arts. 133 and 134 apply — Effect of Art. 133 on S. 109 (c), Civil P. C. See Ibid, Art. 135. **AIR 1951 Mad 1051 (1054, 1055) (Pt D) (Pr 6).**

[Overruled in AIR 1957 S C 540.]

2. Special leave and certificate of fitness — Distinction.

——Art. 134 (1) — Comparison of Art. 136 with Arts. 133 (1) and 134 (1). See Ibid, Art. 136 (1). **AIR 1963 S C 874.**

——Arts. 134 (1) (c) and 136—Certificate of fitness for appeal and Special Leave—Distinction.

The power of the High Court under Art. 134 (1) (c) is more limited than the power under Art. 136 of the Constitution of the Supreme Court in the matter of granting special leave. The Supreme Court ordinarily does not interfere in matters of fact. But in special circumstances it may interfere if, in its discretion, it finds that it is necessary for the ends of justice to interfere. But so far as High Court is concerned, it has to be satisfied that the case is a fit one for leave to appeal. **(1957) All W R (HC) 79 : (1957) All L J 228.**

——Arts. 134 (1) (c), 136 — Grant of certificate by High Court — Considerations involved not same as those under Art. 136. **65 Mad L W 892 : (1952) 2 Mad L J 725 : 1953 Cri L J 256 : AIR 1953 Mad 66 (68, 69) (Pt A) (Pr 5) (DB).**

——Arts. 134 (1) (c) and 136—Scope.

Though Art. 134 (1) is wide enough to cover a case of appeal to Supreme Court against acquittal the standard applicable in respect of Art. 134 (1) (c) is not the same as indicated in Art. 134 (1) (c) which relates to civil matters. No doubt, principles which regulate granting of special leave to appeal by Supreme Court under Art. 136 equally apply in granting leave under Art. 134 (1) (c).

It would, however, be against the policy of legislature to construe Art. 134 (1) (c) as permitting High Court to grant leave to appeal as against judgment of acquittal confirmed by High Court. The mere fact that case involves important questions of law on which there is difference of opinion between judges but which do not ultimately affect decision of appeal on merits is not a sufficient ground for granting leave under Art. 134 (1) (c). The position with regard to Supreme Court is, however, different and, in exceptional cases, it is within the prerogative of the Supreme Court to grant special leave under Art. 136 even against an order of acquittal where circumstances amounting to grave miscarriage of justice or obvious perversity or deceipt by fraud are made out. AIR 1951 Orissa 261 : AIR 1952 Hyd 40; Cr. A. No. 40 of 1952 (SC), Rel. on. Case law discussed. State of Orissa v. Minaketan Patnik. **I L R (1952) Cut 678 : 1953 Cr L J 1084 : AIR 1953 Orissa 160 (163, 165, 166, 168) (Pt C) (Prs 5, 6, 13, 21) (SB).**

——Arts. 134 (1) (c) and 136—Scope—Difference between.

Article 136 is not in terms identical with the provisions laid down in Art. 134 (1) (c). Under Art. 136 an absolute discretion has been given to the Supreme

Court to grant special leave in any case, but under Art. 134 (1) (c) the High Court has no jurisdiction to grant any certificate unless it is of the opinion that it is a fit case for appeal. Therefore, the discretion given to the High Court is circumscribed by the provisions of Art. 134 (1) (c). 57 Punj L R 332 : ILR (1955) Punj 1345 : AIR 1956 Punj 1 (3) (Pt C) (Pr 5) (DB).

3. "Judgment, final order or sentence."

● —Art. 134 (1)—Final order—Meaning of—Interlocutory order allowing application of accused for production of document and disallowing claim of privilege by Union Government — Order confirmed by High Court in revision—Not a final order.

An order cannot be said to be 'final order' within the meaning of that expression in Art. 134 of the Constitution if it does not of its own force bind or affect the rights of the parties. AIR 1951 S C 14, Rel. on. An order allowing the application of the accused for the production of a document by the Union Government and rejecting the claim of privilege by the Union Government in a pending criminal proceeding even if confirmed by the High Court in revision is only an interlocutory order and not a final order within the meaning of Art. 134 (1). It does not purport to decide the rights of the parties, namely, the State of U. P. and the accused. It enables the accused to have the said document duly proved and exhibited in the case. It relates only to a procedural step for adducing evidence. The indirect effect of that order on a third party to the proceedings, viz., the Union Government who does not seek to question that order, does not deprive the order of its interlocutory character. State of U. P. v. Col. Sujan Singh. 1964 All L J 921 : (1964) S C W R 40 : 1965 (1) Cr L J 94 : (1965) 1 S C A 437 : (1965) 2 S C J 389 : 1965 Mad L J (Cri) 623 : (1964) 7 S C R 734 : AIR 1964 S C 1897 (1900, 1901) (Pt C) (Pr 8).

——Art. 134 (1)—'Final order.'

A complaint was filed against the applicant charging him with several offences including one under section 193, I. P. Code. Against the order filing the complaint the applicant went up in appeal to the Sessions Judge under S. 476-B of Cr. P. Code. The Sessions Judge allowed the appeal and set aside the complaint so far as the offence under S. 193, I. P. Code was concerned. Against that order an application in revision was filed in the High Court and the question whether section 479-A of the Criminal Procedure Code had impliedly repealed section 476 of the Code in respect of all cases of witnesses giving or fabricating false evidence in judicial proceedings was raised. The High Court was of opinion that it should be answered in the negative. As a result of that decision, the order of the Sessions Judge was set aside and the case was sent back to him for being heard on merits. It was against this order sending the case back to the Sessions Judge for being considered on merits that the application under Art. 134 (1) (c) of the Constitution had been made :

Held that the order disposing of the application in revision could not be considered to be a final order. It was therefore not open to the High Court to certify the case to be a fit one for appeal to the Supreme Court. 1960 All L J 154 : 1960 Cr L J 1534 : A I R 1960 All 728 (729, 730) (Prs 7, 9).

——Art. 134—Judgment or final order — Dismissal of application to quash proceedings under Defence of India Act on the ground that Act had expired—Revision to Sessions Judge dismissed— Further revision to High Court on same ground dismissed—Judgment or final order is that passed by the High Court and hence no appeal lies to Supreme Court. A I R 1955 N U C (All) 4432.

——Art. 134 (1) — Judgment or final order — Test is final determination of proceeding — Order for retrial is not judgment or final order—AIR 1962 Cal 113, Dissented from and held to be contrary to P. C., F. C., and S. C. decisions. A I R 1954 Cal 424 and AIR 1960 Cal 77, Foll.; A I R 1949 F C 1, Rel. on. 1962 (1) Cr L J 321 (Cal) : A I R 1962 Cal 417 (418, 419, 420) (Prs 4, 13) (DB).

——Art. 134 (1) (c)—Final order—Test of finality — Order granting or refusing bail not final—No certificate can be granted.

It is well settled that test of finality is that in order to be final the order should finally terminate the lis or the proceeding. An interlocutory order is neither a judgment nor a final order within the meaning of Art. 134 of the Constitution. AIR 1954 Cal 424 and AIR 1960 Cal 77, Rel. on.

Judged by the above test, an order granting or refusing bail cannot be a final order. High Court is not competent to grant a certificate under Art. 134 (1) (c) of the Constitution, (1961) 1 Cr L J 370 : A I R 1961 Cal 169 (172) (Pr 4) (DB).

——Art. 134 (1) — Final Order—Interpretation of—(Words and Phrases—Final Order).

Where the proceedings against the accused were pending in the Magistrate's Court and no final order by way of acquittal or conviction had been passed against him, the order passed by the High Court on the criminal revision petition moved by the accused could not be said to be a final order within the meaning of Art. 134 (1) of the Constitution and a certificate of fitness could not be given. AIR 1949 F C 11, Foll. 1954 Cr L J 864 : AIR 1954 Him Pra 45 (45, 46) (Pr 3).

——Art. 134 (1) (c) — 'Final order' — Order on bail application—Leave to appeal.

An order on a bail petition cannot be said to be a final order within the meaning of Art. 134 (1) (c) of the Constitution inasmuch as it does not decide the issue between the parties and as it does not result either in conviction or acquittal of the petitioners. Hence an application for leave to appeal under Art. 134 (1) (c) against the order refusing bail is incompetent. A I R 1955 Mad 512 and AIR 1958 Mad 151, applied. 1959 Mad W N 582 : 72 Mad L W 619 : (1959) 2 Mad L J 541 : 1960 Cr L J 250 : ILR (1960) Mad 81 : 1959 M L J (Cr) 960 : AIR 1960 Mad 76 (77) (Pr 2).

——Arts. 134, 132 Expl.—Provisions of Act impugned—Reference made to High Court before taking any evidence—Order of High Court deciding provisions not void — Order is not covered by explanation to Art. 132—There is neither judgment, final order nor sentence—No leave to appeal to Supreme Court can be granted, under Art. 134 either. See Ibid, Art. 132. AIR 1955 Mad 532 (DB).

● ——Art. 134 (1)—"Final order."

Order sought to be appealed from held no final order within the meaning of Art. 134 (1) and hence not appealable. A I R 1949 F C 1, Foll. State v. Ittaiavirah Apprehen. 1953 Ker L T 796 : 1954 Cr L J 652 : AIR 1954 Trav-Co 250 (250) (Pr 1) (FB).

4. Clause (1) (a).

● ——Art. 134 (1) (a) — 'Acquittal' — Meaning of — Includes acquittal of offence charged and conviction for lesser offence.

The word 'acquittal' does not mean that the trial must have ended in a complete acquittal but would also include the case where an accused has been acquitted of the charge of murder and has been convicted of a lesser offence. In that view of the matter

any judgment, decree or final order of a High Court in a civil proceeding. Similarly Art. 134 was intended to confer a right of appeal against any judgment, final order or sentence of a High Court in a criminal proceeding.

The words of Art. 134 used are not 'criminal proceedings in a High Court' or 'criminal proceeding before a High Court'. There the word 'of' can only refer back to the phrase 'any judgment, final order or sentence' and not to the word 'proceeding'.

Where on an appeal against the order of acquittal, the High Court remanded the case for retrial, and the accused applied for a certificate that it is a fit case for appeal to the Supreme Court; Held, that the order of the High Court was not a 'final order' within the meaning of Art. 134 and the applicant was not entitled to the certificate. **1953 A M L J 130 : 1954 Cr L J 540 : AIR 1954 Ajmer 18 (1) (18) (Prs 4, 5, 7).**

——Art. 134— Scope — Order in proceeding that is neither civil nor criminal—Appeal to Supreme Court, when lies. See Ibid Art. 132. **AIR 1957 All 505 (DB).**

——Art. 134—Appeals to Supreme Court—Procedure for obtaining leave under Art. 132—Scheme under Art. 132 and Arts. 133 and 134 as regards appeals to the Supreme Court is different. See Ibid, Art. 132. **AIR 1961 Cal 527 (DB).**

——Arts. 134 and 20 (2)—Scope — No conflict exists between Articles — Article 134 recognising right of appeal from acquittal does not give way to Art. 20 (2)— Section 417, Criminal P. C. conferring right of appeal against acquittal is not ultra vires of Art. 20 (2) of Constitution—(Criminal P. C. (1898), S. 417).

There is no conflict between Art. 134 and Art. 20 (2) of the Constitution necessitating preference being given to Art. 20 (2). An accused cannot be said to have been convicted or acquitted, as a result of a judgment passed in the course of 'prosecution and punishment,' if that judgment is still open to appeal to a Court of higher jurisdiction and it has been held under S. 403, Criminal P. C., corresponding to Art. 20 (2). that an appeal is not a second trial but only a continuation of the trial in the Sessions Court. It also follows that the institution of an appeal under S. 417, Criminal P. C. by the Government against an acquittal is not tantamount to the prosecution and punishment of an accused for same offence more than once and hence S. 417, Criminal P. C. which confers the right of appeal is not ultra vires of Art. 20 (2) of the Constitution. AIR 1914 Mad 258, Ref. to. **1952 Cri L J 1720 : AIR 1952 Him Pra 81 (85, 86) (Pt B) (Pr 11).**

——Arts. 134 and 372 and Criminal P. C. (5 of 1898), Ss. 195 and 476-B—High Court directing prosecution under S. 193 of the Penal Code—No automatic right of appeal to the Supreme Court.

The expression 'the Court to which appeals ordinarily lie' in section 195 (3) of the Criminal P. C. has reference to a higher Court to which an unrestricted right of appeal against the decisions of an inferior Court is provided. Merely because of the restricted and limited right of appeal to the Supreme Court under Art. 134 (1) of the Constitution, it cannot be said that the Supreme Court of India is a Court of criminal appeal against the decisions of the High Court in criminal matters. So, where the High Court orders the prosecution of two Sub-Inspectors for an offence under S. 193 of the Indian Penal Code there is no automatic right of appeal to the Supreme Court under S. 476-B of the Criminal P. C. against the order. The right of appeal in criminal matters to the Supreme Court is exclusively governed by Art. 134 of the Constitution.

[On the facts, it was held that there was no question of public or private importance and not even a question of law involved and leave was refused against the order of the High Court. But it was certified that this order involved a substantial question of law as to the interpretation of Arts. 134 (1) and 372 of the Constitution.] Case-law reviewed. **1951 Mad W N 825 : 1951 Mad W N (Cri) 245 : ILR (1952) Mad 638 : (1951) 2 M L J 503 : 1952 Cr L J 61 : 64 L W 929 : AIR 1951 Mad 1060 (1062, 1063, 1064) (Pts A, B) (Prs 4, 5, 6, 8, 9) (DB).**

——Arts. 134, 133, 135 and 372 — Article 372 read with Art. 135 does not retain right of appeal where Arts. 133 and 134 apply — Effect of Art. 133 on S. 109 (c), Civil P. C. See Ibid, Art. 135. **AIR 1951 Mad 1051 (1054, 1055) (Pt D) (Pr 6).**

[Overruled in AIR 1957 S C 540.]

2. Special leave and certificate of fitness — Distinction.

——Art. 134 (1) — Comparison of Art. 136 with Arts. 133 (1) and 134 (1). See Ibid, Art. 136 (1). **AIR 1963 S C 874.**

——Arts. 134 (1) (c) and 136—Certificate of fitness for appeal and Special Leave—Distinction.

The power of the High Court under Art. 134 (1) (c) is more limited than the power under Art. 136 of the Constitution of the Supreme Court in the matter of granting special leave. The Supreme Court ordinarily does not interfere in matters of fact. But in special circumstances it may interfere if, in its discretion, it finds that it is necessary for the ends of justice to interfere. But so far as High Court is concerned, it has to be satisfied that the case is a fit one for leave to appeal. **(1957) All W R (HC) 79 : (1957) All L J 228.**

——Arts. 134 (1) (c), 136 — Grant of certificate by High Court — Considerations involved not same as those under Art. 136. **65 Mad L W 892 : (1952) 2 Mad L J 725 : 1953 Cri L J 256 : AIR 1953 Mad 66 (68, 69) (Pt A) (Pr 5) (DB).**

——Arts. 134 (1) (c) and 136—Scope.

Though Art. 134 (1) is wide enough to cover a case of appeal to Supreme Court against acquittal the standard applicable in respect of Art. 134 (1) (c) is not the same as indicated in Art. 134 (1) (c) which relates to civil matters. No doubt, principles which regulate granting of special leave to appeal by Supreme Court under Art. 136 equally apply in granting leave under Art. 134 (1) (c).

It would, however, be against the policy of legislature to construe Art. 134 (1) (c) as permitting High Court to grant leave to appeal as against judgment of acquittal confirmed by High Court. The mere fact that case involves important questions of law on which there is difference of opinion between judges but which do not ultimately affect decision of appeal on merits is not a sufficient ground for granting leave under Art. 134 (1) (c). The position with regard to Supreme Court is, however, different and, in exceptional cases, it is within the prerogative of the Supreme Court to grant special leave under Art. 136 even against an order of acquittal where circumstances amounting to grave miscarriage of justice or obvious perversity or deceipt by fraud are made out. AIR 1951 Orissa 261 : AIR 1952 Hyd 40; Cr. A. No. 40 of 1952 (SC), Rel. on. Case law discussed. State of Orissa v. Minaketan Patnik. **I L R (1952) Cut 678 : 1953 Cr L J 1084 : AIR 1953 Orissa 160 (163, 165, 166, 168) (Pt C) (Prs 5, 6, 13, 21) (SB).**

——Arts. 134 (1) (c) and 136—Scope—Difference between.

Article 136 is not in terms identical with the provisions laid down in Art. 134 (1) (c). Under Art. 136 an absolute discretion has been given to the Supreme

Court to grant special leave in any case, but under Art. 134 (1) (c) the High Court has no jurisdiction to grant any certificate unless it is of the opinion that it is a fit case for appeal. Therefore, the discretion given to the High Court is circumscribed by the provisions of Art. 134 (1) (c). 57 Punj L R 332 : ILR (1955) Punj 1345 : AIR 1956 Punj 1 (3) (Pt C) (Pr 5) (DB).

3. "Judgment, final order or sentence."

● —Art. 134 (1)—Final order—Meaning of—Interlocutory order allowing application of accused for production of document and disallowing claim of privilege by Union Government — Order confirmed by High Court in revision—Not a final order.

An order cannot be said to be 'final order' within the meaning of that expression in Art. 134 of the Constitution if it does not of its own force bind or affect the rights of the parties. AIR 1951 S C 14, Rel. on. An order allowing the application of the accused for the production of a document by the Union Government and rejecting the claim of privilege by the Union Government in a pending criminal proceeding even if confirmed by the High Court in revision is only an interlocutory order and not a final order within the meaning of Art. 134 (1). It does not purport to decide the rights of the parties, namely, the State of U. P. and the accused. It enables the accused to have the said document duly proved and exhibited in the case. It relates only to a procedural step for adducing evidence. The indirect effect of that order on a third party to the proceedings, viz., the Union Government who does not seek to question that order, does not deprive the order of its interlocutory character. State of U. P. v. Col. Sujan Singh. 1964 All L J 921 : (1964) S C W R 40 : 1965 (1) Cr L J 94 : (1965) 1 S C A 437 : (1965) 2 S C J 389 : 1965 Mad L J (Cri) 623 : (1964) 7 S C R 734 : AIR 1964 S C 1897 (1900, 1901) (Pt C) (Pr 8).

——Art. 134 (1)—'Final order.'

A complaint was filed against the applicant charging him with several offences including one under section 193, I. P. Code. Against the order filing the complaint the applicant went up in appeal to the Sessions Judge under S. 476-B of Cr. P. Code. The Sessions Judge allowed the appeal and set aside the complaint so far as the offence under S. 193, I. P. Code was concerned. Against that order an application in revision was filed in the High Court and the question whether section 479-A of the Criminal Procedure Code had impliedly repealed section 476 of the Code in respect of all cases of witnesses giving or fabricating false evidence in judicial proceedings was raised. The High Court was of opinion that it should be answered in the negative. As a result of that decision, the order of the Sessions Judge was set aside and the case was sent back to him for being heard on merits. It was against this order sending the case back to the Sessions Judge for being considered on merits that the application under Art. 134 (1) (c) of the Constitution had been made :

Held that the order disposing of the application in revision could not be considered to be a final order. It was therefore not open to the High Court to certify the case to be a fit one for appeal to the Supreme Court. 1960 All L J 154 : 1960 Cr L J 1534 : A I R 1960 All 728 (729, 730) (Prs 7, 9).

——Art. 134—Judgment or final order — Dismissal of application to quash proceedings under Defence of India Act on the ground that Act had expired—Revision to Sessions Judge dismissed— Further revision to High Court on same ground dismissed—Judgment or final order is that passed by the High Court and hence no appeal lies to Supreme Court. A I R 1955 N U C (All) 4432.

——Art. 134 (1) — Judgment or final order — Test is final determination of proceeding — Order for retrial is not judgment or final order—AIR 1962 Cal 113, Dissented from and held to be contrary to P. C., F. C., and S. C. decisions. A I R 1954 Cal 424 and AIR 1960 Cal 77, Foll.; A I R 1949 F C 1, Rel. on. 1962 (1) Cr L J 321 (Cal) : A I R 1962 Cal 417 (418, 419, 420) (Prs 4, 13) (DB).

——Art. 134 (1) (c)—Final order—Test of finality — Order granting or refusing bail not final—No certificate can be granted.

It is well settled that test of finality is that in order to be final the order should finally terminate the lis or the proceeding. An interlocutory order is neither a judgment nor a final order within the meaning of Art. 134 of the Constitution. AIR 1954 Cal 424 and AIR 1960 Cal 77, Rel. on.

Judged by the above test, an order granting or refusing bail cannot be a final order. High Court is not competent to grant a certificate under Art. 134 (1) (c) of the Constitution. (1961) 1 Cr L J 370 : A I R 1961 Cal 169 (172) (Pr 4) (DB).

——Art. 134 (1) — Final Order—Interpretation of—(Words and Phrases—Final Order).

Where the proceedings against the accused were pending in the Magistrate's Court and no final order by way of acquittal or conviction had been passed against him, the order passed by the High Court on the criminal revision petition moved by the accused could not be said to be a final order within the meaning of Art. 134 (1) of the Constitution and a certificate of fitness could not be given. AIR 1949 F C 11, Foll. 1954 Cr L J 864 : AIR 1954 Him Pra 45 (45, 46) (Pr 3).

——Art. 134 (1) (c) — 'Final order' — Order on bail application—Leave to appeal.

An order on a bail petition cannot be said to be a final order within the meaning of Art. 134 (1) (c) of the Constitution inasmuch as it does not decide the issue between the parties and as it does not result either in conviction or acquittal of the petitioners. Hence an application for leave to appeal under Art. 134 (1) (c) against the order refusing bail is incompetent. A I R 1955 Mad 512 and AIR 1958 Mad 151, applied. 1959 Mad W N 582 : 72 Mad L W 619 : (1959) 2 Mad L J 541 : 1960 Cr L J 250 : ILR (1960) Mad 81 : 1959 M L J (Cr) 960 : AIR 1960 Mad 76 (77) (Pr 2).

——Arts. 134, 132 Expl.—Provisions of Act impugned—Reference made to High Court before taking any evidence—Order of High Court deciding provisions not void — Order is not covered by explanation to Art. 132—There is neither judgment, final order nor sentence—No leave to appeal to Supreme Court can be granted, under Art. 134 either. See Ibid, Art. 132. AIR 1955 Mad 532 (DB).

● ——Art. 134 (1)—"Final order."

Order sought to be appealed from held no final order within the meaning of Art. 134 (1) and hence not appealable. A I R 1949 F C 1, Foll. State v. Ittaiavirah Apprehen. 1953 Ker L T 796 : 1954 Cr L J 652 : AIR 1954 Trav-Co 250 (250) (Pr 1) (FB).

4. Clause (1) (a).

● ——Art. 134 (1) (a) — 'Acquittal' — Meaning of — Includes acquittal of offence charged and conviction for lesser offence.

The word 'acquittal' does not mean that the trial must have ended in a complete acquittal but would also include the case where an accused has been acquitted of the charge of murder and has been convicted of a lesser offence. In that view of the matter

where the High Court, on appeal, reverses the decision of the trial Court and convicts the accused of murder, it amounts to reversing of an order of acquittal and the accused is entitled to a certificate under Art. 134 (1) (a) as of right. Tarachand Damu Satar v. State of Maharashtra. (1962) 2 S C R 775 : (1963) 2 S C J 17 : 1963 Mad L J (Cri) 307 : 1962 All W R (H C) 135 : 1962 All Cr R 103 : 1962 (1) Cr L J 196 : 64 Bom L R 74 : AIR 1962 S C 130 (131, 132) (Pt A) (Pr 5).

● —Art. 134 (1) (a) — Acquittal in trial court — Order reversed on appeal and accused sentenced to death — Accused entitled to challenge propriety of findings of facts — Scope of enquiry under Art. 134 (1) (a).

Where an order of acquittal passed against the accused by the trial judge has been reversed on appeal and he has been sentenced to death, he is entitled to challenge the correctness or the propriety of the findings of fact, and the scope of enquiry in his appeal under Art. 134 (1) (a) of the Constitution is naturally wider. Krishnan Nair v. State of Kerala. 1959 Ker L J 1118 : 1959 Ker L T (S C) 26 : I L R (1959) Ker 1094.

—Art. 134 (1) (a) — Applicability — Death penalty imposed on principal offender — Sentence to be passed against abettor — Benefit of appeal under Art. 134 (1) (a) of Constitution. See Penal Code (1860), S. 109. I L R (1959) Ker 319.

5. Certificate of fitness for appeal — Clause (1) (c).

(a) Certificate of fitness — Guiding principles.
(i) Substantial question of law.
(ii) Questions of great public or private importance.
(iii) Questions of fact.
(iv) Delay — Whether a ground.
(b) Certificate of fitness — When not granted.
(c) New point — Whether can be raised at the stage of application under this sub-clause.
(d) Powers of High Court.
(e) Who can apply.
(f) Appeal against acquittal.
(g) Proceedings for contempt of Court.
(h) Habeas corpus applications.

5. Certificate of fitness for appeal— Clause (1) (c).

—Art. 134 (1) (c) — Scope of inquiry — Power of High Court — Certificate on pure question of fact— Grant of—If justified.

The legal position under Art. 134 (1) (c) is that it is not a case of "granting leave" but of 'certifying that the case is a fit one for appeal to Supreme Court'. "Certifying" is a strong word and a High Court is in error in granting a certificate on a mere question of fact, and is not justified in passing on an appeal for determination by the Supreme Court when there are no complexities of law involved in the case, requiring an authoritative interpretation by that Court. Sidheswar Ganguly v. State of West Bengal. 1958 S C J 349: 1958 S C A 147 : 1958 All W R (H C) 391 : 1958 Pat L R (S C) 1: 1958 All Cr R 277: 1958 Mad L J (Cr) 311: 1958 Cr L J 273 : 1958 S C R 749: AIR 1958 S C 143 (145) (Pt C) (Pr 3).

● —Art. 134 (1) (c)—Certificate of fitness—There must be indication, that High Court has applied its mind—Merely saying "Leave to appeal is granted" towards end of judgment, is not compliance.

Article 134 (1) (a) and (b) lay down two conditions which cover a right of appeal to the Supreme Court. If the High Court 'certifies' that the case is a fit one for appeal, Art. 133 (1) (c) applies as an extraordinary case.

Where the High Court had merely said in the last sentence of the judgment "Leave to appeal to the Supreme Court is granted', and no reasons had been given.

Held, that this omission could only be regarded as indicative of the fact that the High Court did not realise the responsibility that was cast upon it by Art. 134 (1) (c) and did not realise that its discretion had to be judicially and not mechanically exercised, [Following AIR 1954 S C 457 the Supreme Court were unable to regard the appeal as properly certified and so it declined to accept the appeal as one under Art. 134 (1) (c)] Baladin and Others v. State of Uttar Pradesh, 1956 Cr L J 345 : AIR 1956 S C 181 (188, 189) (Pt B) (Prs 14, 15).

● —Art. 134 (1) (c) — Certificate of fitness for appeal — Exercise of discretion. See Ibid, Art. 133 (1) (c). 1954 Cr. L J 1167 : AIR 1954 S C 457.

● —Art. 134 (1) (c) — 'Case'—Meaning.

'Case' as used in Art. 134 (1) (c) means the case of each individual accused. That would be so even if the trial had been by the High Court itself but it is even more so on appeal because, though several persons may join in presenting a common memorandum of appeal (if the Rules of the Court so permit), the appeal of each forms a separate 'case' for those purposes. That is obvious from the fact that every person who is convicted need not appeal nor need several convicts appeal at the same time under a joint memorandum; and if it were necessary to send up the 'case' as a whole it would be necessary to join even those who were acquitted so that the 'case' could be reviewed in its entirety. That is not the meaning of the word in the context of Art. 134 (1). Nar Singh v. State of Uttar Pradesh, (1955) S C R 238 : (1954) 2 M L J 122 : 1954 S C J 570 : 1954 All W R 457 : 1954 All L J 438 : 1954 S C A 642 : 1954 Cr. L J 1167 : AIR 1954 S C 457 (458) (Pt A) (Pr 3).

● —Art. 134 (1) (c)—Reasons for certificate of fitness — Criminal P. C. (1898), S. 376.

If in any particular State there is only one Judicial Commissioner as the ultimate appellate authority, and if the confirmation of sentence of death has to be made by him, the procedure laid down must be followed. The fact that there is not a Bench of two judges as in the High Courts to deal with death sentences is not an adequate ground for converting the Supreme Court into an ordinary Court of appeal and confirmation in such matters; Kalawati v. State of H. P., 1953 S C J 144 : 1953 Cr L J 668 : 1953 All W R (Supp) 52 : 1953 S C R 546 : 1953 S C A 660 : AIR 1953 S C 131 (132) (Pt A) (Pr 6).

—Art. 134 (1) (c) — Scope — Order of High Court incorrect but causing no injustice — Joint application under Art. 134 (1) (c) and S. 561-A, Cr. P. Code — Competency. See Criminal P. C. (1898), S. 561-A. 1961 (1) Cri L J 455 : AIR 1961 All 239.

—Art. 134 — Leave to appeal—Grant of. See Ibid, Art. 132. AIR 1957 All 505 (DB).

—Art. 134 (1) (c) — Order quashing criminal proceedings — Leave to appeal—If can be granted.

The provisions of Art. 134 (1) (c) do not contemplate an appeal against an order of acquittal or an appeal by the complainant against the quashing of the proceedings.

The State or a complainant cannot come forward and ask for leave to appeal under Art. 134 (1) (c). Even if the case involves questions of law it

would not be a fit case in which High Court should grant leave to appeal against the order of quashing of the proceedings. AIR 1954 S C 20; AIR 1953 Orissa 160, Foll. (1957) All W R (H C) 79 : (1957) All L J 228.

——Art. 134 (1) (c) — Criminal P. C. (1898), S. 426 (2B) 'Special leave' — Meaning of — Not restricted to leave granted by Supreme Court under Art. 132 (2) or Art. 136 — It means leave granted on special grounds and includes certificate of fitness under Art. 134 (1) (c) of the Constitution of India. See Criminal P C (1898), S. 426 (2B). AIR 1960 Andh Pra 622.

——Arts. 134 (1) (c), 132 (1) and 136 (1) — Interpretation—Right of appeal in criminal matters — (Civil P. C. (1908), S. 109).

From the provisions of Arts. 132 (1), 134 and 136 (1), it is clear that the intention of the Constitution is to retain the finality of decisions of High Courts in criminal matters until Parliament makes a law under Art. 134 (2), and to provide for no appeals in criminal matters as of right, except in cases where an accused has been sentenced to death and has had no chance to appeal against his conviction by the High Court. It cannot be said that there is anything in the history or the setting of sub-clause (c) of Art. 134 (1) which calls for, a liberal construction.

The words of sub-cl. (c) of Art. 134 (1) are similar to those of the former clause (c) of S. 109, C. P. Code Disputes in criminal proceedings are generally of great private importance as they involve the liberty of the person accused. Nevertheless the Constitution has restricted the normal right of appeal. Therefore, the construction of Cl. (c) of S. 109, Civil P. C., cannot be bodily imported into the construction of sub-cl. (c) of Art. 134 (1) of the Constitution. ILR (1956) Andh Pra 441: 1956 Andh W R 826: 1957 Cri L Jour 1213 : A I R 1957 Andh Pra 871 (872, 873) (Pt A) (Prs 3, 5, 6) (DB).

——Art. 134 (1) (c)—Scope and object of.

Leave under Art. 134 (1) (c) is intended to meet extraordinary cases and the High Court's order granting leave should indicate what questions of outstanding difficulty or importance that require to be settled are involved. A I R 1956 SC 181, Foll. 1956 Andh L T 915.

——Art. 134 (1) (c) — Certificate of fitness — Case should be certified where exceptional and special circumstances exist. A I R 1955 N U C (Andh Pra) 4177.

——Art. 134(1)(c)—Certificate of fitness—Grant of.

Under Art. 134 (1) (c), Constitution of India, the High Court can certify a case as a fit one for appeal to the Supreme Court where the accused in the case was convicted under S. 7 (1), Essential Supplies (Temporary Powers) Act, 1946, for the contravention of the provisions of Ss. 3 and 7, Assam Food Grains Control Order, 1947, by a Magistrate who granted sanction under S. 38, Assam Food Grains Control Order, 1947 and the High Court thinks that the contention of the accused that his trial was void within the meaning of S. 530 (p), Cr. P. C., by reason of the Magistrate being disqualified from tying the case under S. 556, Criminal P. C., is deserving of consideration. 1952 Cri L J 116: AIR 1952 Assam 14 (15) (Pr 3) (DB).

——Art. 134 (1) (c) — Case under S. 409, Penal Code —Crucial document produced by prosecution alleged by accused to be a forgery— Prosecution not producing expert evidence — Accused acquitted — In appeal acquittal set aside and case sent back for trial de novo after examining expert evidence — Relationship between parties that of client and pleader— Case held involved important questions of criminal jurisprudence — Order of High Court held final order — Certificate granted. 1962 (1) Cri L J 277 : A I R 1962 Cal 113 (114) (Prs 5, 7, 8) (DB).

[Reversed on facts in AIR 1963 S C 316.]

——Art. 134 (1) (c) — Question whether case is covered by S. 529 (e) — If ground for certificate of fitness for appeal — (Penal Code (1860), S. 165-A)— —(Criminal P. C. (1898), S. 529 (5)).

Where the Judge of the Special Court in West Bengal in good faith takes cognizance of an offence under S. 165-A Penal Code, at a time when he had no jurisdiction to do so, the question whether the case is covered by S. 529 (e), Criminal P. C., is of considerable importance and the case is a fit one for granting leave to appeal under Art. 134 (1) (c), Constitution of India. 1956 Cri L J 994: AIR 1956 Cal 388 (389) (Prs 10, 11) (DB).

——Art. 134 (1) (c)—Certificate of fitness for appeal — Question whether there was proper sanction — (Prevention of Corruption Act (1947), S. 6).

Whether or not there was a proper sanction in the case is a question serious enough to justify giving the petitioner leave to appeal to the Supreme Court. 1955 Cri L J 1169: AIR 1955 Cal 430 (432) (Pt C) (Pr 8) (DB).

——Art. 134 (1) (c) — Portion of case only referred to High Court under S. 307, Criminal P. C. — Grave irregularity in hearing reference by High Court — Leave to appeal granted — (Criminal P. C. (1898), S. 307).

Where in a case tried with the aid of Jury, an Additional Sessions Judge disagreeing with the verdict of the Jury decided to refer the case to the High Court, but in complete disregard of sub-s. (2) of S. 307 acquitted the accused of certain offences and referred their case to the High Court with respect to other charges only:

Held, that a grave irregularity had occurred, that the reference was not properly dealt with by the High Court and that that fact was sufficient to justify a certificate of fitness for appeal to the Supreme Court under Art. 134 (1) (c). 1955 Cri L J 100: A I R 1955 Cal 27 (28) (Pr 7) (DB).

——Arts. 134 (1) (c) and 136 — Certificate of fitness —When to be granted.

In construing Art. 134 (1) (c) it will not be correct to assume that the principles governing the grant of a certificate under Art. 134 (1) (c) and the granting of special leave by the Supreme Court under Art. 136 are the same.

Article 134 (1) (c) must therefore, be construed independently of Art. 136.

Where the High Court on a consideration of the evidence in the case directs a prosecution under S. 193, Penal Code, of the petitioner for swearing a false affidavit and it is impossible to find any question of public or private importance or even a question of law, the case is not one such as to justify the granting of a certificate of fitness under Art. 134 (1) (c). A I R 1951 Mad 212; A I R 1951 Mad 329; A I R 1951 Mad 721, Ref. I L R (1952) Mad 638 : 64 Mad L W 929 : 1951-2 Mad L J 501 : 1951 Mad W N 825 : 1952 Cri L J 61 : 1951 Mad W N (Cr) 245 : A I R 1951 Mad 1060 (1064) (Pt B) (Prs 8, 9) (DB).

——Art. 134 (1) (c) — Leave to appeal to Supreme Court under — When and under what conditions should be given.

The conditions necessary to be present for the High Court to grant leave to appeal to the Supreme Court under Art. 134 (1) (c) of the Constitution are practically the same as the conditions which ought

to exist for the Supreme Court to grant special leave to appeal. Such leave can be granted only where special circumstances are shown to exist and unless it is shown that exceptional circumstances exist and that severe and grave injustice has been done and that the case in question presents features of sufficient gravity to warrant a review of the decision appealed against, leave to appeal cannot be granted.

A decision by High Court that in proceedings under S. 145, Criminal P. C., the preliminary order should be passed immediately on the receipt of the application and that if there is any delay on the part of the Magistrate in passing such an order, such delay on the part of the Court should not affect the rights of parties, is not a point of such a general and public importance as to warrant the granting of leave to appeal to the Supreme Court against it. 1951 Mad W N 198 : 1951 Mad W N (Cri) 50:ILR (1951) Mad 387: 64 L W 289 (2) : (1951) 1 M L J 296:1952 Cri L J 95 : AIR 1951 Mad 721 (721, 722) (Prs 3, 4, 6, 7) (DB).

——Art. 134 (1) (c)—Discretion—Granting of leave is discretionary.

Under Art. 134 (1) (c) the granting of leave to appeal is discretionary and appeal does not lie as a matter of right as under sub-cls. (a) and (b) of Cl. (1) of that Article, 1956 Cri L J 1411 : AIR 1956 Manipur 44 (48) (Pt D) (Pr 13).

——Art. 134 (1) (c) — Certifies that 'the case is a fit one for appeal' — Meaning.

The phrase "the case is a fit one for appeal" gives wide discretion to the High Court to grant or refuse to grant the certificate even if on the merits a substantial question of law is involved and the Court when granting the certificate should exercise its discretion so as to advance justice and prevent injustice. In any case the phrase means something more than a question of a law or a substantial question of law and that the point involved must be of general importance. Where the question is whether investigation into the affairs of a defunct company is limited to S. 237, Companies Act, and whether the conduct of the alleged delinquent officers of such a company can be investigated by the police or the investigation is limited to S. 237, Companies Act, only, it cannot be said that such officers are so numerous in this country that the matter should be considered of public importance. 57 Punj L R 332 : ILR (1955) Punj 1345 : AIR 1956 Punj 1 (4) (Pt E) (Pr 7) (DB).

——Art. 134 (1) (c) — Improper admission of evidence.

The question whether a particular report made to police was rightly admitted in evidence as the First Information Report, is not such as to justify grant of leave. AIR 1951 Pat 305, Rel. on. 1953 Cri L J 1 723 : AIR 1953 Sau 198 (199) (Pt C) (Pr 6) (DB).

5 (a). Certificate of fitness—Guiding principles.

(i) Substantial question of law.

(ii) Questions of great public or private importance.

(iii) Questions of fact.

(iv) Delay—Whether a ground.

5 (a). Certificate of fitness — Guiding principles.

——Art. 134 (1) (c) — Certificate of fitness.

Circumstances necessary for the grant of certificate. AIR 1950 S C 169, Applied. 1954 Cri L J 1022: AIR 1954 Ajmer 41 (42) (Pt C) (Pr 6).

——Art. 134 (1) (c) — Certificate of fitness for appeal — Grant of — Considerations.

The grant of a certificate under Art. 134 (1) (c) is not a matter of course, but the power has to be exercised after considering what difficult question of law or principle was involved in the case which should require the further consideration of the Supreme Court.

When proceedings are quashed on a finding that it would be an absue of the process of High Court to continue the criminal proceedings which do not appear to be bona fide, no question of law arises after this finding, and it cannot be held that there exist any exceptional or special circumstances in which leave should be granted.

Where there is no ambiguity about the law, there can be no ground for granting leave merely because a question of law was involved. 1957 All W R (HC) 79 : 1957 All L J 228.

——Arts. 134 and 136 — Leave to appeal to Supreme Court in criminal matters — Powers of High Court — Question of reliability of the witnesses for the prosecution — If justifies grant of certificate under Art. 134 (1) (c).

The High Court in granting leave to appeal to Supreme Court in criminal matter has to be guided by the provisions of Art. 134 of the Constitution. If it falls under Art. 134 (1) (a) or (b) then leave has to be granted; otherwise it can be granted only if it is a fit case for appeal to the Supreme Court and the question whether it is or is not a fit case must be decided in accordance with the principles laid down by the Privy Council and which have been reaffirmed by the Supreme Court.

The powers of the Supreme Court under Art. 136 are wider and is not limited by any provision of the Constitution.

But the High Court in granting leave must be governed by Art. 134 and the interpretation put upon it and it cannot be held that the question whether the evidence, believed in by the Sessions Judge and the High Court, is or is not reliable, justifies the grant of certificate under Art. 134 (1) (c). 1952 All L J 566 : 1952 A W R (HC) 502 : 1952 Cr L J 1755 : AIR 1952 All 991 (992) (Pts A, B) (Pr 4) (DB).

——Art. 134 (1) (c) — Certificate that a criminal care is a fit one for appeal to Supreme Court — Principles governing the grant of.

A certificate that a criminal case is a fit one for appeal to the Supreme Court should be granted only when the case fulfils the requirements laid down by the Privy Council in granting special leave to His Majesty in Council in criminal cases. It can be granted only in exceptional cases where injustice of a serious nature or character has occurred not because a different view could be taken of the evidence than has been taken by the High Court, nor because there has been an error in procedure in the proper admission of evidence without which the same conclusion might properly have been arrived at, but because an error in procedure has been committed which is of so grave a character as deprives the accused of a constitutional or statutory right to be tried in a particular way or the error has been carried to such an extent as to cause the outcome of the proceedings to be contrary to fundamental principles which justice requires to be observed, or there has been some disregard of legal principles of natural justice or the law upon a materiel point is in doubt or has been differently interpreted by the various High Courts in India. 1951 A L J 473 : 1952 R D (HC) 70 : ILR (1953) 2 All 471: AIR 1952 All 630 (632, 633) (Prs 13, 14, 21, 22a, 23) (DB).

——Art. 134 (1) (c) — Conditions for issuing certificate — Criminal P. C., S. 537.

Under S. 537, Criminal P. C., the powers of interference of a Court of appeal are limited to cases where in fact there has been a failure of justice. It follows that the question canvassed in an application under Art. 134 (1) (c) must be one, the decision of which in a way different from that by the High Court would affect the conviction or acquittal in the case. The likelihood would amount to a certainty in cases where some error in the judgment of the High Court is brought to its notice, which would warrant a review of the judgment. These would be the exceptional cases in which the High Court ought to issue the certificate. Other cases would be those in which a question of law of unusual difficulty is raised such as question in which there is conflict between different High Courts or questions in which the High Court itself feels a doubt as to the correctness of its decision, or there may be questions of law of great public importance though not involving the interpretation of the Constitution.

Where the sum and substance of the contention was that there was an omission to refer to S. 34, Penal Code, in the charge under S. 302, Penal Code.

Held, that it raised only the question whether any prejudice had been caused. It was a question of fact which the High Court had discussed at length in their judgment and found that there was no prejudice. There was thus no error in the judgment which would justify a review thereof. **ILR (1956) Andh-Pra 441 : 1956 Andh W R 826 : 1957 Cr L J 1213 : AIR 1957 Andh Pra 871 (873, 874) (Pr B) (Prs 7, 8) (DB).**

——Art. 134 (c) — Certificate of fitness for appeal to Supreme Court — Grant of — Requirements.

The test or the standard which would guide the High Courts in determining whether a certificate under Art. 134 (c) of the Constitution should be granted or not ought to be the same which the Supreme Court may apply in exercising its discretion when asked to grant special leave under Art. 136 of Constitution. The standard in the two Courts cannot be different as the appellate jurisdiction of the Supreme Court which is to be exercised after a certificate from a High Court or after special leave under Art. 136, is the same. It would not be proper, therefore for a High Court to refuse to certify a case in which the Supreme Court may consider it proper to allow special leave. Conversely, a High Court may not certify a case as a fit one for appeal to the Suppreme Court where special leave to appeal would be refused by the Supreme Court. The test under both the Articles must be the same.

The Supreme Court is not a Court of appeal in matters not covered by Cls. (a) and (b) of Art. 134 or possibly Art. 132; Cl. (c) of Art. 134, therefore, would cover cases in which the aggrieved party is not entitled to appeal as of right and in which the Judicial Committee of the Privy Council and afterwards the Federal Court of India exercised criminal appellate jurisdiction.

The High Court will not ordinarily certify that the case is a fit one for appeal to the Supreme Court unless it thinks the final order passed by it is unfit to remain or has doubts as to its fitness to remain, whether on facts or in law, without a certificate as prescribed by Art. 134 (c). **1952 Cri L J 381 : 55 C W N 117 : ILR (1951) 3 Assam 117: AIR 1951 Assam 38 (39, 40, 41) (Pts A, B) (Prs 6, 7, 11, 17) (DB).**

——Art. 134 (1) (c) — Leave to appeal to Supreme Court — Certificate of fitness when to be granted — Principles — Criminal P. C. (1898), S. 236.

The jurisdiction to certify a case as a fit one for further appeal under Art. 134 of the Constitution is to a certain extent discretionary like the jurisdiction of the judges of the divisional Court in England to give or refuse leave to appeal from their decision and is very delicate one.

Though the Privy Council was not a Court of criminal appeal, the principles laid down by that Court as essential for granting leave have been held to be applicable even in cases of leave to appeal to the Supreme Court which has been constituted a Court of criminal appeal under Art. 134 of the Constitution. (According to these principles leave to appeal to Supreme Court will not ordinarily be granted unless it is shown that exceptional and special circumstances exist, that substantial and grave injustice has been done, and that the case in question presents features of sufficient gravity to warrant a review of the decision appealed against). AIR 1951 Hyd 71; AIR 1951 Assam 38 and AIR 1951 Mad 329, Rel. on.

The accused was charged and convicted at one trial with offences under Ss. 134, 217, 263 330/71 and 389/71 Hyderabnd Penal Code. The High Court acquitted the accused of all the charges on the ground that there was a misjoinder of charges vitiating the trial and that the accused could not be convicted for abetment in absence of any charge to that effect. The Government filed an application for leave to appeal to the Supreme Court under Art. 134 of the Constitution.

Held, that the application could not be granted especially when it raised no substantive question of law of paramount importance such as might be allowed to override the liberty earned by the accused.

There is a great divergence of opinion on the question whether an accused charged with substantive offence can be convicted for its abetment without a separate charge for it. Hence if the High Court decides the question one way and holds that the accused cannot be charged for abetment and acquits the accused, it would not be a ground for granting leave to appeal to the Supreme Court. **ILR (1951) Hyd 866 : 1952 Cri L J 352 : AIR 1952 Hyd 40 (41, 42) (Pt A) (Prs 5, 7, 8, 10, 11) (DB).**

——Art. 134 (1) (c) — Leave to appeal to Supreme Court — Grant of — Grounds — Principles to be observed.

Though Art. 134 of the Constitution constitutes the Supreme Court as a Court of criminal appeal, the right of appeal is restricted to a limited class of casee only; it does not mean that an appeal would lie to the Supreme Court as a matter of course or as of right but in cases specified therein.

Leave to appeal to the Supreme Court under S. 134 (1) (c) in criminal cases will not be granted unless it is shown that exceptional and special circumstances exist, that substantial and grave injustice has been done and that the case in question presents features of sufficient gravity to warrant a review of the decision appealed against, e. g., a neglect of fundamental rules of practice and the safe administration of criminal justice or a breach of natural justice. It would be opposed to all principles and precedents if the Supreme Court were to be a third Court of fact and, after re-weighing the evidence, come to a conclusion different from that arrived at by the trial judge and the High Court.

Where the questions involved in the case all relate only to the appreciation of evidence and the trial Court and the High Court have come to concurrent findings on the questions of fact and there is no substantial question of law and no sufficient gravity to warrant a review of the judgment of the High Court, leave will not be granted under Art. 134 (1) (c), though the accused has been convicted and sentenced to death, when the accused has had a fair trial. 40 I A 193; AIR 1936 P C 242; AIR 1945 P C 46; AIR

1946 P C 38, Dist.; AIR 1950 S C 169; Foll.; 20 I A 19 44 Cal 876 (PC); AIR 1925 P C 59; AIR 1932 P C 234; AIR 1943 P C 211; AIR 1950 F C 80, Ref. AIR 1950 P C 72, Rel. **52 Cri L J 481 : AIR 1951 Hyd 71 (71, 72, 73, 74) (Pts A, B) (Prs 2, 3, 4, 6) (DB).**

——Art. 134 (1) (c)—Certificate—Grant of — Principles—Substantial question of law — Construction of a document, if one such.

The Supreme Court will not entertain a criminal appeal unless exceptional circumstances exist or unless there has been a denial of fair trial or while maintaining outward semblance of a fair trial the accused had been denied it or if there are other circumstances of gravity. (AIR 1950 F C 80; AIR 1950 S C 169; AIR 1941 P C 132, Ref.).

The High Court is not entitled to ignore these principles on which the Supreme Court will admit or entertain appeals to itself, in granting leave to appeal under this Article. It is as much bound by them as any petitioner who approaches the Supreme Court for leave. (AIR 1950 Bom 380, Ref.).

The question of construction of a document is a question of law but not a substantial question of law as to entitle the applicant to grant of leave under the Art. 134(1)(c). AIR 1949 Bom 134; AIR 1950 Bom 380, Ref.; AIR 1937 Oudh 331, Dist. **52 Cri L J 587 : AIR 1951 Kutch 30 (31, 32) (Pts A, B) (Prs 7, 8, 9).**

——Art. 134 (1) (c)—Certificate of fitness for appeal — Grant of — Principles.

It is only where the case involves a substantial question of law, or where there has been an infringement of the essential principles of justice, or the matter is one which is otherwise of great public importance that the Court should grant a certificate that the case is fit one for appeal to the Supreme Court. **1956 Madh B L J 304 : Madh B L R 1956 Cr 28 : 1956 Cr L J 1000 (1) : AIR 1956 Madh B 182 (183) (Pr 5) (DB).**

——Art. 134 (1) (c)—Certificate of fitness for appeal to Supreme Court — Necessary conditions — (C. P. Code (1908), S. 109).

A case cannot be certified as fit one for appeal to the Supreme Court if injustice of a serious and substantial character has not occurred to the petitioner and if the case does not involve such a substantial question of law, as by reason of there being conflict of existing authorities as to the principle of law involved, requires an authoritative decision from the highest Court in the land. **Madh B L J 1955 H C R 1730 : Madh B L R 1955 Cr 346 : 1956 Cr L J 69 : AIR 1956 Madh B 20 (20) (Pr 7) (DB).**

——Art. 134 (1) (c) — Leave to appeal to Supreme Court—Certificate of fitness—Principles — Question of interpretation of temporary Act—Quashing of proceedings against accused in view of interpretation—Case held not fit for appeal to Supreme Court.

Per Mehta J. : — To justify a grant of leave to appeal to the Supreme Court under Art. 134 (1) (c), there must at least be a substantial question of law or a disregard of the forms of legal process or some violation of the principles of natural justice, or otherwise substantial or grave injustice must have been done, or it should be a matter of great public importance. The mere fact that the petitioner raised a point which may be a point of law does not justify his claim for a certificate under Art. 134 (1) (c). AIR 1941 P C 132; AIR 1951 Mad 212 and AIR 1950 Orissa 235, Ref.

Where the question of law is not well settled or where there is some doubt as to the principles of law involved or there is a conflict of judicial decisions, it may be that a substantial question of law can be said to arise which may require the final adjudication by the highest Court.

The construction of a legislative provision which is no longer in force and under which no further questions on the same point can arise, cannot be said to be of great public importance so as to justify the grant of such leave.

Per Kaul C. J. : — It would not be proper for any Judge to attempt to define in what cases or classes of cases a certificate of fitness should be granted and thus to restrict the wide generality of the language advisably used by the framers of the Constitution. A Judge might indicate in a negative form a class of cases in which the certificate contemplated by Art. 134 (c) should not be granted.

Substantial and grave injustice to the party asking for leave to appeal has almost invariably been held to be the test which must be fulfilled before such leave would be granted in a criminal case.

It should not be granted if the question for consideration is only the interpretation of any section of a temporary Act which is not likely to affect a large number of cases and in respect of which it cannot be said that if the view taken by the High Court is erroneous it would result in grave and substantial injustice.

Where all that the High Court had done was to interpret the words "shall continue to remain in force until repealed or amended," as used in S. 3 of Madhya Bharat Ordinance No. 1 of 1948 and held that the use of these words could not have the effect of making a temporary Law or Order which was to remain in force for a special period, perpetual and in support of this view relied upen AIR 1941 F C 16 and in this view quashed the proceeding initiated against the accused for breach of notification under Indore Essential Supplies (Temporary Powers) Order, 1946 and the State filed an application for leave to appeal under Art. 134 (1) (c) against the judgment of the High Court.

Held, that the case was not fit for appeal under Art. 134 (1) (c) as there was no substantial question of law or a question of public importance involved in the case. The mere fact that the view of law taken by the High Court resulted in the acquittal of a person who had committed a breach of a rule made under a a temporary Order or in a proceeding initiated against him being quashed does not necessarily constitute grave and substantial injustice, justifying the grant of a certificate. **ILR (1952) M P 97 : 1953 Cr L J 437 : AIR 1953 Madh B 35 (36, 37, 38) (Prs 10, 12, 14, 20, 22, 24) (DB).**

●——Art. 134 (1) (c) — Certificate of fitness — Guiding principle.

Under Art. 134 (1) (c) a case cannot be certified as a fit one for appeal if no injustice of serious and substantial character has occurred to the petitioner and if the case does not involve such a substantial question of law as by reason of the question being unsettled or by reason of there being conflict of existing authorities as to the principle of law involved, requires an authoritative decision from the highest Court in the land. Case Law Rel. on. Laxminarayan v. State, **Madh B L R 1952 (Cri.) 58 : 1952 Cri L J 1440 : AIR 1952 Madh Bha 170 (170, 171) (Pr 3) (FB).**

——Art. 134 (1) (c) — Certificate of fitness—Interpretation of S. 524, Criminal P. C., and S. 110, Evidence Act.

A case cannot be certified under Art. 134 (1) (c) as a fit one for appeal to the Supreme Court, if injustice of a serious and substantial character has not occurred to the petitioner and if the case does not involve such a substantial question of law as by reason of the

question not being well settled or by reason of there being a conflict of existing authorities as to the principle of law involved, requires an authoritative decision of the highest Court in the land. The question as to the construction of S. 524, Criminal P. C., and S. 110, Evidence Act, is no doubt a question of law, but is not a substantial question of law in respect of which it can be said that there is, or there may be, a difference of opinion : AIR 1950 S C 169, Foll. Case Law Discussed. **52 Cri L J 1533 : AIR 1951 Madh-Bha 159 (161, 162) (Pt A) (Prs 6, 7, 10).**

——Art. 134 (1) (c) — Certificate of fitness under — Considerations involved are same as those under S. 109 (c), Civil P. C. **65 Mad L W 892 : (1952) 2 Mad L J 725 : 1953 Cri L J 256 : AIR 1953 Mad 66 (68, 69) (Pt B) (Pr 5) (DB).**

——Art. 134 (1) (c) — Certificate of fitness — Requirements.

The conditions necessary to be satisfied for a certificate under Art. 134 (1) (c) are not specified but the need of a certificate implies that there should be something more than what is required for an ordinary appeal under the Code of Criminal Procedure. There should not only be, in the case substantial points of law but also exceptional and special circumstances in the case and it must also be shown that substantial and grave injustice has been done to enable the High Court to issue a certificate under Art. 134 (1) (c). The fact that one of the many Assistant Commissioners in the State is convicted of the offence of taking a bribe does not make the case one of great public importance. Case Law Discussed. **ILR (1951) Mys 480 : 1953 Cri L J 32 : AIR 1952 Mys 88 (90) (Prs 8, 9) (DB).**

——Art. 134 (1) (c) — Principles to be followed in granting certificate.

The well established principles to be followed by the High Court in granting a certificate under Art. 134 (1) (c) are :

(1) It should not be granted against an affirming judgment unless special or exceptional circumstances are shown to exist in consequence of which substantial and grave injustice has been done.

(2) Where, by a disregard of the forms of legal process or by a violation of the principles of natural justice or otherwise, substantial and grave injustice has been done.

(3) Where question of outstanding difficulty or importance arise which the High Court consider should be resolved by the Supreme Court.

(4) It must be shown that there was failure of justice by reason of misapplication or omission to consider any established rule of law or natural justice.

(5) The questions of law or principle should be of outstanding importance or difficulty so as to require to be decided by the Supreme Court. **ILR (1956) Cut 573 : 22 Cut L T 419 : 1957 Cri L J 78 : AIR 1957 Orissa 10 (12) (Pt A) (Pr 6) (DB).**

——Art. 134 (1) (c)—Certificate of fitness for appeal (Criminal P C. (1898), Ss. 367 and 561-A).

When there is no authoritative pronouncement of the Supreme Court on the points which are substantial points of law and are likely to arise again and again and the matter was also of considerable public importance as public servants have no protection or security against undeserved remarks passed by subordinate Courts, except by invoking the inherent jurisdiction of the High Court and where the High Court improperly refuses to exercise it or erroneously exercises it, it is necessary that the party aggrieved should be permitted to seek redress in the Supreme Court as no other remedy is available. **1954 Cri LR 1785 : 20 Cut L T 523 : ILR (1954) Cut 537 : AI R 1954 Orissa 248 (251) (Pt D) (Prs 8, 9) (DB).**

——Art. 134 (1) (c) — Leave to appeal to Supreme Court — Grant of — Principles to be observed.

Leave to appeal to the Supreme Court under Art. 134 (c) of the Constitution in cases which, when entertained, will constitute the Supreme Court a third Court of appeal, should be granted only in those cases where special circumstances are shown to exist. Where there is not much dispute about the finding of fact, and the case does not present either complexity of law or of fact (which are instances of special features), no leave should be granted : AIR 1950 S C 169, Ref. **52 Cri L J 697 (1) : 17 Cut L T 7 : AIR 1951 Orissa 261 (261) (Prs 2, 3) (DB).**

——Art. 134 (1) (c) — Scope—Criminal case—Order by High Court in revision — Leave to appeal to Supreme Court — Grant of—Conditions of — Error of law or fact or of procedure — Sufficiency — Conditions of fitness for appeal.

The Supreme Court does not act in the exercise of its power to review the course of justice in criminal cases in the free fashion of a fully constituted Court of Criminal appeal. A mere mistake on the part of the Court below will not be a sufficient ground unless it has led to injustice of a grave character. Where a certificate is sought for an appeal against an order of the High Court passed in the exercise of discretionary revisional powers, the High Court will not certify the case as a fit one for appeal unless the case involves questions of wide public importance or injustice has been caused to the petitioner of a grave character by reason of a mistake in procedure or unless there has been something so irregular or so outrageous as to shock the very basis of justice. Where there has been no want of jurisdiction, a mere error of law or fact or procedure will not be a sufficient ground to grant leave to appeal : AIR 1950 F C 80, Foll. ; 28 I A 11 ; AIR 1921 P C 25 ; AIR 1927 P C 242 Applied ; AIR 1932 P C 234 ; AIR 1928 All 220 ; AIR 1921 Pat 33; AIR 1928 Rang 187 ; AIR 1941 P C 211, Ref. **ILR 29 Pat 681 : 52 Cri L J 701 : AIR 1951 Pat 437 (438) (Prs 4, 6, 7) (DB).**

——Art. 134 (1) (c) — Principles governing grant of leave : ILR (1942) 23 Lah 36, Applied. **ILR (1954) Punj 630 : 1954 Cri L J 99 : 55 Punj L R 392 : AIR 1954 Punj 9 (11) (Pt B) (Pr 12).**

——Art. 134 (1) (c) — Certificate of fitness under — Grant of — Considerations for — See Ibid, Art. 133 (1) (c). **1954 Cri L J 1677 : AIR 1954 Raj 271.**

——Art. 134 (1) (c) — Leave to appeal to Supreme Court when to be granted.

The test to be applied by the High Court in granting a certificate of fitness under Art. 134 (1) (c), is not different from the one laid down by the Supreme Court in AIR 1950 S C 169 when granting special leave under Art. 136 of the Constitution. The High Court will not therefore grant leave to appeal in criminal cases, unless it is shown that exceptional and special circumstances exist, that substantial and grave injustice has been done and that the case in question presents features of sufficient gravity to warrant a review of the decision appealed against. **1953 Cri L J 1723 : AIR 1953 Sau 198 (199) (Pt A) (Pr 3) (DB).**

——Art. 134 (1) (c) — Test for granting leave.

In granting leave it must be remembered that the High Courts are, in criminal matters other than those falling under Art. 134 (1) (a) and (b), final Courts of Appeal. Test to be adopted is that there should be a substantial question of law or the infringement of some essential principles of justice. Same tests laid down by Supreme Court in Pritham Singh's case (AIR

1950 S C 169), in connection with grant of special leave are to be applied by the High Court also in granting leave : AIR 1953 Mad 66 and AIR 1952 Mys 88, Dissent.

Weight to be attached to evidence of witness on record or that conclusions were reached on an erroneous appreciation of evidence are not sufficient grounds for granting leave. **1953 Cri L J 1531 : 6 Sau L R 210 : AIR 1953 Sau 170 (171, 172, 173) (Pt A) (Prs 3, 7, 9, 10) (DB).**

——Art. 134 (1) (c)—Certificate of fitness for appeal.

Leave to appeal is not to be granted except where some clear departure from the requirements of justice exists, nor unless by a disregard of the form of legal process or by some violation of the principle of natural justice or otherwise, substantial or grave injustice has been done. Certificate of fitness to appeal is to be granted only when special and exceptional circumstances are shown to exist : AIR 1951 Trav-Co 45, Foll. ; AIR 1931 P C 111 and AIR 1950 F C 80, Ref.; AIR 1954 S C 616, Applied. **1954 K L T 911 : 1955 Cri L J 851 : I L R (1955) T-C 168 : AIR 1955 Trav-Co 91 (92) (Pr 3) (DB).**

——Art. 134 (1) (c)—Certificate of fitness — Grant of —Circumstances for, stated — High Court agreeing with trial Court — No exceptional circumstances for granting certificate. AIR 1955 N U C (Trav.Co) 1458 (DB).

——Art. 134 (1) (c) — Principle governing grant of certificate under—Appreciation of evidence—Omission to draw adverse inference from non-production of witnesses — Consideration of the plea of "not guilty" not tendered under S. 287, Cr. P. Code — —Not sufficient grounds.

The principles which apply in granting leave in any case to appeal to the Supreme Court have also to be considered by the High Court in granting a certificate under Art. 134 (1) (c).

The Supreme Court will not grant leave to appeal in criminal cases unless it is shown that exceptional and special circumstances exist, that substantial and grave injustice has been done and that the case in question presents special features, of sufficient gravity to warrant a review of decision appealed against.

The Supreme Court would not constitute itself into a third Court of facts and after reweighing the evidence come to a conclusion different from that arrived at by the trial Judge and the High Court.

There must have been a disregard to forms of legal process or some violation of principle of natural justice whereby substantial and grave injustice has resulted. **1953 Cr L J 68 : AIR 1952 Tripura 25 (25) (Pts A, B, C) (Prs 5, 6, 7).**

5 (a) (i). Substantial question of law.

——Art. 134 (1) (c)—Scope—Certificate of fitness —Discretion of High Court when to be exercised — High Court must be satisfied that case involves a substantial question of law or principle.

Article 134 (1) (c) of the Constitution does not state the conditions necessary for the grant of certificate. No rules under Art. 145 regulating generally the practice and procedure of the Supreme Court for the grant of certificate by the High Court have been framed. The power which is granted is no doubt discretionary but in view of the word 'certifies' it is clear that such power must be exercised with great circumspection and only in a case which is really fit for appeal. It is impossible by a formula to indicate the precise limits of such discretion. Under Art. 134 (1) (c), the Supreme Court has not been made an ordinary Court of Criminal Appeal and the High Courts should not by the certificates attempt to create a jurisdiction which was not intended. The certificate should not be granted to afford another hearing on facts unless there is some error of a fundamental character.

Article 134 (1) (c) does not confer an unlimited jurisdiction on the High Courts. The power gives a discretion but discretion must always be exercised on some judicial principles. A similar clause in Art. 133, which allows appeals in civil cases, has been consistently interpreted as including only those cases which involve a question of general public importance. That test need not necessarily be applied to a criminal case but it is clear that mere questions of fact should not be referred for decision. The Constitution does not contemplate a criminal jurisdiction for the Supreme Court except in those two cases covered by cls. (a) and (b) which provide for appeals as of right. The High Court before it certifies the case must be satisfied that it involves some substantial question of law or principle. In a criminal appeal the High Court can consider the case on law and fact and if the High Court entertains doubt about the guilt of the accused or the sufficiency of the evidence it can always give the benefit to the accused there and then. It is obvious that only a case involving something more than mere appreciation of evidence is contemplated by the Constitution for the grant of a certificate. What that may be will depend on the circumstances of the case. Babu v. State of U. P., **I L R (1965) 1 All 951 : 1965 S C D 1075 : (1965) 1 S C W R 936 : 1965 (2) Cr L J 539 : (1965) 2 S C A 296 : AIR 1965 S C 1467 (1470, 1471, 1472) (Pt B) (Prs 9, 11, 14).**

——Art. 134 (1) (c)—Certificate of fitness—Substantial question of law—Penal Code (1860), S. 21, Cl. 9 —Railways Act (1890), S. 137 (4).

The following questions were held to be substantial questions of law involved in the petition and therefore, the petitioner was held entitled to a certificate of fitness under Art. 134 (1) (c).

(1) The question as to who is to be deemed to be an 'officer' within the meaning of Cl. 9 of S. 21, Penal Code and whether it is necessary for the prosecution to prove that the duties of the charged person are or are not auxiliary to an officer wielding authority?

(2) The question whether the provisions of S. 137 (4), Railways Act, exclude all railway servants from the definition of public servants except for purposes of Chapter IX of the Penal Code?

(3) Whether Ex. P-5 could, in the circumstances of the case, be used to corroborate the oral evidence on the record? **1955 Cri L J 608 : AIR 1955 Ajmer 18 (1) (18) (Pt A) (Prs 2, 3).**

——Art. 134 (1) (c)—Substantial question of law. See Criminal P. Code (1898), S. 247, Proviso. **AIR 1955 N U C (Ajmer) 2631.**

——Art. 134 — Supreme Court — Leave to appeal in criminal case — Certificate of fitness — Grounds for issue of — Whether High Court has power to review or alter, judgment after it is recorded and a writ issued in terms of order — If justifies certificate being granted.

The question whether the High Court has power to review or alter its judgment in a criminal appeal, after the judgment has once been recorded and a writ in terms of that order has been issued, is an important point of law and a fit one for a certificate to be issued for appeal to the Supreme Court. **52 Cr L J 441 : 53 Bom L R 117 : AIR 1951 Bom 49 (51, 53, 55) (Prs 6, 12, 17) (DB).**

——Art. 134 (1) (c)—Certificate of fitness — Considerations which should weigh in granting certificate —Merely raising question of law, if sufficient.

Except in cases falling under sub-cls. (a) and (b) of Art. 134 (1) in all other criminal matters the Constitution of India intends that the High Courts in the respective States in the territory of India should normally and ordinarily be the final Courts of appeal. This fact must therefore be borne in mind in deciding the question as to whether a certificate of fitness should be given in a case. There must at least be a substantial question of law; or considerations like those mentioned by Viscount Simon L. C. in A I R 1941 P C 132 should be shown to be present; or it should be a matter of great public importance. The mere fact that the petitioner raises a point which may be a point of law does not justify his claim for a certificate under Art. 134 (1) (c). 52 Bom L R 534 : 1952 Cri L J 620 : AIR 1950 Bom 380 (382) (Pr 5) (DB).

—— Art. 134 (1) (c) — Certificate of fitness — Held form in which relief was granted did not raise any substantial question of law justifying grant of leave. AIR 1955 N U C (Cal) 4509.

——Art. 134 (1) (c) and 132—No substantial question of law as to interpretation of the Constitution involved—No special ground made out under Arts. 132 and 134 (1) (c) — Leave to appeal to Supreme Court refused. See Ibid, Art. 132. AIR 1953 Hyd 218.

——Art. 134 (1) (c) —Certificate of fitness — Failure to supply copies under S. 162, Proviso, Criminal P. C. —Criminal P. C. (1898), S. 162, Proviso.

Where the case in respect of which complaint was made was not investigated by the Police the accused is not entitled under the proviso to S. 162, Cr. P. C., to copies of Police statements recorded in the course of investigation of case started on the report of the accused. It is one thing to ask for statements under the proviso to section 162 and another thing to request the Court for production of some documents or statements for contradiction of a witness. This is not a question of law, and no certificate of fitness under Art. 134 (1) (c) can be granted. 1952 Cri L J 1037 : AIR 1952 Kutch 54 (55) (Pt D) (Pr 8).

——Art. 134 (1) (c) — Question of misjoinder of charges under Ss. 409 and 477-A, Penal Code— Substantial question of law — Omission to point out specific points under S. 342, Criminal P. C.

A substantial question of law is an important and difficult question of law on which there may be divergence of judicial opinion not set at rest by the pronouncement of the highest Court. But mere existence of a substantial question of law is not sufficient under Art. 134 (1) (c). It must also be shown that by the adverse decision on the question of law, serious injustice of a substantial nature has resulted. (Case-law, reviewed.) AIR 1928 Bom 110; AIR 1944 Oudh 122, AIR 1915 All 462; AIR 1950 F C 80; AIR 1950 S C 169; AIR 1950 Orissa 235; AIR 1951 Mad 721; AIR 1951 Pat 439 (2); AIR 1951 Kutch 30; AIR 1947 P C 67, Ref.

Section 342, Criminal P. C., requires salient points appearing in evidence against an accused must be pointed out to him and he should be asked to render explanation if he so desired. (AIR 1933 P C 124.) But it does not follow that failure to do so would necessarily vitiate the trial. (AIR 1946 Bom 465, Foll.) 1952 Cr L J 1025 : AIR 1952 Kutch 51 (53) (Pts A, B) (Prs 6, 8).

——Art. 134 (1) (c)—Certificate of fitness — Case involving substantial question of law—Certificate cannot be granted unless it has resulted in grave and substantial injustice. AIR 1955 N U C (Madh B) 3042.

——Art. 134 (1) (c)— Substantial question of law — Applicability of law.

When the principle of law is well established then the applicability of the law to the facts of a case is not a substantial question of law. 52 Cri L J 1533 : AIR 1951 Madh B 159 (162) (Pt B) (Pr 8).

——Art. 134 — Question involving interpretation of S. 198-B, Cr. P. Code — Leave to appeal sanctioned— Criminal Procedure Code (1898), S. 198 B. See Ibid, Art. 132. ('62) 28 Cut L T 104.

——Art. 134 (1) (c)—Case involving question of law.

It is not necessary that in every case where a point of law is raised the matter should be certified as fit for appeal. A I R 1950 Bom 380, A I R 1950 S C 169, Relied on.

Held, that though the case involved a question of law (relating to the legality of conviction under S. 149, I P C where the culprits that could be identified were less than five), it was not a fit case for appeal to the Supreme Court. 3 Pepsu L R 132 : 52 Cri L J 1409 : AIR 1951 Pepsu 152 (153, 154) (Pt B) (Prs 6, 7) (DB).

——Art. 134 (1) (c) — Substantial question of law — Question as to admissibility of notification issued under Statute.

Contentions which essentially relate to questions of fact cannot form a good ground for a certificate under Art. 134 (1) (c). But the High Court has to exercise its power after considering as to what difficult questions of law or principle are involved which require further consideration by the Supreme Court. Unless, therefore, there is a substantial question of law or of principle, the High Court will not be justified in granting a certificate under this article. Further, a notification properly issued under the powers conferred on the municipal committee, in law, becomes almost, as if, it is a part of the statute itself. It is always competent for a Court to take judicial notice of the provisions contained in such notifications. Where therefore the only question raised for the consideration of the Supreme Court is regarding the admissibility of certain notification issued under a municipal Act, no certificate under Art. 134 (1) (c) can be granted. 1960 Cr L J 1375 (1): AIR 1960 Punj 547 (548) (Pr 1).

——Art. 134 (1) (c)—Substantial question of law.

Merely because a novel or a new point is raised, it does not become a substantial question of law or of general importance and, therefore, fit one for appeal. 57 Punj LR 332 : ILR (1955) Punj 1345 : AIR 1956 Punj 1 (4) (Pt F) (Pr 8) (DB).

——Art. 134 (1) (c)—Substantial question of law.

A finding that there was no undue delay in submitting the charge-sheet is a finding of fact and a certificate cannot be granted on the ground that it is erroneous.

Where there has been no failure of justice by the delay in submitting the charge-sheet, the question, whether the delay in submitting the charge-sheet should affect the conviction of the accused becomes at best a question of law but is not a substantial question of law, which might justify the grant of a certificate. 1953 Cr L J 1723 : AIR 1953 Sau 198 (199) (Pt B) (Pr 5) (DB).

——Arts. 134 (1) (c) and 133 — Substantial question of law.

If there is a well-established principle of law and that principle of law is applied to the facts of the case that would not be a substantial question of law. Where the question of law was not well settled, or where there was some doubt as to the principles of law, involved, it might be regarded as a substantial question of law. This test or standard is equally true of criminal matters. 1953 Cr L J 1531 : 6 Sau L R 210 : AIR 1953 Sau 170 (171) (Pt B) (Pr 4) (DB).

——Art. 134 (1) (c)— Important questions of law — Whether permission to cross-examine prosecution witness at stage of re-examination was rightly granted to prosecution under S. 154, Evidence Act — Certificate granted.

The question whether permission to cross examine a prosecution witness was rightly given to the prosecution in the exercise of discretion under S. 154, Evidence Act at the stage of his re-examination is a very important question of law which requires an authoritative pronouncement of the Supreme Court. So also the question whether the Magistrate was right in rejecting his answers in the cross-examination by the adverse party as interested evidence and in accepting his answers in the examination-in-chief as corroborative evidence is an important question. Held, that the question involved was an important question of law and fact which required consideration by the Supreme Court and therefore a certificate under Art. 134 (1) (c) should be granted. **1960 Cr L J 1666 : AIR 1960 Tripura 44 (46, 47, 48) (Pt A) (Prs 12 to 17, 20).**

5 (a) (ii). Questions of great public or private importance.

——Art. 134 (1) (c) — Certificate of fitness.

The petitioner is not entitled to a certificate merely because the case is of great public or private importance. **AIR 1956 Ajmer 40 (1) (Pt C) (Pr 3).**

——Art. 134 (1)— Matter of public importance — (Penal Code (1860), S. 228).

There can be no doubt that the question of maintenance of the integrity of the jurisdiction is a matter of great public importance. But the reputation of the judiciary is so well established that it will not suffer even if one contempt of Court goes unpunished. The publication of an article in a newspaper against a Magistrate is not of great importance and the purpose would not be advanced by the grant of a certificate of leave to appeal to the Supreme Court. **1953 Cr L J 1206 : AIR 1953 Ajmer 11 (12) (Pt B) (Pr 4).**

——Art. 134 (1) (c)— Application under — Non-compliance with S. 342, Criminal P. C. — If ground for granting certificate.

In a Sessions trial the Sessions Judge merely read over the examination of the accused in the Court of the committing Magistrate and asked him whether he had made that statement and it was correct. No question was put to him regarding the evidence produced and circumstances appearing against him in the sessions Court. Even as regards the evidence which was recorded exclusively in the Sessions Court, only a general question was put to the applicant as to whether he had to say anything in regard to that evidence. The accused filed an application under Art. 134 (1) (c) of the Constitution for leave to appeal to the Supreme Court on the ground that non-compliance with S. 342, Criminal P. C. vitiated the trial.

Held, that the omissions complained of were sufficient to justify the Court in certifying that the case was a fit one for appeal to the Supreme Court : A I R 1951 S C 441, Ref. **1952 Cri L J 114 : AIR 1952 Him Pra 5 (6) (Pt C) (Pr 8).**

——Art. 134 (1) (c)—Certificate of fitness — Police officer making complaint to Magistrate in respect of non-cognizable offence —Criminal P. C. (1898), Ss. 4 (1) (h) & 190 & Ss. 529 & 530.

Where a police officer who was investigating a complaint made by a person in respect of a cognizable offence made a complaint to the Magistrate in respect a non-cognizable offence, the complaint is valid in view of the definition in S. 4 (1) (h). It was open to the Magistrate to have asked the police officer to investigate the complaint. The proceeding of the Magistrate is not liable to be quashed because the police officer instead of resorting to Section 155 filed a complaint. S. 529 (e) and not S. 530 applies in such a case. The question is not of such public or private importance that a certificate of fitness can be issued. **1952 Cri L J 1037 : AIR 1952 Kutch 54 (55) (Pt A) (Prs 4, 5, 9).**

——Art. 134 (1) (c)—Certificate of fitness — Terror of criminal complaint — Penal Code (1860), S. 385.

Terror of a criminal complaint, whether true or false amounts to fear of injury and the guilt or innocence of the party threatened is immaterial. Where in the complaint it was stated that a person put another in fear that as his passport was false he would be prosecuted, the complaint disclosed commission of an offence. The point is not of such a public or private importance that a certificate of fitness can be issued. **1952 Cri L J 1037 : AIR 1952 Kutch 54 (55) (Pt B) (Prs 6, 9).**

——Art. 134 (1) (c) — Certificate of fitness — Sufficiency of evidence.

A question of sufficiency or credibility of evidence in proof of a particular fact is not a case of private importance specially when there are concurrent findings of fact, and no certificate under Art. 134 (1) (c) can be granted. **1952 Cri L J 1037 : AIR 1952 Kutch 54 (55) (Pt C) (Pr 7).**

——Art. 134 (1) (c) — Act amounting to insult—Act if can be dealt with under summary jurisdiction of High Court— Question is of great public importance —(Penal Code (1860), S. 228)—(Contempt of Courts Act (1952), S. 3).

The question whether a single act of the accused which amounts to an insult offered to the Magistrate while he is sitting as a Court can be dealt with under the summary jurisdiction of the High Court in so far as it is an attack on the impartiality and integrity of the Magistrate is not of great public importance particularly where the contemner can adequately be punished under S. 228, Penal Code. **Madh B L J 1955 H C R 1741 : Madh B L R 1955 Cr 357 : 1956 Cr L J 243 : AIR 1956 Madh B 96 (96) (Prs 5, 8)(DB).**

——Art. 134 (1) (c) — Certificate of fitness under — Propriety of grant or refusal of an adjournment—Not a question of sufficient importance for granting certificate under the Article. **65 Mad L W 892: (1952) 2 Mad L J 725:1953 Cri L J 256 : AIR 1953 Mad 66 (69) (Pt D) (Pr 7) (DB).**

——Art. 134 (1) (c) — Standard of fitness — Conviction on basis of portion of retracted confession — Non-compliance with S. 342, Criminal P. C. — Criminal P. C. (1898), Ss. 342 and 404 — Evidence Act (1872), S. 24.

The scope of an appeal to the Supreme Court against a final order or sentence in a criminal proceeding has not at all been widened. That Court will have to interfere with convictions by local tribunals within the same bounds of limitations and restraints laid down by the Privy Council and the fitness has to be judged by the standard that that tribunal laid before it in granting special leave to appeal. The only change that the Constitution has introduced is to endow the State High Courts with powers to certify, or in other words, to grant leave to appeal.

Where a major portion of the retracted confession by the accused implicating a co-accused for offences under Ss. 457, 380 and 461, Penal Code, has been found to be false and the co-accused has been acquitted, the accused cannot be convicted for the same offences on the basis of the remaining portion of the confession which amounts to entangling the

accused as one who came into possession of some property recently stolen, unless the accused is given an opportunity under S. 342, Criminal P. C, to explain as to how it came into his possession. The general sort of examination under S. 342 as to why and under what circumstances the accused made the confession would not be sufficient under the circumstances. In such a case there is a disregard of the form of legal process so vital to a criminal trial in the failure of compliance with the statutory rule of accused's examination under S. 342, Criminal P. C., and the case is a fit one for appeal to the Supreme Court under Art. 134 (1) (c) of the Constitution. 16 Cut L T 115 : ILR (1950) Cut 305 ; 1952 Cri L J 120 : AIR 1950 Orissa 235 (239, 240, 241) (Pt A) (Prs 15, 18, 19, 20) (DB).

5 (a) (iii). Questions of fact.

■ ——Arts. 134 (1) (c) and 136 — Question of fact — High Court's jurisdiction to give certificate under Art. 134 (1) (c) — Principle on which Supreme Court will grant leave under Art. 136 and intervene.

The High Court has no jurisdiction to grant a certificate under Art. 134 (1) (c) in a case where admittedly in its opinion the question involved is one of fact. No High Court has the jurisdiction to pass on mere questions of fact for further consideration of the Supreme Court under the relevant articles of the Constitution. In such a case the High Court should refuse to give a certificate under Art. 134 (1) (c) and leave the parties, in case it finds itself helpless to redress the grievance to approach the Supreme Court by invoking its special jurisdiction under Art. 136 (1).

No High Court can arrogate the function of the Supreme Court under Art. 136 (1) to itself and pass on a matter to it involving purely questions of fact. And if the High Court does so, then it can be taken to have exercised its discretion wrongly and the certificate purporting to have been granted under Art. 134 (1) (c) will be considered as no certificate and of no avail to the accused. Harpada Dey v. State of West Bengal, 1957 M P C 1 : 1957 Andh L T 202 : 1956 S C A 1078 : (1956) 2 M L J (SC) 65 : 1956 S C J 701 : 1956 All W R (Sup) 141 : 1957 B L J R 23 : 1957 All L J 70 : 1956 S C R 639 : AIR 1956 S C 757 (759) (Pt A) (Pr 2).

■ ——Art. 134 (1) (c) — Certificate — When granted — Affirming judgment not involving substantial question of law.

If a case does not involve any question of law, then however difficulf the question of fact may be, that would not justify the grant of a certificate under Art. 134 (1) (c) of the Constitution, because if the High Court has any doubt about the facts of a criminal case, the benefit of that doubt must go to the accused. If, on the other hand, the High Court confirms the order of conviction passed by the trial Court ordinarily there could be no ground for entertaining an application for a certificate that the case was a fit one for a further appeal to the Supreme Court. Where the High Court has reversed an order of acquittal and sentenced the accused or has itself convicted an accused person and sentenced him to death, those cases would be covered by the provisions respectively of Art. 134 (1) (a) and 134 (1) (b) of the Constitution. Therefore, ordinarily in a case which does not involve a substantial question of law or principle in an affirming judgment, the High Court would not be justified in granting a certificate under sub-Art. (c) of Art. 134 (1) of the Constitution. AIR 1954 S C 457, Foll.

Where the conviction by the Courts below was based entirely on circumstantial evidence and the High Court dismisses the appeal, the grant of a certificate for leave to appeal to the Supreme Court does not fulfil the requirements of Art. 134 (1) (c) Sunder Singh v. State of Uttar Pradesh, 1956 Cri L J 801 : AIR 1956 S C 411 (412, 413) (Pt A) (Prs 1, 2).

■ ——Art. 134 (1) (c) — High Court in doubt about facts — No certificate.

A certificate cannot be granted under sub-Art. (c) of Art. 134(1) if the High Court is in doubt about the facts. If there is doubt in the minds of the Judges about the facts, their duty is to acquit. They cannot convict and then issue a certificate because they cannot make up their minds about the facts. Baladin v. State of Uttar Pradesh, 1956 Cri L J 345 : AIR 1956 S C 181 (189) (Pt C) (Pr 16).

——Art. 134 (1) (c) —Certificate of fitness — Contentions based on questions of fact—Certificate cannot be granted. AIR 1955 N U C (Ajmer) 4702.

——Art. 134 (1) — Fitness — [Penal Code (1860), S. 300].

The question as to what is 'undue advantage' in each particular case is a question of fact and no question of law is involved. The case involving the interpretation of those words does not therefore fall under clauses (a) and (b) of Art. 134 (1)—Not a fit case for appeal to Supreme Court—Petition for permission to appeal to Supreme Court rejected. 1954 Cri L J 223 : AIR 1954 Ajmer 7 (1) (7) (Pr 2).

——Art. 134 (1) (c)—Question of fact—Case depending only upon determination of facts in the light of evidence produced — No question of law involved—Not fit case for grant of certificate under Art. 134 (1) (c). 1960 All L J 361 : 1960 All W R (HC) 223 : 1960 All Cr R 157 : 1960 Cri L J 1276 : A I R 1960 All 585 (588) (Pt C) (Pr 15).

——Art. 134 (1) (c) — Certificate of fitness—Appeal from conviction — High Court coming to different conclusion from that arrived at by Courts below on medical evidence—No ground for certificate.

A certificate of fitness can only be granted, when there is either some question of law of some importance arising between the parties to the case or some question of general importance, or there is some question of difficulty which needed further careful investigation by a higher Court. When no such question is raised, the mere fact that the High Court has come to a different conclusion from that arrived at by the Court below on the medical testimony is no ground either for the State or for the accused for a certificate of fitness under Art. 134 (1) (c). 1956 All W R (HC) 295 : 1956 All L J 399 : 1956 Cri L J 1385 : A I R 1956 All 731 (734, 735) (Pt B) (Pr 18) (DB).

——Art. 134 (1) (c)—Question involved purely one of fact—No certificate. 1953 All L J 294 : 1953 Cri L J 1376 : 1953 All W R (HC) 505 : A I R 1953 All 610 (610, 611) (Pt B) (Pr 2) (DB).

——Arts. 134(1)(c), 404—Question as to appreciation of evidence on record.

A question as to the weight to be attached to the evidence of witnesses on the record in a criminal case cannot be deemed to be sufficient ground for allowing leave under Art. 134 1 (c). 1952 R D (HC) 116.

——Art. 134 (1) (c)—Certificate.

Reference under S. 307, Criminal P. C. — High Court not considering the illegality of procedure followed by the Sessions Judge — High Court considering facts and evidence and holding conviction of accused justified — No miscarriage of justice — No certificate would be granted. A I R 1951 Assam 38,

Foll.; A I R 1951 S C 169, Applied. 1953 Cri L J 1138 : AIR 1953 Assam 136 (137) (Prs 3, 4) (DB).

——Art. 134 (1) (c)—Certificate of fitness—Questions involved relating to appreciation of evidence — Concurrent findings of fact — No substantial question of law involved—No certificate of fitness can be granted. A I R 1955 N U C (Him Pra) 4853.

——Art. 134 (c) — Criminal case — Certificate — Circumstances for — Will be granted only in exceptional and special cases — Concurrent finding that accused accepted illegal gratification — Case held not fit for certificate. A I R 1955 N U C (Him Pra) 3679.

——Art. 134 (1) (c)—Scope—Concurrent findings as to guilt of accused—Certificate of fitness.

Where there are concurrent findings of fact as to the guilt of the accused, a certificate under Art. 134 (1) (c) cannot be granted unless there is a substantial question of law, or unless there are exceptional and special circumstances. 1959 Cri L J 1452 : A I R 1959 Manipur 46 (46, 47) (Pt A) (Pr 3).

——Art. 134 (1) (c)—Question of weighing evidence —If ground for certificate.

The question whether a witness is reliable or not and to what extent, is a question for the Judge to decide. It cannot therefore form a good ground for a certificate in a case in which the simple question involved was whether the petitioners were responsible for causing the injuries, and both Courts came to the conclusion that it was so. The question of weighing the evidence cannot therefore furnish a good ground for the grant of certificate. 1959 Cri L J 1452; AIR 1959 Manipur 46 (47) (Pt F) (Pr 10).

——Art. 134 (1) (c) — Certificate of fitness—When can be granted.

In order that a certificate of fitness for leave to appeal to the Supreme Court may be granted in a criminal case under Art. 134 (1) (c) of the Constitution of India there should be a substantial question of law and the case one of sufficient importance. Where the accused has been found guilty by all the Courts below for breach of a control order and the decision merely turns on the appreciation of evidence no certificate can be granted merely because the accused wants to challenge the validity of the order for the first time. ('52) 30 Mys L J 88 : ILR (1951) Mys 114.

——Art. 134—Finding on evidence.

Held, that whether to accept certain evidence or not was entirely for the Court of fact to decide. That Court having accepted the evidence which was received without objection from the accused the finding as to the speed limit could no longer be questioned in an application under Art. 134. 1954 Cri L J 1367 : 1954 Nag L J 534 : 1954 All W R (Suppl.) 80 : ILR (1954) Nag 661 : A I R 1954 Nag 265 (267) (Pt E) (Pr 12) (DB).

——Art. 134 (1) (c) — Sufficient ground for granting leave.

A question as to the weight to be attached to the evidence of witnesses on the record in a criminal case cannot be deemed to be a sufficient ground for allowing leave under Art. 134 (1) (c) of the Constitution of India. A I R 1953 All 133, Foll. 1953 Nag L J 666 : 1954 Cri L J 288 : 1954 All W R (Supp) 24 : ILR (1954) Nag 65 : A I R 1954 Nag 64 (64) (Pt A) (Pr 3) (DB).

——Art. 134 (1) (c)—Questions of fact — Certificate should not be granted.

The unusual delay in lodging the F I R the disbelief of a portion of the story of complainant as an exaggeration, and other adverse comments made against the prosecution case by the trial Court and the Court of appeal are questions of fact to be considered by a regular Court of appeal and once they have been considered and due weight given to them a certificate under Art. 134 (1) (c) cannot be granted for re-agitating the same before the Supreme Court. ILR (1956) Cut 573 : 22 Cut L T 419 : 1957 Cri L J 78 : A I R 1957 Orissa 10 (14) (Pt E) (Pr 18) (DB).

——Art. 134 (1) (c)—Ground for—Question of fact.

The point that certain evidence should not have been accepted by the Magistrate proceeding under S. 145, Criminal P. C., is a question of fact and cannot be a ground on which a certificate can be granted. ILR 29 Pat 904 : 1952 Cri L J 540 : A I R 1951 Pat 305 (307) (Pt D) (Pr 14) (DB).

——Art. 134 (1) (c)—Sufficient ground for granting leave.

There is sufficient ground for granting leave where the application for it is based on the contention that the facts found to be proved by the evidence led on behalf of the prosecution are not sufficient to sustain a conviction. Case law relied on. 54 C W N (S C R) 228, Disting. 1954 Cri L J 60: 55 Punj L R 397: AIR 1954 Punj 7 (7, 8) (Pr 3) (DB).

——Art. 134 (1) (c)—Concurrent finding of fact.

The Supreme Court will not enter into questions of fact decided on appreciation of evidence by the Courts below. When, therefore, the trial Court and the High Court, in appeal, concurrently hold, after appreciating the evidence on record, that the circumstances alleged by the prosecution are proved, a certificate cannot be granted on the ground that the appreciation of evidence was erroneous. 1953 Cri L J 1723 : A I R 1953 Sau 198 (200) (Pt D) (Pr 7) (DB).

5 (a) (iv). Delay—Whether a ground.

——Arts. 134 (1) (c) and 136—Certificate of fitness —Mere delay in pronouncing judgment resulting in omission to consider arguments on questions of facts —No certificate should be given on this ground under Art. 134 (1) (c)—Appellant if aggrieved may apply to Supreme Court under Art. 136.

The High Court should not grant, under Art. 134 (1) (c) of the Constitution, a certificate on the mere ground of unusual delay in pronouncing a judgment in appeal by the High Court and the equally slender ground that some of the questions which were raised were forgotten at the time of the judgment. If the appellant has any such real grievance it is open to him to apply to the Supreme Court under Art. 136 but the mere ground of delay is not a ground on which the High Court can certify a case to be fit one for appeal to the Supreme Court. A mere ground of delay in giving a judgment does not fall within the words 'fit one for appeal to the Supreme Court' even if it is felt by the High Court that the delay might have led to omission to consider arguments on questions of fact and law. It is not open to a High Court to give certificates of fitness under this clause merely because in its opinion the judgment of the Court delivered by another Bench suffers from an error in regard to certain facts. AIR 1956 S C 757 and AIR 1958 S C 143 and 28 Ind App 11 (PC) and AIR 1921 P C 25, Rel. on. Achyut Adhicary v. State of W. B., 1962 Mad W N 565 : (1963) 2 S C J 92 : 1963 Mad L J (Cri) 317 : (1963) 2 S C R 47 : (1963) 2 S C A 210 : (1962) 2 Ker L R 188 : 1962 (2) Cri L J 59 : 1962 S C D 763 : 1963 All W R (HC) 714 : 1962 All Cri R 391 : 1962 B L J R 983: 65 Punj L R 171 : A I R 1963 S C 1039 (1040) (Pr 4).

——Art. 134 (1) (c) — Criminal appeal — Appeal against acquittal in Sessions case of rioting and murder charge, preferred beyond limitation period—No attempt to obtain copy of judgment—Appeal dismissed by High Court on ground that delay in filing appeal, was not satisfactorily explained—Application for leave to appeal under Art. 134 (1) (c), on ground that delay in Court of Session in sending copies of judgment as required under R. 171, Criminal Rules of Practice (A P.), should be excused under S. 12 (2), Limitation Act—Case held not fit for grant of certificate—Limitation Act (1908), S. 12 (2), Art. 157—Criminal Rules of Practice (A. P.) R. 177 (1).

Where in Sessions case in which the accused were acquitted of the charges of rioting and murder, the prosecuting agency had never applied for a copy of the judgment, and the applications under S. 561A, Criminal P. C., for excusing the delay in preferring appeals against the order of acquittal beyond the period of limitation prescribed under Art. 157 of the Limitation Act, were dismissed on the ground that the delay had not been satisfactorily explained and the appeals were dismissed and the State applied for grant of a certificate under Art. 134 (1) (c) of the Constitution, relying on R. 177 (1) of the Criminal Rules of Practice (Andhra Pradesh), and it was urged that the delay in filing the appeals was due to the delay in supplying copies of the judgments by the Sessions Court and that, period should be excluded in calculating the period of limitation as provided by S. 12 (2) of the Limitation Act :

Held, that there was no valid ground for granting a certificate under Art. 134 (1) (c) of the Constitution.

The Criminal Rules of Practice (Andhra Pradesh), which were in the nature of administrative directions and instructions, could not have the effect of adding to or subtracting from the provisions of the Limitation Act.

As the prosecuting agency never applied for a copy of the judgment it could not be said that the delay was occasioned by the time taken for obtaining a copy of the judgment. Therefore, the delay in the Court of Session sending copies of the judgment to the District Superintendent of Police and the Local Public Prosecutor could not save Limitation in the instant cases. **ILR (1962) Andh Pra 1133.**

5 (b). Certificate of fitness — When not granted.

● **——Art. 134**—Certificate of fitness—On a difference of opinion the case was referred under S. 429 Cr. P. C. to a third Judge who agreed with Mathur, J., in dismissing the appeal. One of the points of difference was with regard to the authenticity of F. I. R. and the third Judge did not consider it necessary to discuss it and had merely stated at the end of his order that if it was necessary for him to decide the point he was in agreement with all that Mathur, J. had said.

Held, that the decision given by the third Judge was a proper decision and, therefore, the certificate granted under Art. 134 could not be based upon the omission of the third Judge to discuss the authenticity of the F. I. R. **1965 (2) Cr L J 539 : AIR 1965 S C 1467 (1470) (Pt A) (Pr 7).**

● **——Art. 134 (1) (c)—Criminal P C. (1898), S. 421—Appeal to High Court Its power to dismiss appeal summarily — Leave to appeal to Supreme Court — Leave should not be granted on ground that appeal should not have been dismissed summarily.**

In dealing with criminal appeals brought before them the High Courts should not summarily reject them if they raise arguable and substantial point. The position under S. 421 is clear and unambiguous. When a criminal appeal is brought before the High Court, the High Court has to be satisfied that it raises an arguable or substantial question; if it is so satisfied, the appeal should be admitted; if, on the other hand, the High Court is satisfied that there is no substance in the appeal and that the view taken by the trial Court is substantially correct it can summarily dismiss the appeal. Therefore the High Court is not right in granting certificate to the appellant under Art 134 (1) (c) of the Constitution of India on the ground that his appeal should not have been summarily dismissed by another Division Bench of the said High Court. If the High Court in dealing with criminal appeals takes the view that there is no substance in the appeal, it is not necessary that it should record reasons for its conclusion in summarily dismissing it. Chittaranjan Das v. The State of West Bengal, (1964) 1 S C A 654 : (1964) 2 S C J 311 : 1964 Mad L J (Cri) 495 : (1964) 3 S C R 237 , 1963 (2) Cr L J 534 : (1963) 2 S C D 815 : AIR 1963 S C 1696 (1700, 1701) (Pt C) (Pr 12).

——Art. 134—Certificate of fitness—S 247 Cr. P. C. applies to enquiries under S 18 (2) Press (Objectionable Matter) Act — A. I. R. 1927 Cal 343, applies—Hence certificate under Art. 134 (1) (c) cannot be granted on ground that S. 247, Cr P C., was wrongly applied to enquiry. See Press (Objectionable Matter) Act 1951, S. 18 (2). **1954 Cr L J 1022 : AIR 1954 Ajmer 41.**

——Art. 134 (1) (c)—Certificate of fitness.

The High Court had not differed from the earlier decision of the High Court and had only held that each case depended upon its own circumstances.

Held, that this was not a fit case for the grant of leave. **1954 Cr L J 1762 : 1954 All W R (HC) 553 : AIR 1954 All 795 (801) (Pt I) (Pr 47) (DB).**

——Art. 134 (1) (c)—Certificate of fitness.

Under Art. 134 (1) (c), the High Court should certify a case as a fit one where exceptional and special circumstances exist. Where the High Court in its judgment discussed how the offence of murder was made out on the testimony of eye-witnesses and on the facts came to the conclusion that the offences of murder and attempt to commit suicide formed part of the same transaction the case is not one for grant of a certificate under Art. 134 (1) (c). Case-law discussed. **1955 Andhra W R 469 : 1957 Cri L J 1223 : AIR 1957 Andh Pra 931 (932, 933) (Prs 1, 4) (DB).**

——Art. 134 (1) (c) — Grant of certificate — Principles—Matter resting upon assessment of evidence.

It is only where there is a substantial question of law or there has been an infringement of the essential principles of justice or there is a matter of great public importance that the High Court would consider it proper to grant a certificate that the case is a fit one for appeal to the Supreme Court. It would also consider it proper to grant a certificate where exceptional and special circumstances exist which make it just for the Supreme Court to intervene. Where the matter entirely rests upon the assessment of the evidence direct and circumstantial, bearing on the question with regard to the guilt of the accused, it is not a fit case for the grant of the certificate. **Madh B L J 1955 H C R 1736 : Madh B L R 1955 Cr 344 : 1956 Cr L J 233 (1) : AIR 1956 Madh B 82 (83) (Prs 9 to 11) (DB).**

——Art. 134 (1) (c)— No material difference between facts disclosed in sanction for prosecution under S. 161, Penal Code and those disclosed in charge—Variation considered by High Court not material—It is not sufficient ground for granting certificate under Art. 134 (1) (c). **AIR 1955 N U C (Madh B) 3075.**

——Art. 134 — Irregularity in choosing assessors — Grant of certificate—(Criminal P. C. (1898), S. 284).

Where no prejudice is caused to the accused any irregularity in choosing the assessors cannot be a ground which would justify the High Court in granting a certificate of fitness under Art. 134. 1952 Cri L J 1261: AIR 1952 Madh B 133 (135) (Pt A) (Pr 18) (DB).

——Art. 134 (1) (c) — Leave to appeal — When not granted—Trial Court and High Court concurrent on question of fact — No substantial question of law — Leave will not be granted. AIR 1955 NUC (Nag) 2465 (DB).

5 (c). New point—Whether can be raised at the stage of application under this sub-clause.

——Art. 134 (1) (c)—New point.

Points urged in High Court for leave to appeal to Supreme Court not taken in trial Court or in appeal before High Court — Nothing shown to justify conclusion that any injustice of serious and substantial character has occurred—Case held not fit one for appeal, to Supreme Court. AIR 1952 Madh B 170 (FB), Ref. 1954 Cr L J 35 : AIR 1954 Ajmer 16 (16) (Prs 6, 8).

——Art. 134—New point.

In an application for leave to appeal to Supreme Court a new point the decision of which would depend upon questions of fact which were not placed before the High Court whose order is sought to be appealed, cannot be allowed to be raised for the first time. 55 Bom L R 937 : ILR (1954) Bom 252 : 1954 Cr L J 576 : AIR 1954 Bom 206 (208) (Pt B) (Pr 9) (DB).

——Art. 134 (1) (c)—Secondary evidence admitted — Objection not taken — No point raised in appeal to High Court — It cannot be made a ground of appeal to Supreme Court under Art. 134 (1) (c). AIR 1955 N U C (Madh B) 3075.

——Art. 134 (1) (c) — Leave to appeal to Supreme Court — New ground.

Per Sharma, J.— Held on facts that leave to appeal to the Supreme Court could not be granted on a point which is not pressed at the hearing of the case. It was true that the decision of Allahabad High Court (AIR 1960 All 1) on which reliance was placed in support of the contention in the petition was not reported till the arguments in the case were concluded, but that alone could be no ground for not pressing the point itself at the time of hearing of the appeal. 1961 M P L J (Notes) 21.

——Art. 134 (1) (c)—New point — Question whether depositions were read over to witnesses is one of fact —Question cannot be allowed to be raised for first time in leave application — Nor can it be ground for granting certificate. 1959 Cri L J 1452 : AIR 1959 Manipur 46 (47) (Pt E) (Pr 9).

——Art. 134—New point.

Point not raised in proceedings before High Court, against which leave to appeal is sought, cannot be raised as a ground for leave to appeal to Supreme Court specially when it is raised not with reference to pure question of law but is one which depends upon certain further facts. (1889) 39 Ch D 322, Rel. on. ILR (1952) Cut 467 : 1953 Cr L J 1578 : AIR 1953 Orissa 266 (269) (Pt C) (Pr 5) (DB).

——Art. 134—New plea.

The point that the Magistrate decided under S. 145, Criminal P. C., the question of possession with reference to title which was not raised before the High Court in revision cannot be allowed to be raised at the stage of application under Art. 134 (1)(c). ILR 29 Pat 904 : 1952 Cri L J 540 : AIR 1951 Pat 805 (307) (Pt C) (Pr 14) (DB).

5 (d). Powers of High Court.

● ——Art. 134 (1) (c) — High Court's power to grant certificate — Trial of offence under S. 409, Penal Code, along with S. 5, Prevention of Corruption Act (1947).

Three cases were started against the respondent under Ss. 409 and 465, Penal Code and S. 5 (2) of the Prevention of Corruption Act. The three cases were sent to the Magistrate before whom it was objected that charges under S. 409 could not be tried by the Magistrate. The objection was allowed. The State preferred three appeals in the High Court. The appeals were dismissed by the High Court but it held that the appellant was entitled to a grant of a certificate to appeal to the Supreme Court under Art. 134 (1) (c). A preliminary objection having been taken on behalf of the respondent that the certificate could not be granted :

Held, that the High Court had the power to grant the certificate under Art. 134 (1) (c) of the Constitution.

Held, further, the Courts below were wrong in coming to the conclusion that the respondent would not be tried for an offence under S. 409. State of Punjab v. Shadi Lal, 1960 Cri L J 539 : AIR 1960 S C 397 (399) (Prs 6, 7).

● ——Art. 134 (1) (c)—Power of High Court—Division Bench — Jurisdiction to sit in judgment on decision of another Division Bench.

Where an appeal filed by the accused having been summarily dismissed by a Division Bench of the High Court, the accused applied for grant of a certificate under Art. 134 (1) (c) and another Division Bench which dealt with the application examined the grounds taken in the appeal;

Held, that the Division Bench acted contrary to the legal position that one Bench of the High Court has no jurisdiction to sit in judgment on the decision of another Division Bench. Sidheswar Ganguly v. State of West Bengal, 1958 Cri L J 273 : 1958 S C A 147 : 1958 All W R (HC) 391 : 1958 Pat L R (SC) 1 : 1958 All Cri R 277 : 1958 S C R 749 : 1958 S C J 349 : 1958 Mad L J (Cri) 311 : AIR 1958 S C 143 (145) (Pt A) (Pr 2).

● ——Art. 134—Application for leave—Delay in disposal condemned.

It is of the essence that an application for leave to appeal to the Supreme Court against the sentence of death awarded to the appellant by the High Court should be dealt with great despatch and the accused should know his fate and not be left with the feeling of apprehension for longer time than necessary. Whatever the state of arrears in a particular High Court, there is absolutely no justification for an inordinate delay of one year and ten months in the disposal of such an application.

An inordinate delay in disposal of an application for leave to appeal to Supreme Court by the High Court is however not a consideration for interference by the Supreme Court with the sentence awarded by the High Court. Bissu v. State of U. P., 1954 Cr L J 1796 : AIR 1954 S C 714 (715) (Pt B) (Pr 3).

——Art. 134 (1) (c) — Application for certificate of fitness — One of the Judges who disposed of appeal not available—Application can be heard by a different Bench. (1961) M L J (Cr) 328 : 1960 Ker L J 1053 : 1960 Ker L T 1045 : I L R (1960) Ker 1184 : (1960) 2 Ker L R 426 : 1961 (2) Cr L J 112 (113) (Pt A) (Pr 4) (DB).

——Art. 134 (1) (c)— Power and duty of High Court —It cannot reassess evidence.

In a leave application, the High Court is concerned solely with the question as to whether, on the judg-

ment of the High Court, any important question of law or principle arises. It cannot reassess the evidence, come to its own conclusion different from that of the first Court, and then grant leave to appeal on the ground that the findings were not justified by the evidence on record. AIR 1954 Orissa 248, Criticised. ILR (1956) Cut 573 : 22 Cut L T 419 : 1957 Cri L J 78 : AIR 1957 Orissa 10 (14) (Pt C) (Pr 16) (DB).

5 (e). Who can apply.

——Art. 134 — Right to apply — Appeal in murder Case—Court appointing counsel to represent convict — Appeal heard and dismissed — Petition under Art. 134 (1) (c) — Authority of counsel to present — (High Court Rules and Orders — Allahabad High Court—Rules of the Court, Chap. XVIII, R. 10).

Where in an appeal from a death sentence in a murder case, the convict does not engage a lawyer but the High Court, in view of R. 10 of Ch. XVIII of the Rules of the Court, appoints certain lawyer to represent the accused, such an appointment is for a specific purpose and comes to an end when the appeal is heard and decided. The lawyer has no locus standi to present a petition under Art. 134 of the Constitution if the accused has not engaged him for that purpose. 1958 All L J 465 : 1958 All W R (H C) 568 : 1958 All Cr R 363 : 1958 Cri L J 1367 : A I R 1958 All 791 (792) (Pt B) (Prs 13, 14) (DB).

——Art. 134 — Who can apply for leave — Right of third party.

The provisions of Art. 134 of the Constitution of India are intended to be availed of by an accused who has been convicted or by the State and not by a third person. A third person even if he be the father of the murdered man has no locus standi to make this application. 1951 All L J 455 : I L R (1951) 2 All 545 : AIR 1952 All 85 (86) (Pr 2) (DB).

——Art. 134—Who can apply—Prosecution by State—Private person cannot apply.

Where the prosecution was initiated by the State, and the only interest of the petitioners was that it was at their suggestion that the District Magistrate had passed the order for the contravention of which the accused persons were challaned :

Held, that the petitioners had no locus standi to challenge the order of acquittal. Madh B L J 1955 H C R 1852 : Madh B L R 1955 Cr 388 : 1956 Cri L J 535 : AIR 1956 Madh B 114 (114, 115) (Pt B) (Pr 2) (DB).

5 (f). Appeal against acquittal.

■ ——Art. 134—Scope—No provision in Constitution corresponding to S. 417, Criminal P. C. — Observation of Bench of three Judges over which no opinion was expressed by a Constitution Bench.

Dictum.—"The decision in A. I. R. 1954 S. C. 20 was a decision of a Bench of three Judges and not that of a Constitution Bench. There, the appeal was by special leave granted by this Court. The observation that there was no provision in the Constitution corresponding to S. 417 of the Criminal Procedure Code was obviously made to emphasise that this Court should not, in an appeal by special leave, interfere with an order of acquittal passed by the High Court merely for correcting errors of facts or law. Without hearing further arguments on the scope of Art. 134 (1) (c), we would prefer not to express any opinion as a Constitution Bench as to the validity of the certificates given by the High Court in this case." State of Madras v. Gurviah Naidu & Co., 1956 Mad W N 65 : (1955) 6 S T C 717 : 1956 Cri L J 331 : 1956 S C C 98 : A I R 1956 S C 158 (161) (Pt B) (Pr 10).

■ ——Arts. 134 and 136—Acquittal by High Court—There is no appeal from such acquittal—Overriding power of Supreme Court under Art. 136—[Criminal P. C. (1898), S. 417].

Article 134 does not provide for an appeal from a judgment, final order or sentence in a criminal proceeding of a High Court, if the High Court has on appeal reversed an order of conviction of an accused person and has ordered his acquittal. In other words, there is no provision in the Constitution corresponding to S. 417 of the Code of Criminal Procedure, and such an order is final, subject however to the overriding powers vested in the Supreme Court by Art. 136 of the Constitution. State Government, M. P. v. Ramakrishna Ganpatrao Limsey, 1954 Cri L J 244 : AIR 1954 S C 20 (22) (Pt A) (Pr 5).

■ ——Art. 134 (1), Cls. (a), (b) and (c)—Scope of — Clause (c) not confined to appeal from order of conviction — Judgment of acquittal — High Court can grant certificate under Cl. (c). A I R 1960 All 458, Overruled.

Clauses (a) and (b) of Art. 134 (1) are fundamentally different from Cl. (c). The former give an absolute right of appeal to the accused and deal with a case in which he is tried and sentenced to death by the High Court itself, and Cl. (c), an independent right to appeal. There is no scope at all for the application of the principle of ejusdem generis, as the relationship of genus and species does not exist between Cl. (c) on one side and Cls. (a) and (b) on the other.

There is, therefore, no doubt that a High Court has jurisdiction to certify that the case decided by it resulting in acquittal of the accused or maintenance of his acquittal by a subordinate Court is a fit one for appeal to the Supreme Court. A I R 1960 All 458 : 1960 Cri L J 1044, Overruled, A I R 1960 All 585, Approved. A I R 1953 Orissa 160, Diss. from. State of U. P. v. Jag Raj, I L R (1961) 2 All 213 : 1961 All L J 589 : 1961 All Cr R 260 : 1961 All W R (H C) 471 : 1961 (2) Cri L J 751 : A I R 1961 All 630 (632, 633) (Prs 6, 12, 13) (FB).

——Art. 134 (1) (c) — Appeal against acquittal — Jurisdiction to grant certificate of fitness — Cr. P. Code (1898), S. 417—Scope of.

Even after the judgment of acquittal has been passed in appeal by the High Court, the High Court may grant a certificate to the State under Art. 134 (1) (c), where a substantial question of law has been decided by it and where the question is such that an authoritative decision by the Supreme Court over it becomes necessary either because of conflict of existing decisions by different Courts or because of any other factor which the High Court may deem as substantial or of great general importance.

Section 417, Cr. P. Code, does not at all apply to the case of an appeal to the Supreme Court from an original or an appellate order of acquittal passed by the High Court. AIR 1954 S C 20, held did not lay down contrary law. 1960 All L J 361 : 1960 All W R (H C) 223 : 1960 All Cr R 157 : 1960 Cri L J 1276 : AIR 1960 All 585 (587) (Pt A) (Prs 7, 9) (DB).

——Arts. 134 (1) (c) and 136—Scope—Appeal against acquittal—Dismissal—Application for special leave.

Where the trial Court has acquitted the accused, the presumption of innocence becomes stronger and it becomes still stronger when the appeal against acquittal is dismissed by the High Court. The powers of the High Court under Art. 134 (1) (c) are not as wide as those of the Supreme Court under Art. 136. Further, cls. (a) and (b) of Art. 134 (1) both provide for appeal against conviction and on the principle of ejusdem generis Cl. (c) should also be interpreted so as to mean that an appeal would lie only from a conviction and not from acquittal. Where in an appeal against an acquittal, there was a difference of opinion between two Judges of the High Court and on the opinion of the third Judge the appeal was dis-

missed, and an application for special leave to appeal to the Supreme Court was made :

Held that even if there were some important questions of law involved in the appeal, it would not be a fit case in which the High Court should grant special leave. AIR 1950 S C 169 and A I R 1954 S C 20 and AIR 1953 Orissa 160, Relied on. 1959 All L J 887 : 1959 All W R (H C) 681 : 1960 All Cr R 20 : 1960 Cri L J 1044 : AIR 1960 All 458 (459, 460) (Pt A) (Pr 13) (DB).

[Overruled in AIR 1961 All 630 (FB)].

——Art. 134 (1) (c) - Certificate of fitness — Question involved in proposed appeal relating to High Court's power in appeal against acquittal based on jury's verdict—Question covered by Supreme Court decisions—Certificate not granted. 1965 (2) Cri L J 79 : A I R 1965 Cal 348 (353) (Pt F) (Pr 49) (DB).

——Art. 134 (1) (c) Criminal P. C. (1898), S. 417—Conviction reversed and accused acquitted by the High Court—No leave to appeal to Supreme Court.

Article 134 (1) (c) does not provide for an appeal from a judgment, final order or sentence in a criminal proceeding of a High Court if the High Court has on appeal reversed an order of conviction of an accused person and has ordered his acquittal. When there is no provision in the constitution corresponding to S. 417, Criminal P. C. such an order is final, subject, however, to the overriding powers vested in the Supreme Court by Art. 136 of the Constitution. Hence, leave to appeal to the Supreme Court against such orders of acquittal passed by the High Court in an appeal will not be granted. AIR 1954 S C 20, Foll. 59 Cal W N 1042 : 1956 Cri L J 746 : AIR 1956 Cal 316 (317) (Prs 3, 4) (DB).

——Art. 134 (1) (c) — Scope of inquiry—Leave to appeal in criminal case—Order of acquittal—Principles to be considered in granting leave.

Leave to appeal to the Supreme Court in a criminal case under Art. 134 (1) (c) of the Constitution will not ordinarily be granted unless it is shown that exceptional and special circumstances exist, that substantial and grave injustice has been done and that the case in question presents features of sufficient gravity to warrant a review of the decision appealed against. The fact that on a question on which there is difference of opinion the High Court has decided one way does not furnish a ground for granting leave to appeal to the Supreme Court. When no question of law of paramount importance is raised such as might be allowed to override the liberty earned by an accused by an order of acquittal in his favour, leave ought not to be granted to the prosecution to prefer an appeal against the acquittal. AIR 1943 P C 211; AIR 1944 P C 54; AIR 1925 P C 59; AIR 1951 Assam 38; AIR 1951 Mad 329; AIR 1951 Hyd 71; AIR 1947 Pat 350, Ref. ILR (1951) Hyd 866 : 1952 Cr L J 352 : AIR 1952 Hyd 40 (41, 42) (Pt A) (Prs 5, 7, 8, 10, 11) (DB).

——Art. 134 (1) (c) — Acquittal confirmed by High Court—Certificate under Art. 134 (1) (c)—Grant of.

In a case where the High Court has confirmed an order of acquittal, it will not be proper to grant a certificate under Art. 134 (1) (c) unless the case involves questions of law of such complexity that require elucidation and an authoritative pronouncement by the Supreme Court. AIR 1954 S C 20 ; AIR 1958 S C 143, Rel. on. 1962 Ker L T 449.

——Art. 134 (1) (c) — Appeal against acquittal—Possibility of error— If sufficient for grant of certificate.

In a criminal case where the High Court has confirmed an order of acquittal, the granting of a certificate under Art. 134 (1) (c) is not justified unless the case involves questions of law of such complexity as require elucidation by the Supreme Court. AIR 1954 S C 20 and AIR 1958 S C 143, Foll. Mere possibility of an error is not sufficient to justify the grant of a certificate. 1960 Ker L J 1053 : 1960 Ker L T 1045 : ILR (1960) Ker 1184 : (1960) 2 Ker L R 426 : 1961 Mad L J (Cr) 328 : 1961 (2) Cr L J 112 (115) (Pt B) (Pr 6) (DB).

——Art, 134—High Court reversing order of conviction—Leave for appeal to Supreme Court cannot be granted.

Article 134 does not provide for an appeal from a decision of a High Court reversing an order of conviction of an accused person and acquitting him. AIR 1954 S C 20 Rel. on Madh B L J 1955 H C R 1852 : Madh B L R 1955 Cr 388 : 1956 Cr L J 535 : AIR 1956 Madh B 114 (114) (Pt A) (Pr 2) (DB).

——Art. 134 (1) (c) — Leave to appeal to Supreme Court from acquittal—There is no propriety of certifying case as fit one. AIR 1955 NUC (Madh B) 3024.

——Art. 134 (1) (c) — Leave to appeal against acquittal — (Criminal P. C. (1898), S. 429).

Appeal against acquittal. One of the Judges constituting the Division Bench agreeing with trial court while the other Judge though inclined to take different view ultimately agreeing with order of acquittal giving benefit of doubt to accused. No question of violation of any fundamental principles of criminal law or of S. 429, Criminal P. C., arises by adoption of such a course—Leave cannot be granted. State of Orissa v Minaketan Patnaik, ILR (1952) Cut 678 : 1953 Cr L J 1084 : AIR 1953 Orissa 160 (162, 163) (Pt B) (Pr 3) (SB).

——Art. 134 (1) (c)— Order of acquittal — Leave to appeal—Order of acquittal passed in revision—Effect.

In view of the Supreme Court decision in AIR 1954 S C 20, it is no longer permissible to a High Court to certify under Art. 134 (1) (c) a case of acquittal in a criminal case to be fit for appeal to the Supreme Court, even if the High Court feels that a substantial question of law of general importance is involved. AIR 1954 S C 20, Foll.; AIR 1956 S C 158, Ref ; AIR 1956 Cal 316, Relied on; AIR 1960 All 585, Diss. from.

Whether the order of acquittal is in an appeal or in a revision does not make any difference. 1961 (2) Cr L J 299 : AIR 1961 Tripura 43 (45, 46) (Prs 14, 17, 18, 19).

5 (g). Proceedings for contempt of Court.

— Art. 134 (1) (c) — Conditions required -(Penal Code (1860), S. 228).

The contention that the High Court should not have treated the qualified apology as an unqualified one and should have convicted and sentenced the accused for contempt of Court, cannot be considered in an application for a certificate that the case is a fit one for appeal to the Supreme Court. 1953 Cr L J 1206 : AIR 1953 Ajmer 11 (12) (Pt A) (Pr 2).

——Arts. 134 (1) (c) and 215 — Criminal proceeding —Proceedings for contempt of Court — Civil and criminal contempt.

In order that an order of a High Court, sought to be appealed from, may come under Art 134, it is necessary that it should be an order made in a criminal proceeding.

Where, the contempt consists in offering an affront to the Court or in interfering or tending to interfere with the administration of justice, the contempt committed in such forms is said to be criminal contempt. The Code does not apply to proceedings taken by a superior Court for the punishment of such contempt.

The jurisdiction to punish for its own contempt under Art. 215 which a High Court exercises as a Court of Record is not derived from any statute, but arises out of the very fact that it is a Court of Record. Proceedings taken by a Court of Record for the punishment of criminal contempt are proceedings taken in the exercise of criminal jurisdiction. This

principle would apply to proceedings taken by all the High Courts contemplated by Art. 134 (1) (c). AIR 1948 Cal 214, Foll. 1959 Cr L J 172 : AIR 1959 Cal 106 (107, 108, 109, 110) (Pt A) (Prs 2, 4, 5, 9, 12) (DB).

——Arts. 134 (1) (c) and 215 - Certificate of fitness — Contempt of Court Leave to appeal.

Where the decision of the High Court, holding that certain persons had committed contempt of Court, amounted to holding that not only is mens rea immaterial in a case of contempt of Court but knowledge of the pendency of a case with respect to which interference is supposed to have been caused, is also immaterial.

Held, that whether or not this was the correct position in law was a matter which ought to be finally and authoritatively decided and, accordingly, a certificate of fitness under Art. 134 (1) (c) should be granted. 1959 Cr L J 172 : AIR 1959 Cal 106 (113, 114) (Pt E) (Pr 26) (DB).

——Arts. 134 (1) (c) and 215 — Contempt of High Court—Nature of proceeding — Principles governing granting of certificate in criminal cases—Certificate refused.

Article 134 (1) (c) of the Constitution confers a wide discretion upon the High Courts. Under it an appeal shall lie to the Supreme Court from any judgment, final order or sentence in a criminal proceeding of a High Court if the High Court certifies that the case is a fit one for appeal to the Supreme Court. There is, however, nothing in the Constitution to indicate in what cases or classes of cases a certificate of fitness to appeal may be granted by the High Court.

In the absence of anything in the Constitution to guide the Courts in this matter, the question should be determined on general principles and such inferences as may be drawn as to the nature and scope of the discretion conferred upon the High Courts from the existing criminal law of the country. There is another Article in the Constitution, Art. 136, under which the Supreme Court may in its discretion grant a special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter, passed or made by any Court or tribunal in India. How the discretion conferred upon the Supreme Court will be exercised in criminal cases was indicated in the recent decision of that Court in — 'Pritam Singh's case', AIR 1950 S C 169. (Principles laid down in AIR 1950 S C 169 indicated).

Observations in AIR 1950 S C 169 may well furnish some guidance to the High Courts in granting of certificate applied for under Art. 134 (1) (c). In granting a certificate for leave to appeal the High Court must be satisfied that there is reasonable ground for thinking that grave and substantial injustice may have been done by reason of some departure from the principles of natural justice.

The High Court when considering an application for grant of a certificate under Art. 134 (1) (c) does not sit in judgment upon its own decision. It has however been authorised to grant a certificate of fitness to appeal to the Supreme Court in any case that it might consider appropriate. It would not be proper for any Judge to attempt to define in a few clear cut categories in what cases or classes of cases a certificate of fitness should be granted and that to restrict the wide generality of the language advisedly used by the framers of the Constitution. Every case should be considered on its own facts and circumstances, but a certificate should not be granted unless there is something exceptional or special in the case calling for a review of the decision of the High Court by the Supreme Court.

The jurisdiction exercised by the High Courts under Art. 215 of the Constitution is criminal jurisdiction. It is true that the High Court exercises a special and summary jurisdiction in cases of contempt of itself. But from the earliest times it was never intended that the exercise of this jurisdiction should be made subject to a review by an appeal and there is a serious doubt whether a certificate of fitness can at all be granted in such a case except possibly under some extraordinary circumstances. High Court would not be justified in applying to petitions for grant of a certificate under Art. 134 (1) (c) in cases of conviction for a contempt of itself, a standard of scrutiny different from that by which it judges applications for certificates of fitness in other cases.

Liability of an editor and printer when they are not connected with the work of the press at the relevant time when the contempt was published is not a question of general importance, since the law on the subject is well-settled. Similarly when the ground upon which the certificate is sought challenges a finding of fact, it is not a ground for granting certificate. I L R (1952) M B 308 : 1953 Cri L J 1323 : AIR 1953 Madh B 206 (207, 208) (Prs 6, 7, 9, 12, 13, 16, 20, 21) (DB).

——Arts. 134 (1) (c) and 215 — Order imposing punishment for contempt of High Court — Leave to appeal to Supreme Court — (Contempt of Courts Act (1952), S. 5).

Where the High Court inflicts a penalty for contempt of Court as a Court of record in the exercise of its discretion in summary proceedings, leave to appeal to Supreme Court can be granted in exceptional cases under Art. 134 (1) (c) of the Constitution of India provided the requisite conditions are fulfilled.

Held, that as there has been no departure from the principles of natural justice and as no question of law is likely to be raised nor has it been raised in this Court at this stage and as there is nothing exceptional or special in this case calling for review of decision of this Court, no grounds have been made out for allowing the petitioner leave to appeal to the Supreme Court. 1956 Cri L J 1411 : A I R 1956 Manipur 44 (46, 47, 48) (Pt A) (Prs 7, 14).

——Art, 134 (1) (c) — Leave to appeal to Supreme Court against conviction for contempt — Considerations — Case held not fit one for granting leave.

Granting for the nonce that a proceeding resulting in conviction for contempt is a criminal proceeding within the meaning of Art. 134 (1), half the efficiency of the jurisdiction exercised by the Court in the matter of contempt would be impaired if the contemner were to be permitted to appeal as a matter of course under Cl. (c) in every case of conviction.

A right of appeal is no doubt a creation of statute. Where an appeal as of right is given by a statute, it cannot be limited by any considerations foreign to the statute. But the right of appeal given in clause (c) is not as of right but at the discretion of the Court. The discretion has to be exercised not arbitrarily but on sound judicial consideration. But in considering a case under the residuary Cl. (1) (c) of Art. 134, it may not be improper to bear in mind the nature of the jurisdiction exercised by a superior Court of record in a matter of contempt. It is well established that every superior court of record is the sole and exclusive judge of what constitutes contempt of itself.

The facts that while punishing the petitioner for contempt the Court has not exercised either a new-fangled jurisdiction or held anything to be a contempt which was not already covered by precedent, and the questions raised in the decision cannot be

regarded as either res integra or such as have given rise to any divergence of view, the entire range of the discussion in the decision against which appeal is sought being covered by one Full Bench and two Division Bench decisions, are considerations normally sufficient, to reject an application for leave under Art. 134 (1) (c) to appeal to the Supreme Court. Case law Ref. ILR (1952) Nag 130 : 1952 Cri L J 749 : AIR 1952 Nag 130 (132) (Pt C) (Prs 10, 14, 17) (DB).

——Art. 134 — Leave to appeal to Supreme Court from conviction for contempt — Prejudice—Inadmissible evidence admitted (Contempt of Courts Act (1926), S. 2).

Proceedings in contempt though criminal in one sense are not strictly governed by the Criminal P. C. or the Evidence Act.

A procedural illegality can be waived by the contemner. Hence absence of objection to any particular procedure is a material consideration in judging whether justice has suffered in order to grant leave to appeal.

Where inadmissible evidence was admitted in contempt proceedings and no objection was taken, it was held that there had not been such gross violation of the principles of natural jusitce which was likely to have caused prejudice. I L R (1952) Cut 467 : 1953 Cri L J 1578 : AIR 1953 Orissa 266 (268) (Pt B) (Pr 3) (DB).

——Arts. 134 and 215 — Contempt proceedings — Leave to appeal.

High Court as a Court of record has exclusive jurisdiction in matters relating to contempt of court — Findings arrived at are not open to further challenge — No leave can be granted to appeal to Supreme Court for purposes of challenging those findings. ILR (1952) Cut 467 : 1953 Cri L J 1578 : A I R 1953 Orissa 266 (270) (Pt D) (Pr 9) (DB).

——Arts. 134 and 215—Contempt proceedings—Substantial question of law.

Whether deliberate and intended interference with Civil Court process by a Magistrate without authority and, exercising his official position without due care, require to be checked by the High Court by proceedings in contempt, is a question of sufficient importance with reference to which leave to appeal to the Supreme Court may be granted if the High Court has the power to grant such leave. ILR (1952) Cut 467 : 1953 Cr L J 1578 : AIR 1953 Orissa 266 (270, 271) (Pt F) (Pr 11) (DB).

——Art. 134 (1) (c) and criminal contempt—(Contempt of Courts Act (1926), S. 2).

The jurisdiction in contempt proceedings for what is called "criminal contempt" is Crimiral and the High Court has the power to grant leave to appeal in such cases under sub-Cl. (c) of Cl. (1) of Art. 134, but only on the very limited grounds akin to those on which the Privy Council was granting special leave as in the case in AIR 1936 P C 141 ; AIR 1933 Bom 108 ; AIR 1945 PC 134; (1890) 15 PC 59; Rel. on; AIR 1952 Nag 130, Considered and Disting. Case-law considered. ILR (1952) Cut 467 : 1953 Cr L J 1578: AIR 1953 Orissa 266 (273) (Pt H) (Prs 17, 19) (DB).

——Art. 134 (1) (c)—Applicability—Contempt proceedings — Nature of — Leave to appeal to Supreme Court—Grant of. See Ibid, Arts. 132 (1) and 133 (1) (c). 30 Pat 287 : AIR 1952 Pat 23 (DB).

5 (b). Habeas corpus applications.

——Art. 134—Order of detention under Preventive Detention Act—Petition under Art. 226 of the Constitution for a writ of habeas corpus dismissed by High Court — Appeal to Supreme Court — Detenu in Jail prevented by the Superintendent of the jail from sending a petition to the Supreme Court on the ground that the same is without a certificate of the High Court—Held, it is not the business of the Superintendent to decide the question whether or not the petitioner should be allowed to forward a mere petition. 1962 (1) Cr L J 311: AIR 1962 Cal 162 (166) (Pt H) (Pr 16) (DB).

——Arts. 134 (1) (c), 32—Application for certificate under Art. 134 (1) (c) against order of detention under the Preventive Detention Act (1950) — Application under Art. 32 to Supreme Court against identical order of detention summarily dismissed—In view of that fact application under S. 134 (1) (c), held, failed on merits. 1962 (1) Cr L J 282 : AIR 1962 Cal 122 (123) (Pt B) (Pr 6) (DB).

——Art. 134 (1) (c) — Certificate of fitness under — Order of release on application for writ of habeas corpus — Detenu rearrested within five minutes of release—Second application for same writ also allowed—Government applying for leave to appeal against both orders—Held, no leave could be granted. 65 Mad L W 892 : (1952) 2 Mad L J 725 : 1953 Cri L J 256 : AIR 1953 Mad 66 (69, 70) (Pt E) (Prs 7, 8).

6. Proviso to Cl. (1) (c)—Rules of High Court.

——Art 134 (1) (c), Proviso—R. 29 of Ch. 23 of Allahabad High Court Rules, is invalid and cannot be justified by proviso to Art 134 (1). See High Court Rules and Orders — Allahabad High Court Rules, Ch. 23, R. 28. 1958 Cr L J 1107 : AIR 1958 All 667.

——Art. 134—Cr. P. Code (1898), S. 404—Appeal to Supreme Court—Application for grant of certificate when to be made.

In accordance with the Rules of the Allahabad High Court, an application embodying the prayer for the grant of a certificate of fitness for appeal in a criminal case to the Supreme Court must be made before or at the time of the delivery of judgment. 1956 Cr L J 561 : 1956 All L J 735 : AIR 1956 All 297 (304) (Pt H) (Pr 32) (DB).

——Arts. 134 (1) (c), 132 (1)—High Court Rules and Orders—Allahabad High Court Rules, Chap. 23, R. 28—Validity—Under Rule 28, Chapter 23, High Court Rules, application for leave to appeal has to be made before or at the time of delivery of judgment:—Rule is not ultra vires. See High Court Rules and Orders—Allahabad High Court Rules, Chapter 23, Rule 28. 1953 Cri L J 1376 : AIR 1953 All 610 (DB).

——Art. 134 — Application under Art. 134 (1) (c) of the Constitution—Filing before Commissioner is not proper filing. See High Court Rules and Orders — Calcutta High Court Appellate Side Rules, R. 57. 1962 (1) Cr L J 282 : AIR 1962 Cal 122 (DB).

——Arts. 134 (1) (c), 132 and 133 (1) (c) — Applications under — To whom to be made — Practice in Calcutta High Court — Calcutta High Court Rules (Original Side) Chap. 33A Rr. 2 and 4 — Appellate Side Rules Part 2, Chap. 6, Rr. 2 and 5 and Vol. 1, Chap. 2, R. 14—Practice of leave applications being heard by Bench different from that which had decided the case deprecated and desirability of amendment of rules suggested. See Ibid, Art. 132. AIR 1961 Cal 521 (SB).

——Art. 134 (1) (c)—Petitioner sentenced to imprisonment in default of fine—R. 59 of Ch. 6, Calcutta High Court Appellate Side Rules, does not apply. See Calcutta High Court Appellate Side Rules, Ch. 6, R. 59. 1960 Cri L J 58 : AIR 1960 Cal 44 (DB).

7. Bail.

——Art. 134 (1) (c)—Person having certificate under —Power of High Court to grant bail to or suspend execution of sentence. See Criminal P. C. (1898), S. 426 (2-B). 1958 Cr L J 1107 : AIR 1958 All 667.

8. Powers and duties of Supreme Court on appeal.

(a) Concurrent finding of fact—Interference.

(b) New point—Whether can be allowed to be raised for the first time before Supreme Court.

8. Powers and duties of Supreme Court on appeal.

■——Art. 134—Powers of Supreme Court — Death sentence when can be substituted by life imprisonment by Supreme Court. See Penal Code (1860), S. 302. 1965 (2) Cr L J 539 : AIR 1965 S C 1467.

■——Arts. 134 and 136 - Criminal appeal—Sentence —Interference — Practice of Supreme Court—Case presenting unusual features—Sentence reduced to that already undergone.

It is the settled rule of the Supreme Court that it would not interfere with the sentence passed by the Courts below unless there is an illegality in it or the same involves any question of principle.

Where the facts of the case before the Supreme Court presented some unusual features viz., that the accused had undergone a major part of the sentence of one year's imprisonment imposed on him by the trial Court till he was acquitted by the High Court in appeal and he also remained in imprisonment for some months till the decision of the Supreme Court in appeal by special leave by the State on account of his failure to furnish the bail.

Held, that in the circumstances the Supreme Court while allowing the appeal would technically interfere with the sentence by reducing it to the period already undergone. State of Maharashtra v. Mayer Hans George, 1965 (1) Cr L J 641 : (1965) 1 S C W R 430 : (1965) 1 S C A 750 : (1965) 35 Comp Cas 557 : 67 Bom L R 583 : 1965 S C D 725 : AIR 1965 S C 722 (744, 745) (Pt D) (Pr 50).

■——Art. 134 —High Court ordering complaint to be filed against appellants under Ss. 193, 199, 211, Penal Code—Appeal to Supreme Court—Duty of Supreme Court.

Where the High Court has ordered the Registrar of the High Court to make complaint in writing against the appellants for their prosecution under Ss. 193, 199 and 211, Penal Code; the Supreme Court in appeal will not ordinarily do more than examine whether the High Court has fairly considered a case to reach the conclusion that prima facie there is good reason to launch the prosecution, that there is reasonable prospect of conviction and that it is expedient in the interest of justice to order a prosecution. Hari Das v. State of West Bengal, 1964 Cri L J 787 : 1964 Mad W N 574 : (1965) 1 S C W R 42 : 1965 SCD 219 : (1965) 2 S C J 329 : 1965 Mad L J (Cri) 588: (1964) 7 S C R 237 : A I R 1964 S C 1773 (1776) (Pt B) (Pr 12).

■——Art. 134 (1) (c)—Appeal on certificate in habeas corpus matter—Order of detention which is the basis for appeal revoked and detenu arrested under fresh order on same date—Supreme Court can decide points of law raised in appeal if it would be in the interests of justice.

Generally speaking, no useful purpose would be served by the appeal Court deciding the appeal in a habeas corpus matter where the detenu has been released before the appeal comes up for final hearing But in case where an order of detention which is the basis for such an appeal has been revoked on ground of technical defect and a fresh order has been passed on the same date and the detenu has been immediately re arrested after his release, even though technically the order out of which the appeal has arisen has been revoked there is nothing to preclude the Supreme Court from deciding the appeal, though ordinarily it would not do so, if it appears that it would be in the interests of justice to decide the points raised in the appeal. AIR 1944 F C 24 (1), Disting. Smt. Godavari Shamrao Pandekar v. State of Maharashtra, 1965 M P L J 134 : 1965 Mah L J 78 : (1965) 1 S C A 390 : 1965 S C D 477 : (1965) 2 S C J 523 : 1965 Mad W N 244 : 1964 (2) Cri L J 222 : 66 Bom L R 453 : AIR 1964 S C 1128 (1130) (Pt A) (Pr 2).

■——Art. 134—Accused pouring oil on clothes of wife and setting fire—Wife dying of burns — Conviction under S. 302, I. P. C. based solely on her dying declaration—Held, correct. (Majority view). See Penal Code (1860), S. 302. 1962 (1) Cri L J 196 : AIR 1962 S C 130.

■——Arts. 134 and 136—Certificate of fitness—Duty of Supreme Court.

If the certificate of fitness granted by the High Court does not satisfy the requirements of Art. 134 (1) (c) the appeal on such a certificate has to be dismissed in limine; but the Supreme Court has to satisfy itself whether there are such grounds as would justify that Court in granting special leave to appeal to that Court, if the appellant had approached the Court in that behalf. Khushal Rao v. State of Bombay, 35 Mys L J 428 : 1959 S C A 281 : 1958 All W R (H C) 38 : 1958 All L J 91 : 1958 Jab L J 175 : 1958 S C C 28 : 1958 All Cr R 43 : 1958 S C R 552 : 1958 Cri L J 106 : 1957 M P C 813 : 1958 S C J 198 : 1958 M L J (Cr) 100 : A I R 1958 S C 22 (25) (Pt A) (Prs 6, 7).

■——Arts. 134 and 136—Appeal against convictions and sentences based on acceptance of verdict of jury—Scope for interference on appeal either by High Court or by Supreme Court is very limited. 1957 Cri L J 1325 : AIR 1957 S C 747 (759) (Pt B) (Pr 34).

■——Art. 134 — Supreme Court — Appeal — Interference with High Court's decision—Practice. See Criminal P. C., S. 411-A. 1957 Cri L J 889 : AIR 1957 S C 589.

■——Art. 134 - Defective certificate by High Court—Power of Supreme Court to grant special leave. See Ibid, Art. 136. 1957 Cri L J 328 : AIR 1957 SC 211.

■——Arts. 134 (1) (c) and 136 (1)—Certificate by High Court found not justified—Duty of Court.

Where on a certificate granted by the High Court under Art. 134 (1) (c) an appeal is filed before the Supreme Court and the Supreme Court comes to the conclusion that the certificate does not fulfil the requirements of Art. 134 (1) (c), the conclusion does not necesssarily mean the end of the appeal. The Supreme Court has to consider whether in the circumstances of the case it could have thought fit to grant special leave in term of Article 136 (1) of the Constitution. Sunder Singh v. State of Uttar Pradesh. 1956 Cri L J 801 : A I R 1952 S C 411 (413) (Pt B) (Pr 3).

■——Arts. 134 (1) (c) and 136 (1)—Leave under Art. 134 (1) (c) granted—Supreme Court holding appeal not maintainable under Art. 134 (1) (c)—Supreme Court can examine whether it is case for exercising special powers under Art. 136 (1). Baladin v. State of Uttar Pradesh, 1956 Cri L J 345 : A I R 1956 S C 181 (189) (Pt D) (Pr 17).

● —Art. 134 – Powers of Supreme Court on appeal —Interference with exercise of discretion – (Criminal P. C. (1898), S. 423).

It is a well-settled principle that when the legislature entrusts to an authority the power to pass an order in its discretion, an order passed by that authority in exercise of that discretion is, in general, not liable to be interfered with by an appellate Court unless it can be shown to have been based on some mistake of fact or misapprehension of the principles applicable thereto. Corporation of Calcutta v. Mulchand Agarwala, 1956 S C J 128 : 1956 Cri L J 285: 1956 S C A 96 : (1955) 2 S C R 995 : AIR 1956 S C 110 (115) (Pt E) (Pr 11).

● —Art. 134 – Jury trial set aside on ground of misdirection and non-direction to jury — Normal course is to order retrial Their Lordships instead of ordering retrial, discharged the accused. See Criminal P. C. (1898), S. 423. AIR 1955 S C 287.

● —Arts. 134 and 136—Interference by Supreme Court.

Where the High Court reverses the decision of the trial Court without noticing or giving due weight and consideration to important matters relied upon by that Court and its decision has to a large extent been influenced by suspicious circumstances disclosed at the trial which are undoubtedly prejudicial to the accused, but in regard to which no opportunity of explanation was given to him when he was examined under the provision of S. 342, Criminal P. C., these would be considered adequate grounds justifying interference by Supreme Court. Illiravi Nambudiri v. State of T. C. 1953 Ker L T 173 : ILR (1953) Trav. Co 181 : 1954 Cri L J 102 (S C) : A I R 1953 S C 478 (484) (Pt B) (Pr 20).

● —Art. 134—Supreme Court practice—Criminal appeal—Interference in.

In the case of the concurrent findings of fact by both the lower Courts, the Supreme Court cannot substitute its own appreciation of evidence for those of the Courts below. The Supreme Court has in the absence of any compelling reasons, always declined to act as a third Court of facts. Held that in this case there was no reason for departing from that well recognised rule of practice adopted by the Court. K. Damodaran v. State of Travancore-Cochin, 1953 Ker L T 295: 1953 Cri L J 1928 : AIR 19 53 S C 462 (465, 466) (Pt B) (Pr 10).

● —Arts. 134, 136—Criminal appeal when to be entertained -Criminal P. C. (1898), S. 404.

The Supreme Court will not entertain a Criminal Appeal except in special and exceptional cases where it is manifest that by a disregard of the forms of legal process or by a violation of the principles of natural justice or otherwise substantial and grave injustice has been done. Where the appellant has been convicted notwithstanding the fact that the evidence is wanting on a most material part of the prosecution case, the Supreme Court will entertain the appeal. Mohinder Singh v. State. 1950 S C R 821 : 1953 Cri L J 1761 : AIR 1953 S C 415 (418) (Pt A) (Pr 10).

● —Arts. 134, 142—Supreme Court, powers of.

Where the Courts below in coming to their decision regarding the guilt of the accused relied to a considerable extent on the so-called admission of the accused which had no existence in fact.

Held, that the proper order to make would be to direct a rehearing of the appeal on the evidence as it actually stood after excluding from consideration the alleged admission, Darhan Singh v. State of Punjab. I L R (1953) Punj 639: 1953 Cri L J 525: 1953 S C J 48: (1953) 1 M L J 220 : 1953 S C R 319 : 19 Cut L T 419 : AIR 1953 S C 83 (87) (Pt D) (Pr 15).

● —Art. 134 — Supreme Court — Practice—Interference in matter of punishments.

It is not the practice of the Supreme Court to interfere by special leave in the matter of punishment imposed for crimes committed, except in exceptional cases where the sentences are unduly harsh and do not really advance the ends of justice. Adamji Umar v. State of Bombay, 65 Mad L W 209 : 1952 S C R 172 : 54 Pun L R 129 : 54 Bom L R 400 : (1952) S C A 74 : 1953 Cri L J 542 : 1951 S C J 820 : 1952 All L J 94 : 1952 Mad W N 147 : 1952 Mad W N Cr 23 : AIR 1952 S C 14 (16) (Pt B) (Pr 7).

—Art. 134 — Power to stay execution or operation of order passed by High Court. See Ibid, Art. 132. AIR 1957 All 505 (DB).

8 (a). Concurrent finding of fact – Interference.

● —Arts. 134 and 136 — Arguments on facts—Details of, given in judgments of High Courts would normally be regarded as correct—Practice of making allegation that many arguments on facts brought before High Court Judges were not considered by them, deprecated. Basiruddin v. Subai Sunni Majlis-a-wakf. 1965 6 L J R 381 : (1965) 2 S C W R 105 : (1965) 1 S C J 72 : AIR 1965 S C 1206 (1208) (Pt B) (Pr 7).

● —Arts. 134, 136 — Finding of fact—Practice of Supreme Court is not to interfere with such finding except under exceptional circumstances especially when there are concurrent findings of fact. Major E. G. Barsay v. State of Bombay. (1962) 1 S C A 106 : (1962) 1 S C J 231 : 1962 Mad L J (Cr) 153 : (1962) 2 S C R 195 : 1961 (2) Cr L J 828 : AIR 1961 S C 1762 (1779) (Pt K) (Prs 34, 36).

● —Arts. 134 and 136 — Concurrent finding of fact —No interference by Supreme Court, unless there are exceptional circumstances. Deep Chand v. State of Rajasthan. 1961 Mad W N 532 : (1963) 1 Mad L J (SC) 1 : (1963) 1 Andh W R (SC) 1 : (1962) 1 S C A 234 : (1962) Mad L J (Cri) 678 : (1962) 1 S C R 662 : (1962) 2 S C J 655 : 1961 All W R (HC) 550 : (1961) 2 Ker L R 500 : 1961 All Cr R 339 : 1961 (2) Cr L J 705 : AIR 1961 S C 1527 (1531) (Pt B) (Pr 8).

● —Art. 134—Powers of Supreme Court—Finding of fact — Accused acquitted by Special Judge but convicted by High Court on appeal holding that the grounds given by Special Judge for distrusting prosecution evidence were perverse—Appeal to Supreme Court on a certificate — As findings on questions of fact are not concurrent, Supreme Court in appeal can form its own conclusions, irrespective of the grounds given by the High Court for holding that judgment of Special Judge was perverse. Muhammad Dastagir v. State of Madras, (1960) 1 Ker L R 592 : 1960 S C J 726 : 1960 Cr L J 1159 : (1960) 2 Mad L J (SC) 39 : (1960) 2 Andh W R (S C) 39 : 1960 M L J (Cr) 466 : 1960 All Cr R 240 : 1960 All W R (H C) 357 : (1960) 3 S C R 116 : A I R 1960 S C 758 (761, 762) (Pt C) (Pr 10).

● —Arts. 134 and 136 — Supreme Court is not Court of criminal appeal.

The Supreme Court is not a Court of criminal appeal and it would not, therefore, examine the reasons of the High Court for coming to certain conclusions of facts. C. S. D Swami v. State, 1960 Mad W N 149 : 1960 Cr L J 131 : (1960) S C J 160 : (1960) M L J (Cr) 91 : (1960) 1 S C R 461 : 1960 Pat L R (SC) 21 : ILR (1959) Punj 1955 : AIR 1960 S C 7 (9, 10) (Pt B) (Pr 4).

● —Art. 134—Finding of fact—Interference.

Where the High Court disagreed with the finding of fact of the trial Magistrate and gave very good grounds for the same, in an appeal before the Supreme Court on a certificate by the High Court, the Supreme Court after reviewing the evidence held that the High Court did not err in disagreeing with the trial Court's finding and declined to interfere with the High Court's finding. Narayandas Bhagwandas Madhavdas v. State of W. B., 1960 Mad W N 161 : (1959) 2 S C A 268 : 1959 Cr L J 1368 : (1960) 1 S C R 93 : AIR 1959 S C 1118 (1120, 1121) (Pt A) (Pr 5).

● —Art. 134—Concurrent findings of fact—Interference.

Ordinarily the Supreme Court does not interfere with concurrent findings of fact. Badri Rai v. State of Bihar, 36 Mys L J 764 : 1959 Pat L R (SC) 14 : 1959 S C A 315 : 1958 Cr L J 1434 : (1959) S C J 117 : 1959 All Cr R 44 : 1959 B L J R 50 : 1958 All W R (H C) 861 : 1958 All L J 909 : 1959 M L J (Cr) 25 : AIR 1958 S C 953 (954) (Pt A) (Pr 3).

● —Art. 134—Concurrent findings of fact.

Following the usual practice the Supreme Court will decline to interfere with concurrent findings of fact where there is ample evidence which, if believed, can be used in support of the findings. K. C. Mathew v. State of Travancore-Cochin, 1956 Mad W N 217 : (1956) S C J 213 : 1956 Cr L J 444 : 1956 S C A 175 : 1966 All W R (Sup) 34 : (1956) 1 M L J (SC) 130 : 1956 Ker L T 355 : 1956 Andh L T 506 : (1955) 2 S C R 1057 : AIR 1956 S C 241 (246) (Pt F) (Pr 24).

● —Art. 134—Concurrent findings of fact—Interference.

It is a well-established practice of the Supreme Court not to interfere with concurrent findings of fact. Hence where both the trial Court and the High Court have found that the signatures on certain document were forged, the findings being concurrent findings of fact, the Supreme Court in appeal will not interfere with them. Ram Narain v. State of Punjab, 1955 Cr L J 871 : A I R 1955 S C 322 (323) (Pt B) (Pr 4).

● —Art. 134—Supreme Court will not interfere on question of fact—Point touching credibility of witnesses—No interference. See Criminal P. C. (1898), S. 404. 1954 Cr L J 1708 : AIR 1954 S C 657.

● —Art. 134 — Practice — Concurrent findings—[Evidence Act (1872), S. 11]—[Cr. P. Code (1898), S. 411-A].

The plea of alibi involves a question of fact and when both the Courts below concurrently found that fact against the accused the Supreme Court cannot on an appeal by special leave, go behind that concurrent finding of fact. Thakur Prasad v. State of Madhya Pradesh. 1954 Cr L J 261 : A I R 1954 S C 30 (31) (Pt A) (Pr 2).

● —Art. 134 — Appreciation of evidence — Interference.

Some eye-witnesses implicating both accused—Eye-witnesses believed — One of accused admitting his guilt and convicted—Supreme Court refusing to interfere in his case — In such case ordinarily Supreme Court would not interfere with the case of the other accused also, unless there are special reasons for not accepting the statements of these witnesses at their face value against the other accused. (Special circumstances, held existed.) Hate Singh S/o Bhagat Singh v. State of M. B., 1953 Cri L J 1933 : M B L R 1952 Cr 1 (SC) : A I R 1953 S C 468 (469) (Pt A) (Pr 5).

● —Art. 134 — Appreciation of evidence—Interference.

Usually the Supreme Court in a criminal appeal before it, will not depart from its practice of declining to re-assess the evidence but where there has been a departure from the rule that when an accused person puts forward a reasonable defence which is likely to be true, and in addition is supported by two prosecution witnesses, then the burden on the other side becomes all the heavier because a reasonable and probable story likely to be true when pitted against a weak and vacillating case is bound to raise reasonable doubts of which the accused must get the benefit, the Supreme Court would examine the evidence at length. (After reviewing the evidence the Supreme Court set aside the conviction and the sentence.) Hate Singh S/o Bhagat Singh v. State of M. B., 1953 Cri L J 1933 : M B L R 1952 Cri 1 : AIR 1953 S C 468 (471) (Pt F) (Pr 26).

● —Art. 134—Practice—Criminal appeal — Interference in.

In the case of the concurrent findings of fact by both the lower Courts the Supreme Court cannot substitute its own appreciation of the evidence for those of the Courts below. The Supreme Court has in the absence of any compelling reason, always declined to act as a third Court of facts.

Held that in this case there was no reason for departing from that well-recognised rule of practice adopted by the Court. K. Damodaran v. State of Travancore-Cochin, 1953 Ker L T 295 : 1953 Cri L J 1928 : AIR 1953 S C 462 (465, 466) (Pt B) (Pr 10).

● —Arts. 134, 136—Power to look into evidence—Criminal P. C., 1898, S. 404.

The Supreme Court will not look beyond the finding of fact arrived at by the Courts below, but where decision on the plea of alibi has been arrived at in disregard of the principle that the standard of proof which is required in regard to that plea must be the same as the standard which is applied to the prosecution evidence and in both cases it should be a reasonable standard the Supreme Court will look into the evidence. Mohinder Singh v. State, 1950 S C R 821 : 1953 Cri L J 1761 : A I R 1953 S C 415 (418) (Pt C) (Pr 11).

● —Art. 134 — No interference.

Supreme Court would not be justified in disturbing the decision of the Courts below merely on the ground that perhaps different inference could also have been drawn from the facts found in the case. Vijendrajit Ayodhya Prasad Goel v. State of Bombay, 1953 Mad W N 552 : 1953 S C A 395 : 1953 S C J 328 : 1953 Cr L J 1097 : 1953 All W R (Supp) 70 : AIR 1953 SC 247 (248) (Pt D) (Pr 4).

● —Art. 134 (1)—Argument on point of fact.

It is not the function of the Supreme Court to reassess evidence and an argument on a point of fact which did not prevail with the Courts below cannot avail the appellants in the Supreme Court. Lachhman Singh v. State, 1952 All L J 437 : I L R (1952) Punj 278 : (1952) S C A 491 : 1952 S C R 839 : 65 Mad L W 429 : 1952 Cri L J 863 : 1952 S C J 230 : 1952 Mad W N 389 : 1952 Mad W N Cr 93 : 1952-2 Mad L J 100 : AIR 1952 S C 167 (169) (Pt B) (Pr 9).

● —Art. 134—Supreme Court—Criminal appeal—Interference with concurrent finding of fact — Practice.

The Supreme Court does not ordinarily interfere with a concurrent finding of fact but when the finding omits to notice very important points in the accused's favour which swing the balance the otherway, it will not let the finding stand. Kashmira Singh v. State of

M. P. 1952 All W R (Sup) 64 : (1952) S C A 474 : 1952 Cri L J 839 : 1952 S C J 201 : 1952 Mad W N 402: 1952 Mad W N 106: 1952-1 Mad L J 754 : 1952 S C R 526 : AIR 1952 S C 159 (164) (Pt C) (Pr 12).

S (b). New point—Whether can be allowed to be raised for the first time before Supreme Court.

● ——Art. 134—New plea.

A plea that there was no proof of fact that sanction for prosecution was given after considering the relevant facts and by following procedure prescribed by law is not a pure question of law but requires for its decision investigation of facts and will not be allowed to be raised for the first time before the Supreme Court. Tulsi Ram v. State of Uttar Pradesh. (1963) Supp 1 S C R 382 : (1963) 2 S C J 274 : 1963 Mad L J (Cr) 434 : I L R (1963) 1 All 840 : 1963 (1) Cri L J 623 : A I R 1963 S C 666 (670, 671) (Pt A) (Pr 12).

● ——Art. 134 — New plea as to invalidity of sanction.

Where the plea as to invalidity of sanction under S. 197, Criminal P. C. on ground that the sanction did not show that the Governor-General had exercised his individual judgment in the matter, was not raised at any stage before the lower Court when the sanction was proved, the plea cannot be allowed to be raised for the first time before the Supreme Court. R. R. Chari v. State of Uttar Pradesh, (1963) 1 S C R 220 : (1962) 46 I T R 169 : 1962 All L J 799 : (1962) All W R (H C) 649 : (1962) 2 S C A 679 : A I R 1962 S C 1573 (1579, 1580) (Pt B) (Pr 16).

● ——Arts. 134 and 133 — New point — Point not urged before High Court will not be permitted to be raised as mattar of course and save in exceptional cases. (Additional point was, however, allowed to be raised because the prosecution of appellant was pending and the counsel had undertaken to base his contention regarding violation of fundamental rights on materials already on record). See Ibid, Art. 133. 1961 (2) Cri L J 24 : AIR 1961 S C 928.

● ——Art. 134—New point.

Point not taken before the Bench of the High Court which granted the certificate of fitness for appeal to the Supreme Court cannot be raised before the Supreme Court, Narayandas Bhagwandas Madhavdas v. State of W. B., 1960 Mad W N 161 : (1959) 2 S C A 268 : 1959 Cr L J 1368 : (1960) 1 S C R 93 : A I R 1959 S C 1118 (1121) (Pt C) (Pr 6).

● ——Arts. 134 and 136 — Prevention of Corruption Act (1947), S. 3, Proviso, S. 5 (4) — Investigation by Police Officer — Non-compliance with provisions of Act — Objection cannot be raised before Supreme Court for first time — Conviction not vitiated. See Prevention of Corruption Act (1947), S. 3, Proviso. AIR 1959 S C 831.

● ——Art. 134—New point of fact.

A question of fact which has to be investigated afresh cannot be allowed to be raised for the first time in appeal to the Supreme Court. Rameshwar Ghartia v. State of Assam, 1953 Mad W N 343 : 1952 S C J 559 ; (1953) 1 M L J 17 : (1953) Cri L J 163 : 1953 All W R (Supp) 1 : 1953 S C R 126 : ILR (1953) 5 Assam 1 : 1953 S C A 42 : AIR 1952 S C 405 (406) (Pt A) (Pr 5).

● ——Art. 134—Supreme Court— Practice—Plea not mentioned in grounds of appeal or in additional grounds—Claim made for the first time in Supreme Court at time of hearing — Held not entertainable. Bhupendra Narain v. Bahadur Singh, 1952 S C R 782 : 1953 S C A 143 : 1952 S C J 269 : A I R 1952 S C 201 (205) (Pt C) (Pr 11).

9. Laches and limitation.

——Art. 134 (1) (a) (c) — Period of 90 days under S. 30 (b), Limitation Act — Computation of—S. 12 cannot be considered—Cases of hardship are covered by S. 6 — Application for leave to appeal to Supreme Court held barred by limitation. See Limitation Act (1963), S. 30 (b). AIR 1965 All 14.

——Art. 134 (1) (c) — Delay in making application for leave to appeal.

There is no provision in any of the statutes or the rules made by the High Court prescribing a period of time for making an application for the grant of leave to appeal. However a belated application for leave to appeal in a criminal case should not be allowed to be presented and a citizen of the State harassed after the lapse of a long period of time (in this case 197 days after the order against which the appeal was sought to be filed, was made). I L R (1954) Punj 630 : 1954 Cr L J 99 : 55 Punj L R 392 : A I R 1954 Punj 9 (9, 11) (Pt A) (Prs 2, 12, 13).

ARTICLE 135

● ——Arts. 135 and 374 (2)— Scope and effect of — Bombay Hereditary Offices Act (1874), S. 10—Certificate issued by Collector under S. 10 on previous occasion held by Bombay High Court to be invalid in that it was not addressed to Privy Council which had ultimately passed the decree but to the civil Court — Subsequent reissue of certificate under S. 10 addressed to Supreme Court which was successor of Privy Council—Certificate is perfectly valid — Decision of Bombay High Court cannot operate as res judicata — By virtue of combined operation of Ss. 2, 4 (b), 5 and 8, Abolition of Privy Council-Jurisdiction Act, 1949 and Arts. 135 and 374 (2) of the Constitution, Supreme Court must be deemed in law to be the Court which passed the decree and therefore competent to entertain an application for cancellation of decree under S. 10, Bombay Hereditary Offices Act. Yellappagouda Shankargouda Patil v. Basangouda Shiddahgouda Patil. (1960) 3 S C R 221 : 1960 S C J 1278 : A I R 1960 S C 808 : (809, 810) (Prs 6, 8).

● ——Art. 135—Scope — Decision in appeal under S. 19 (1) (f) of Defence of India Act not judgment, decree or order but award—No special leave could be granted for filing appeal to Federal Court —Maintainability of appeal to Supreme Court. See Federal Court (Enlargement of Jurisdiction) Act (1948), S. 3 (a) (ii). AIR 1958 SC 947.

● ——Art. 135—Suit filed before Constitution—Valuation above Rs. 10,000 —Right of appeal—Vested right —Appeal maintianable to Federal Court on date of suit —Subsequent changes in law and abolition of Federal Court—Maintainability of appeal in Supreme Court— See Ibid, Art. 133. AIR 1957 S C 540.

● ——Art. 135— Jurisdiction and powers were exercisable by the Federal Court — Interpretation of.

As the law stood prior to the commencement of the Constitution, the Federal Court had jurisdiction to entertain and hear appeals from a decree of a High Court which reversed the lower Court's decree as regards properties of the value of more than Rs. 10,000. It was matter over which jurisdiction was "exercisable" by the Federal Court As soon as the decree of the High Court came into existence the jurisdiction of the Federal Court to hear an appeal from the decree became exercisable provided certain conditions as to security and deposit were complied with. Daji Saheb v. Shankar Rao, 1956 S C J 70 : (1955) 2 S C R 872 : 1956 S C A 481 : 58 Bom L R 496 : AIR 1958 S C 29 (30, 31) (Pt C) (Pr 8).

● ——Art. 135 — Saving of right of appeal when appeal lay to Federal Court.

Merely because the Supreme Court came into existence in place of the Federal Court, a vested right of appeal to the fiederal, Court is not taken away. By the Adaptation of Laws Order, 1950, S. 110, Civil Procedure Code, was adapted to the new situation but the requirement as to value was raised from Rs. 10,000 to Rs. 20,000. What is provided by Para. 20 of this Order is that this adaptation will not affect the right of appeal already accrued. Daji Saheb v. Shankar Rao, 1956 S C J 70 : (1955) 2 S C R 872 : 1956 S C A 481 : 58 Bom L R 496 : A I R 1956 S C 29 (31) (Pt D) (Prs 9, 10).

●——Arts. 135, 136 — Applicability — Judgments passed before 26-1-1950 by Courts in Nizam's territory.

The judgments and sentence passed by the High Court of H. E. R. the Nizam before 26-1-1950, cannot be considered as judgments and sentence passed by a Court within the territory of India for purposes of Art. 136. Such judgments are also not covered under Art. 135. The Supreme Court has, therefore, no jurisdiction to entertain the petitions for special leave to appeal against such judgments of the High Court of Hyderabad under Art. 136. Janardhan Reddy v. The State, 1952 Cri L J 391 : 1951 S C J 98 : 1950 S C R 940 : 64 Mad L W 378 : 1951 Mad W N 709 : 1951 Mad W N (Cri) 213 : AIR 1951 S C 124 (127) (Pt B) (Prs 7, 8, 9).

——Art. 135—Right of appeal to the Federal Court established by defendant — Appeal is maintainable under Art. 135. See Civil P. C. (1908), S. 109 (a). AIR 1964 All 25 (DB).

——Art. 135 — Order sought to be appealed from passed not in appeal but in revision — No appeal to the Federal Court — No appeal to Supreme Court. See Ibid, Art. 133. A I R 1963 All 191 (DB).

——Art. 135—Scope — Order in proceeding that is neither civil nor criminal—Appeal to Supreme Court, when lies. See Ibid, Art. 132. AIR 1957 All 505 (DB).

——Art. 135— Suit instituted in 1940 — Valuation of subject matter of appeal more than Rs. 10,000/- but less than Rs. 20,000 — Question of vested right of appeal. See Ibid, Art. 133. AIR 1956 All 638 (DB).

[Overruled in A I R 1957 S C 540].

——Art. 135 — Income-tax relating to assessment year 1944-45 —Application to High Court under S. 66 (2) of Income-tax Act (1922) summarily rejected—Application under Art. 135 for certificate — Appeal would not lie to Federal Court from order passed by High Court in exercise of its advisory or consultative jurisdiction — Appeal to Supreme Court not competent solely by virtue of Art. 135 — Certificate refused, (1962) 46 I T R 778 : AIR 1962 Cal 287 (290) (Pr 15) (DB).

——Arts. 135, 133—Scope—Word "matter and exercisable" meaning of—(C. P. Code (1908), Ss. 109, 110).

Art. 135 confers on the Supreme Court jurisdiction in respect, inter alia, of any civil matter to which the provisions of Art. 133 do not apply, provided that jurisdiction and powers in relation to that matter were exercisable by the Federal Court on 25th January, 1950. The 'matter' to which Art. 133 applies is the appellate jurisdiction of the Supreme Court in appeals from High Courts in regard to Civil matters.

Where the 'matter' was the judgment and decree of a High Court, dated 16th December, 1953, in which the value of the subject matter in dispute was below Rs. 20,000 :

Held, that there could not be any jurisdiction or powers capable of being exercised by the Federal Court as the Federal Court had ceased to exist and hence Art. 135 could not apply. It was the right of appeal which at any time was capable of being exercised being dependent upon the stage the litigation had reached. Therefore, when the Federal Court was itself abolished by the Constitution a litigant's right of appeal was therefore to be found, if at all, in the Constitution itself, that is, in the case of judgments of a High Court in Arts. 133 and 135. A I R 1953 Pat 275. Diss. from ; A I R 1953 All 509, Disting. 1956 All W R (H C) 724 : AIR 1956 All 321 (322, 323, 324) (Pt C) (Prs 6, 7, 8, 10, 12, 15) (DB).

[Overruled in A I R 1957 S C 540].

——Art. 135—Decision of High Court in income-tax reference — Jurisdiction of Supreme Court to hear appeal—(Income-tax Act (1922), S. 66A (2).)

The result of the Federal Court (Enlargement of Jurisdiction) Act, 1948 and the Abolition of the Privy Council Jurisdiction Act, 1949, is that before the Constitution came into force the Federal Court had the same jurisdiction that the Privy Council had under S. 66A (2) to hear appeals in income-tax matters, and if the Federal Court had the jurisdiction, the Supreme Court has also jurisdiction under Art. 135. (1952) 22 ITR 150 : 54 Bom L R 609 : ILR (1953) Bom 549 : AIR 1952 Bom 479 (481) (Pt C) (Pr 5) (DB).

——Art. 135 — Civil P. C. (1908), S. 110 — Right of appeal under S. 110, Civil P. C. — Federal Court having jurisdiction to entertain appeal — Jurisdiction of Supreme Court under Art. 135, See Ibid, Art. 133. AIR 1952 Bom 303 (DB).

——Art. 135 — Scope — Litigant coming under Art. 133 but unable to fulfil its requirements — Right to fall back upon Art. 135. See Ibid, Art. 133. AIR 1960 Cal 77 (DB).

——Art. 135 — Applicability and scope.

In order to make out a right of appeal under Art. 135 one has to establish that such an appeal lay to the Federal Court immediately before the commencement of the Constitution. Secondly, Art. 135 does not seem to contemplate any certificate of fitness to be granted by the High Court at all. The provisions for certificate are incorporated only in Arts. 132, 133 and 134. Article 135 is expressed in general terms and nothing is said in it as regards a certificate to be granted by the High Court. 95 Cal L J 160 : AIR 1955 Cal 257 (258) (Pt C) (Pr 4) (DB).

——Art. 135 — Appeal to Supreme Court in income-tax cases is maintainable — Income-tax Act (1922), S. 66-A (2) — (Federal Court (Enlargement of Jurisdiction) Act 1947 (1 of 1948), Ss. 2, 3 — Abolition of Privy Council Jurisdiction Act (C. A. Act V of 1949), S. 5).

An appeal lies to the Supreme Court, in income-tax cases, under Art. 135 of the Constitution read with S. 66-A (2) of the Income-tax Act.

There are enough indications in Federel Court (Enlargement of Jurisdiction) Act, 1947, which establish beyond reasonable doubt that the expression "Civil case" was not used in the Act in the strict sense of cases governed by the Civil Procedure Code, but was used in a sense, large enough to comprise proceedings in income tax matters.

Although by the definition of the expression "judgment to which this Act applies" in S. 2 the limitation that the judgment must be a judgment in a civil case is imported into S. 3 as well, what the meaning of "civil case" is, is indicated by the provision that such cases are those in which an appeal could have been preferred to the Privy Council without special leave under the provisions of the Code of Civil Procedure or of any other law. It is quite obvious that the Act is contemplating not merely appeals provided for and permitted by the Code of Civil Procedure, but also appeals permitted by other laws.

Since the common requirement of all cases in which an appeal shall lie to the Federal Court is that the judgment appealed from must be a judgment in a civil case and since S. 3 provides that the cases contemplated are those in which an appeal could have been preferred to the Privy Council without special leave under the Code of Civil Procedure and other laws, it is perfectly plain that cases in which an appeal could have been preferred under such laws as the Income-tax Act or the Land Acquisition Act are also contemplated.

(Effect of S. 6 of Act 1 of 1948 also considered).

The expression "civil cases" is not thus, in the contemplation of the Act, limited to cases governed by the Code of Civil Procedure in respect of appeals to the Privy Council, but extends to cases in which appeals to that tribunal were provided for by other laws.

The conclusions therefore follow that the jurisdiction to hear such appeals (in Income-tax cases) came to the Federal Court under Act 1 of 1948 and has now been conferred on the Supreme Court by Art. 135 of the Constitution.

Under the Constituent Assembly Act (5 of 1949), the jurisdiction to hear income-tax appeals which the Privy Council undoubtedly had before the 10th October, 1949 the appointed day within the meaning of S. 5 of the Constitutent Assembly Act (5 of 1949) came to the Federal Court on and from that date as an exclusive jurisdiction, whether such appeals were appeals in civil cases or not; and since that jurisdiction was never taken away from the Federal Court before it was replaced by the Supreme Court, it had jurisdiction in regard to income-tax appeals immediately before the commencement of the Constitution as required by Art. 135.

Obiter.—Article 133 cannot possibly have any application to an appeal in an income-tax matter. **58 Cal W N 354 : (1954) 25 I T R 418 : AIR 1954 Cal 477 (479, 480) (Pt A) (Prs 8, 9, 10, 12) (DB).**

——Art. 135 — Application for leave — Delay.

Assessment to excess profits for three periods raising identical question of law — Question of law decided by Income-tax Tribunal against assessee — Tribunal asked to refer three cases to High Court — First case referred to High Court — Other two applications rejected as barred by limitation — High Court answering question in case referred in favour of assessee and directing Tribunal to make reference in other cases — These cases also similarly decided in favour of assessee — Application for leave to appeal to Supreme Court under Art. 135 in first case — **Held** that the fact that the Commissioner of Excess Profits Tax raised a plea before the Tribunal that the second and the third applications were time-barred and that the plea succeeded there, did not disentitle him from asking for leave to the Supreme Court, for the reason that a consequence of the view urged by him and accepted by the Tribunal had been to cause a delay in the hearing of the application for leave, when there was nothing to show that the point was taken deliberately and with the knowledge that it was unsubstantial or that there was any particular reason for causing a delay in the hearing of the second reference, since the same point would be considered at the hearing of the first. **58 Cal W N 354 : (1954) 25 I T R 418 : AIR 1954 Cal 477 (480) (Pt C) (Pr 13) (DB).**

——Art. 135 — Jurisdiction under — Article contemplates not any pending proceedings, but only subject-matter. See Ibid, Art. 133. **AIR 1954 Cal 289 (DB).**

● **——Art. 135 — "Matters in relation to which jurisdiction and power were exercisable by Federal Court" — Meaning.**

Unless an appeal to the Federal Court had been admitted the proceedings must be deemed to be pending before the High Court in respect of which the Federal Court could not exercise jurisdiction. It cannot, therefore, be said that a case in which the decree was passed after the commencement of the Constitution is a matter in relation to which jurisdiction and powers were exercisable by the Federal Court immediately before the commencement of the Constitution. It is at least necessary that the judgment should have been delivered or the decree or final order passed before the Constitution to say that the Federal Court had any exercisable jurisdiction and powers in relation to a case. **AIR 1941 F C 5,** Rel. on. Gundapuneedi Veerana v. Gundapuneedi China Venkanna, **1953 Mad W N 496 ; (1953) 2 M L J 317 : 66 Mad L W 645 : ILR (1953) Mad 1079 : AIR 1953 Mad 878 (883) (Pt C) (Pr 21) (FB).**

[**Overruled** in AIR 1957 S C 540].

● **——Art. 135** — Suit instituted before Constitution — Judgment after commencement of Constitution — Second appeal — Applicability of Arts. 133 (1) and 135. See Ibid, Art. 133. **AIR 1953 Mad 878 (FB).**

[**Overruled** in AIR 1957 S C 540].

● **——Art. 135** — Doctrine of vested right of appeal — Extent of — Federal Court (Enlargement of Jurisdiction) Act (1947), S. 3 — Abolition of Privy Council Jurisdiction Act (1949), S. 5. See Civil P. C. (1908), S. 109. **AIR 1953 Mad 878 (FB).**

[**Overruled** in AIR 1957 S C 540].

——Art. 135 — Supreme Court Rules, O. 12, R. 3 — Failure to deposit printing costs — Power of High Court to cancel certificate—Civil P. C. (1908), O. 45, R 7.

Under the Supreme Court Rules the provisions of O. 45, Civil P. C. have been made applicable to appeals preferred under Arts. 132 (1), 133 (1) and 135 of the Constitution and under O. 12, R. 3 of those Rules the High Court has power to cancel a certificate for the appellants' failure to comply with provisions of O. 45, R. 7, **AIR 1952 Mad 94** (96) (Pr 6) (DB).

——Art. 135 — "Matter" in Art. 135 excludes civil and criminal proceedings.

The matter referred to in Art. 135 should be understood as meaning a matter which is neither civil nor criminal and by the application of the maxim expressio unius est exclusio alterius—the express mention of one thing implies the exclusion of another —The word 'matter' in Art. 135 should be deemed to exclude both civil and criminal proceedings. AIR 1951 Mad 251, Dissent. **I L R (1953) Mad 65 : 1951-2 Mad L J 479 : 64 Mad L W 934 : 1951 Mad W N 811 : AIR 1951 Mad 1051 (1055) (Pt C) (Pr 6) (DB).**

[Overruled on another point in AIR 1957 S C 540].

——Arts. 135, 133, 134, 372 — Art. 372 read with Art. 135 does not retain right of appeal where Arts. 133 and 134 apply—Effect of Art. 133 on Civil P. C. (1908), S. 109 (c).

By the Federal Court (Enlargement of Jurisdiction) Act, 1948, in all cases where an appeal lay to the Privy Council it was provided that an appeal shall lie to the Supreme Court; therefore even where the order is not a final one special leave can be granted in exceptional cases under S. 109, Cl. (c). However, Art. 372 read with Art. 135 does not retain that right where the provisions of Arts. 133 and 134 can be invoked. Prior to the Constitution there was no enactment in force except the Civil Procedure Code and the Letters Patent of the High Courts conferring and regulating the rights of appeals from the High Courts. But now as a result of Chap. IV of

Part V of the Constitution the right of appeal to the Supreme Court is crystallised in clear cut terms. If Art. 133 prohibits an appeal to the Supreme Court where the decision is not a final order, it cannot be said that any earlier statutory provisions repugnant to that Article can hold the field any further despite Art. 372. AIR 1951 Mad 251, Dissent.

Thus, a right of appeal which existed to the Federal Court under the Federal Court (Enlargement of Jurisdiction) Act, is now rendered non-existent. But to compensate for that there is always the right to the party to apply to the Supreme Court for special leave as contemplated by Art. 136 of the Constitution. I L R (1953) Mad 65 : 1951-2 Mad L J 479 : 64 Mad L W 934 : 1951 Mad W N 811 : AIR 1951 Mad 1051 (1055) (Pt D) (Pr 6) (DB).

[Overruled in AIR 1957 S C 540].

——Art. 135—Retrospective effect of Art. 133 — Suit commenced before Constitution but decided in appeal after Constitution — Right of appeal is not governed by Art. 133. See Ibid, Art. 133. AIR 1953 Nag 313 (DB).

——Art. 135 — Civil P. C. (1908), S. 110 — Reversing decision of High Court — Application for leave to Federal Court pending when Constitution came into force — Value of subject matter more than Rs 10,000 but less than Rs. 20,000 — Art. 133 whether bars appeal to Supreme Court. See Ibid, Art. 133. A I R 1950 Nag 222 (DB).

——Art. 135 — Arts. 132 and 134 — Question involving interpretation of S. 193-B, Criminal P. C. —Leave to appeal sanctioned—Criminal P. C. (1898), S. 193-B.

Whether an order of the Home Secretary on the face of which all the facts on which the prosecution is to be based does not appear constitutes a requisite sanction under S. 193 B (3) (a), Criminal P. C. (1898), is a question which is serious enough to justify the High Court giving leave to appeal to the Supreme Court. Section 193-B has been newly introduced into the Code to deal with a subject which is prima facie of intrinsic importance and hence requires a final pronouncement by the Supreme Court on its interpretation AIR 1955 Cal 430, Rel. on. (1962) 4 Orissa J D 1 : 28 Cut L T 104 : 1962 (2) Cri L J 574 (574) (Pr 4) (DB).

——Arts. 135 and 133—Article 133 has no retrospective effect — Application for leave filed long before Constitution — Decree involved claim of the value of Rs. 10,000 or upwards — Art. 135 and not Art. 133 applies. See Ibid, Art. 133. A I R 1951 Orissa 141 (DB).

——Art. 135 — Scope — Civil P. C. (1908), S. 110 — Adaptation of Laws Order (1950), S. 27:— As a result of Art. 135 and S. 27, Adaptation of Laws Order, 1950, the Supreme Court has the same jurisdiction as the Federal Court had in the matter. See Ibid, Art 133 (1). AIR 1953 Pat 275 (DB).

——Art. 135 — Applicability—Suits instituted before Constitution — Vested right of appeal — Effect of coming into force of Constitution —Civil P. C. (1908), S. 110. See Ibid, Art. 133 (1). A I R 1956 Punj 228 (DB).

——Art. 135—Applicability.

Article 135 does not confer any jurisdiction and powers on the Supreme Court with respect to any matter to which the provisions of Art. 133 are directly applicable but for the limits laid down by the said Article. ILR (1955) 5 Raj 711 : A I R 1955 Raj 208 (215) (Pt C) (Pr 38) (DB).

ARTICLE 136

SYNOPSIS

(Constitution of India, Art. 136)

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   (b) Revocation of special leave.
   (c) Rejection of application for special leave—Effect.
   (d) Rule of exhaustion of statutory remedies.
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1. Scope.

——Arts. 136, 134 — Appeal by special leave against sentence of imprisonment—Death of accused appellant — Appeal abates — Principles of S 431, Criminal P. C. (1898), can be applied to appeals under Constitution against sentence of fine and not against sentence of imprisonment—Maxims—Actio personalis moritur cum persona.

Section 431, Criminal P. C. (1898), does not apply proprio vigore to a case of appeal filed with the special leave of the Supreme Court granted under Art. 136, when the appellant-accused dies pending the appeal. But where the appeal is against sentence of fine, the appeal may be permitted to be continued by the legal representatives of the deceased appellant accused. There is no provision making such appeals abate. The principle on which the hearing of a proceeding may be continued after the death of an accused would appear to be the effect of the sentence on his property in the hands of his legal representatives. If the sentence affects that property, the legal representatives can be said to be interested in the proceeding and allowed to continue it But where the sentence is not one of fine but of imprisonment, which on the death of the accused becomes infructuous, the sentence does not affect the property of the deceased accused in the hands of his legal representatives, and therefore, the appeal, in such a case, would abate, upon the death of the accused.

The fact that the accused was a Government servant and was under suspension during the trial and

the fact that if the conviction and sentence were set aside, his estate would be entitled to receive full pay for the period of suspension, cannot be said to affect his estate, because the setting aside of the sentence would not automatically entitle the legal representatives to the salary. Bondada Gajapathi Rao v. State of Andhra Pradesh, (1965) 1 S C J 465 : 1965 Mad L J (Cri) 240 : 1965 S C D 390 : (1964) 7 S C R 251 : 1965 Mad W N 161 : (1965) 1 S C W R 1014 : 1965 All W R (HC) 445 : 1965 All Cri R 288 : 1964 (2) Cri L J 598 : A I R 1964 S C 1645 (1646, 1647, 1648) (Pt A) (Prs 2, 3, 5, 9).

● ——Arts. 136 and 134 (1) (c)—Certificate of fitness — Mere delay in pronouncing judgment possibly resulting in omission to consider arguments on questions of facts — No certificate should be given on this ground under Art. 134 (1) (c)—Appellant if aggrieved may apply to Supreme Court under Art. 136. See Ibid, Art. 134 (1) (c). AIR 1963 S C 1039.

● ——Art. 136—Scope — Comparison with Arts. 133 (1) and 134 (1)—Article 136 (1) confers very wide powers—Limitations under Arts. 133 (1) and 134 (1) are not imposed by Art. 136 (1). AIR 1963 S C 874 (877) (Pt A) (Pr 3).

● ——Art. 136—Scope of.

Article 136 of the Constitution confers a wide discretionary power on the Supreme Court to entertain appeals in suitable cases not otherwise provided for by the Coustitution. Though Art. 136 is couched in widest terms, the practice of the Supreme Court is not to interfere on questions of fact except in exceptional cases when the finding is such that it shocks the conscience of the Court.

Where the High Court had not contravened any of the principles laid down in Sheo Swarup's case AIR 1934 P C 227 (2) : 67 M L J 664 and had also given reasons which led it to hold that the acquittal was not justified, it was held that no case had been made out for the Supreme Court's not accepting the said findings. Sanwat Singh v. State of Rajasthan, 1961 Mad W N 293 : (1961) 2 Ker L R 249 : (1961) 3 S C R 120 : 1961 All L J 238 : 1961 M P C 274 : 1961 B L J R 313 : 1961 All Cr R 215 : (1961) 2 S C A 342 : 1961 (1) Cr L J 766 : (1961) 2 SCJ 179 : 1961 All W R (H C) 382 : 1961 Mad L T (Cr) 472 : AIR 1961 S C 715 (722) (Pt B) (Pr 16).

● ——Art. 136 — Power of the Supreme Court — Appeal under special leave—Question of jurisdiction raised — Supreme Court rejecting appeal on ground of no failure of justice—Question of jurisdiction left open—No ground for review.

When in an appeal by special leave under Art. 136, the judgment of the Supreme the Court leaves the question of the jurisdiction of the lower tribunal open on the ground that there was no failure of justice and, in consequence, the Court refuses to exercise its jurisdiction under Art. 136, it cannot be said that something was done which was unknown to law. Though the powers of the Supreme Court under Art. 136 are wide, their exercise is discretionary. In an appeal under Art. 136 the Supreme Court is not bound to decide the question of jurisdiction when, on the facts and circumstances of the case it has come to the conclusion that, there was no failure of justice and the judgment is not open to review on that ground. Balvantrai Chimanlal Trivedi v. M. N. Nagrashna (1961) 1 S C R 113 : (1961) 2 SCJ 84 : (1962) 2 Lab L J 236 : (1961-62) 21 F J R 562 : AIR 1960 S C 1292 (1293, 1294) (Pr 4).

● ——Art. 136—Supreme Court in exercise of appellate powers does not give opinions on hypothetical questions.

In the exercise of its appellate powers the Supreme Court does not give speculative opinions on hypothetical questions. If and when they arise, they must arise in concrete cases. L R (1903) A C 524, Rel. on. Central Bank of India v. Their Workmen, (1959) 2 Lab L J 205 : (1959) 29 Com Cas 387 : (1959-60) 17 F J R 57 : (1960) 1 S C A 454 : (1960) 1 S C R 200 : 1960 S C J 842 : AIR 1960 SC 12 (27, 28) (Pt J) (Pr 31).

● ——Art. 136 — Supreme Court is not Court of criminal appeal. See Ibid, Art. 134. 1960 Cr L J 131 : AIR 1960 S C 7.

● ——Art. 136—Competency of Appeal — Instead of describing respondent as worker of the appellant company represented by the Union appellant impleading union itself as respondent—Objection purely technical — Such misdescription cannot make appeal incompetent. Muzaffarpur Electric Supply Co., Ltd. v. Muzaffarpur Electric Supply Workers Union. (1959) 16 F J R 259 : AIR 1959 S C 1294 (1295) (Pt A) (Pr 3).

● ——Art. 136 — Appeal on facts—The intention of the Constitution in providing for an appeal on facts under Art. 134 (1) (a) and (b) was to exclude it under Art. 136. See Ibid, Art. 134 (1). AIR 1956 S C 217.

● ——Art. 136—Applicability of O. 41, R. 22, Civil P. C. (1908).

Order 41, rule 22 has no application to an appeal granted by special leave under Article 136. Vashist Narain Sharma v. Dev Chandra, (1954) 2 M L J 385 : 1954 S C J 723 : 1955 S C R 267 : 1955 S C A 501 : AIR 1954 S C 513 (516) (Pt C) (Pr 14).

[Overruled in AIR 1965 S C 669].

● ——Art. 136 — Industrial Disputes Act (1947), S. 15 (4) — S. 15 (4) does not affect Art. 136 of the Constitution. (1950.51) 2 F J R 1 : 86 Cal L J 230 : (1950) S C R 459 : AIR 1950 S C 188 (198) (Pt D) (Pr 29).

——Art. 136 — Scope — Proceedings not covered by Art. 133 or 134—Remedy is under Art. 136. See Ibid, Art. 133. AIR 1956 Ajmer 40 (1).

——Art. 136 — Order in proceeding that is neither civil nor criminal — Appeal to Supreme Court, after obtaining special leave from the Supreme Court. See Ibid. Art. 132. AIR 1957 All 505 (DB).

——Arts. 136 and 226—Appeal under Art. 136 is not alternative remedy. See Ibid, Art. 226. AIR 1956 All 644.

——Art. 136 (1) — Under clause (1) of Art. 136, the Supreme Court is vested with an overriding discretion to grant special leave to appeal in any civil or criminal case. See Ibid, Art. 134 (1) (c). 1957 Cr L J 1213 : AIR 1957 Andh Pra 871 (DB).

● ——Art. 136—Powers of Supreme Court—Extent of—Powers under S. 112 (repealed) of C. P. Code (1908)—Distinction.

The powers of the Supreme Court under Art. 136 are much wider than those given in S. 112 (which has now been repealed) of the C. P. Code. Kapur Singh v. Union of India, 59 Punj L R 331 : ILR (1957) Punj 873 : AIR 1957 Punj 173 (176) (Pt A) (Pr 5) (FB).

——Art. 136 (1) — Order of single Judge not subject to Letters Patent Appeal within Court — Remedy is to approach Supreme Court for special leave. See Ibid, Art. 133 (3). AIR 1955 NUC (Punj) 4025.

2. Special leave—General.

(a) Principles relating to the grant of special leave.

(b) Revocation of special leave.

(c) Rejection of application for special leave—Effect.

(d) Rule of exhaustion of statutory remedies.

2. Special leave—General.

■——Art. 136 — Special leave granted — Objection by respondent that it should not have been granted — When open and sustainable — Civil Procedure Code (5 of 1908), S. 100 — Second appeal — Judgment of single Judge — Grant of special leave to appeal against where no leave to appeal under Letters Patent had been applied for — When can be revoked —Judgment in Second Appeals — Essentials of — Judgment not giving reasons for conclusion — Infirmity.

It cannot be said that leave granted to the appellants under Art. 136, can never be revoked. The true position is that in a given case, if the respondent brings to the notice of the Court facts which would justify the Court in revoking the leave already granted, the Court would, in the interests of justice, not hesitate to adopt that course. Normally, an application for special leave to appeal against a second appellate decision would not be granted unless the remedy of a Letters Patent Appeal has been availed of. Even so it would not be possible to lay down an unqualified rule that leave should not be granted if the party has not moved for leave under the Letters Patent and it cannot be so granted, nor is it possible to lay down an inflexible rule that if in such a case, leave has been granted, it must always and necessarily be revoked. The question as to whether the jurisdiction of the Supreme Court under Art. 136 should be exercised or not, and if yes, on what terms and conditions, is a matter which the Court has to decide on the facts of each case. If at the stage when special leave is granted the respondent caveator appears and resists the grant of Special Leave on the ground that the appellant has not moved for Letters Patent Appeal and it appears that the said ground was argued and rejected on the merits and consequently Special Leave is granted, then it would not be open to the respondent to raise the same point over again at the time of the final hearing of the appeal. If, however, the caveator does not appear, or having appeared, does not raise this point, or even if he raises the point the Court does not decide it before granting special leave, the same point can be raised at the time of final hearing. In such case, there would be no technical bar of res judicata and the decision on the point will depend upon a proper consideration of all the relevant facts. P. Balakrishna Iyer v. Ariya M. Ramaswami Iyer, (1965) 1 S C J 235: (1965) 1 Mad L J (SC) 10: (1965) 1 Andh W R (S C) 10: (1964) 7 S C R 49 : (1964) 1 S C W R 535 : A I R 1965 S C 195 (197, 198) (Prs 7, 8, 9).

■ ——Art. 136 —Certificate of fitness under Art. 132— Appellant cannot raise grounds other than those on which certificate is granted except with leave of Court — Leave has to be obtained from the Supreme Court on an application under Art. 136 to file appeal against those grounds. See Ibid, Art. 132. AIR 1964 S C 1419.

■ ——Art. 136 (1) — Special leave—Grant of, at ex parte hearing on appellant's petition—Final hearing —Procedure — Preliminary objection that the decision, judgment or order appealed against has not been pronounced by a 'Tribunal' or a 'Court' can be raised by the respondent at the time of final hearing.

Even in cases where special leave has been granted at the ex parte hearing of the matter on the petition of the appellant for special leave, the respondent can, at the final hearing, raise a preliminary contention that special leave should not have been granted since the decision, judgment or order appealed against, has not been pronounced either by a Court or a Tribunal within the meaning of Art. 136 (1) of the Constitution. Indo-China Steam Navigation Co., Ltd. v. Jasjit Singh, Additional Collector of Customs, Calcutta, (1965) 1 S C A 402 : (1964) 6 S C R 594 : (1964) 34 Com Cas 435 : 1964 (2) Cr L J 234 : AIR 1964 S C 1140 (1145) (Pt A) (Pr 8).

■ ——Art. 136—Special leave to appeal granted without hearing respondents and without full materials on record — Supreme Court can consider at time of hearing of appeal whether leave was properly granted and whether appellant is entitled to be heard on merits. AIR 1961 S C 100, Rel. on. Chandi Prasad Chokhani v. State of Bihar, (1962) 2 S C R 276 : (1962) 2 S C A 609 : (1961) 43 I T R 498 : (1962) 1 S C J 138 : (1962) 1 Andh L T 193 : (1961) 12 S T C 506 : 1961 B L J R 721 : 1961 All L J 785 : 1961 M P C 741 : AIR 1961 S C 1708 (1711) (Pt A) (Pr 7).

■ ——Art. 136 —Scope of the exercise of the power— Special leave—Grant of —Propriety —If can be questioned at hearing of appeal.

There is no distinction in the scope of the exercise of the power under Art. 136 at the stage of application for special leave and at the stage when the appeal is finally disposed of. It is open to the Court to question the propriety of the leave granted at the time of the hearing of the appeal. No respondent will be aggrieved by such procedure; the appellant also cannot complain as he adopted the procedure with open eyes and therefore must take such consequences as follows from invoking the special jurisdiction of this Court under Art. 136. There is no question of one division bench sitting in judgment over another; the same Court hears the same matter at different stages. Unless the Supreme Court at the hearing of the appeal is satisfied that the appeal raises a question that justifies the exercise of its discretionary jurisdiction under Art. 136, the appeal is liable to be dismissed without further investigation into the merits of the case. Baldota Brothers v. Libra Mining Works, AIR 1961 S C 100 (102, 103) (Pt A) (Prs 2, 3).

■ ——Art. 136 — Duty of prosecution and accused to prove their respective allegations—Failure of accused to lead evidence—Effect on grant of special leave to appeal. See Cr. P. Code (1898), S. 286. **AIR 1956 S C 757.**

■ ——Art. 136 (1) — Leave under Art. 134 (1) (c) granted — Supreme Court holding appeal not maintainable under Art. 134 (1) (c)—Supreme Court can examine whether it is case for exercising special powers under Art. 136 (1). See Ibid, Art. 134 (1) (c). **1956 Cr L J 345 : AIR 1956 S C 181.**

——Arts. 136 and 226 — Labour Appellate Tribunal deciding that there is no question of fact—Writ application is not maintainable—Supreme Court's discretionary power to grant special leave—Remedy if not effective. See Ibid, Art. 226. **AIR 1953 All 531 (DB).**

——Art. 136 — Criminal P. C. (1898), S. 426 (2B) — 'Special Leave'—Meaning of—Not restricted to leave granted by Supreme Court under Art. 132 (2) or Art. 136—It means leave granted on special grounds and includes certificate of fitness under Art. 134 (1) (c) of the Constitution of India. See Criminal P. C. (1898), S. 426 (2B). **AIR 1960 Andh Pra 622.**

——Arts. 136, 134 — Order of detention under Preventive Detention Act—Petition under Art. 226 of the Constitution for a writ of Habeas Corpus dismissed by High Court — Appeal to Supreme Court — Detenu in jail prevented by the Superintendent of the jail from sending a petition to the Supreme Court on the ground that the same is without a certificate of the High Court—Held it is not the business of the Superintendent to decide the question whether or not the petitioner should be allowed to forward a mere petition. ILR (1961) 1 Cal 276 : 1962 (1) Cr L J 311 : AIR 1962 Cal 162 (166) (Pt H) (Pr 16) (DB).

2 (a). Principles relating to the grant of special leave.

● —Art. 136 — Power of Supreme Court—When may not be exercised.

Though in a proper case the Supreme Court may refuse to exercise its jurisdiction under Art. 136 where the interests of justice patently indicate the desirability of adopting such a course, such a plea cannot be entertained where it is clearly shown that the impugned orders passed by the High Court are without jurisdiction. Syed Yakoob v. K. S. Radhakrishnan, (1964) 5 S C R 64 : AIR 1964 S C 477 (482, 483) (Pt D) (Pr 16).

● —Arts. 136 and 133 (3) — Judgment of Single Judge of High Court in second appeal —Practice of Supreme Court in granting special leave. See Ibid, Art. 133 (3). AIR 1963 S C 1633.

● —Art. 136 — Applicability — Point raised by appellant municipal corporation relating to its rights under incorporating statute—Point is of importance and case fit for decision in appeal under Art. 136 although occasion giving rise to question is over.

Where the point raised by the appellant municipal corporation is as to its powers under the incorporating statute and how far courts can review the exercise of its power by the appellant Corporation the point is of great importance and must be decided in the appeal under Art. 136, although the occasion which has given rise to the question, has already passed and from that point of view, the question raised may be said to have become academic. City of Nagpur Corporation, Nagpur v John Servage Philip, (1963) Supp 2 S C R 600 : 1963 M P L J 393 : 1963 Mah L J 425 : (1963) 2 S C J 591 : AIR 1963 S C 897 (900) (Pt B) (Pr 9).

● —Art. 136—Appeal admitted by special leave—Findings of fact—Interference.

It is the settled practice of the Supreme Court to grant leave to appeal under Art. 136 only if exceptional and special circumstances exist, or if substantial and grave injustice has been done and the case presents features of sufficient gravity to warrant a review of the decision appealed against. Merely because the appeal has been admitted by special leave, the appellant is not free to contest the findings of fact of the subordinate tribunals. Only those points on which special leave may initially be granted, can be urged at the final hearing; and normally special leave will not be granted by the Supreme Court under Art. 136 (1) of the Constitution on a plea of error committed by the Courts below in the appreciation of evidence. Balwan Singh v. Lakshmi Narian, 1960 S C J 716 : (1960) 2 Mad L J (S C) 27 : (1960) 2 Andh W R (SC) 27 : (1960) 2 S C A 230 : (1960) 3 S C R 91 : AIR 1960 S C 770 (775) (Pt C) (Pr 11).

● —Art. 136—Offence committed more than four years ago—High Court wrongly discharging accused —Application for special leave to Supreme Court not disclosing reason on which similar application was rejected by High Court - Held, in the circumstances Supreme Court would be justified in not exercising its discretionary jurisdiction under Art. 136 as public interest did not require that stale matter should be resuscitated. State of Bihar v. Hiralal Kejriwal, ILR 39 Pat 175 : 1960 Cr L J 150 : 1960 S C J 91 : 1960 M L J (Cr) 35 : 1960 B L J R 1 : (1960) 1 S C R 726 : AIR 1960 S C 47 (51) (Pt D) (Pr 8).

● —Art. 136—Jurisdiction of Supreme Court vis-a-vis awards of tribunals.

Article 136 of the Constitution does not confer a right of appeal to any party from the decision of any tribunal but it confers a discretionary power on the Supreme Court to grant special leave to appeal from the order of any tribunal in the territory of India. Though Art. 136 is couched in widest terms, it is necessary for the Supreme Court to exercise its discretionary jurisdiction only in cases where awards under the Industrial Disputes Act are made in violation of the principles of natural justice, causing substantial and grave injustice to parties or the case raises an important principle of industrial law requiring elucidation and final decision by the Supreme Court or discloses such other exceptional or special circumstances which merit the consideration of the Supreme Court. Bengal Chemical & Pharmaceutical Works, Ltd. v. Their Employees, 1959 S C J 647 : 1959 Mad L J (Cr) 370 : (1959-60) 16 F J R 35 : 1959 S C A 438 : (1959) 1 Lab L J 413 : (1959) Supp 2 S C R 136 : AIR 1959 S C 633 (635) (Pt A) (Prs 4, 5).

● —Art. 136 — Error of law.

Where the Judge accepted as correct all the essential facts constituting the offence with which the accused was charged, but he passed an order of acquittal on a misconception as to the effect of a decision of the Supreme Court it is a fit case for the exercise of jurisdiction under Art. 136 of the Constitution. AIR 1954 S C 20 : 1954 Cr L J 244 Rel. on. The State of Bihar v. Basawan Singh, 1959 S C R 195 : I L R 37 Pat 1013 : 36 Mys L J 713 : 1958 All Cri R 641 : 1958 Cr L J 976 : 1958 S C J 856 : (1958) 2 M L J (S C) 136 : (1958) 2 Andh W R (S C) 136 : 1958 M L J (Cr) 641 : 1958 All W R (H C) 609 : 1958 B L J R 618 : 1958 All L J 608 : AIR 1958 S C 500 (507) (Pt H) (Pr 18).

● —Art. 136—Order of High Court regarding disciplinary action against legal practitioner — Interference by Supreme Court — (Legal Practitioners Act (1879), Ss. 13 and 10) — (Bar Councils Act (1926), S. 10).

In a proceeding under Ss. 13 and 14, Legal Practitioners Act against a legal practitioner the recommendation of the Munsif was that the legal practitioner should be suspended for one year. The legal practitioner had filed a written apology and expressed regret to the Munsif. The High Court suspended him from practice for a period of five years.

Held that on a matter of this nature the Supreme Court would be reluctant to interfere with the order of the High Court as respects the disciplinary action to be taken against a member of the Bar. However in view of the two mitigating circumstances in the case, the period of suspension should be reduced to two years only. Lalit Mohan Das v. Advocate-General, Orissa, (1957) S C J 230 : (1957) M L J (Cr) 151 : (1957) 1 M L J (S C) 78 : 1957 S C C 164 : 1957 An L T 411 : 1957 S C A 569 : (1957) 1 An W R (S C) 78 : 1957 S C R 167 : AIR 1957 S C 250 : (254, 255) (Pt C) (Pr 12).

—Arts. 136, 134 — Defective certificate by High Court —Power of Supreme Court to grant special leave.

Even if the certificate granted by the High Court for leave to appeal to the Supreme Court, was defective, it is open to the Supreme Court to grant special leavei. Pershadi v State of Uttar Pradesh, 1957 Cr L J 328 : AIR 1957 S C 211 (213) (Pt A) (Pr 4).

● —Art. 136 — Special leave — Powers of Supreme Court Income-tax Act (1922), S. 66 — Question of law not raised in reference — Point covered by authority—(Income-tax Act (1922), S 66 (1)).

The powers of the Supreme Court in appeal under Art. 136 are not intended to be exercised for complying with an idle formality of law, such as directing

the Income-tax Tribunal to refer a question of law for the decision of the Court under S. 66 (1), Income-tax Act. Shree Meenakshi Mills, Ltd. Madurai v. Commissioner of Income-tax. 1956 S C A 1139 : (1957) 31 I T R 28 : 1956 S C R 691 : 1957 S C J 1 : (1957) 1 Mad L J (S C) 1 : (1957) 1 An W R (S C) 1 : AIR 1957 S C 49 (72) (Pt D) (Pr 36).

● —Arts. 136 and 134 (1) (c) — Mere question of facts involved — High Court has no jurisdiction to give certificate under Art. 134 (1) (c) — Principles on which Supreme Court will grant leave under Art. 136 and intervene — See Ibid, Art. 134 (1) (c). AIR 1956 S C 757.

● —Art. 136 (1) — Certificate under Art. 134 (1) (c) held not justified — Duty of Supreme Court to consider whether special leave can be granted — See Ibid, Art. 134 (1) (c). 1956 Cri L J 801 : AIR 1956 S C 411.

● —Art. 136 — Powers of Supreme Court under — Intent and purpose of the power — Finality of decisions of Tribunals — Effect of.

It is not possible to define with any precision the limitations on the exercise of the discretionary jurisdiction vested in the Supreme Court by the constitutional provision made in Art. 136. The limitations, whatever they be, are implicit in the nature and character of the power itself. It being an exceptional and overriding power, naturally it has to be exercised sparingly and with caution and only in special and extraordinary situations. Beyond that it is not possible to fetter the exercise of this power by any set formula or rule.

The power will only be used to advance the cause of justice, and its exercise will be governed by well established principles which govern the exercise of overriding constitutional powers. It is, however, plain that when the Court reaches the conclusion that a person has been dealt with arbitrarily or that a Court or tribunal within the territory of India has not given a fair deal to a litigant, then no technical hurdles of any kind like the finality of finding of facts or otherwise can stand in the way of the exercise of this power. Dhakeswari Cotton Mills, Ltd. v. Commr. of Income tax, West Bengal, (1954) 26 I T R 775: 1955 S C J 122: (1955) 1 M L J (S C) 60 : 1955 An W R (S C) 60 : 1955 S C A 96 : 1955 S C R 941 : AIR 1955 S C 65 (69) (Pt A) (Pr 7).

● —Art. 136 — Powers under, when exercised — Pleas available to appellant.

Unless it is shown that exceptional and special circumstances exist that substantial and grave injustice has been done and the case in question presents features of sufficient gravity to warrant a review of the decision appealed against, the Supreme Court does not exercise its overriding powers under Art. 136 (1) of the Constitution.

The circumstance that because an appeal has been admitted by special leave does not entitle the appellant to open out the whole case and contest all the findings of fact and raise every point which could be raised in the High Court. Even at the final hearing only those points can be urged which are fit to be urged at the preliminary stage when the leave to appeal is asked for. Hem Raj Devilal v State of Ajmer. 1954 Mad W N 468 : (1954) 1 M L J 694 : 1954 S C J 449 : 1954 All W R (Supp) 49 : 1954 Cr L J 1313 : 1955 S. C A 50 : AIR 1954 S C 462 (462) (Pt A) (Pr 2).

● —Art. 136—Substantial question of law—Whether can be a ground for granting special leave. See Ibid, Art. 133. AIR 1954 S C 355.

● —Art. 136 (1)—Special leave to appeal in criminal cases—When granted.

The Supreme Court will not grant special leave to appeal under Art. 136 (1) of the Constitution unless it is shown that exceptional and special circumstances exist, that substantial and grave injustice has been done and the case in question presents features of sufficient gravity to warrant a review of the decision appealed against and that only those points can be urged at the final hearing of the appeal which are fit to be urged at the preliminary stage when leave is asked for. It is well established that this Court does not by special leave convert itself into a Court to review evidence for a third time.

Where, however, the Court below fails in apprehending the true effect of a material change in the versions given by a witness immediately after the occurrence and the narrative at the trial with respect to the nature and character of the offence, it would not be right for the Supreme Court to affirm such a decision when it occasions a failure of Justice. AIR 1950 S C 169, Rel. on.

Thus where in the statements made by the witnesses in the trial, the whole version as to the nature and character of the act of the accused has been completely changed and an act which on the facts stated in the first information report and on the the statements made to the police may well be regarded either accidental or rash and negligent, has been deliberately made to look like an act of deliberate murder. Such difference goes to the root of the case and if the High Court holds, on the basis of the evidence in the trial, that accused is guilty of the offence of murder under S. 302, I. P. Code, it is in error and the Supreme Court can set aside the decision of the High Court under Art. 133 (1). Sadhu Singh v. State of Pepsu, ILR (1954) Patiala 66 : 1954 Cr L J 727 : AIR 1954 S C 271 (276) (Pt A) (Prs 11, 12)

● —Art. 136—Circumstances under which Supreme Court will not interfere.

If there has been mere mistakes on the part of the Court below of a technical character which has not occasioned any failure of justice or if the question was purely one of the Supreme Court taking a different view of the evidence given in the case, there is no interference under the provisions of Art. 136. Such questions are as a general rule treated as being for the final decision of the Courts below. Habeeb Mohammad v. State of Hyderabad, 1954 Mad W N 233 : 1953 S C J 678 : 1954 Cr L J 338 : 1954 S C A 514 : 1954 S C R 475 : AIR 1954 S C 51 (61) (Pt F) (Pr 15).

● —Art. 136—Substantial question of law.

Where the decision of the matter in appeal by special leave before the Supreme Court depended on the construction of the leave rules of the Carnatic Mills which were in accordance with and similar in terms to provisions of Ch. IV-A, Factories Act.

Held, that the appeal involved a substantial question of law. Buckingham and Carnatic Co., Ltd. v. Workers of the Buckingham and Carnatic Co. Ltd. 1953 S C J 15 : 4 F J R 399 : (1953) 1 Lab L J 181 : 1953 S C A 363 : (1953) 1 M L J 191 : 1953 S C R 219 : 1953 All L J 141 : 1953 B L J R 120 : AIR 1953 S C 47 (49) (Pt B) (Pr 7).

● —Art. 136—Special leave.

(Per Das J.)—An intending appellant who has not applied for or obtained the leave of the High Court and who does not say a word by way of explanation as to why he did not apply to the High Court and as to why there has been great delay in applying to the Supreme Court should not get special leave from the Supreme Court for the mere asking Aswini Kumar Ghose v. Arbinda Bose, 1952 S C J 568 :

1953 S C R 1 : 1952 S C R 683 : AIR 1952 S C 369 (386) (Pt K) (Pr 70).

● ——Art. 136—Leave to appeal against decision of Industrial Tribunal — Jurisdiction of Supreme Court to entertain application for.

The wording of Art. 136 of the Constitution is wide enough to give jurisdiction to the Court to entertain an application for leave to appeal against the decision of an Industrial Tribunal although it is obvious that having regard to the nature of the functions of the Tribunal the S C will be very reluctant to entertain such an application. Bharat Bank v. Employees of Bharat Bank, (1950-51) 2 F J R 1 : 1950 S C R 459 : 86 C L J 230 : AIR 1950 S C 188 (189, 190, 211) (Pt B) (Prs 3, 5, 68).

● ——Art. 136—Special leave to appeal—Decisions of Privy Council—Binding effect—Precedents.

Though the Supreme Court is not bound to follow the decisions of the Privy Council too rigidly, yet some of those principles are useful as furnishing in many cases a sound basis for invoking the discretion of the Court in granting special leave. Pritam Singh v. The State, 1950 Mad W N (Cri) 236 : 1950 Raj L W 378 : 86 Cal L J 120 : 53 Pun L R 1 : 1950 Mad W N Cr 236 : 1950 S C R 453 : 63 Mad L W 875 : 51 Cri L J 1270 : 1950 Mad W N 605 : AIR 1950 SC 169 (171, 172) (Pt D) (Pr 9).

● ——Art. 136 — Criminal appeal—Special leave to appeal — When granted.

Generally speaking Supreme Court will not grant special leave to appeal in criminal cases, unless it is shown that exceptional and special circumstances exist, that substantial and grave injustice has been done and that the case in question presents features of sufficient gravity to warrant a review of the decision appealed against. The Supreme Court will not constitute itself into a third Court of fact. Pritam Singh v. The State, 1950 Mad W N (Cri) 236 : 1950 Raj L W 378 : 86 Cal L J 120 : 63 Mad L W 875 : 53 Pun L R 1 : 1950 S C R 453 : 51 Cri L J 1270 : 1950 Mad W N 605 : A I R 1950 S C 169 (170, 171, 172) (Pt A) (Prs 4, 9).

● ——Art. 136 — Special leave to appeal — Scope of the discretionary power — Principles governings its exercise.

On a careful examination of Art. 136 along with Art. 135, it seems clear that the wide discretionary powers with which the Supreme Court is invested under it is to be exercised sparingly and in exceptional cases only and as far as possible a more or less uniform standard should be adopted in granting special leave in the wide range of matters which can come up before it under this Article. The Supreme Court can under this Article grant special leave in civil cases, in criminal cases, in income-tax cases, in cases which come up before different kinds of tribunals and in a variety of other cases. The Supreme Court should grant special leave to appeal only in those cases where special circumstances are shown to exist. Generally speaking the Supreme Court will not grant special leave unless it is shown that exceptional and special circumstances exist, that substantial and grave injustice has been done and that the case in question presents features of sufficient gravity to warrant a review of the decision appealed against. In this particular case it was held that the conditions for granting special leave did not exist. Pritam Singh v. State, 86 C L J 120 : 1950 Mad W N 605 : 1950 Mad W N (Cri) 236 : 63 L W 875 : 51 Cr L J 1270 : 4 A I Cr D 610 : 1950 B L W 378 : 1950 S C R 453 : 53 P L R 1 : AIR 1950 S C 169 (171) (Pt C) (Pr 9).

——Art. 136 — Special leave to appeal in criminal matters — Powers of Supreme Court.

In granting special leave to appeal in criminal matters, the Supreme Court is not governed by Art. 134 but by Art. 136, the powers under which are much wider and it can, in its discretion, grant special leave in any case.

Similarly the jurisdiction of the Supreme Court in matters coming up before it is not limited by any provision in the Constitution and that Court is not precluded from going into questions of fact if it considers it necessary. See Ibid, Art. 134. 1952 Cri L J 1755 : AIR 1952 All 991 (DB).

2 (b). Revocation of special leave.

● ——Art. 136 — Special leave obtained ex parte — Non-compliance with O. 13, R. 2, Supreme Court Rules — Leave revoked. See Supreme Court Rules 1950, O. 13, R. 2. AIR 1965 S C 1142.

● ——Art. 136—Leave under Art. 136, can be revoked, in interest of justice—Party not applying for leave to file Letters Patent Appeal but applying for leave under Art. 136—Propriety of—Leave under Art. 136, may be granted, if facts justify it — Single Judge not exercising jurisdiction in second appeal in accordance with law — Special leave under Art. 136, not revoked, even though no leave to appeal under Letters Patent was applied for. Balkrishna Iyer v Ramaswami Iyer, AIR 1965 S C 195 (197, 198) (Prs 7 to 9).

● ——Art. 136 — Grant of special leave after notice to respondent and giving him hearing — Revocation of — New ground of objection as to leave cannot be permitted except in exceptional circumstances — Supreme Court Rules, O. 19, R. 4.

Where special leave to appeal under Art. 136 of the Constitution has been granted by the Supreme Court after notice to the respondent and giving him a hearing, the Supreme Court will not permit the respondent to urge any argument regarding the correctness of the order of the Court granting leave except possibly in some extraordinary cases where the ground urged happens to arise subsequent to the grant of the special leave or where it could not be ascertained by the respondent at that date notwithstanding the exercise of due care. The very object of issuing notice to the respondent before the grant of leave is to ensure that the latter is afforded an opportunity to bring to the notice of the Court any grounds upon which leave should be refused and the purpose of the rule would be frustrated if the respondent were permitted to urge at a later stage—at the stage of the hearing of the appeal and long after the appellant has incurred all the costs—that the leave granted after notice to him should be revoked on a ground which was available to him when the application for special leave was heard. Thungabhadra Industries, Ltd. v. Government of Andhra Pradesh, (1964) 5 S C R 174 : 1964 S C D 179 : (1964) 1 S C W R 310 : A I R 1964 S C 1372 (1375, 1376) (Pt A) (Pr 6).

● ——Art. 136—Special leave obtained by withholding true information from Supreme Court — Leave revoked—Duty of applicant towards Supreme Court not discharged by summarising judgment of Court below when findings of Court below were also recorded on his misrepresentation.

There is a restricted right of appeal to the Supreme Court conferred by the Constitution upon litigants in civil cases. Exercise of the jurisdiction of the Court under Art. 136 of the Constitution is discretionary; it is exercised sparingly and in exceptional cases, when a substantial question of law falls to be determined or where it appears that interference by the Supreme Court is necessary to remedy serious injustice. A party who approaches the Supreme Court invoking the exercise of this overriding discretion of the Court must come with clean hands. If there appears on his

part any attempt to over-reach or mislead the Court by false or untrue statements or by withholding true information which would have a bearing on the question of exercise of the discretion, the Court would be justified in refusing to exercise the discretion or if the discretion has been exercised, in revoking the leave to appeal granted even at the time of hearing of the appeal. It is not correct to say that the duty of an applicant for special leave to the Supreme Court is discharged when he merely summarises the judgment of the Courts below and claims relief on the footing that the findings are correct, when to his knowledge the findings cannot be sustained and the findings have been so recorded because the Courts below have been misled on account of representations for the making of which he was either directly or indirectly responsible. If the defendant has by misleading the Supreme Court obtained an order granting special leave and has under the protection of that order remained in possession of the property in dispute for a period of three years, it would be putting a premium upon the unfair conduct of the defendant to permit him to argue the appeal on the footing other than that on which the case was argued in the High Court, and to argue which presumably no special leave would have been granted. (Special leave granted was revoked.) AIR 1963 S C 1558 and C. A. No 155 of 1963, dated 5 4-1963 (S C), Rel. on. Rajabhai Abdul Rehman Munshi v. Vasu lev Dhanjibhai, (1964) 3 S C R 480 : 66 Bom L R 210 : 1964 Mah L J 484 : 1964 M P L J 560 : (1964) 2 Mad L J (SC) 42 : (1964) 2 Andh W R (SC) 42 : (1964) 2 S C J 196 : A I R 1964 S C 345 (347, 348) (Prs 9, 10, 11).

■ ——Art. 136—Revocation of special leave—Special leave to appeal granted — At subsequent hearing respondent praying for revocation of special leave — Serious mis-statements found in application for special leave. Necessity of giving accurate statements in such application — Application revoked. Hari Narain v. Badri Das, (1963) 1 S C W R 569 : (1964) 1 S C J 51 : (1964) 1 Mad L J (S C) 25 : (1964) 1 Andh W R (SC) 25 : (1964) 2 S C R 203 : 1963 S C D 611 : A I R 1963 S C 1558 (1559, 1560) (Prs 7, 9).

■ ——Art. 136—Granting of special leave ex parte after condoning delay—Revocation of—Recommendation for amendment of the Rules of the Supreme Court.

Except in very rare cases, if not invariably, it should be proper that the Supreme Court should adopt as a settled rule that the delay in making an application for special leave should not be condoned ex parte but that before granting leave in such cases notice should be served on the respondent and the latter afforded an opportunity to resist the grant of the leave. Such a course, besides being just, would be preferable to having to decide applications for revoking leave at the time of hearing appeal on the ground that the delay in making the same was improperly condoned, years after the grant of the leave when the Court naturally feels embarrassed by the injustice that would be caused to the appellant if leave were then revoked when he would be deprived of the opportunity of pursuing other remedies if leave had been refused earlier. The rules of the Court should be amended suitably to achieve this purpose.

Where the leave was granted ex parte after condoning delay of four years, the Supreme Court refused to revoke the leave, in the peculiar circumstances of the case inasmuch as there was no by-passing the High Court and there was no suppression of any fact and the grant of special leave merely served to shorten the proceedings. Civil Misc. Petn. No 71/D of 1954, D/- 5-1-1955 (Punjab at Delhi), Reversed. Ram Lal Kapur and Sons (P.) Ltd. v. Ram Nath, (1963) 2 S C R 242 : (1963) 2 S C J 125 : AIR 1963 S C 1060 (1061, 1062) (Pt A) (Prs 8, 9).

2(c). Rejection of application for special leave—Effect.

■ —Art. 136—Supreme Court Rules, O. 4, R. 30—Rejection of application for special leave — Supreme Court not concerned with proceedings in the High Court—In the matter of D, an Advocate, 1956 Cri L J 280: 1958 S C J 124: (1956) 1 Mad L J (SC) 85: 1956 S C A 507 : 58 Bom L R 510 : (1955) 2 S C R 1006 : 69 Mad L W 915 : A I R 1956 S C 102 (104, 105) (Pt C) (Pr 8).

——Arts. 136 and 137—Petition by convicted person for special leave to appeal dismissed by Supreme Court — High Court ceases to have jurisdiction to entertain review application. See Criminal P. C. (1898), S 561-A. 1962 (1) Cri L J 390 : A I R 1962 All 193 (DB).

——Arts. 136, 226—Award of Industrial Tribunal — Special leave to appeal against award, under Art. 136 refused by Supreme Court — Jurisdiction of High Court to entertain application under Art. 226 to quash award not affected. See Ibid, Art. 226. AIR 1959 Ker 291.

——Art. 136 — Supreme Court refusing leave to appeal against award of Industriai Tribunal—High Court if can exercise powers under Art. 226.

The right to apply for leave to appeal to the Supreme Court under Art. 136 if it could be called a "right" at all, cannot be equated to a right to appeal. That the Supreme Court declined to exercise its discretion in favour of the petitioner by granting the leave asked for under Art. 136 cannot affect the jurisdiction vested in the High Court under Art 226.

However, the fact that the Supreme Court declined to exercise its discretion in favour of the petitioner and refused to grant leave under Art. 136, against the award of the Industrial Tribunal without giving any reasons is a factor that ought to be taken into account when the High Court is called upon to exercise its discretion in favour of interference. 71 Mad L W 371: (1958) Mad L J (Cr) 584: (1958) 2 Mad L J 74: (1958) 2 Lab L J 315: I L R (1958) Mad 672: AIR 1958 Mad 398 (403) (Pt A) (Prs 18, 19, 21).

2(d). Rule of exhaustion of statutory remedies.

■ ——Art. 136 — Applicability and scope — Limitations imposed by Supreme Court on exercise of its own powers — Order passed under Central Sales Tax Act—Appeal to Supreme Court against order—Appellant failing to exhaust remedies available under Act—His appeal will not be entertained. AIR 1961 S C 1106 and AIR 1958 S C 667, Disting. Ram Saran Das and Bros. v. Commercial Tax Officer, Calcutta, 1962 S C D 192 : 1962 Supp (1) S C R 276 : (1962) 2 S C J 210 : (1962) 13 S T C 6 : AIR 1962 S C 1326 (1328, 1329) (Prs 3, 4).

■ ——Art. 136—Scope— Proper course for an appellant is to exhaust all his remedies (including those in the High Court) before invoking jurisdiction of Supreme Court under Art 136. The State of Bombay v. Ratilal Vadilal, (1961) 12 S T C 18: (1961) 2 S C R 367 : (1963) 1 S C J 794 : (1963) 2 Mad L J (S C) 1 : (1963) 2 Andh W R (S C) 1 : AIR 1961 S C 1106 (1106) (Pt A) (Pr 3).

■ ——Art. 136—Scope—Special leave against decision of Single Judge, when appellant did not avail himself of his right to make Letters Patent Appeal cannot be granted—Obiter. Raruha Singh v. Achal Singh, 1960 Jab L J 870 : AIR 1961 S C 1097 (1099) (Pt C) (Pr 9).

■ ——Art. 136—Scope — Special leave when to be granted—Decision of Income-tax Tribunul — Under Income-tax Act assessee can only apply to the tribunal to refer to a High Court question of law arising out of the tribunal's decision — Act gives no

right of appeal at all from the decision nor any other remedy against it—Application of assessee for reference made one day late under circumstances beyond his control—Application dismissed and appeal against such dismissal also dismissed— Assessee then moving Supreme Court for special leave— Leave held could not be refused on the ground that the assessee had been unsuccessful in availing himself of the other remedy provided in the Income-tax Act. Baldeo Singh v. Commr. of Income-tax Delhi, (1960) 40 ITR 605 : (1961) 1 S C J 512 : (1961) 1 S C R 482 : AIR 1961 S C 736 (738, 799) (Pt A) (Pr 5).

● ——Art. 136 — Special leave — Grant of, when appeal lies to another Court.

It cannot be contended that the Supreme Court has no jurisdiction to entertain an appeal against the order of a Court when an appeal lies from that order to another Court. The provisions of Art. 136 of the Constitution are not circumscribed by any such limitation. But when an appeal lay to another Court the Supreme Court should not give special leave and thereby short circuit the legal procedure prescribed. Union of India v. Kishorilal Gupta, (1960) 1 S C R 493 : 1960 S C J 1101 : (1960) 2 S C A 343 : 1961 An L T 20 : AIR 1959 S C 1362 (1363, 1364, 1372) (Pt A) (Prs 2, 20).

3. Certificate of fitness and special leave—Distinction.

● ——Art. 136 (1)—Scope — Comparison with Articles 133 (1) and 134 (1).

Article 136 (1) confers very wide powers on the Supreme Court and as such, its provisions have to be liberally construed. It is significant that whereas Arts. 133 (1) and 134 (1) provide for appeals to that Court against judgments, decree or final orders passed by the High Courts no such limitation is prescribed by Art. 136 (1). All Courts and all Tribunals in the territory of India except those in Cl. (2) are subject to the appellate jurisdiction of the Supreme Court under Art. 136 (1). It is also clear that whereas the appellate jurisdiction of the Supreme Court under Arts. 133 (1) and 134 (1) can be invoked only against final orders, no such limitation is imposed by Art. 136 (1). In other words, the appellate jurisdiction of the Supreme Court under this latter provision can be exercised even against any interlocutory order or decision. All causes and matters that are brought for adjudication before Courts or Tribunals are covered by Art. 136(1). It is true that in exercising its powers under the Article the Supreme Court in its discretion can refuse to entertain applications for special leave where it appears to the Court that interference with the orders sought to be appealed against may not be necessary in the interest of justice. But the limitations thus introduced, in practice, are the limitations imposed by the Court itself in its discretion. They are not prescribed by Art. 136 (1). Engineering Mazdoor Sabha v. Hind Cycle, Ltd, (1963) 1 S C W R 367 : (1964) 1 S C J 140 : (1963) Supp 1 S C R 625 : 1963 (6) Fac L R 103 : (1963) 2 S C A 101 : (1962) 2 L Lab L J 760 : (1963-64) 24 F J R 245 : AIR 1963 S C 874 (877) (Pt A) (Pr 3).

——Art. 136—Principles regarding grant of special leave and certificate of fitness — Similarity. See Ibid. Art. 134 (1) (c). AIR 1960 All 458.

[Overruled on another point in AIR 1961 All 630 (FB)].

——Arts. 136, 134 (1) (c) — Scope — Certificate of fitness for appeal and special leave—Distinction. See Ibid, Art. 134 (1) (c). 1957 All L J 228.

——Arts. 136, 134 (1) (c)—Grant of certificate by High Court— Considerations involved not same as those under Art. 136. See Ibid, Art. 134 (1) (c). AIR 1963 Mad 66.

——Arts. 136 and 134 (1) (c) — Principles governing the grant of certificate of fitness under Art. 134 (1) (c) and the granting of special leave by Supreme Court under Art. 136—Distinction. See Ibid. Art. 133. 1954 Cri L J 167 : AIR 1954 Raj 271 (DB).

4. Effect of grant of special leave.

● ——Art. 136—Withdrawal of concession on a point of law—Question whether "ottas' and 'chabutras' fall within term 'buildings' not purely one of law — State not entitled to withdraw concession on such question made before High Court — What was urged in special leave petition was pressed in support of application for grant of certificate. State of Bombay v. Sardar Venkat Rao. 1962 Nag L J 369 : 1962 M P L J 753 : (1963) 1 S C R 428 : AIR 1966 S C 991 (993) (Pt B) (Pr 8).

● ——Art. 136—Appeal by special leave—Powers of Supreme Court—Respondent, if can be allowed to support judgment in his favour even on grounds found against him—Supreme Court Rules (1950), O. 18, R. 3.

As soon as special leave is granted there is an appeal before the Supreme Court and while dealing with such an appeal the Supreme Court exercises its civil jurisdiction, It is true that the Supreme Court Rules do not contain any provision analogous to O. 41, R. 22 of the Code of Civil Procedure which permits a party to support the judgment appealed against upon a ground which has been found against him in that judgment. The provision nearest to it is the one contained in O. 18, R. 3 of the Rules of the Supreme Court which requires parties to file statements of cases. There is no reason to limit the provisions of this rule only to those contentions which deal with the points found in favour of that party in the judgment appealed from. Apart from that, while dealing with the appeal before it the Supreme Court has the power to decide all the points arising from the judgment appealed against and even in the absence of an express provision like O. 41, R. 22 of the Code of Civil Procedure it can devise the appropriate procedure to be adopted at the hearing. There could be no better way of supplying the deficiency than by drawing upon the provisions of a general law like the Code of Civil Procedure and adopting such of those provisions as are suitable. Normally a party in whose favour the judgment appealed from has been given will not be granted special leave to appeal from it. Considerations of justice, therefore, require that the Supreme Court should in appropriate cases permit a party placed in such a position to support the judgment in his favour even upon grounds which were negatived in that judgment. AIR 1954 S C 513 and AIR 1959 S C 93, **Overruled**. Ramanbhai Ashabai Patel v. Dabhi Ajitkumar Fulsinji, (1965) 6 Guj L R 423 : AIR 1965 S C 669 (676) (Pt B) (Pr 18).

● ——Art. 136 — Appeal by special leave from order of High Court in revision under S. 17, Mysore House Rent and Accommodation Control Act—Matter which cannot be raised before High Court in revision cannot be canvassed before Supreme Court. Misrilal Parasmal v. Sadasiviah, (1961) 2 S C W R 103 : (1965) 1 S C J 265 : AIR 1965 S C 553 (554, 555) (Pt B) (Pr 2).

——Art. 136 — Scope— Powers of Supreme Court— Proper certificate granted — Scope of appeal not restricted to certificate. See Ibid, Art. 133. AIR 1964 S C 136.

● ——Art. 136—Estoppel — Accepting benefit under decree appealed from—Pre-emption decree — Appeal by vendee under Art. 136 — Appellant withdrawing the deposit of pre-emption price after grant of special leave — Appellant not precluded from continuing appeal. See Evidence Act (1872), S. 115. (1961) 2

S C J 601 : (1961) 2 Mad L J (S C) 165 : A I R 1961 S C 1327.

● ——Art. 136 — Question of law — Question as to nature of offence on proved facts—Power of Supreme Court.

In a case where the question for decision is the nature of the offence deducible from proved facts, the matter is one of pure law and even if there has been no elucidation of the point with clarity in the Courts below, the Supreme Court is not precluded from giving a decision as to the exact nature of the offence proved on a scrutiny of the findings. Dharman v. State of Punjab, 1957 Cri L J 420 : 1957 S C R 1 : A I R 1957 S C 324 (326) (Pt C) (Pr 9).

● ——Art. 136 — Admission of appeal by special leave—Procedure to be followed.

The assumption that once an appeal has been admitted by special leave the entire case is at large and the appellant is free to contest all the findings of fact and raise every point which could be raised in the High Court or the trial Court is entirely unwarranted. Only those points can be urged at the final hearing of the appeal before the Supreme Court which are fit to be urged at the preliminary stage when leave to appeal is asked for, because it would be illogical to adopt different standards at two different stages of the same case. The exercise of this extraordinary jurisdiction is not justifiable in criminal cases unless exceptional or special circumstances are shown to exist or that substantial and grave injustice has been done. A I R 1950 S C 169, Reiterated. State Government M. P. v. Ramkrishna Ganpatrao, 1954 Cri L J 244 : A I R 1954 S C 20 (22) (Pt B) (Pr 5).

● ——Art. 136 — Supreme Court — Grant of special leave—Effect—Full case if open at the final hearing.

Only those points can be urged at the final hearing of an appeal for which special leave was granted which are fit to be urged at the preliminary stage when leave to appeal is applied for and it would be illogical to adopt different standards at two different stages of the same case. Pritam Singh v. The State. 86 Cal L J 120 : 63 L W 875 : 51 Cri L J 1270 : 4 A I Cr D 610 : 1950 R L W 378 : 53 P L R 1 : (1950) S C R 453 : A I R 1950 S C 169 (171, 172) (Pt D) (Pr 9).

——Art. 136—Leave to appeal — Grant of — Effect. See Ibid, Art. 132. A I R 1957 All 505 (DB).

5. Duty of High Court in disposing of appeal.

● ——Art. 136—Criminal P. C. (1898), S. 421—Summary dismissal—Special leave.

It is not right for the High Court to dismiss an appeal preferred by the accused to that Court summarily where it raises some arguable points which require consideration. In cases which prima facie raise no arguable issue that course is, of course, justified but the Supreme Court would appreciate it if in arguable cases the summary rejection order gives some indication of the views of the High Court on the points. Without the opinion of the High Court on such points in special leave petitions under Art. 136 of the Constitution, Supreme Court some times feels embarrassed if it has to deal with those matters without the benefit of that opinion. Mushtak Hussein v. State of Bombay, 1953 Cri L J 1116 : 1953 S C J 355 : 1953 S C R 825 : 56 Bom L R 1 : 1954 S C A 29 : A I R 1953 S C 282 (286) (Pt C) (Pr 9).

6. "Judgment . . . . . order."

● ——Arts. 136, 226—Trial Court refusing to issue a rule nisi on application under Art. 226 — Appellate Court reversing the order—Appeal to Supreme Court under Art. 136 — Contention that appellate Court should not have interfered with discretion exercised by trial Court — Held, that orders of both Courts are interlocutory — Though powers under Art. 136 are very wide, Supreme Court does not interfere with such orders — Secondly, order of appellate Court merely being that rule nisi should issue, there was no reason to interfere with it. Himansu Kumar Bose v. Jyoti Prokash Mitter, (1964) 1 S C A 347 : A I R 1964 S C 1636 (1640) (Pt B) (Pr 14).

● ——Art. 136—'Determination' and 'order'—Meaning of — Authority of Supreme Court under Article being judicial 'determination' or 'order' sought to be appealed against must also have character of judicial adjudication—Judicial and administrative acts—Distinction.

The expression "determination" in the context in which it occurs in Art. 136 signifies an effective expression of opinion which ends a controversy or a dispute by some authority to whom it is submitted under a valid law for disposal. The expression 'order' must have also a similar meaning, except that it need not operate to end the dispute. Determination or order must be judicial or quasi-judicial ; purely administrative or executive direction is not contemplated to be made the subject-matter of appeal to the Supreme Court. The character of the power conferred upon the Supreme Court original or appellate, by its constitution being judicial, the determination or order sought to be appealed from must have the character of a judicial adjudication.

A judicial decision must be the act of a body or authority invested by law with authority to determine questions or disputes affecting the rights of citizens and under a duty to act judicially. What distinguishes an act judicial from administrative is therefore the duty imposed upon the authority to act judicially. A I R 1950 S C 222, Rel. on.

To make a decision or an act judicial, the following criteria must be satisfied :

(1) it is in substance a determination upon investigation of a question by the application of objective standards to facts found in the light of pre-existing legal rules ; (2) it declares rights or imposes upon parties obligations affecting their civil rights ; and (3) that the investigation is subject to certain procedural attributes contemplating an opportunity of presenting its case to a party, ascertainment of facts by means of evidence if a dispute be on question of fact, and if the dispute be on question of law on the presentation of legal argument, and a decision resulting in the disposal of the matter on findings based upon those questions of law and fact. Jaswant Sugar Mills, Ltd., Meerut v. Lakshmi Chand, (1963) Supp 1 S C R 242 : (1965) 10 Fac L R 179 : (1963) 1 Lab L J 524 : (1963) 2 S C A 192 : (1963-64) 24 F J R 53 : A I R 1963 S C 677 (680, 681, 682) (Pt A) (Prs 10, 11, 13).

● ——Art. 136 — Interlocutory orders — Practice of Supreme Court is generally not to interfere with such orders — Order of remand by High Court directing fresh trial — Supreme Court refused to depart from the practice. Madanraj v. Jalamchand Lodha, 1960 Cri L J 1151 : A I R 1960 S C 744 (745) (Pt B) (Pr 6).

7. "In any cause or matter."

● ——Art. 136—Decision given by Industaial Tribunal — Appeal to Supreme Court — Competency of —Industrial Disputes Act (1947), S. 15.

Per Kania C. J., Fazl Ali and Mahajan JJ.; Mukherjea and Patanjali Sastri JJ., Contra. — Certain words used in Art. 136 seem to have a special significance; these words are 'determination', cause or matter' and tribunal.' These words greatly widen the scope of Art. 136. They show that an appeal will lie

from a determination or order of 'any tribunal' in any cause or matter. Thus, the wording of Art. 136 is wide enough to give jurisdiction to the Supreme Court to entertain an application for leave to appeal.

Per Fazl Ali J. — "The proviso to S. 15 (2), Industrial Disputes Act, relates to a very special type of case (i. e., where the Government is a party to the dispute) and as at present advised I do not wish to express any opinion as to whether an appeal lies to this Court or not in such a case but, in my judgment, where the Government has only to declare the award to be binding an appeal shall lie." Bharat Bank Ltd. v. Employees of Bharat Bank, **(1950-51) 2 F J R 1 : 86 Cal L J 230 : 1950 S C R 459 : AIR 1950 S C 188 (189, 190, 191, 211) (Pt B) (Prs 3, 5, 12, 68).**

——**Art. 136** — The words "in any cause or matter" confer the widest possible jurisdiction on the Supreme Court in the matter of the grant of special leave. The Supreme Court can grant special leave in civil cases, in criminal cases, in income-tax cases, in cases which come up before different kinds of tribunals and in a variety of other cases. Pritam Singh v. The State, **86 Cal L J 120 : 63 Mad L W 875 : 51 Cri L J 1270 : 1950 Mad W N 605 : 53 P L R 1 : 1950 Mad W N (Cr) 236 : 1950 S C R 453 : AIR 1950 S C 169 (171, 172) (Pt C) (Pr 9).**

8. "Any Court or tribunal."

● ——**Arts. 136 (1) and 227**—Tribunal — Meaning of —Tests to determine—'Tribunal' in Art. 227 has also the same meaning as in Art. 136 — State Government exercising appellate jurisdiction under R. 6 (5) and (6) of Punjab Welfare Officers Recruitment and Conditions of Service Rules (1952), is a tribunal. Associated Cement Co., Ltd. v. Sharma, **(1965) 11 Fac L R 77: (1964-65) 27 F J R 204 : (1965) 1 S C A 723 : (1965) 1 Lab L J 433 : AIR 1965 S C 1595 (1599, 1600, 1603, 1605, 1606, 1607, 1608, 1609) (Pt A) (Prs 9, 10, 25, 33, 34, 38, 41, 44, 45, 47).**

● ——**Art 136 (1)—'Court' or 'Tribunal' — Customs officer acting under S. 167 of Sea Customs Act is not a 'Court' or a 'tribunal'—'Central Board of Revenue' and 'Central Government' exercising appellate and revisional powers respectively, under S. 190 and S. 191 are, however, 'Tribunal' within the meaning of Art. 136 (1).**

A Customs Officer is not a 'Court' or a 'Tribunal' though in adjudicating upon matters under S. 167 of the Sea Customs Act, he has to act in a judicial manner. But the Central Board of Revenue exercising appellate power under S. 190 of the Sea Customs Act and the Central Government exercising revisional power under S. 191 thereof are 'Tribunals' within the meaning of Art. 136 of the Constitution. These authorities are constituted by the Legislature and they are empowered to deal with the disputes brought before them by aggrieved persons. The scheme of the Act, the nature of the proceedings brought before the appellate and the revisional authorities, the extent of the claim involved, the nature of the penalties imposed and the kind of enquiry which the Act contemplates, all indicate that both the appellate and the revisional authorities acting under the relevant provisions of the Act constitute Tribunals under Art. 136 of the Constitution, because they are invested with the judicial power of the State, and are required to act judicially. Indo China Steam Navigation Co., Ltd. v. Jasjit Singh, Additional Collector of Customs, Calcutta, **(1965) 1 S C A 402 : (1964) 6 S C R 594 : (1964) 34 Com Cas 435 : 1964 (2) Cr L J 234 : AIR 1964 S C 1140 (1145, 1146, 1148) (Pt B) (Prs 10, 18).**

● ——**Art. 136 (1)—Conditions for invoking Art. 136 (1) — Distinction between quasi-judicial and executive decisions—'Tribunal' contemplated by Art. 136 (1)—Comparison with Arts. 226 and 227—Industrial Disputes Act (1947), S. 10-A—Decision of arbitrator acting under—Appeal under Art. 136 (1)—Not competent — Arbitrator is not a Tribunal, although his decision is quasi-judicial — Positions of Industrial Tribunal and private arbitrator under Arbitration Act compared.**

For invoking Art. 136 (1) two conditions must be satisfied; (1) the act complained against must have the character of a judicial or a quasi-judicial act as distinguished from a mere executive or administrative Act and (2) the authority whose act is complained against must be a Court or a Tribunal. Unless both the conditions are satisfied, Art. 136 (1) cannot be invoked.

The decision of the arbitrators to whom industrial disputes are voluntarily referred under S. 10-A, Industrial Disputes Act, 1947, are no doubt, quasi-judicial decisions and amount to a determination or order under Art. 136 (1). But an arbitrator acting under S. 10-A is not a 'Tribunal' under Art. 136 even though some of 'the trappings of a Court' are present in his case. As one of the essential conditions for invoking Art. 136 (1) is not satisfied special leave to appeal to the Supreme Court from the decision of an arbitrator acting under S. 10-A, Industrial Disputes Act, cannot be granted.

The question whether an act is a judicial or a quasi-judicial one or a purely executive act depends on the terms of the particular rules and the nature, scope and effect of the particular powers in exercise of which the act may be done and would, therefore, depend on the facts and circumstances of each case. Where an authority is required to act judicially either by an express provisions of the statute under which it acts or by necessary implication of the said statute, the decisions of such an authority generally amount to quasi-judicial decisions.

Article 136 (1) refers to a Tribunal in contradistinction to a Court. Tribunal as distinguished from the Court, exercises judicial powers and decides matters brought before it judicially or quasi-judicially, but it does not constitute a Court in the technical sense. A domestic tribunal appointed in departmental proceedings, for instance, or instituted by an industrial employer cannot claim to be a tribunal under Art. 136 (1). Purely administrative tribunals are also outside the scope of the said Article. The tribunals which are contemplated by Art. 136 (1) are clothed with some of the powers of the Courts. They may not be bound by the strict and technical rules of evidence, but, nevertheless, they must decide on evidence adduced before them. The procedural rules which regulate the proceedings before the tribunals and the powers conferred on them in dealing with matters brought before them, are sometimes described as the trappings of a Court and in determining the question as to whether a particular body or authority is a tribunal or not, sometimes a rough and ready test is applied by enquiring whether the said body or authority is clothed with the trappings of a Court.

Apart from the importance of the trappings of a Court, the basic and essential condition which makes an authority or a body a tribunal under Art. 136, is that it should be constituted by the State and should be invested with the State's inherent judicial power: AIR 1950 S C 188, Rel. on.

The arbitrator under S. 10-A of the Industrial Disputes Act is clothed with certain powers, his procedure is regulated by certain rules and the award pronounced by him is given by statutory provisions a cerain validity and a binding character for a specified period. Having regard to these provisions, it may perhaps be possible to describe such an arbitrator, as, in a loose sense, a statutory arbitrator.

But the fact that the arbitrator under S. 10-A is not exactly in the same position as a private arbitrator, does not mean that he is a tribunal under Art. 136. Even if some of the trappings of a Court are present in his case, he lacks the basic, the essential and the fundamental requisite in that behalf because he is not invested with the State's inherent judicial power. He is appointed by the parties and the power to decide the dispute between the parties who appoint him is derived by him from the agreement of the parties and from no other source. The fact that his appointment once made by the parties is recognised by S. 10-A and after this appointment he is clothed with certain powers and has thus, no doubt, some of the trappings of a Court, does not mean that the power of adjudication which he is exercising is derived from the State and so, the main test in determining the question about the character of an adjudicating body is not satisfied. Hence, from the decision of an arbitrator under S. 10-A, special leave to appeal to Supreme Court under Art. 136 (1) cannot be granted.

From the mere fact that a writ under Art. 226 may lie against the award pronounced by an arbitrator acting under S. 10-A it cannot be concluded that such an arbitrator is a "tribunal" within Art. 136 (1).

Like Art. 136, Art. 227 also refers to Courts and tribunals and what is said about the character of the arbitrator appointed under S. 10 A by reference to the requirements of Art. 136 may prima facie apply to the requirements of Art. 227. AIR 1962 Bom 274, Doubted. Engineering Mazdoor Sabha v. Hind Cycle Ltd., (1963) 1 S C W R 367: (1964) 1 S C J 140: (1963) Supp F 1 S C R 625 : 1963 (6) Fac L R 103 (1963) 2 S C A 101 : (1962) 2 Lab L J 760 : (1963-64) 24 F J R 245 : AIR 1963 S C 874 (877, 878, 879, 881, 882, 883, 884) (Pt B) (Prs 4, 5, 6, 8, 15, 16, 19, 21, 23, 24, 25).

● —Art. 136—Appeal lies from adjudication of Courts and tribunals only—Tribunal, meaning of—Conciliation Officer exercising powers under Cl. 29 of Order of U P. Governor under Ss. 3 and 8 of U. P. Industrial Disputes Act—Not a Tribunal within Art. 136—Appeal against this order of direction not competent.

Under Art. 136, an appeal lies to the Supreme Court from adjudications of Courts and tribunals only. Adjudication of a Court or tribunal must doubtless be judicial; but every authority which by its constitution or authority specially conferred upon it is required to act judicially, is not necessarily a tribunal for the purpose of Art 136. A tribunal, adjudication whereof is subject to appeal, must, beside being under a duty to act judicially, be a body invested with the judicial power of the State.

The duty to act judicially imposed upon an authority by statute does not necessarily clothe the authority with the judicial power of the State. Even administrative or executive authorities are often by virtue of their constitution, required to act judicially in dealing with question affecting the rights of citizens. Boards of Revenues, Customs Authorities, Motor Vehicles Authorities, Income-tax and Sales tax Officers are illustations prima facie of such administrative authorities, who though under a duty to act judicially, are still not delegates of the judicial power of the State. Their primary function is administrative and not judicial. In deciding whether an authority required to act judicially when dealing with matters affecting rights of citizens may be regarded as tribunal, though not a Court, the principal incident is the investiture of the "trappings of a Court"—such as authority to determine matters in cases initiated by parties, sitting in public, power to compel attendance of witnesses and to examine them on oath, duty to follow fundamental rules of evidence (though not the strict rules of the Evidence Act), provision for imposing sanctions by way of imprisonment, fine, damages or mandatory or prohibitory orders to enforce obedience to their commands.

The scheme of the Order promulgated by the Governor of U. P. in exercise of his powers under Ss. 3 and 8 of the U. P. Industrial Disputes Act (1947) indicates that no procedure is prescribed for the investigation to be made by the Conciliation Officer under Cl. 29. He is concerned in granting leave to determine whether there is a prima facie case for dismissal or discharge of an employee or for altering terms of employment, and whether the employer is actuated by unfair motives; he has not to decide whether the proposed step of discharge or dismissal of the employee was within the rights of the employer. The Conciliation Officer has undoubtedly to act judicially in dealing with an application under Cl. 29, but he is not invested with the judicial power of the State and he cannot therefore be regarded as a 'tribunal' within the meaning of Art. 136 of the Constitution.

The Conciliation Officer does not hold the status of an industrial tribunal in exercising powers under S 33 of the Industrial Disputes Act or Cl. 29 of the U. P. Order. Therefore, an appeal under Art. 136 of the Constitution to the Supreme Court is not competent against the direction given by the Conciliation Officer exercising power under Cl. 29 of the Order issued by the Governor of U. P. under the U. P. Industrial Disputes Act, 1947. Jaswant Sugar Mills. Ltd., Meerut v. Lakshmi Chand, (1963) Supp 1 S C R 242 : (1965) 10 Fac L R 179 : (1963) 1 Lab L J 524 : (1963) 2 S C A 192 : (1963-64) 24 F J R 53 : AIR 1963 S C 677 (682, 685, 686, 687) (Pt B) (Prs 15, 19, 21, 22, 23).

● —Art. 136—'Tribual'—Order made by Central Government in appeal under S. 111 (3), Companies Act, 1956 — Order is one made by 'tribunal' (Per Majority—Hidayatullah, J. contra).

Per Majority. — The proceedings started under S. 111, Companies Act, 1956, by way of an appeal before the Central Government have all the trappings of a proceeding before a judicial tribunal Central Government exercising appellate powers under S. 111 of the Companies Act, 1956, even before its amendment by Act (65 of 1960), is a tribunal exercising judicial functions and is subject to the appellate jurisdiction of the Supreme Court under Art. 136 of the Constitution.

Per Hidayatullah, J. (Contra)—Whether the right to hear appeals generally against decisions of the Central Government acting as a tribunal be within Art. 136 or not, special leave to appeal should not be granted in such cases, unless the Supreme Court is able to rend the veil of secrecy cast by the law without rending the law itself. Harinagar Sugar Mills, Ltd. v. Sham Sunder Jhunjhunwala, (1962) 2 S C R 339 : (1963) 1 Com Cas R 1 (S C) : (1963) 1 S C J 471 : (1961) 31 Com Cas 387 : (1961) 2 S C A 384 : AIR 1961 SC 1669 (1676, 1683) (Pt B) (Prs 16, 44).

● —Art. 136 — Appeal to Central Government under S. 111 (3) of the Companies Act, 1956—Refusal of registration of shares Presumption in favour of directors—Burden of proof on person appealing against refusal order of directors—Central Government being tribunal should record reasons.

A party can maintain a petition for an order for rectification of the register of shareholders. In the hearing of such a petition normally the Court will presume the exercise of the power was bona fide. The discretionary power conferred by the articles of association to refuse to register would be presumed to be properly exercised and it was for the aggrieved

transferor to show affirmatively that it had been exercised mala fide and not in the interest of the company. (1872) 8 Ch A 446 and (1942) 1 Ch 304, Rel. on.

In the Companies Act, 1956, the Legislature has provided a right of appeal to the Central Government, in S. 111 against the order of refusal. But the power to entertain the appeal is not unrestricted; being an alternative to the right to approach the civil Court, it must be subject to the same limitations which are implicit in the exercise of the power by the civil Court under S. 155. The Central Government may therefore exercise the power to order that the transfer which the directors have in their discretion refused, be registered if it is satisfied that the exercise of the discretion is mala fide.

As the Central Government acts as a tribunal exercising judicial powers and the exercise of that power is subject to the jurisdiction of the Supreme Court under Art. 136 of the Constitution the power of the supreme Court cannot be effectively exercised if reasons are not given by the Central Government in support of its Order. Harinagar Sugar Mills, Ltd. v. Shyam Sunder Jhunjunwala, (1961) 31 Com Cas 387; (1962) 2 S C R 339 : (1963) 1 Comp Cas R 1 (S C) (1963) 1 S C J 471 : (1961) 2 S C A 384 : AIR 1961 SC 1669 (1677, 1678, 1679) (Pt C) (Prs 20, 23).

● —Art. 136—'Court or tribunal'—Meaning of.

Per Hidayatullah, J.—By 'Court' is meant Courts of Civil Judicature and by 'tribunals', those bodies of men who are appointed to decide controversies arising under certain special laws. Among the powers of the State is included the power to decide such controversies.

The word 'judicial' has two meanings. It may refer to the discharge of duties exercisable by a Judge or by Justices in Court, or to administrative duties which need not be performed in Court, but in respect of which it is necessary to bring to bear a judicial mind —that is a mind to determine what is fair and just in respect of the matters under consideration. That an officer is required to decide matters before him 'judicially' in the second sense does not make him a Court or even a tribunal. Harinagar Sugar Mills Ltd. v. Shyam Sunder Jhunjhunwala, (1961) 31 Com Cas 387 : (1962) 2 S C R 339 : (1963) 1 Com Cas R 1 (SC): (1963) 1 S C J 471 : (1961) 2 S C A 384 : AIR 1961 S C 1669 (1679, 1680, 1681) (Pt E) (Prs 30, 32, 33, 34).

● —Art. 136—'Tribunal' meaning of— (Words and Phrases—Tribunal)

The expression 'Tribunal' as used in Art. 136 does not mean the same thing as 'Court' but includes, within its ambit, all adjudicating bodies, provided they are constituted by the State and are invested with judicial as distinguished from purely administrative or executive functions. The only Courts or tribunals, which are expressly exempted from the purview of Art. 136, are those which are established by or under any law relating to the Armed Forces as laid down in clause (2) of the Article. AIR 1950 S C 188, Rel. on. Durga Shankar Metha v. Thakur Raghuraj Singh, (1954; 2 M L J 385; 1955 S C A 501 : 1955 S C R 267 : 1954 S C J 723 : AIR 1954 S C 520 (522) (Pt B) (Pr 4).

9. "In the territory of India".

● —Art. 136—Order made by Tribunal in Pondicherry at a time when it did not form part of India —Special leave under Art. 136 cannot be granted.

Special leave to appeal to the Supreme Court under Art. 136 cannot be granted from an order which was passed by the Appellate Authority in Pondicherry under the Motor Vehicles Act at a time when Pondicherry was not within the territory of India. AIR 1962 S C 797, Foll. K. S. Ramamurthy Reddiar v. Chief Commr., Pondicherry, (1963) 1 S C W R 779 : (1964) 1 S C A 108 : (1964) 1 S C R 656 : AIR 1963 S C 1464 (1466) (Pt A) (Pr 6).

● —Arts. 136 (1), 1 (3) (c), 12, 32, 142 — Pondicherry, if territory of India—Appeal under Art. 136 (1) from orders of Chief Commissioner of Pondicherry acting as appellate authority under S. 64, Motor Vehicles Act, if maintainable — Writ petition against orders — Enforcement of orders on writ petition — Powers under Art. 32 not circumscribed by territorial limitations — Question whether Pondicherry is Indian territory, referred to Union Government under S. 4, Foreign Jurisdiction Act.

No appeal lies to Supreme Court under Art. 136 (1) from the orders of the Chief Commissioner Pondicherry, acting as Appellate Authority under S. 64, Motor Vehicles Act, 1939, which was extended to Pondicherry by Government of India with effect from June 19, 1959, by a notification under S. 4, Foreign Jurisdiction Act, 1947, if Pondicherry is not a territory of India. But the powers of the Supreme Court under Art. 32 of the Constitution are not circumscribed by any territorial limitation. It extends not merely over any authority within the territory of India but also those functioning outside provided that such authorities are under the control of the Government of India.

Per Majority : The power conferred on the Supreme Court by Part III of the Constitution has, however to be read in conjunction with Art. 12 of the Constitution. Article 142 brings in a limitation as regards the territory in which the orders or directions of this Court could be enforced. It is manifest that there is an anomaly between the powers of this Court under Art. 32 read with Art. 12 and the executability or enforceability of the orders under Art. 142. If the order of the authority under the control of the Government of India but functioning outside the territory of India was not of an executive or administrative nature, relief can be afforded to a petitioner under Art. 32 by passing suitable orders against the Government of India directing them to give effect to the decision of this Court by the exercise of their powers of control over the authority outside the territory of India. Such an order could be enforceable by virtue of Art. 144, as also Art. 142. But in a case where the order of the outside authority is of a quasi-judicial nature as in this case, resort to such a procedure is not possible and if the orders or directions of this Court could not be directly enforced against the authority in Pondicherry, the order would be ineffective.

Per Court : Having regard to the subject dealt with the expression, 'acquired' in Art. 1 (3) (c) should be taken to be a reference to 'acquisition'. Where the administration of the territory is being conducted under the powers vested in the Government under the Foreign Jurisdiction Act such as in the case of Pondicherry this would prima facie show that Pondicherry has not been 'acquired' but shall continue to be outside the territory of India. But though this might be very strong evidence that the territory has not been 'acquired', it is still not conclusive.

Their Lordships in the exercise of the powers vested in them under S. 6 of the Foreign Jurisdiction Act, 1947, referred to the Union of India for submission of their answers to the following questions : (1) Whether Pondicherry which was a former French Settlement is or is not at present comprised within the territory of India as specified in Art. 1 (3) of the Constitution by virtue of the Articles of the Merger Agreement, dated 21st October, 1954, between the Governments of India and France and other relevant agreements, arrangements, acts and conduct of the two Governments. (2) If the answer to Question 1 is

that Pondicherry is not within the territory of India, what is the extent of the jurisdiction exercised by the Union Government over the said territory and whether it extends to making all and every arrangement for its civil administration, its defence and in regard to its foreign affairs. The Government of India might also state the extent of jurisdiction which France possesses over the area and which operates as a diminution of the jurisdiction ceded to or enjoyed by the Government of India. N. Masthan Sahib v. Chief Commr., Pondicherry, (1964) 1 S C A 119 : 1962 Supp (1) S C R 981 : A I R 1963 S C 533 (535, 536, 537, 538, 539, 540) (Prs 4, 6, 7, 8, 10, 11, 13, 20).

● ——Art. 136 — Special leave to appeal to Supreme Court from sentence passed by the Hyderabad High Court before 26th January, 1950—If can be granted — Interpretation of Statutes — Considerations of hardship — Relevancy.

On the question whether the Supreme Gourt can grant special leave to appeal under Art. 136 of the Constitution from judgments or sentences which were passed and made by the Hyderabad High Court on the 12th, 13th and 14th December, 1949. (i. e.) before the 26th of January. 1950, when the Constitution of India became applicable to Hyderabad State,

Held, Under the words used in Art. 136, the Courts which passed judgments or sentences must be Courts within the territory of India. The territory of the Government of His Exalted Highness the Nizam was never the territory of India before 26th of January, 1950 and therefore the judgments and sentences passed by the High Court of His Exalted Highness the Nizam on the 12th, 13th and 14th of December, 1949, cannot be considered as judgments and sentences "passed by a Court within the territory of India" within the meaning of Art. 136 of the Constitution of India and therefore special leave to appeal against such judgments and sentences cannot be granted.

The question of hardship cannot be and, should not be allowed to affect the true meaning of the words used in the Constitution. The proper way is to approach the Articles irrespective of considerations of hardship. Janardhan Reddy v. The State, 1951 Mad W N 709 : 1951 Mad W N (Cri) 213 : 64 L W 378 : 52 Cri L J 391 : 5 A I Cr D 270 : 1950 S C R 940 (1951) S C J 98 : AIR 1951 SC 124 (127) (Pts A, B) (Prs 7, 8, 9).

10. Criminal cases—Appeal to Supreme Court.

(a). Appeal against acquittal.

10. Criminal cases—Appeal to Supreme Court.

● ——Art. 136 — Criminal appeal—Sentence — Interference—Practice of Supreme Court—Case presenting unusual features — Sentence reduced to that already undergone. See Ibid, Art. 134. 1965 (1) Cri L J 641 : AIR 1965 S C 722.

● ——Art. 136—Criminal trial—Duty of prosecution to examine material witnesses—Some witnesses not examined on ground of their being won over — Duty of Court — Court not calling such witnesses — Supreme Court in appeal will take this fact into account. See Criminal P. C. (1898), S. 286. 1965 (1) Cri L J 226 : AIR 1965 S C 202.

● ——Art. 136 — Conviction for murder with a pistol confirmed by High Court in appeal — Appeal by Special Leave to Supreme Court — Subsequent acquittal of accused under S. 19 (1) (f) Arms Act in a companion case started against accused — Such acquittal held could not be taken into account in disposing appeal by Supreme Court. See Criminal P. C. (1898), S. 403. 1965 (1) Cri L J 112 : A I R 1965 S C 79.

● ——Art. 136—Conviction by High Court in appeal —Supreme Court's jurisdiction to interfere—Practice of Supreme Court stated.

Per K. Subba Rao and Mudholkar, JJ. : In an appeal under Art. 136, against the judgment of the High Court convicting an accused after setting aside the order of acquittal made by a subordinate Court, the Supreme Court has undoubted jurisdiction to interfere even with findings of fact arrived at by the High Court.

The Supreme Court can, under Art. 136, in its discretion, entertain an appeal and exercise all the powers of an appellate Court in respect of judgments, decrees, determinations, sentences or orders mentioned therein. But that wide jurisdiction has to be regulated by the practice of the Court. The fact that the appellate Court in setting aside the order of acquittal has not followed the principles laid down by the Supreme Court in AIR 1961 S C 715, may certainly be a ground for that Court interfering with the judgment of the High Court. But if the High Court, having followed the aforesaid principles has considered the evidence and given findings of fact thereon, the same practice obtaining in the Court in regard to findings of fact in appeals under Art. 136, of the Constitution may conveniently be adopted.

Ordinarily the Supreme Court addresses itself to two questions when such an appeal comes before it for disposal, namely, (i) did the appellate Court follow the principles laid down by that Court in Sanwat Singh's case, AIR 1961 S C 715, in appreciating the evidence; and (ii) if it did, is it one of those exceptional cases which calls for the interference of that Court?

Per Raghubar Dayal, J. : The entire exercise of the Court's discretion under Art. 136, is solely dependent on the views of a particular Bench deciding a certain appeal on the basis of the facts and law and it is for that Bench as to how to proceed to hear and decide that appeal. No useful purpose is served by laying down what appears to a certain Bench to be a preferable mode for hearing such appeals and when to interfere with the order of the Court below. It is really for the Bench hearing the special leave petition to consider as fully as possible whether the case deserves a hearing in the Supreme Court, if it deserves a hearing whether that is to be limited to any particular aspect of law or fact and that therefore if the Bench grants special leave, it should make clear the matters on which it considers a hearing in the Supreme Court desirable or necessary. If no such indication is given, the appeal should preferably be heard both on facts and law. Dividing the hearing of an appeal under Art. 136, into two parts, hearing on a broader view and later, if necessary, on facts, does not go to make a hearing as perfect as it would be desirable for a proper adjudication of the appeal.

After hearing the appeal fully, the Court is in the best position as to how to dispose of the appeal. It can surely dispose of it by merely stating that it sees no reason to consider the findings of fact to be incorrect or it may consider those findings and express a different opinion. Nihal Singh v. The State of Punjab, 1965 Mad L J (Cri) 65 : (1965) 1 S C J 160 : 1964 S C D 853 : 1965 (1) Cri L J 105 : A I R 1965 S C 26 (28, 29, 33) (Prs 4, 20, 21).

● ——Art. 136—Practice of Supreme Court — Interference with conclusion of High Court in criminal case.

In an appeal with special leave the Supreme Court would not be justified in interfering with the conclusion of the High Court especially when its attention has not been invited to any substantial infirmity in the reasoning of that Court. Noor Khan v. State of Rajasthan, (1964) 1 Mys L J (S C) 1 : 1964 S C D 395,

1964 (1) Cr L J 167 : (1964) 1 S C W R 194 : 1964 S C D 395 : AIR 1964 S C 286 (294) (Pt C) (Pr 20).

● —Art. 136 – Sentence.— Accused not converting money of Municipal Board to his own use but using same for advances to officers of Board— Sentence already undergone held sufficient — Ordinarily Supreme Court does not interfere in the matter of sentence in appeals under Art. 136. See Prevention of Corruption Act (1947), S. 5. 1964 (1) Cri L J 11 : AIR 1964 S C 28.

● —Art. 136 – Appeal against acquittal—Powers of High Court in disposing of appeal—Approach which High Court must adopt in dealing with such appeals —Interference by Supreme Court in special appeal against conviction by High Court. See Criminal P C. (1898), S. 423 (1) (a). 1963 (1) Cr L J 235 : AIR 1963 S C 200.

● —Art. 136—Arrest and detention of foreigner for purpose of deportation — Protection under Art. 22, if available — Non-production of detenu within 24 hours of his arrest before nearest Magistrate—Legality of detention — Order of High Court under S. 491 Criminal P.C., declaring detention as illegal—Appeal by special leave under Art. 136 — Detenu obtaining interim injunction against State from executing order of deportation pending disposal of his suit — Interference by Supreme Court. Cri. Misc. Case No 186 of 1960 D/- 28-7-1960 (All.) **Reversed.** See Ibid, Art. 22. 1962 (2) Cr L J 499 : AIR 1962 S C 1506.

● —Art. 136—Misdirection in charge of jury—High Court in reference under S. 307 can consider evidence afresh and come to its own conclusion — In such case Supreme Court should not in exercise of its discretionary jurisdiction under Art. 136 of the Constitution interfere with the findings of the High Court. Nanavati, K. M. v. State of Maharashtra, 1962 Mad W N 363 : 1962 Supp (1) S C R 567 : 64 Bom L R 488 : 1962 Mad L J (Cr) 531 : (1962) 2 S C A 434 : (1962) 2 S C J 347 : 1962 (1) Cr L J 521 : AIR 1962 S C 605 (623) (Pt H) (Pr 25).

● —Art. 136—Criminal appeal by special leave — Sentence —Interference.

In a trial for offence under S. 161, I P. C., the Supreme Court would ordinarily not interfere with the quantum of punishment given by the Courts below particularly in the exercise of its jurisdiction under Art. 136. Ramanlal Mohanlal Pandya v. State of Bombay, 1960 Cr L J 1380 : AIR 1960 S C 961 (966) (Pt B) (Pr 8).

● —Art. 136—Scope — Dismissal of petition under S. 488 —Appeal by special leave to Supreme Court— Plea of invalidity of inquiry raised for first time before Supreme Court—Though ordinarily Supreme Court would not interfere in such a case under Art. 136, considering the special circumstance of the case, the Supreme Court would interfere and set aside the orders of Magistrate on ground of illegal procedure followed by him. Nand Lal Misra v. Kandhiyao Lal Misra, 1960 Mad W N 635 : ILR (1960) 2 All 384 : 1960 M P L J 1113 : 1960 Nag L J 873 : (1961) 1 S C J 65 : 1961 S C D 14 : 1960 Cr L J 1246 : (1960) 2 Ker L R 165 : 1960 Ker L J 673 : (1960) 2 S C A 222 : 1961 All W R (HC) 58 : (1960) 3 S C R 431 : 1961 Andh L T 77 : 1961 M L J (Cr) 15 : (1961) 1 SCJ 65 : AIR 1960 S C 882 (884) (Pt B) (Pr 6),

● —Art. 136 — Power of Supreme Court — Appeal by special leave against order of High Court under S. 561-A, Criminal P. C. refusing to exercise its inherent power to quash criminal proceedings at interlocutory stage — What Supreme Court has to decide is whether judgment under appeal is erroneous in law so as to call for interference under Art. 136— Question whether Supreme Court would have come to the same conclusion as that of High Court is not really very material R.P. Kapur v. State of Punjab, 1960 Mad W N 631: 1961 S C D 30: 1960 Cr L J 1239 : (1960) 2 Ker L R 208 : 1961 All W R (HC) 49 : 1961 M L J (Cr) 21 : ILR (1960) 2 Punj 450 : (1961) 1 S C J 59 : (1960) 3 S C R 388 : A I R 1960 S C 866 (871) (Pt C) (Pr 11).

● —Art. 136 — Criminal appeal — Interference — Charge to jury—Misdirection—Charge suffering from plethora of details and extraordinarily lengthy — Interference. See Criminal P. C. (1898), S. 297. 1960 Cr L J 1020 : AIR 1960 S C 706.

● —Arts. 136, 134—Appeal against verdict of jury —(Criminal P. C. (1898), S. 423).

Where the appeals before the High Court and before the Supreme Court are against the convictions and sentences based on the acceptance of the verdict of the jury against each of the accused, scope for interference on appeal either by the High Court or by the Supreme Court is very limited. Sardul Singh v. State of Bombay, 35 Mys L J 319 : 1958 All Cri R 19 : 1958 All W R (Sup) 1 : 60 Bom L R 691 : 1958 Mad W N (S C) 73 : 1958 S C R 161 : 1957 S C J 780 : 1957 Cr L J 1325 : 1957 M L J (Cr) 739 : AIR 1957 S C 747 (759) (Pt B) (Pr 34),

● — Art. 136 -Powers of Supreme Court.

Held, that the Supreme Court was only deciding whether the High Court had given true effect to the principles which must guide a Court in an appeal against an acquittal and was not holding that certain things must have happened as a fact because that was not its function. Ranjanam Singh v. State of Bihar, 1956 Cr L J 1254 : AIR 1956 S C 643 (653, 654) (Pt E) (Pr 44).

● —Art 136 — Conviction—Interference by Supreme Court—Grounds.

Ordinarily if there were no special circumstances, the Supreme Court would not interfere with the conviction. Santa Singh v. State of Punjab, 1956 Pat L R (S C) 192 : 1956 Cr L J 930 : A I R 1956 S C 526 (527) (Pt A) (Pr 3).

● —Art. 136 — Complaint in respect of offences, under Ss. 193 and 471, Penal Code in relation to proceedings before Subordinate Judge First Class— Who can make — Complaint made by Senior Subordinate Judge — Legality — Appeal to District Judge who transferred it for disposal to Additional District Judge—Legality—Additional District Judge rejecting application - Revision to High Court — Powers of High Court — Appeal to Supreme Court by special leave — Interference — See Criminal P. C. (1898), S. 195. AIR 1956 S C 391.

● —Art 136 — Criminal P. C. (1898), S. 417 and S. 423 — Appeal against acquittal under S. 417 — Interference by High Court — Special leave under Art. 136 —Interference by Supreme Court.

Per Venkatarama Ayyar J.—When in appeal under S. 417, Criminal P. C., the High Court considers the evidence and comes to its own conclusion the findings recorded by it are not, open to interference by the Supreme Court in special appeal. Had the law provided a further appeal on facts against those orders of reversal the appreciation of the evidence by the High Court would be a matter open to review in the Supreme Court. And that would be the position in an appeal under Arts. 132 (1) and 134 (1) (a) and (b). But where no appeal on facts is provided the decision of the High Court is not open to review by the Supreme Court under Art. 136 on the ground that there were no compelling reasons for the Judges of the High Court to reverse an order of acquittal. Aher Raja Khima v. State of Saurashtra, 1956 Mad W N 665 : 1956 S C J 243 : 1956 Cr L J 426 : (1956) 1

M L J (S C) 135 : 1956 S C A 440 : 9 Sau L R 109 : 1956 All W R (Sup) 60 : 1955 (2) S C R 1285 : 1957 A L T 92 : A I R 1956 S C 217 (228, 229) (Pt G) (Pr 36).

● —Art. 136—Special appeal—Criminal—Practice.

In a criminal appeal with special leave, Supreme Court will interfere only when there are exceptional grounds. Virindar Kumar v. State of Punjab, 1956 Mad W N 210 : 1956 S C J 138 ; 1956 Cr L J 326 : 1956 S C A 410 : (1955) 2 S C R 1013 : 58 Punj L R 584 : ILR (1956) Punj 163 : AIR 1956 S C 153 (158) (Pt D) (Pr 10).

● —Art. 136 — Finding of lower Courts as to voluntary nature of confession.

Where the Courts below have in coming to the conclusion that the confession of the accused was voluntary, failed to note that the C. I. D. Inspector had offered no explanation for keeping the accused in prolonged custody immediately preceding the making of the confession, which matter the prosecution had to explain if the confession was to be accepted as voluntary the Supreme Court would interfere with the finding of the lower Court in the special appeal. Nathu v State of Uttar Pradesh, 1956 Cri L J 152 : AIR 1956 S C 56 (59) (Pt C) (Pr 6).

● —Art. 136 — Held, on facts, that the accused was certainly under the circumstances entitled to the benefit of doubt. Substantial and grave injustice had been done to the accused and there was sufficient cause for interference by the Supreme Court — See Essential Supplies (Temporary Powers) Act (1946), S. 7. 1954 Cri L J 253 : AIR 1954 S C 23.

● —Art. 136 — Interference by Supreme Court.

Where the High Court reverses the decision of the trial Court without noticing or giving due weight and consideration to important matters relied upon by that Court and its decision has to a large extent been influenced by suspicious circumstances disclosed at the trial which are undoubtedly prejudicial to the accused, but in regard to which no opportunity of explanation was given to him when he was examined under the provision of S. 342, Criminal P. C., then these would be considered adequate grounds justifying interference by the Supreme Court in Criminal appeals coming before it on special leave. C. M. Narayan v. State of Trav-Co, 1953 Ker L T 173 : 1954 Cri L J 102 : ILR (1953) Trav-Co 181 : AIR 1953 S C 478 (484) (Pt B) (Pr 20).

10 (a). Appeal against acquittal.

● —Art. 136 — Powers of Supreme Court — Stale matter — Supreme Court refused to interfere with order of acquittal by High Court.

Where the High Court had wrongly set aside a conviction under S. 29, Industrial Disputes Act, for committing a breach of settlement, the Supreme Court refused to interfere with that order under Art. 136 in view of the fact that all disputes between the parties had been settled afresh and the workman concerned had been reinstated. Public interest does not require that a stale matter should be resuscitated : AIR 1960 S C 47. Rel. on. State of Bihar v. Kripa Shankar Jaiswal, ILR 40 Pat 241 : (1961) 2 Fac W R 321 : (1964-65) 26 F J R 414 : 1961 (1) Cri L J 447 : (1961) 1 S C J 291 : 1961 M L J (Cri.) 154 : (1961) 2 S C R 1 : (1961) 1 Lab L J 334 : AIR 1961 S C 304 (307) (Pt D) (Pr 10).

● —Art. 136 — Criminal P. C. (1898), Ss. 374, 376 — High Court not confirming sentence of death but acquitting accused—Appeal by State to Supreme Court under Certificate granted by High Court—Appeal allowed — Supreme Court can in exercise of powers under Art. 136, pass the same order of confirmation of sentence, as the High Court is, by the Code of Criminal P. C., competent to pass — See Criminal P. C. (1898), S. 374. AIR 1960 S C 1125.

● —Art. 136—Appreciation of evidence — Magistrate and Sessions Judge convicting accused on testimony of a single witness — Acquittal by High Court holding that witness was accomplice and his testimony required corroboration — Appeal by special leave — Held, that Sessions Judge had committed an error of law in treating evidence of the witness as reliable — Supreme Court was bound to consider the evidence and arrive at its own conclusion whether it was reliable. State of Delhi v. Shri Ram Lohia, 1960 Cri L J 679 : AIR 1960 S C 490 (493) (Pt B) (Pr 14).

● —Art. 136—Presidency Magistrate wrongly framing charge under S. 500, Penal Code, in violation of provisions of S. 198, Criminal P. C. — Order of acquittal by Magistrate is bad — Powers of Supreme Court in appeal by special leave — See Criminal P. C. (1898), S. 198. 1960 Cri L J 158 : AIR 1960 S C 82.

● —Art. 136 — Acquittal — Power of Supreme Court to interfere — Extent of.

It cannot be said that under Art. 136 interference by the Supreme Court with findings of High Courts in judgments of acquittal is not intended. In Art. 136, the use of the words "Supreme Court may in its discretion grant special leave to appeal from any sentence made by any Court in the territory of India" show that in criminal matter no distinction can be made as a matter of construction between a judgment of conviction or acquittal. The Supreme Court will not readily interfere with the findings of fact given by the High Court, but if the High Court acts perversely or otherwise improperly, interference will be called for : AIR 1956 S C 158. Rel. on. State of Madras v. A. Vaidyanath Iyer, 36 Mys L J 163 : 1958 Mad W N (S C) 34 : 1958 Cri L J 232 : 1958 Mad L J (Cri) 299 : 1958 All Cri R 267 : 1958 S C R 580 : 1958 S C J 335 : (1958) 1 Andh W R (S C) 136 : (1958) 1 Mad L J (S C) 136 : (1958) 2 Lab L J 653 : 1958 All W R (H C) 371 : AIR 1958 S C 61 (63, 64, 65, 66) (Pt A) (Prs 8, 13, 14, 15, 21).

● —Art. 136 — Acquittal by High Court - There is no appeal from such acquittal—Overriding power of Supreme Court under Art. 136—See Ibid, Art. 134. 1954 Cri L J 244 : AIR 1954 S C 20.

● —Art. 136—Exercise of extraordinary jurisdiction by Supreme Court when order of acquittal is made by High Court.

The exercise of the extraordinary jurisdiction vested in the Supreme Court by Art. 136 is not justifiable in criminal cases unless exceptional or special circumstances are shown to exist or that substantial and grave injustice has been done. In the case of an order of acquittal where the presumption of the innocence of an accused person is reinforced by an order of acquittal of a High Court, the exercise of this jurisdiction will not be justified for merely correcting errors of fact or law of the High Court. An occasion for interference with an acquittal order may arise, however, where a High Court acts perversely or otherwise improperly or has been deceived by fraud. AIR 1950 S C 169. Rel. on. State Government, M. P. v. Ramakrishna Ganpatrao Limsey, 1954 Cri L J 244 : AIR 1954 S C 20 (22) (Pt B) (Pr 5).

● —Arts 136 and 134 — Power to look into evidence — Criminal P. C. (1898), S. 404 — See Ibid, Art. 134. AIR 1953 S C 415.

● —Art. 136 — Scope.

In exceptional cases it is within the prerogative of the Supreme Court to grant special leave under Art. 136 even against an order of acquittal where

circumstances amounting to grave miscarriage of justice or obvious perversity or deceipt by fraud are made out. State of Orissa v. Minaketan Patnaik, ILR (1952) Cut 678 : 1953 Cri L J 1084 : AIR 1953 Orissa 160 (163 to 166, 168) (Pt C) (Prs 5, 6, 13, 21) (SB).

11. Appreciation of evidence.

(a) Finding of fact.
(b) Concurrent findings of fact.

11. Appreciation of evidence.

● ——Art. 136 — Criminal appeal—Review of evidence — Practice of Supreme Court.

Normally, Supreme Court does not proceed to review the evidence in appeals in criminal cases, unless the trial is vitiated by some illegality or irregularity of procedure or the trial is held in a manner violative of the rules of natural justice resulting in an unfair trial or unless the judgment under appeal has resulted in gross miscarriage of justice. Kirpal Singh v. State of U. P., (1963) 1 Mys L J (SC) 124 : 1964 Mad W N 203 : 1963 B L J R 864 : 1963 All L J 882 : (1963) 2 S C W R 224 : 1963 S C D 847 : (1964) Mad L J (Cri) 229 : (1964) 1 S C J 411 : ILR (1963) 2 All 945 : (1964) 3 S C R 992 : 1965 (1) Cri L J 636 : AIR 1965 S C 712 (714) (Pt A) (Pr 4).

● ——Art. 136—Criminal appeal on special leave — Appreciation of evidence — Practice of Supreme Court.

The Supreme Court is not a Court of appeal in criminal matters except on a certificate by the High Court or in the exceptional case described in Art. 134 of the Constitution, and it is not the practice of that Court in a criminal appeal on special leave to examine at large the evidence in the case unless there are circumstances which make it feel that there has been a miscarriage of justice. Mohinder Singh v. State of Punjab, 1965 (1) Cri L J 112 : AIR 1965 S C 79 (81) (Pt B) (Pr 8).

● ——Art. 136—Question of participation of individual accused in the unlawful assembly is question of fact — Supreme Court would ordinarily refuse to investigate the same — High Court hearing appeal not examining evidence in this connection with the care it deserved — In view of the serious error made by High Court, Supreme Court found it necessary to examine evidence for itself. Smt. Mathri v. State of Punjab, (1964) 5 S C R 916 : 1964 (2) Cri L J 57 : 1964 S C D 557 : AIR 1964 S C 986 (991, 992) (Pt B) (Prs 21, 22).

● ——Art. 136—Advocate held guilty of professional misconduct by High Court — Appeal to Supreme Court—Contention that Bar Council was not consulted under S. 10 (2) of the Bar Councils Act, before referring matter to District Judge for inquiry — Objection not raised in the High Court — Question held to be one of fact—Supreme Court would not entertain objection—Fact that in the order of reference of the proceedings under S. 10 (2) to the District Judge there is no explicit statement that the Bar Council had previously been consulted is not decisive on the point—There would be a presumption of regularity in respect of official and judicial acts and it would be for the party who challenges such regularity to plead and prove his case. P. J. Ratnam v. D. Kanikaram, (1964) 3 S C R 1 : 1964 (1) Cri L J 146 : 1964 S C D 138 : (1964) 1 Andh L T 121 : AIR 1964 S C 244 (247) (Pt B) (Pr 6).

● ——Art. 136—Appreciation of evidence by Supreme Court—In murder trial evidence of prosecution witnesses accepted as true and adequate not only by the Sessions Judge who had opportunity to see and hear the witnesses but also by the High Court—Their evidence could not be reappraised in the appeals of the accused by special leave to the Supreme Court. Baleshwar Rai v. State of Bihar, 1962 Mad W N 569 : 1962 All W R (H C) 719 : 1962 All Cr R 396 : 1963 B L J R 165 : (1963) 2 S C J 128 : 1963 Mad L J (Cr) 343 : (1963) 2 S C R 433 : ILR 42 Pat 166 : 1964 (1) Cri L J 564 (565) (Pt A) (Pr 6).

● ——Art. 136 — Criminal case — Consideration of evidence.

Per Kapur and Hidayatullah, JJ. — Ordinarily the Supreme Court does not re-assess the evidence and re-examine the findings reached by the Courts below particularly where there are concurrent findings of fact. But where it is urged by the appellants in an appeal from conviction based solely on circumstantial evidence, that the circumstances established do not lead to the irresistible conclusion that the appellants are guilty, while according to the submissions of the respondents, they lead to one conclusion alone that the appellants have been rightly convicted, the Supreme Court may find it expedient to go into evidence and satisfy itself as to the guilt of the appellants. Raghav Prapanna Tripathi v. State of Uttar Pradesh, (1963) 3 S C R 239 : 1963 (1) Cri L J 70 : A I R 1963 S C 74 (80, 81) (Pt C) (Pr 38).

● ——Art. 136—Appreciation of evidence by Supreme Court —Suspicious circumstances regarding execution and attestation of will noted by High Court and some differences in the approach of the two Judges composing the Bench of High Court existing — Supreme Court permitted counsel for parties to go into the entire evidence so that Supreme Court might be able to Judge whether the High Court was right in its conclusion that the fact of registration of the will had dispelled all suspicions. Rani Purnima Debi v. Kumarkhagendra Narayan Deb, (1962) 3 S C R 195 : ILR (1962) 14 Assam 89 : (1962) 1 S C J 725 : (1962) 2 Andh W R (S C) 27 : (1962) 2 Mad L J (S C) 27 : (1961) 2 Ker L R 620 : A I R 1962 S C 567 (569) (Pt C) (Pr 6).

● ——Art. 136—Criminal appeal by special leave — Appraisement of evidence by Supreme Court.

Held, that the features and the nature of the gunshot wound on the deceased ought to have been taken into consideration in assessing the value of the evidence of the eye-witnesses and since the judgment of the High Court did not contain any discussion of the peculiar feature of the gunshot wound on the deceased, the Supreme Court could go through the evidence and discuss the nature of the wound and the evidence. [The Supreme Court found, after appraisement of the evidence no reason to interfere with the assessment of the evidence made by the High Court]. Cr. Appeal No. 890 of 1961 and Murder Ref. No. 74 of 1961 D/ 25th Oct. 1961 (Punj), Affirmed. Sewa Singh v. State of Punjab, 1962 All Cri R 393 : 1962 Mad W N 567 : 1962 All W R (H C) 716 (S C).

● ——Art. 136 — Sales Tax — Bihar Sales Tax Act (1947), S. 25 — Reference of case to High Court — Appeal to Supreme Court from order of High Court — Additional grounds cannot be taken —See Sales Tax —Bihar Sales tax Act, 1947 (19 of 1947), S. 25. AIR 1961 S C 440.

● ——Art. 136—Grounds that workmen were not entitled to compensation for period of lock-out for the reason that representative of workmen did not take part in the conciliation proceedings —Question is not such as can be permitted to be raised under Art. 136. Itakhoolie Tea Estate v. Its Workmen, (1960 61) 18 F J R 87 : (1960) 2 Lab L J 95 : AIR 1960 S C 1349 (1351, 1352) (Pt B) (Pr 6).

● ——Art. 136 — Criminal appeal—Practice of Supreme Court—Review of evidence.

It is the settled practice of the Supreme Court that unless the trial is vitiated by an illegality or irregularity of procedure and the trial is held in a manner violative of the principles of natural justice resulting in an unfair trial, or unless the trial has resulted in gross miscarriage of justice, the Supreme Court in a criminal appeal, does not normally enter upon a review of the evidence on which the conclusion of the Courts below is founded. Shambhu Nath Singh v. State of Bihar, 1960 B L J R 236 : 1960 Cri L J 1144 : AIR 1960 S C 725 (727) (Pt A) (Pr 4).

● ——Art. 136—Right of appeal —:Question of fact —Interference.

Article 136 does not confer a right of appeal on any party from the decision of a Court; but it confers a discretionary power on the Supreme Court to interfere in suitable cases. The practice of the Privy Council and that followed by the Federal Court and the Supreme Court is not to interfere on questions of fact except in exceptional cases, when by disregard to the forms of legal process or some violation of the principles of natural justice or otherwise, substantial and grave injustice has been done. Where the findings in the case at some places appeared to be inconsi-tent, and the admitted and proved circumstances were prima facie indicative of the guilt of the accused, the Supreme Court heard the counsel at some length on facts to ascertain whether it was one of those exceptional cases where the Supreme Court must deviate from the conventional rule of guidance laid down by it. State of Bombay v. Rusy Mistry, 1960 Cri L J 532 : A I R 1960 S C 391 (395, 396) (Pt C) (Prs 11, 12).

● ——Art. 136—Additional evidence— Admission of —Usually the Supreme Court does not admit additional evidence in appeals under Art. 136—It was the duty of the party to adduce evidence at the proper stage. Tika Ram & Sons, Ltd. v. Its Workmen, (1959-60) 16 F J R 255 : 1959 S C R 1287 : (1960) 1 Lab L J 514 : AIR 1960 S C 198 (199, 200) (Pt A) (Prs 8, 9).

● ——Art. 136—Question of fact.

In an appeal by special leave it is not ordinarily permissible to make submissions on questions of fact. Ram Prakash v. State of Punjab, 1959 All W R (H C) 152 : 1959 S C A 524 : 1959 Mad L J (Cr) 51 : 1959 All Cr R 179: 1959 Cri L J 90 : 1959 S C J 181 : 1959 S C R 1219 : AIR 1959 S C 1 (8) (Pt B) (Pr 12).

● ——Arts. 136 and 134—Certificate of fitness—Main ground, relating to question of fact — High Court not justified in sending up such case for further consideration by Supreme Court which does not, ordinarily, concern itself with deciding questions of fact unless such questions arise on a certificate granted under Cl. (a) or Cl. (b) of Art. 134 (1). See Ibid, Art. 134. AIR 1958 S C 22.

● ——Art. 136 — Appreciation of evidence — Interference.

Believing or disbelieving witnesses is essentially a matter of the Courts of fact and in an appeal by special leave the Supreme Court will not ordinarily interfere with their discretion.

Where the High Court was in error in thinking that it was the defence case that one of the accused had been beaten by the police at the time of his arrest but the error had not caused, failure of justice in the circumstances of the case :

Held, that this was not a case in which the Supreme Court would go behind the finding in that respect. Brij Bhukhan v. The State of Uttar Pradesh, 1957 Cri L J 591 : A I R 1957 S C 474 (476, 477) (Pt A) (Pr 5).

● ——Art. 136—Reference under S. 307, Cr. P. Code —High Court failing to consider evidence — Interference—(Cr. P. Code (1898), S. 307).

Where in reference under S. 307, Cr. P. Code the High Court failed to consider the entire evidence on record and in the appeal by special leave, the Supreme Court were invited to consider the entire evidence for themselves and come to the conclusion which, according to the provisions of S. 307 (3) the High Court should have done, the Supreme Court did not think that that was the proper procedure to adopt and remanded the matter to the High Court. Ramyed Rai v. State of Bihar, 1957 Cri L J 557 : 1957 S C R 273 : 1957 Pat L R (S C) 39 : I L R 36 Pat 464 : 1957 B L J R 316 : 1957 All L J 470 : 1957 M P C 363 : 1957 S C A 612 : 1957 All W R (H C) 485 : AIR 1957 S C 373 (375) (Pt B) (Pr 9).

● ——Art. 136 — Appreciation of evidence — Interference.

Except where there has been an illegality, or an irregularity of procedure, or a violation of the principles of natural justice resulting in an absence of fair trial or a gross miscarriage of justice the Supreme Court does not permit a third review of evidence with regard to questions of fact in cases in which two Courts of fact have appreciated and assessed the evidence with regard to such questions. Chikharage Gowda v. State of Mysore, I L R (1956) Mys 377 : 1956 Cri L J 1365 : 1957 Ker L J 25 : AIR 1956 S C 731 (735) (Pt A) (Pr 7).

● ——Art. 136—Appreciation of evidence—Credibility of witness—Interference.

As to whether the witness should be or should not be believed is prima facie a matter for the Courts of fact to determine. Khacheru Singh v. State of Uttar Pradesh, 1956 Cr L J 950 : AIR 1956 S C 546 (548) (Pt C) (Pr 6).

● ——Art. 136 — Appreciation of evidence — Interference.

The Supreme Court is not a Court of appeal when it acts under Art 136 and it is not the practice of the Supreme Court to review or re-assess the evidence in special leave.

Where in a case under S. 149 read with S. 302, Penal Code, the two Courts of fact are satisfied that an unlawful object developed after the attack had started, and there are circumstances from which Courts of fact would deduce such an inference there is no reason for the Supreme Court to interfere. Sukha v. State of Rajasthan, 1956 All W R (Sup) 83 : 1956 Cr L J 923 : 1956 S C J 503 : 1956 S C R 288 : 1956 Andhra L T 583 : 1956 S C A 781 : 1956 S C C 355 : 1956 S C R 288 ; AIR 1956 S C 513 (518, 519) (Pt B) (Prs 29, 31),

● ——Art. 136—Appreciation of evidence.

The Supreme Court will not, save in very exceptional cases, convert itself into a regular Court of appeal on evidence, in dealing with matters arising by way of special leave. In a case where it finds that the appellate Court has not at all applied in judicial mind to the appreciation of the evidence and grave injustice has resulted therefrom, the Supreme Court may remand the case to the first appellate Court for fresh consideration. Surjan v. State of Rajasthan, 1956 Cr L J 815 : AIR 1956 S C 425 (431) (Pt B) (Pr 9).

● ——Art. 136—Appreciation of evidence.

In appeal by special leave, the Supreme Court cannot, consistently with its practice, convert itself into a third Court of facts. Gurbakhsh Singh v. State of Punjab, 1955 Cr L J 869 : AIR 1955 S C 320 (322) (Pr 4).

● ——Art. 136 — Criminal appeal on special leave — Appellants sentenced to death on opinion of third Judge — Consideration of evidence—Practice—(Criminal P. C. (1898), S. 411-A).

Though ordinarily, the Supreme Court in a criminal Appeal would not enquire into the questions of fact, yet where three persons have been sentenced to death on the opinion of the third Judge, despite the opinion of one that the death sentence should not be imposed and of the other that they are not guilty and so should be acquitted, the Supreme Court deemed it advisable to examine the evidence. Pandurang v. State of Hyderabad, **1955 Mad W N 161 : 1955 S C J 106 : 1955 Cr L J 572 : 1955 S C R 1083 ; 1955 S C A 228 : 1955 All W R (Sup) 34 : A I R 1955 S C 216 (218) (Pt A) (Pr 9).**

11 (a). Finding of fact.

● —Art. 136 — Finding of High Court on question of facts — Not allowed to be challenged in Supreme Court. Mangaldas v. Maharashtra State, **1966 Cr L J 106 : (1965) 2 S C W R 561 : (1965) 2 S C A 530 : AIR 1966 S C 128 (130) (Pt A) (Pr 2).**

● —Art. 136 — Appeal against order in writ proceedings — Appreciation of affidavit evidence—Interference with finding of fact — Practice of Supreme Court—Decision of High Court that impugned order was invalid on ground of personal bias—Matters to be considered in appreciating evidence. See ibid, Art. 133. **AIR 1965 S C 1303.**

● —**Art. 136—Appreciation of evidence—Question of fact—Finding of High Court—If can be discarded in appeal under Art. 136.**

Where the High Court in second Appeal has preferred the view taken by the Trial Court and has refused to accept the view taken by the First Appellate Court, in an appeal with special leave under Art. 136 of the Constitution, Supreme Court will not ordinarily discard the findings of the High Court on what is essentially a question of fact, and on which question the Court was competent under the law governing the appeal before it to arrive. Mukund Deo v. Mahadu, **1965 S C D 275 : (1965) 1 Andh L T 306 : (1965) 2 S C J 632 : (1965) 2 Andh W R (SC) 116 : (1965) 2 Mad L J (SC) 116 : (1965) 1 S C W R 278 : AIR 1965 S C 703 (708) (Pt A) (Pr 6).**

● —Art. 136 — Finding of fact—Interference by Supreme Court in exceptional cases.

Ordinarily the Supreme Court in exercise of its jurisdiction under Art. 136 of the Constitution accepts the findings of fact arrived at by the High Court.

Held this was an exceptional case to depart from the said practice and the Supreme Court would consider the entire evidence for itself. Dayabhai Chhaganbhai Thakkar v. State of Gujarat, **(1964) 7 S C R 103 : 1964 (2) Cr L J 472 : 66 Pun L R 695 : (1964) 2 S C J 579 : AIR 1964 S C 1563 (1568, 1569) (Pt G) (Pr 8).**

● —Art. 136 — Sea Customs Act (1878), S. 52-A—Contravention of — It is a question of fact—Supreme Court would not in an appeal by special leave, ordinarily reconsider the matter on evidence with a view to decide whether the said finding is right or not—Indo-China Steam Navigation Co. v. Jasjit Singh Addl. Collector of Customs Calcutta, **(1964) 34 Com Cas 435 : 1964 (2) Cr L J 234 : AIR 1964 S C 1140 (1152, 1153) (Pt F) (Pr 31).**

● —Art. 136 — Accused shown to have accepted money which was not legal remuneration—Presumption can be raised — Rebuttal must be by explanation which must be true and not merely plausible—Presumption under S. 4 (1) and Evidence Act, S. 114—Distinction between— Whether presumption is rebutted is question of fact — Supreme Court is slow to interfere with view of facts taken by High Court. See Prevention of Corruption Act (1947), S. 4 (1). **AIR 1964 S C 575.**

● —**Art. 136—Jurisdiction of High Court in cases of professional misconduct—Finding of High Court —Interference by Supreme Court.**

The jurisdiction exercised by the High Court in cases of professional misconduct is neither civil nor criminal as these expressions are used in Arts. 133 and 134 of the Constitution. In one aspect it is a jurisdiction over an officer of the Court and the Advocate owes a duty to the Court apart from his duty to his clients. In another aspect it is a statutory power and a duty vested in the Court under S. 10 of the Bar Councils Act to ensure that the highest standards of professional rectitude are maintained, so that the Bar can render its expert service to the public in general and the litigants in particular and thus discharge its main function of co-operating with the judiciary in the administration of justice according to law. The Supreme Court is in consequence most reluctant to interfere with the orders of High Courts in this field, save in exceptional cases when any question of principle is involved or where the Supreme Court is persuaded that any violation of the principles of natural justice has taken place or that otherwise there has been a miscarriage of justice. Where however none of these factors are present, it is not the practice of the Supreme Court to permit the canvassing of the evidence on the record either for reappraising it or to determine whether it should be accepted or not. The findings of the High Court therefore on questions of fact are not open before the Supreme Court and it would only consider whether on the facts found, the charge of professional misconduct is established. P. J. Ratnam v. D. Kanikaram, **(1964) 3 S C R 1 : 1964 (1) Cr L J 146 : 1964 S C D 136 : (1964) 1 Andh L T 121 : A I R 1964 S C 244 (246, 247) (Pt A) (Pr 5).**

● —Art. 136—Finding of fact—Industrial dispute—Finding on question of victimisation is generally one of fact and cannot be agitated in Supreme Court—Civil P. C. (1908), S. 112—Industrial Disputes Act (1947), S. 33. P. H. Kalyani v. Air France, Calcutta, **(1963) 1 Lab L J 679 : (1963) 6 Fac L R 435 : (1963-64) 24 F J R 464 : (1963) 2 S C W R 359 : (1964) 1 S C J 566 : (1964) 2 S C R 104 : AIR 1963 S C 1756 (1759) (Pt E) (Pr 7).**

● —Art. 136 — Where the High Court looked for corroboration of the retracted confession and found the same, the finding is one of fact and cannot be disturbed in the appeal. See Evidence Act (1872), S. 24. **AIR 1963 S C 1094.**

● —Art. 136 — Appreciation of evidence—Illegal search—Fact of seizure accepted by High Court—Interference under Art. 136. See Criminal P. C. (1898), S. 103. **1963 (1) Cr L J 809 : AIR 1963 S C 822.**

● —Art. 136 — Search of woman — Decency—It will not be an extraordinary circumstance that some men should have seen an article being taken out from the woman — Evidence regarding recovery of article accepted by High Court — Supreme Court will not depart from its usual practice of accepting the finding. See Criminal P. C. (1898), S. 52. **1962 (2) Cri L J 273 : AIR 1962 S C 1189.**

● —**Art. 136 — Finding of fact — No interference by Supreme Court.**

In considering an appeal by special leave, the Supreme Court normally accepts as final every finding of fact reached by the High Court as well as its appreciation of oral testimony and if there is evidence which could serve as a basis for any finding reached by the High Court the same cannot be canvassed before the Supreme Court. Dalbir Singh v. State of Punjab, **1962 S C D 893 : (1963) 1 S C A 369 : (1963) 2 S C J 367 : 1963 Mad L J (Cri) 468 : (1962) Supp 3**

S C R 25 : 1962 (2) Cri L J 247 : AIR 1962 S C 1106 (1109, 1110) (Pt C) (Pr 10).

● ——**Art. 136**—Income-tax Act (1922), S. 66—Question of fact — Finding as to inflation of wages is one of fact – Finding based on material – Non-acceptance of explanation of assessee — Cannot convert question into question of law. See Income-tax Act (1922), S. 66. (1962) 44 ITR 495 (SC).

● ——**Art. 136**—Systematic appeal on ground of religion — Question of fact—Normally it is the practice of the Supreme Court to accept the findings on questions of fact of the Court immediately below. See Representation of the People Act (1951), S. 123 (2) (a) (ii). AIR 1960 S C 148.

● ——**Art. 136** — Finding of fact based partly on irrelevant evidence — Whether due to admissibility of irrelevant evidence — Question is one of law. See Income-tax Act (1922), S. 66 (1). AIR 1959 S C 1238.

● ——**Art. 136**—Findings of fact of Courts below — Ordinarily Supreme Court will not go behind findings. Mulk Raj v. State of U. P., 1959 Cri L J 1219 : AIR 1959 S C 902 (903) (Pt A) (Pr 4).

● ——**Art. 136 — Finding of fact — Finding as to debtor's inability to pay — Interference— AIR 1955 Punj 193, Reversed.**

Where the two lower Courts of appeal are under a clear misapprehension as to the finding of a fact by the trial Court, the Supreme Court will examine the evidence itself. AIR 1955 Punj. 193, Reversed. Kaushal Kishore v. Ram Dev, AIR 1958 S C 999 (1001) (Pr 5).

● ——**Art. 136—Findings of fact—Interference.**

The Supreme Court will not ordinarily interfere with findings of fact given by the trial Judge and the Appeal Court but if in giving the findings the Courts ignore certain important pieces of evidence and other pieces of evidence which are equally important are shown to have been misread and misconstrued and the Supreme Court comes to the conclusion that on the evidence taken as a whole no tribunal could properly as a matter of legitimate inference arrive at the conclusion that it has, interference by the Supreme Court will be called for. AIR 1958 S C 61 and Cri. A. No. 122 of 1954, D/ 20th December, 1957 (S C) and AIR 1936 P C 289, Foll. Earnest John White v. Mrs. Kathleen Olive White (Neemeade), (1958) S C J 839 : (1958) 2 Andh W R (SC) 125 : 1958 M P C 594 : (1958) 1 M L J (Cri) 631 : 1958 All L J 671 : 1958 S C A 1108 : 1958 B L J R 714 : (1958) 2 Mad L J (SC) 125 : AIR 1958 S C 441 (442) (Pt A) (Pr 4).

● ——**Art. 136 — Evidence — Breach of civil liability or offence under S. 420, Penal Code — Facts found against accused by lower Courts — If open to challenge in Supreme Court—(Penal Code (1860), S. 420).**

The question whether the evidence discloses only a breach of civil liability or a criminal offence under S. 420, Penal Code, depends upon whether the complainant in parting with his money acted on the representation, of the accused and in belief of the truth thereof and were in fact false to the knowledge of the accused. If the Courts below find these facts specifically against the accused in categorical terms, the above questions of fact are not open to challenge in the Supreme Court in an appeal on special leave. Mobarik Ali Ahmed v. State of Bombay, 61 Bom L R 58 : (1958) Mad L J (Cri) 42 : 1958 S C A 865 : 1958 All W R (H C) 112 : 1958 All Cr R 94 : 1958 S C R 328 : 1958 S C J 111 : 1957 Cri L J 1346 : AIR 1957 S C 857 (863) (Pt A) (Pr 8).

● ——**Art. 136—Appeal under special leave—Question of voluntariness of confession — Consideration of — (Evidence Act (1872), S. 24) — (Criminal P. C. (1898), S. 164).**

Prima facie whether or not the confession is voluntary would be a question of fact and in an appeal by special leave under Art. 136, the Supreme Court would be reluctant to interfere with a finding on such a question of fact unless they are satisfied that the impugned finding has been reached without applying the true and relevant legal tests in the matter. Sarwan Singh Ratan Singh v. State of Punjab, 35 Mys L J 255 : 1957 S C R 953 : ILR (1957) Punj 1602 : 1957 Mad W N (SC) 88 : 1957 Pat L R (S C) 53 : 1957 All L R (Sup) 99 : (1957) M L J (Cr) 672 : (1957) S C J 699 : 1957 M P C 781 : 1957 Cri L J 1014 : AIR 1957 S C 637 (643) (Pt G) (Pr 10).

● ——**Art. 136—Finding of fact—Finality.**

The Supreme Court is, in criminal appeal under special leave, ordinarily bound by the finding of fact arrived at by the High Court; but if it is found that the High Court has not dealt with the appeal as it should have, the Supreme Court will proceed to hear the appeal on the evidence. Juman v. The State of Punjab, 1957 Cri L J 586 : AIR 1957 S C 469 (472) (Pt B) (Pr 13).

● ——**Art 136—Appreciation of evidence — Finding of fact how far binding — Penal Code (1860), Ss. 34 and 302 – Applicability.**

Held on facts, in an appeal by special leave, ordinarily the Supreme Court is bound by the findings of fact arrived at by the High Court and especially when such findings are in favour of the accused, the request on behalf of the State to canvass the correctness of the findings of the High Court, cannot be granted. The Judges of the High Court were apparently not alive to the situation created by the conclusion on facts which leave no option but to hold that the appellant is not guilty of the offence. In order, that S. 34 may be applied in a case of this kind, the common intention of committing the crime must be attributed to more than one individual and if the offence is the result of a joint act of more than one person, then only each one of them can be found guilty under S. 302 read with S. 34, Penal Code. Zabar Singh v. The State of Uttar Pradesh, 1957 Cri L J 581 : AIR 1957 S C 465 (466) (Pr 8).

● ——**Art. 136** – Findings of fact — Interference. See Representation of the People Act (1951), S. 123 (7). **AIR 1957 S C 444.**

● ——**Art. 136—Findings of fact—Interference.**

The ordinary rule of the Supreme Court is not to go behind the findings of fact arrived at by the Courts below unless there is a sufficient ground for doing so. Kamala Devi v. Bachulal Gupta, 1957 S C J 321 : 1957 Andh L T 315 : 1957 S C A 290 : (1957) 1 Andh W R (SC) 66 : (1957) 1 M L J (SC) 66 : 1957 S C R 452 : AIR 1957 S C 434 (438) (Pt A) (Pr 8).

● ——**Art. 136 — Scope — Findings of fact — Interference.**

In an appeal by way of special leave, the Supreme Court does not interfere with the findings of fact arrived at by the Court below unless something substantial is shown to persuade it to go behind the findings of fact arrived at by them. Kacheru Singh v. State of Uttar Pradesh, 1956 Cri L J 950 : AIR 1956 S C 546 (547) (Pt A) (Pr 4).

● ——**Art. 136 – Findings of fact—Interference.**

The Supreme Court on special leave does not ordinarily interfere with findings of fact of the Courts below. Ram Shankar Singh v. State of Uttar Pradesh, 1956 Cri L J 822 : 1956 S C A 591 : AIR 1956 S C 441 (445) (Pt B) (Pr 9).

● ——Art. 136 — Criminal Appeal — Appreciation of evidence.

Where the Courts below have carefully examined and accepted evidence of eye-witnesses directly incriminating the appellant, the Supreme Court on special leave will not ordinarily go behind their findings. Chhutannai v. State of U. P., 1956 Cri L J 797 : AIR 1956 S C 407 (410) (Pt A) (Pr 8).

● ——Art. 136—Appreciation of evidence.

The question whether the evidence that the accused was seen with the deceased at about the time of the occurrence near a garden should be believed is one on which the Supreme Court would not ordinarily interfere with the views of the Courts below. Nathu v. State of Uttar Pradesh, 1956 Cri L J 152 : A I R 1956 S C 56 (59) (Ft D) (Pr 8).

● ——Art. 136—Question of fact.

The question whether a person is a benamidar or not, is purely one of fact, and a finding thereon cannot be interfered with in special appeal, if there is evidence on which it could be based. Chattanatha v. Ramachandra, (1956) S C J 1 : (1956) 1 Mad L J (SC) 1 : (1955) 2 S C R 477 : 1956 S C A 361 : 58 Pun L R 314 : 1956 Ker L T 371 : A I R 1955 S C 799 (800) (Pt A) (Pr 5).

● ——Art. 136—Special leave — Respondent, if can take up point decided against him by High Court — Supreme Court—Practice.

In an appeal to the Supreme Court, upon special leave the Supreme Court will not allow the respondent to re-open a finding of fact decided against him by the High Court. Bhikaji Keshao v. Brijlal Nandlal, 1955 Mad W N 991 : (1955) S C J 658 : (1955) 2 M L J (SC) 154 : (1955) Andh W R (SC) 408 : 1955 S C A 999 : A I R 1955 S C 610 (613) (Pt A) (Pr 2).

● ——Art. 136 — Question of fact cannot be reagitated.

In a special leave to appeal under Art. 136, it is not open to the appellant to re-agitate questions of fact and ask the Court to disturb the findings of fact arrived at by the Courts below. Those findings must therefore be accepted as binding. Kunjilal v. State of M. P., 1955 Nag L J 84 : 1955 Mad W N 707 : 1955 S C J 592 : (1955) 2 M L J (SC) 96 : (1955) Andh W R (SC) 350 : 1955 Cri L J 730 : 1955 S C R 872 : A I R 1955 S C 280 (282) (Pt A) (Pr 5).

● ——Art. 136 (1) — Appreciation of oral evidence—Finding of fact. See Criminal P. C. (1898), S. 439. 1954 Cri L J 1808 : A I R 1954 S C 726.

● ——Art. 136—Interference with finding of fact.

A finding of fact depending upon the merits or appreciation of the evidence is not open to reconsideration in an appeal brought by special leave.

Held, that no flagrant error of law or procedure had been pointed out to the Supreme Court in the findings of the Courts below, nor was the Supreme Court satisfied that in arriving at findings of fact any miscarriage of justice had resulted to accused. A. J. Peiris v. The State of Madras, 1954 Cri L J 1638 : A I R 1954 S C 616 (621) (Pt C) (Pr 12).

11 (b). Concurrent findings of fact.

● ——Art. 136—Election petition—Appeal to Supreme Court by special leave — Concurrent finding on question of caste of candidate is a question of fact—No interference — Practice. Bhaiya Lal v. Harikishan Singh, 1965 Jab L J 860 : (1965) 2 S C A 721 : (1965) 1 S C W R 840 : 1965 M P L J 669 : 1965 Mah L J 602 : A I R 1965 S C 1557 (1558, 1559) (Pt A) (Pr 4).

● ——Art. 136—Appeal with special leave—Supreme Court normally does not seek to reappreciate evidence —Concurrent findings of facts of lower Courts — Findings cannot be allowed to be reopened unless there are special circumstances justifying departure. Surasaibalini Debi v Phanindra Mohan Majumdar, (1965) 1 I T J 526 : (1965) 1 S C J 583 : A I R 1965 S C 1364 (1367) (Pt A) (Pr 8).

● ——Art 136—Concurrent findings of fact.

It is the practice of the Supreme Court not to interfere with concurrent findings of fact even in regular appeals and particularly so in appeals under Art. 136, of the Constitution. Bhagwan Swarup Lal Bishan Lal v. State of Maharashtra, (1964) 2 S C R 378 : (1964) 2 S C J 771 : 1965 (1) Cri L J 608 : A I R 1965 S C 682 (687) (Pt B) (Pr 10).

● ——Art. 136 — Concurrent findings of fact — No interference. See Representation of the People Act (1951), S. 81. A I R 1964 S C 1366.

● ——Art. 136—Murder trial — Concurrent finding by Courts below about deceased having died on account of gunshot injuries received by him — No evidence to support finding — Finding can be looked into by Supreme Court.

It is necessary for proving the charge of murder by firing that the deceased had died on account of the gunshot injuries received by him and any finding to that effect, in the absence of evidence, can be looked into by the Supreme Court even though the Courts below have confirmed that finding. Moti Singh v. State of U. P., (1963) 1 Mys L J (SC) 74 : (1964) 1 S C R 688 : 1963 Mad W N 425 : 1963 Cur L J (SC) 87 : (1963) Mad L J (Cri) 625 : 1963 All W R (HC) 469 : 1963 All L J 647 : 1964 (1) Cri L J 727 : 1963 All Cr R 250 : (1963) 2 S C J 714 : 1963 S C D 1007 : ILR (1963) 2 All 708 : (1964) 1 S C R 688 : A I R 1964 S C 900 (903) (Pt C) (Pr 15).

● ——Art. 136—Concurrent findings of facts — Practice of Supreme Court — Supreme Court would not interfere unless there are exceptions — Fact that Supreme Court does not agree with reasons given by High Court for such finding is no ground for interference. See Ibid, Art. 133. A I R 1964 S C 818.

● ——Art. 136—Concurrent findings of lower Courts on simple questions of fact — High Court in second appeal interfering on ground of insufficiency of evidence — Contravention of S. 100, Civil P. C. — Supreme Court would interfere.

Where the Supreme Court is satisfied that in dealing with a second appeal the High Court has either unwillingly and in a casual manner or deliberately contravened the limits prescribed by S. 100, Civil P. C., by interfering with concurrent findings on simple questions of fact on ground of insufficiency of evidence, it becomes the duty of the Supreme Court to intervene and give effect to the said provisions. It may be that in some cases, the High Court dealing with the second appeal is inclined to take the view that what it regards to be justice or equity of the case has not been served by the findings of fact recorded by Courts of fact. A I R 1960 Andh Pra 397, Reversed. Madamanchi Ramappa v. Muthaluru Bojjappa, (1963) 2 S C W R 107 : (1964) 1 Andh L T 1 : 1964 S C D 358 : (1964) 2 S C R 673 : A I R 1963 S C 1633 (1637, 1638) (Pt D) (Pr 12).

● ——Art. 136—Concurrent findings of fact.

The findings that the appellant put the signatures of his father who was already dead on the relevant documents, attested them and got the securities transferred in the name of his father and received the money from the Post Office are findings of fact and following the usual practice, the Supreme Court will accept such concurrent findings based upon relevant evidence. G. S. Bansal v. The Delhi Administration,

(1963) 2 S C W R 187 : 66 Pun L R 60 : 1964 All W R (HC) 9 : 1963 Mad W N 670 : 1964 All Cri R 49 : (1964) 2 S C R 470 : 1963 (2) Cri L J 439 : (1963) 2 Ker L R 169 : A I R 1963 S C 1577 (1579, 1580) (Pt A) (Prs 6, 9).

● ——Art. 136 — Evidence Act (1872), S. 24 — "Appears to the Court to have been caused by inducement, etc." — "Appears" means "seems" — Degree of proof — Three lower Courts holding statement not one caused by inducement, threat or promise — Supreme Court will not interfere under Art. 136 of the Constitution. See Evidence Act (1872), S. 24. A I R 1963 S C 1094.

● ——Art. 136—Concurrent finding of fact—Finding that plaintiff had attained majority more than three years prior to suit is one of fact—Supreme Court would not interfere when there is no sufficient reason to differ from concurrent finding of two lower Courts. Padma Vithoba Chakkayya v. Mohd. Multani, 1963 S C D 179 : (1963) 1 Andh L T 269 : (1963) 2 S C J 172 : (1963) 3 S C R 229 : (1962) 2 Ker L R 340 : A I R 1963 S C 70 (72) (Pt A) (Pr 3).

● ——Art. 136—Concurrent finding by Courts below that certain service inams were pre-settlement inams — There being no special reasons such as manifest error of law in arriving at the finding or disregard of the judicial process or of principles of fair hearing, etc., Supreme Court will not be justified in going behind such concurrent finding. Gondumogula Tatayya v. Pernumatcha Anande Vijaya Timma Jagapathi raju, 1962 S C D 724 : (1963) 2 M L J (SC) 86 : (1963) 2 Andh W R (SC) 86 : (1963) 2 S C J 461 : (1962) Supp 3 S C R 324.

● ——Arts. 136, 134 — Finding of fact — Practice of Supreme Court is not to interfere with such finding except under exceptional circumstances especially when there are concurrent findings of fact. See Ibid, Art. 134. A I R 1962 S C 1762.

● ——Arts. 136 and 134—Concurrent finding of fact —No interference by Supreme Court, unless there are exceptional circumstances. See Ibid, Art. 134. AIR 1961 S C 1527.

● ——Art. 136 — Supreme Court — Practice — Concurrent findings of fact—No interference unless there are exceptional circumstances. Singhai Ajit Kumar v. Ujayar Singh, (1961) 2 S C J 680 : (1961) 2 Mad L J (S C) 193 : (1961) 2 Andh W R (S C) 193 : A I R 1961 S C 1334 (1335, 1336) (Pt A) (Pr 6).

● **——Art. 136 — Concurrent findings of fact — No interference—Hindu law—Partition—Question whether certain property was left undivided.**

Prima facie, the question whether at a partition between members of a joint Hindu family, certain property was left undivided is a question of fact depending upon appreciation of evidence, and the Supreme Court, according to its settled practice, would not disturb a concurrent finding on the question. The Supreme Court would not be justified in an appeal with special leave in discarding a finding by the trial Court because some other evidence which could have been brought before the Court in support thereof was not tendered. Devidas v. Shri Shailappa, 64 Bom L R 82 : 1962 Nag L J 191 : (1962) 1 S C J 557 : (1961) 3 S C R 896 : AIR 1961 S C 1277 (1280, 1281) (Pt A) (Prs 8, 9).

● ——Art. 136 — Questions of fact — Interference — The Supreme Court will not interfere on questions of fact, particularly when they are concurrent findings, except under exceptional circumstances. Shri Ram v. State of Maharashtra, 1961 Mad W N 488 : (1961) 2 S C R 890 : 1961 All L J 202 : 1961 B L J R 231 : (1961) 1 Mad L J (SC) 221 : (1961) 1 Andh W R (SC) 221 : (1961) 1 Ker L R 352 : 1961 M P C 255 : 1961 Mad L J (Cr) 342 : 1961 Andh L T 396 : 1961 (1) Cri L J 760 : 1961 All W R (HC) 201 : 63 Bom L R 434 : 1961 All Cr R 84 : (1961) 1 S C J 677 : 1961 M P L J 1101 : 1961 Nag L J 517 : A I R 1961 S C 674 (676) (Pt A) (Pr 5).

● ——Art. 136 — Criminal appeal—Concurrent finding of fact—Finding that charge against accused has been proved beyond reasonable doubt cannot be challenged in appeal by special leave. Kadiri Kunnammad v. State of Madras, 1960 Cri L J 1013 : AIR 1960 S C 661 (663) (Pt A) (Pr 3).

● **——Art. 136 — Concurrent findings by lower Courts based on circumstantial evidence — Supreme Court will re-examine finding of fact.**

Ordinarily, it is not the practice of the Supreme Court to re-examine the findings of fact reached by the High Court, particularly in a case where there is concurrence of opinion between the two Courts below. Where the case against the accused was entirely based on circumstantial evidence and there was no direct evidence that he administered a poison to the deceased their Lordships of the Supreme Court felt it necessary, in view of the extraordinary nature of the case to satisfy themselves whether each conclusion on the separate aspects of the case was supported by evidence and was just and proper. Ordinarily, the Supreme Court was not required to enter into an elaborate examination of the evidence, but it departed from this rule in the particular case, in view of the evidence of conduct which the appellant had sought to explain away on hypothesis suggesting innocence. Anant Chintaman Lagu v. State of Bombay, 1960 Cri L J 682 : 62 Bom L R 371 : 1960 Mad L J (Cr) 493 : 1960 S C J 779 : (1960) 2 S C A 623 : (1960) 2 S C R 460 : A I R 1960 S C 500 (505) (Pt B) (Pr 16).

● **——Art. 136 — Appreciation of evidence — Concurrent findings of fact.**

It is against the practice of the Supreme Court in an appeal by special leave to embark on an assessment of the evidence when two Courts have already assessed it and come to concurrent conclusions therefrom. Charan Singh v. The State of Uttar Pradesh, 1960 S C (Notes) 68.

● **——Art. 136—Concurrent findings of fact—Interference by Supreme Court.**

It is not the practice of the Supreme Court to set aside findings of fact concurrently arrived at by the Courts below.

Where the Courts below could on the evidence before them legally come to the conclusion that the consideration mentioned in the deed of sale had been paid, it is not for the Supreme Court to substitute its own view of the question for the view taken by the Courts below. Mallappa Girimallappa Betgeri v. Ramagouda Yellappa Gouda Patil, A I R 1959 S C 906 (907, 908) (Pt A) (Prs 8, 9, 10).

● ——Art. 136 — Concurrent finding of fact — Usual practice of Supreme Court is to accept it. See Ibid, Art. 133. AIR 1959 S C 781.

● **——Art. 136 — Interference with concurrent findings of fact.**

In an appeal filed by special leave under Art. 136 of the Constitution it is not normally open to the appellant to raise questions of fact or to ask for interference with concurrent findings of fact, unless the findings are vitiated by errors of law or the conclusions reached by the Courts below are so patently opposed to well-established principles as to amount to a miscarriage of justice. Ratan Gond v. State of Bihar, 1960 Andh L T 407 : 1959 Mad L J (Cr) 109 : 1959 Cri L J 108 : 1959 All L J 35 : 1959 All W R (HC) 108 : 1959 B L J R 1 : 1959 M P C 46 : 1959

All Cr R 118 : I L R 37 Pat 1409 : 1959 S C J 222 : 1959 S C R 1336 : A I R 1959 S C 18 (21) (Pt B) (Pr 5).

● ——Art. 136—Appeal by special leave — Conviction based on concurrent findings of facts — Interference—(Cr. P. Code (1898), S. 411-A).

In a criminal appeal filed by special leave under Art. 136, it would normally not be open to the appellants to raise questions of fact before the Supreme Court, unless they are satisfied that the said findings are vitiated by errors of law or that the conclusions reached by the Courts below are so patently opposed to well established principles of judicial approach that they can be characterised as wholly unjustified and even perverse. Swaran Singh Rattan Singh v. State of Punjab, 35 Mys L J 255 : 1957 S C R 953 : I L R (1957) Punj 1602 : 1957 Mad W N (SC) 88 : 1957 Pat L R (SC) 53 : (1957) All L R (Sup) 99 : (1957) M L J (Cr) 672 : (1957) S C J 699 : 1957 Cri L J 1014 : 1957 M P C 781 : A I R 1957 S C 637 (640) (Pt A) (Pr 6).

● ——Art. 136—Concurrent findings of fact—Interference.

When both the Tribunal and the High Court have made concurrent findings of fact against the appellant that he was guilty of professional misconduct the Supreme Court in an appeal admitted on special leave under Art. 136 of the Constitution would not re-examine on merits that finding of fact. Manaklal, Advocate v. Dr. Premchand Singhvi, (1957) S C J 359 : (1957) Mad L J (Cr) 254 : 1957 S C A 719 : 1957 S C R 575 : A I R 1957 S C 425 (433) (Pt C) (Pr 11).

● ——Art. 136—Scope — Accused acting under common intention and common conspiracy — Conviction and sentence—Concurrent finding—Effect. See Penal Code (1860), S. 364. **1957 Cri L J 559 : A I R 1957 S C 381.**

● ——Art. 136—Concurrent findings of fact—Interference.

Where both the Sessions Judge and the High Court concurred in the conclusion arrived at regarding respective degrees of guilt of the various accused the Supreme Court hearing an appeal under special leave would not ordinarily canvass the correctness or justification of the findings on question of fact arrived at by the lower Courts. Dharman v. State of Punjab, **1957 Cri L J 420 : A I R 1957 S C 324** (325) (Pt A) (Pr 4).

● ——Art. 136 (1)—Concurrent findings — Finding about guilt when can be re-opened by Supreme Court.

Where the Sessions Judge accepts the testimony of the prosecution witnesses and disbelieves the story put forward by the accused and in this he has the concurrence of the High Court on appeal, the Supreme Court would not be justified in re-opening the finding about the guilt of the accused appellants, if no question of law is involved or if the conclusion is not perverse or opposed to principles of natural justice or revolting to judicial conscience. Niranjan Singh v. State of U. P., 1957 Mad W N (S C) 1 : (1957) Mad L J (Cri) 1 : 1957 S C A 75 : 1957 S C J 69 : 1957 Cri L J 294 : 1957 All W R (HC) 258 : 1956 S C R 734 : 1957 All L J 233 : I L R (1956) 2 All 745 : AIR 1957 S C 142 (146) (Pt A) (Pr 11).

● ——Art. 136 — Practice — Concurrent findings of fact—Interference by Supreme Court.

The usual practice of the Supreme Court in special appeals under Art. 136 is not to disturb findings of fact by Tribunals unless there are exceptional grounds therefor. But where the Tribunal has spoken in two voices, and has given inconsistent and conflicting findings, the Supreme Court has, if necessary to determine which of them should be accepted as supported by material findings. Pipraich Sugar Mills, Ltd. v. Pipraich Sugar Mills Mazdoor Union, (1956-57) 11 F J R 262 : (1957) 1 Lab L J 235 : 1957 S C J 38 : 1956 S C R 872 : 1957 S C A 28 : AIR 1957 S C 95 (102) (Pt C) (Pr 11).

● ——Art. 136—Appeal by special leave in criminal case —Appreciation of evidence by lower Court — Inferference in appeal—Concurrent findings of lower Courts —Effect.

Where the witnesses on a certain point are, after due consideration of the circumstances and the criticisms levelled against their evidence, believed by both the Courts below, it is not for the Supreme Court to reweigh or to re-appreciate their evidence and come to a contrary conclusion. Pritam Singh v. State of Punjab, 1956 Cr L J 805 : AIR 1956 S C 415 (422, 424) (Pt A) (Prs 19, 21, 25).

● ——Art. 136—Appreciation of evidence.

Support was sought to be derived from the discrepancies to be found in regard to the date of the occurrence in the evidence as also in the report of the injuries made by the doctor to the police on the 15th March, 1952, evening. It was suggested that apart from the occurrence of the 13th March, 1952, deposed to by the witnesses there must have been of necessity some further occurrence on the evening of the 14th March, 1952, which aggravated the condition of the deceased and which was really responsible for his ultimate death. Both the Courts below arrived at a concurrent finding of fact that the injuries were really inflicted by the accused on the person of the deceased on the evening of the 13th March, 1952, and these were the injuries which were responsible for the ultimate death of the deceased.

Held, that the Supreme Court had no reason to differ from this concurrent finding of fact. Inder Singh v. State of Pepsu, 1955 Cr L J 1014 : I L R (1954) Patiala 380 : AIR 1955 S C 439 (440) (Pt B) (Pr 6).

● ——Art. 136 — Supreme Court—Practice—Concurrent findings of three courts—Mixed question of law and fact —Nature of property — Interference.

The question as to non-ancestral nature of property is a mixed question of law and fact and when there is a concurrent finding on it of three courts, it cannot be allowed to be re-opened in an appeal before the Supreme Court. Gopal Singh v. Ujagar Singh, 1954 S C J 562 : (1955) 1 S C R 86 : 1955 S C A 223 : AIR 1954 S C 579 (580) (Pt A) (Pr 7).

● ——Art. 136— Concurrent finding based on sole testimony of unreliable witness who was himself a party to the preparation of a forged document in the case — Review by Supreme Court on special leave.

When the Court of first instance and the Court of appeal arrive at concurrent findings of fact after believing the evidence of a witness, the Supreme Court as the final Court does not disturb such findings save in most exceptional cases. Thus where a finding of fact is arrived at on the testimony of a witness who is not a person on whom any reliance could be placed and who was himself a party to the preparation of a forged document in the suit and the courts below have departed from the rule of prudence that such testimony should not be accepted unless it is corroborated by some other evidence on the record, a finding of that character in the circumstances of a particular case may well be reviewed even on special leave if the other circumstances in the case require it, and substan-

tial and grave injustice has resulted. Hanumant v. The State of Madhya Pradesh. (1952) S C A 623 : 1952 All W R (Sup) 109 : 1953 Mad W N 347 : (1952) 2 M L J 631 : 1952 S C J 509 : 1952 S C R 1091 : 54 Cr L J 129 : AIR 1952 S C 343 (345) (Pt A) (Pr 9).

● ——Art. 136 – Supreme Court practice — Concurrent findings on questions of fact —Interference.

When the Courts below have given concurrent findings on pure questions of fact, the Supreme Court would not ordinarily interfere with these findings and review the evidence unless there are exceptional circumstances justifying departure from this normal practice. The position may undoubtedly be different if the inference is one of law from facts admitted and proved or where the finding of fact is materially affected by a violation of any rule of law or procedure. The practice adopted by the Supreme Court is similar to what has always been acted upon by the Judicial Committee. "It is not by any means a cast iron practice" ; there may occur cases of unusual nature which might constrain the Supreme Court to interfere with the concurrent findings of fact to avoid miscarriage of justice. Sriniwas Ram Kumar v. Mahabir Prasad, 1951 A L J (S C) 64 : 64 L W 544 : (1951) S C J 261 : ILR 30 Pat 673 : (1951) S C R 277 : 87 C L J 236 : AIR 1951 S C 177 (179) (Pt A) (Pr 8).

● ——Art. 136 – Appeal under – Concurrent findings of fact by lower courts cannot be interfered with.

In appeals under Art. 136 the High Court generally does not interfere with the concurrent findings of fact. The appeal preferred by accused has to be limited to questions of law which may arise on the findings recorded against him by the courts below. Krishnan Nair v. State of Kerala, 1959 Ker L J 1118 : 1959 Ker L T (S C) 28 : I L R (1959) Ker 1094 (S C).

12. New point.

● ——Art. 136—New plea—Plea not raised in Courts below —Appellant not allowed to raise it in Supreme Court for first time. South Asia Industries Private. Ltd. v. Sarup Singh. (1965) 2 S C W R 934 : (1966) 1 SCA 151 : AIR 1966 S C 346 (352) (Pt A) (Pr 24).

● ——Arts. 136, 133 — New plea by respondent — Plea of considerable importance — Supreme Court may deal with it.

The scope of an appeal cannot, even at the instance of the respondent who is entitled to support a decree in his favour even upon a ground found against him by the High Court, be permitted to be enlarged beyond that of the appeal before the High Court or the Courts below. But the Supreme Court may deal with it, if it is a question of considerable importance and might be raised in other similar suits which are pending. Bharat Kala Bhandar, Ltd., (Private) v. Municipal Committee, Dhamangaon, (1965) 2 S C J 741 : (1965) 2 I T J 657 : AIR 1966 S C 249 (257) (Pt A) (Pr 25).

● ——Art. 136—New point — Invalidity of sanction —Point not raised in High Court or earlier—Point not allowed to be raised. Mangaldas v. Maharashtra State, (1965) 2 S C W R 561 : (1965) 2 S C A 530 : 1966 Cr L J 106 : AIR 1966 SC 128 (130) (Pts A, C) (Prs, 2, 6).

● —Art. 136—New plea —Plea of jurisdiction not depending upon investigation of facts — Plea that order of Magistrate acting under S. 259 of Cantonments Act is not revisible under Ss. 435/439 of Cr. P. Code —Plea not allowed to be raised —Order can be interfered with under Art. 227 of the Constitution.

It is true that a question of jurisdiction not depending upon facts to be investigated can be allowed to be raised at any stage. But where in an appeal by special leave before the Supreme Court the question is raised for the first time that the Magistrate acting under S. 259 of the Cantonments Act (1924) is a persona designata and, therefore, his order is not revisable under Ss. 435, 439 of the Code of Criminal Procedure, though the High Court may not have jurisdiction to interfere under Ss. 435/439 of the Code of Criminal Procedure it can certainly interfere with the order of the Magistrate under Art. 227 of the Constitution. If this point had been raised before the High Court it may very well be that the High Court might have considered the reference as if it was an application before it under Art. 227 of the Constitution, in which case the High Court would have jurisdiction to interfere with the order of the Magistrate if it came to the conclusion that the Magistrate had no jurisdiction under S. 259 of the Act. In the circumstances the Supreme Court would not permit the appellant to raise this point before it. Cantonment Board, Ambala v. Pyare Lal, 1966 Cr L J 93 : (1965) 2 S C W R 972 : (1965) 2 S C A 783 : AIR 1966 S C 108 (109, 110, 112) (Pt B) (Prs 3, 13).

● ——Art. 136—New plea — Appeal by special leave against order of High Court on reference under S. 66, Income-tax Act —Point that a particular question did not arise out of the order of the Appellate Tribunal not taken before the High Court or in the statement of case before Supreme Court —Point cannot be allowed. Commissioner of Income-tax, Madras v. Stremann, (1965) 1 I T J 5 : (1965) 1 S C J 106 : (1965) 56 I T R 62 : AIR 1965 S C 1494 (1495, 1496) (Pt B) (Prs 7, 8).

● ——Art. 136— New plea — Plea that there was no proof that Government had sanctioned lodging of complaint under S. 198 B, Cr. P. Code — Plea neither raised in Courts below nor taken in petition for special leave—Plea not allowed to be raised. Sahib Singh Mehra v. State of U. P., (1965) 1 S C W R 571 : 1965 S C D 600 : 1965 (2) Cr L J 434 : AIR 1965 S C 1451 (1452) (Pt A) (Pr 5).

● ——Art. 136 —Question of law — If can be raised.

Question of law which can be decided on the material on the record of the case can be allowed to be raised at the stage of appeal, by special leave. State of Rajasthan v. Karamchand Thappar, (1965) 16 S T C 412 : AIR 1965 S C 913 (917) (Pt C) (Pr 18).

● ——Art. 136—New point raised regarding validity of section for first time in appeal—Such point will not be allowed to be taken. Lakshmi Narayana Reddy v. State of Andhra Pradesh, (1963) Supp 1 S C R 308 : AIR 1965 SC 580 (585) (Pt F) (Pr 13).

● ——Art. 136—Question of law or fact not raised before High Court, when can be raised before Supreme Court.

It may be conceded that if a point of fact which plainly arises on the record, or a point of law which is relevant and material can be argued without any further evidence being taken, it may, in a proper case, be permissible to the appellants to ask the Supreme Court to consider that point in an appeal under Art. 136 of the Constitution; after all in criminal proceedings of this character where sentences of death are imposed on the appellants, it may not be appropriate to refuse to consider relevant and material pleas of fact and law only on the ground that they were not urged before the High Court. If it is shown that the pleas were actually urged before the High Court and had not been considered by it, then of course, the party is entitled as a matter of right to obtain a decision on those pleas from the Supreme Court. But even otherwise no hard and fast rule can be laid down prohibiting such pleas being raised in appeals under Art. 136. Masalti v. State of U. P., 1964 S C D 980 : 1964 Mad W N 588 : (1965) 1 S C J

605: ILR (1964) 2 All 694 : 1965 Mad L J (Cri) 312: (1964) 8 S C R 133: (1965) 1 Andh L T 19 : 1965 (1) Cri L J 226 : A I R 1965 S C 202 (208, 209) (Pt B) (Pr 11).

● ——Art. 136 — New plea — Plea not raised before revenue authorities, Income-tax appellate tribunal or even before High Court — Plea not entertained by Supreme Court for first time in appeal before it. The Commissioner of Income-tax Bihar and Orissa, Patna v. Rani Bhuwaneshwari Kuer, ILR 43 Pat 577: (1964) 7 S C R 920 : (1964) 53 ITR 195 : (1964) 2 I T J 170 : 1964 B L J R 713: (1964) 2 S C J 361:AIR 1965 S C 6 (10) (Pt A) (Pr 12).

● ——Art. 136 — New point — Question whether premiums received on issue of share capital are gains within Explanation to S. 2 (6-A) of the Income-tax Act (1922) — Question neither urged before High Court nor before appellate tribunal — Question not allowed to be developed by Supreme Court. Bharat Fire and General Insurance Ltd., New Delhi v. Commr. of I. T., New Delhi, (1964) 2 S C W R 115 : 67 Pun L R 1 : (1964) 7 SCR 626 : (1964) 53 I T R 108: (1964) 34 Com Cas 683 : (1964) 2 Com L J 100 : (1964) 2 I T J 138 : (1964) 2 S C J 434 : A I R 1964 S C 1800 (1803) (Pt A) (Pr 7).

● ——Art. 136—New plea—Question regarding exact effect of S. 48 (3), Administration of Evacuee Property Act (1950) as amended in 1956 and whether it will apply even to cases where recovery had become barred under Limitation Act before 22-10-1956 — Question not raised in lower Courts—Not allowed to be raised for first time before Supreme Court. Memon Abdul Karim Haji Tayab Central Cutlery Stores Veraval v. Deputy Custodian-General New Delhi. (1964) 6 S C R 837: (1964) 2 S C J 220 : AIR 1964 S C 1256 (1259, 1260) (Pt D) (Pr 6).

● ——Art, 136 — Plea of mala fide against Government based on averments made for first time in application for special leave to appeal, cannot be raised in special appeal.

A plea of mala fide must always be made by proper pleadings at the trial stage, so that the respondent has an opportunity to meet the said pleadings. A case of mala fides cannot be made on the averments made for the first time in the application for special leave, Makhan Singh Tarsikka v State of Punjab, 1964 Cur L J (S C) 1: 1964 S C D 201: 1964 (2) Cri L J 217 : (1965) 2 S C A 739 : AIR 1964 S C 1120 (1126) (Pt B) (Pr 17).

● ——Art. 136 — Question whether respondent to application under S. 488, Criminal P. C. submitted to jurisdiction of Magistrate—Question is mixed question of fact and law — Supreme Court will not in the absence of exceptional circumstances allow such question to be raised for first time before it. Mst. Jagir Kaur v. Jaswant Singh, (1963) 1 S C W R 536 : (1963) 1 Mys L J (S C) 79 : 1963 S C D 896 : 1963 Mad W N 428 : (1964) 2 S C R 73 : (1964) 1 SCA 166 : (1964) 1 S C J 386: 1964 Mad L J (Cri) 254: 1963 (2) Cri L J 413 : 1963 All Cr R 271 : 65 Punj L R 814 : 1963 All W R (H C) 543 : 1963 Cur L J (S C) 15 : 1963 All L J 807 : A I R 1963 S C 1521 (1523) (Pt A) (Pr 4).

● ——Art. 136—New plea—Case not made out in statement of case—Cannot be allowed at time of arguments.

If a certain case is not made out in the statement of the case the Supreme Court will not allow the case to be made out at the time of the arguments. The Supreme Court has to be very strict in enforcing the rules of pleading, as laid down in the rules of the Supreme Court bearing on the question of statement of case of the parties. These rules have been laid down with a view to help the Court in narrowing down the controversies between the parties and also for the purpose of giving notice to the other side that a particular question will be raised, and that that party should be ready to meet that particular point. The Supreme Court would not ordinarily permit any laxity in the matter of pleadings in the Supreme Court. Tulsi Das Khimji v. Workmen, (1964) 1 S C J 300 : (1963) 1 S C R 675 : (1962) 1 Lab L J 435 : (1962) 4 Fac L R 453 : (1962-63) 22 F J R 316 : AIR 1963 S C 1007 (1012, 1013) (Pt D) (Pr 8).

● ——Art 136—New point—Question as to prejudice due to non-compliance with S. 342, Criminal P. C.—Question cannot be allowed to be raised for the first time in appeal under Art. 136—Criminal P. C. (1898), S. 537.

Where no grievance was made in the lower Courts about non-compliance with the requirements of S. 342, Criminal P. C. :the point as to prejudice to the accused appellant cannot be allowed to be raised for the first time in an appeal under Art. 136, the reason being that whether there was prejudice is a question of fact. Radha Kishan v. Uttar Pradesh, (1963) 1 S C W R 158 : (1963) 1 Mys L J (S C) 47 : (1963) 2 Lab L J 667 : (1963) Supp 1 S C R 408 : 1963 Mad W N 281 : 1963 All L J 397 : 1963 B L J R 353 : 1963 All W R (H C) 304: 1963 (1) Cri L J 809: 1963 All Cri R 156 : A I R 1963 S C 822 (824) (Pt B) (Pr 5).

● ——Art. 136 — New point—Industrial dispute — Reference of dispute relating to introduction of gratuity scheme in cement factory—Company merely opposing introduction of scheme before Tribunal but not making any submissions about details of scheme like maximum of wages payable as gratuity—Award in favour of introduction of scheme—Appeal to Supreme Court by special leave — No points as to details of scheme raised in special leave petition — Company not allowed to challenge details of scheme in Supreme Court. Management of Sone Valley Portland Cement Co., Ltd. v. Their Workmen, (1962) 4 Fac L R 176 ; (1962) 1 Lab L J 218 : (1961-62) 22 F J R 34 : AIR 1963 S C 495 (498, 499) (Pt C) (Pr 6).

● ——Art. 136:— New plea — New pleas which need further evidence are not allowed to be raised in appeals under Art. 136 of the Constitution. Dr. Gopal Dass Verma v. S. K. Bhardwaj, (1961) 2 S C J 616: (1962) 2 S C R 678 : AIR 1963 S C 337 (340) (Pt D) (Pr 11).

● ——Art. 136—New point — Point not raised in Courts below but having heard arguments on it Supreme Court pronounced upon it. Dr. Indramani Pyarelal Gupta v. W. R. Naiu, (1963) 2 S C J 59 : 65 Bom L R 378 : (1963) 1 S C R 721 : A I R 1963 S C 274 (284, 285) (Pt D) (Pr 24).

● ——Art. 136—New plea—Point not presssed in High Court—Decision on point turning on investigation of facts not made — Point should not be allowed to be taken in appeal to the Supreme Court. Waverly Jute Mills Co, Ltd. v. Raymon & Co., (India), Pvt., Ltd., (1963) 1 S C A 391: (1963) 3 S C R 209 : A I R 1963 S C 90 (96) (Pt D) (Pr 16).

● ——Art. 136—New plea—Case not raised in lower Courts but made in appellant's statement of case—Not allowed. R K. Dalmia v. Delhi Administration, (1963) 1 S C R 253 : (1962) 32 Com Cas 699 : 1962 (2) Cr L J 805 : AIR 1962 S C 1821 (1877) (Pt V) (Pr 330).

● ——Art. 136—New point based on Displaced Persons (Institution of Suits) Act, 1948, as amended by Act, 1950 raised for first time in appeal under Art. 136 —Point not taken in plaint—Suit in forma pauperis out of circumstances arising out of partition of India — New point allowed to be raised. F. A. No. 299 of 1951 D/- 13-3-58, Reversed. Boota Mal v. Union of India,

1962 S C D 749 : (1963) 1 SCR 70 : 64 Punj L R 1043 : 1962 B L J R 832 : (1962) 2 S C A 669 : 1962 Nag L J 587 : 1962 M P L J 1019 : A I R 1962 S C 1716 (1721, 1722) (Pt B) (Pr 13).

● **——Art. 136 — New plea—According to settled practice of Supreme Court appellant, except in exceptional circumstances, is not entitled to raise plea for the first time at the hearing in Supreme Court. See Ibid, Art. 133. AIR 1962 S C 1183.**

● **——Art. 136—New point — Question relating to interpretation of S. 3 (2) (d) and Explanation (1) appended to it, of Madras Estates Land Act — Point though not agitated in High Court allowed to be argued before Supreme Court. Gondumogula Tatayya v. Penumatcha Anande Vijaya Timma Jagapathiraju, 1962 S C D 724 : (1963) 2 M L J (S C) 86 : (1963) 2 Andh W R (SC) 86 : (1963) 2 S C J 461 : (1962) Supp 3 S C R 324.**

● **——Art. 136—New plea — Question of mala fides on part of employer in dismissing workman for alleged misconduct is one of fact — Question cannot be raised for first time in appeal before Supreme Court. Central India Coal Fields, Ltd, Calcutta v. Ram Bilas Shobnath, (1960-61) 19 F J R 302 : (1961) 2 Fac L R 545 : (1961) 1 Lab L J 546 : AIR 1961 S C 1189 (1191) (Pt B) (Pr 6).**

● **——Art. 136—New plea.**

In an appeal by special leave against the award of an Industrial Tribunal it was contended that the Tribunal erred in awarding bonus without having recorded a conclusion as regards the existence and extent of gap between the actual wages received by the workmen and the living wage. No such ground had been taken in the petition for special leave to appeal. The award of the Tribunal as well as the statement of the case filed by the appellant did not refer to any such question having been raised.

Held, that it was not open to the appellant to urge such contention in appeal before the Supreme Court. **Burmah Shell Refineries, Ltd. v. Their Workmen, (1961) 1 S C J 577 : 1961 S C D 458 : (1961) 3 S C R 669 : (1961) 2 Fac L R 273 : (1961) 1 Lab L J 644 : AIR 1961 S C 917 (919) (Pt A) (Pr 3).**

● **——Art. 136—New point — Point not raised before lower tribunal — Point being one of law arising on admitted facts allowed to be argued before Supreme Court. Alembic Chemical Works Co., Ltd. v. Workmen, (1961-62) 20 F J R 78 : (1961) 2 S C J 745 : (1961) 3 S C R 297 : (1961) 2 Fac L R 191 : (1961) 1 Lab L J 328 : A I R 1961 S C 647 (648) (Pt A) (Pr 3).**

● **——Arts. 136, 133 — Practice — New point—New plea involving question of fact not raised before High Court—Supreme Court refused to allow it to be raised in appeal filed before it on a certificate of fitness. Thakur Kesari Singh v. State of Rajasthan, (1961) 1 S C J 254 : (1961) 2 S C R 47 : A I R 1961 S C 432 (439, 440) (Pt E) (Pr 31).**

● **——Art. 136 — New point — Industrial dispute — Retrenchment—Point that principle of last come, first go not followed, cannot be taken for first time in appeal before Supreme Court. Newspapers, Ltd., Allahabad v. U. P. State Industrial Tribunal, (1960) 1 Fac L R 587 : (1960) 2 Lab L J 37 : (1960-61) 19 F J R 1 : AIR 1960 S C 1328 (1329) (Pt B) (Pr 6).**

● **——Art. 136—New point—Question of fact—Question of fact not raised at any earlier stage—Point cannot be permitted to be urged before Supreme Court. Rajendra Mills v. Their Workmen, (1960) 2 Lab L J 53 : (1961-62) 20 F J R 543 : (1960) 1 F L R 854 : AIR 1960 S C 1323 (1325) (Pts D, E) (Pr 8).**

● **——Art. 136 — New point — Industrial dispute — Important point or mixed question of fact and law.**

In an industrial dispute points of importance, such as, that the particular dispute is not an industrial dispute, should be raised before the original industrial Court. Where the point is not taken even in the petition for special leave the appellant would not be allowed to raise it before the Supreme Court.

The question whether a dispute relating to a single employee which is not taken up by the employees or the union is an industrial dispute is a mixed question of fact and law and the Supreme Court would be very reluctant to allow a new point to be raised, the decision of which would need further enquiry into relevant facts. **The Manager, Bengal Nagpur Cotton Mills Ltd. v. J. Bastian, (1960) 1 Fac L R 525 : (1960) 1 Lab L J 501 : A I R 1960 S C 1110 (1114, 1115) (Pt A) (Prs 4, 5).**

● **——Art. 136—New plea—Complainant filing revision against acquittal—No objection by accused that revision was barred by virtue of S. 439 (5), Criminal P. C. (1898) as complainant had right to file appeal under S. 417 (3), Criminal P. C. (1898) — Objection cannot be allowed to be raised for first time in appeal under Art. 136. Madanraj v. Jalamchand Lodha, 1960 Cr L J 1151 : A I R 1960 S C 744 (745) (Pt A) (Pr 5).**

● **——Art. 136—New case.**

A case not set up in the written statement and not therefore allowed by the High Court to be argued before it, was not allowed to be made out by the Supreme Court in an appeal from the decision of the High Court. **Lilachand Tuljaram Gujar v. Mallappa Tukaram Borgavi, 1960 S C J 96 : 62 Bom L R 134 : (1960) 1 S C R 693 : A I R 1960 S C 85 (87, 88, 89) (Pt A) (Pr 4).**

● **——Art. 136—Prevention of Corruption Act (1947), S. 3, Proviso — Investigation by Police officer—Non-compliance with provisions of Act—Objection cannot be raised before Supreme Court for first time — Conviction not vitiated. See Prevention of Corruption Act (1947), S. 3, Proviso. AIR 1959 S C 831.**

● **——Art. 136 — New plea — Plea of waiver. See Houses and Rents—Bombay Rents, Hotel and Lodging House Rates Control Act (LVII of 1947), S. 13 (1) (e). AIR 1959 S C 689.**

● **——Art. 136—New plea—Point of law.**

In an appeal by special leave under Art. 136, the appellant assessee sought to raise for the first time a new point that the entries in her books of account could not in law show profits received by her because the appellant could not trade with herself.

Held, that in the special circumstances of the case the appellant could not be allowed to raise the point as that would mean reopening of the whole enquiry into the appellant's liability to tax. **Indermani Jatia v. Commr. of Income-tax, U. P., 1959 S C J 68 : (1959) 35 I T R 298 : ILR (1958) 2 All 932 : (1959) Supp 1 S C R 45 : A I R 1959 S C 82 (89, 90) (Pt B) (Prs 15, 16, 17).**

● **——Art. 136—New plea—Point not taken in pleadings and lower Court — No issue — If can be raised before Supreme Court. See Civil P. C. (1908), S. 112. AIR 1958 S C 255.**

● **——Art. 136—New plea—Question of law.**

Fresh point before Supreme Court — Point being purely one of law — Supreme Court allowed it to be argued. **State of Bihar v. Ram Naresh Pandy, 1957 Pat L R (S C) 31 : 1957 S C C 282 : 1957 Cr L J 567 : 1957 S C A 350 : 1957 S C J 336 : 1957 B L J R 406 : (1957) Mad L J (Cr) 247 : 1957 M P C 420 : 1957 All W R (HC) 430 : 1957 All L J 609 : ILR 36 Pat 513 : 1957 S C R 279 : A I R 1957 S C 389 (394) (Pt B) (Pr 6).**

● ——Art. 136—New point—Appeal by special leave against judgment of High Court on writ petition — Supreme Court declined to entertain question not raised in petition or in the High Court. Mohammad Ghouse v. State of Andhra, 1957 S C A 170 : 1957 S C J 225 : (1957) 1 M L J (SC) 41 : 1957 S C C 180 : (1957) 1 An W R (SC) 41 : 1957 S C R 414 : A I R 1957 S C 246 (249) (Pt C) (Pr 9).

● ——Art. 136—New plea.

Where the question about the misjoinder of charges was not urged in the High Court and was not taken in the petition for special leave it cannot be permitted at the stage of hearing of the appeal. Mangal Singh v. State of Madhya Bharat, 1957 Cr L J 325 : A I R 1957 S C 199 (201) (Pt A) (Pr 5).

● ——Art. 136—New plea—Permissibility.

Where the points that the verdict of the jury was vitiated by communal bias and that the examination of the accused under S. 342, Cr. P. Code, was inadequate, were not raised before the High Court, the Supreme Court is reluctant to allow any such contentions to be raised on special leave. Moseb Kaka Chowdhry v. State of West Bengal, 1956 Pat L R 187 : 1956 S C J 533 : 69 Mad L W 997 : 1956 S C R 372 : 1956 All W R (Sup) 102 : 1956 S C A 754 : 1956 Cr L J 940 : 1956 B L J R 545 : 1956 All L J 567 : (1956) 2 Mad L J (S C) 33 : AIR 1956 S C 536 : (540) (Pt C) (Pr 7).

● ——Art. 136 — New plea necessitating retrial — Permissibility—(Cr. P. Code (1898), S. 342).

An argument which would, if accepted, necessitate a retrial, as for example, that inadequate examination of accused under S. 342, Cr. P. Code, in a jury trial has vitiated the trial is one that ought to be put forward at the earliest stage and, at any rate, at the time of the regular appeal in the High Court. It cannot be entertained for the first time in an appeal on special leave. Moseb Kaka Chowdhry v. State of West Bengal, 1956 S C J 533 : 1956 Pat L R 187 : 1956 S C R 372 : 69 Mad L W 997 : 1956 All W R (Sup.) 102 : 1956 S C A 754 : 1956 Cr L J 940 : 1957 B L J R 545 : 1956 All L J 567 : (1956) 2 Mad L J (SC) 33 : AIR 1956 S C 536 (540, 541) (Pt E) (Pr 8).

● ——Art. 136 — Supreme Court — Practice—New plea—Question of law.

There is nothing to preclude a question if it is purely one of law, being reopened before the Supreme Court with its leave when it happens to be one of considerable importance. State of Madras v. Rajagopalan, 57 Pun L R 532 : 1955 S C A 1331 : (1955) 2 S C R 541 ; A I R 1955 S C 817 (819) (Pt C) (Pr 4).

● ——Art. 136 — Practice—New plea—Question of law.

A respondent may rightly be allowed to raise a question even at appellate stage when it is a pure question of law. (Point conceded). M. K. Ranganathan v. Government of Madras, 1955 S C J 515 : 1955 S C A 841 : (1955) 25 Com Cas 344 : (1955) 2 M L J (SC) 68 : A I R 1955 S C 604 (607) (Pt D) (Pr 12).

● ——Art. 136 — Criminal case — Special leave to appeal—New point—Entertainment of.

In an appeal on special leave in a criminal case, even though a new point was raised for the first time before the Supreme Court in that it was not raised before the High Court either during the hearing of the appeal or even at the time when the appellant applied for leave to appeal to the Supreme Court, still the Supreme Court considered the point on facts holding that there was no substance in the point which related to the injuries to have been caused by a lethal weapon with which they were alleged to have been caused. Nawab Singh v. State of Uttar Pradesh, 1954 Cr L J 738 : A I R 1954 S C 278 (278) (Pt A) (Pr 3).

● ——Art. 136—Industrial dispute—Appeal—Appeal to Supreme Court—Question of jurisdiction—Cannot be raised for first time. United Commercial Bank v. Secretary, U. P. Bank Employees Union, (1952) 2 Lab L J 577 : AIR 1953 S C 437 (438). (Pt A) (Pr 7).

13. Retrospective operation.

● ——Art. 136 — Suit filed before Constitution — Valuation above Rs. 10,000 — Right of appeal — Special leave. See Ibid, Art. 133. AIR 1957 S C 540.

● ——Art. 136—Retrospective operation.

Article 136 has no retrospective operation. Hence where an award was passed on 15th January 1950, and was published under S. 17, Industrial Disputes Act, 1947, by the Government in a notification of the Ministry of Labour, dated 17th January 1950, and was also declared binding on the same day for a period of one year, Art. 136 has no application. It cannot be said that the award was really published on 28th January 1950, when the notification referred to above appeared in the Gazette of India. Lloyds Bank, Ltd. v. The Lylods Bank Indian Staff Association, AIR 1956 S C 745 (745) (Pr 2).

● ——Art. 136—Retrospectivity.

Prima facie every legislation is prospective and there is no reason to depart from this rule of interpretation in the case of Art. 136 of the Constitution. Even without the use of the word 'hereafter' the Article conveys the same meaning. Janardhan Reddy v. The State, 1952 Cr L J 391 : 1951 S C J 98 : 1950 S C R 940 : 64 Mad L W 378 : 1951 Mad W N 709 : 1951 Mad W N (Cri) 213 : AIR 1951 S C 124 (127) (Pt A) (Pr 7).

14. Bail.

——Art. 136 — Criminal P. C. (1898), Ss. 426 (2B), 561A, 369, 382, 388 (1) (b) and Ch. 29 — Power of High Court to grant bail to, or suspend execution of sentence of, convicted person who has been granted certificate under Art. 134 (1) (c) or Art. 132 (1). See Criminal P. C. (1898), S. 426 (2B). AIR 1958 All 667.

——Art. 136 — High Court Rules and Orders — Allahabad High Court Rules, Ch. 23, Rr. 28 and 29 — High Court has no power to grant bail or to suspend operation of sentence pending proposed application for special leave to appeal to Supreme Court—High Court does not possess inherent power to grant bail. See Criminal P. C. (1898), S. 426 (2B). AIR 1956 All 523.

15. Limitation.

● ——Art. 136 — Delay — Condonation—Grounds—State not appealing against decision of High Court —Time for appeal, expiring—Subject matter of suit coming under another State—Latter seeking leave—Delay, if can be condoned.

Where a party acquiesces in a judgment and deliberately allows the time for filing an appeal to lapse, it would not be a sufficient ground to condone the delay that he has subsequently changed his mind and desires to prefer an appeal. But where the result of the litigation would affect the rights of members of the public, and it is just that the matter should be decided on the merits, so that the controversies involved might be finally settled, the delay will be condoned.

Where the Madras State did not file appeal against the decision of the Madras High Court but actually supported the decision of the High Court, when the High Court granted certificate of fitness to the oppo-

site party, for appealing to the Supreme Court :and the time for appeal was allowed to expire and the opposite party had appealed to the Supreme Court against the decision of the High Court upon the certificate of fitness and in the meanwhile due to the State reorganization the subject-matter of the suit had fallen in the State of Mysore and the State of Mysore was substituted in the place of the Madras State and the Mysore State had asked for special leave under Art. 136 to appeal against the High Court decision, the delay was condoned by the Supreme Court considering the fact that the result of the decision would affect rights of the public. Sri Venkataramana Daevaru v. State of Mysore, 36 Mys L J 232 : 1958 Mad W N (S C) 96 : (1958) S C J 382 : (1958) 1 Andh W R (S C) 109 : (1958) 1 Mad L J (S C) 109 : 1958 S C R 895 : AIR 1958 S C 255 (262) (Pt B) (Pr 11).

●——Art. 136—Limitation—Application for special leave—Supreme Court Rules (1950), O. 13, R. 1—Delay in filing application—(Limitation Act (1908), S. 5).

An application for special leave to appeal is to be filed in the time limited by the Rules of the Supreme Court. Where there was a delay of 44 days in filing the petition and the only ground urged for condonation of delay was that the petitioners had to collect money from amongst a large number of petitioners who were interested in the case :

Held, that that was not a sufficient ground for condoning the delay. Banarsidas v. State of Uttar Pradesh, 1956 SCJ 529 : 1956 Mad W N 834 : 1956 S C A 702 : 1956 B L J R 511 : 1956 S C R 357 : 1956 S C C 299 : 1956 All W R (H C) 421 : 1956 All L J 517 : AIR 1956 S C 520 (522) (Pt B) (Pr 6).

16. Interference with exercise of discretion.

●——Art. 136—Other remedy open but not availed of—Does not oust jurisdiction of High Court under Art. 226 — Alternative effective remedy — What is—Exercise of discretion by High Court — No interference by Supreme Court unless exceptional circumstances exist. See Ibid, Art. 226. (1965) 2 S C W R 1032 : AIR 1966 S C 197.

●——Arts. 136 and 226 — Other remedy open — Discretion of High Court to grant relief under Art. 226—Interference by Supreme Court.

Though the High Court would not ordinarily entertain a petition :under Art. 226 of the Constitution where an alternative remedy is open to the aggrieved party, it has jurisdiction to grant relief to such a party if it thinks proper to do so in the circumstances of the case. In the present case, the High Court has chosen to exercise discretion in favour of the respondents and it would not be right for the Supreme Court to interfere with the exercise of that discretion unless it is satisfied that the action of the High Court was arbitrary or unreasonable. Municipal Council, Khurai v. Kamal Kumar, 1965 M P L J 233 : 1965 Jab L J 237 : 1965 Mah L J 225 : (1965) 1 S C W R 632 : AIR 1965 S C 1321 (1324) (Pt A) (Pr 7).

●——Art. 136 — Interfere with discretion — Madras Cultivating Tenants Protection Act (25 of 1955), Ss. 3 (4) (a), 3 (4) (b), 6 B — Failure of tenant to deposit rent in Court — Revenue Divisional Officer not exercising discretion to allow time—Jurisdiction of High Court and Supreme Court to interfere. See Tenancy Laws — Madras Cultivating Tenants Protection Act (25 of 1955), S. 3 (4) (a). AIR 1965 S C 498.

●——Art. 136—Sentence—Interference in appeal—Ordinarily Supreme Court will not interfere — Held however that discretion in this respect was not judicially exercised by trial Court and by High Court and therefore Supreme Court interfered.

The question of sentence is in the discretion of the trial Court and would not ordinarily be disturbed by the High Court in appeal if the discretion has been exercised judicially. There is still less reason ordinarily for the Supreme Court to interfere with sentences passed by the Trial Court and confirmed by the High Court. Where, however, some of the accused persons were womenfolk and no specific part had been allotted to them it is reasonable to think in all the circumstances of the case that they did not take a leading part in the occurrence but came into the field when their menfolk came out—partly to save their fields and partly to save their menfolk. On a consideration of all the circumstances of the case the sentence on these women-accused under S. 304, Part II read with S. 149, S. 326/149 and S. 148 should be reduced to the period of imprisonment already undergone. So also in respect of the male accused in consideration of their old age the interests of justice held would be served if their sentences were also reduced to period of imprisonment already undergone. [Cri. Appeals Nos. 417 and 552 of 1961, D/- 15-12-1961 (Punjab) Reversed.] Smt Mathri v. State of Punjab, (1964) 5 S C R 916 : 1964 (2) Cr L J 57 : 1963 S C D 556 : AIR 1964 S C 986 (992) (Pt C) (Prs 25, 26, 27).

●——Art. 136 — Counter-claim — Maintainability—Power of Court to treat counter-claim as plaint in cross-suit—Suit by one partner against heirs of deceased partner for specific performance of agreement by which co-partner had agreed to convey his interest to former—Counter-claim by defendants for accounts of dissolved firm—Not maintainable—Power of High Court in second appeal to treat counter-claim as plaint in cross-suit — Exercise of discretion — Interference by Supreme Court in appeal by special leave. See Civil P. C. (1908), O. 8, R. 6. AIR 1964 S C 11.

●——Art. 136—Discretionary order—Refusal to adjourn — No interference by Supreme Court—C. P. Code (1908), O. 17, R. 1.

Per Kapur and Raghubar Dayal, JJ.— It is a matter within the discretion of the Court to allow an adjournment and such discretionary order is, ordinarily not a matter for the consideration of the Supreme Court in an appeal under Art. 136 of the Constitution.

Per Das Gupta, J.—The conduct of the proceedings before a Court must necessarily be left to the Court itself and an appellate Court should not lightly interfere with the discretion exercised by a Court in refusing a prayer for adjournment.

Held, on facts that the action of the High Court in refusing the appellants' prayer for time to engage a counsel and to call on him to argue the case himself was not in the interests of justice. Thakur Sukhpal Singh v. Thakur Kalyan Singh, 1963 S C D 103 : (1963) 1 Andh L T 181 : (1963) 1 S C A 585 : 1963 All W R (HC) 913 : (1963) 2 S C R 733 : 1962 All L J 1075 : 1962 B L J R 977 : AIR 1963 S C 146 (150, 151) (Pt B) (Prs 17, 22, 24, 25).

●——Art. 136—Appeal by special leave against order of High Court under Art. 226 — Interference with exercise of discretion of High Court—Held, that in the peculiar circumstances of case Supreme Court would not interfere as High Court had not exercised its discretion improperly in entertaining writ petition or granting the relief — (Per Majority ; Sarkar, J., Dissenting). A. V. Venkateswaran, Collector of Customs, Bombay v. Ramchand Sobhraj Wadhwani, (1962) 1 S C J 170 : (1962) 1 Mad L J (S C) 83 : (1962) 1 Andh W R (S C) 83 : 64 Bom L R 386 : (1962) 1 S C R 753 : (1961) 2 S C A 622 : AIR 1961 S C 1506 (1511, 1514) (Pt E) (Prs 13, 28).

● ——Art. 136—Powers of the Supreme Court — Refusal to grant injunction restraining defendant from proceeding with suit in another Court—Special leave —Grant of.

Whether the power of the Bombay High Court to issue an injunction restraining the defendant from proceeding with his suit against the plaintiff in a Court outside the jurisdiction of the Bombay High Court de hors the provisions of Rr. 1 and 2, O. 39 of the Code of Civil Procedure rests on S. 151 of the Code or in exercise of power under its general equity jurisdiction independent of the Code of Civil Procedure, the power is a discretionary one vested in a Court to be exercised for the ends of justice, having regard to the circumstances of each case.

Where the High Court has, in exercise of its discretion, refused to give an injunction, the plaintiff is not entitled to be granted special leave against such a purely discretionary order. Baldota Brothers v. Libra Mining Works, AIR 1961 S C 100 (104) (Pt B) (Pr 5).

● ——Art. 136—Discretionary order—Interference—Available surplus—Distribution of — Employer making voluntary payment to workers—Industrial Tribunal allowing something in addition in its own discretion—Supreme Court will not interfere. Rajendra Mills v. Their Workmen, (1961) 2 Lab L J 53 : AIR 1960 S C 1323 (1325) (Pt D) (Pr 8).

● ——Art. 136 — Power of interference — Discretionary Orders.

Where the appellant comes to the Supreme Court by special leave under Art. 136, he is not entitled to challenge the correctness of the decision of the High Court as a matter of right. It is only in the discretion of the Supreme Court that the appellant can be permitted to dispute the correctness or the propriety of the decision of the High Court.

Where the trial Court and High Court exercised their discretion in not granting stay under S. 34 of the Arbitration Act, having regard to the limits on the exercise of the jurisdiction under Art. 136, he must still satisfy the Supreme Court that it would be justified in interfering with the concurrent exercise of discretion by the two Courts below. Printers (Mysore) Private Ltd. v. Pothan Joseph, 1960 Mad W N 685 : 38 Mys L J 807 : 1961 Pat L R (SC) 6 : ILR (1960) Mys 545 : (1960) 3 S C R 713 : (1962) 1 S C J 274 : (1962) 1 M L J (SC) 127 : (1962) 1 An W R (SC) 127 : AIR 1960 SC 1156 (1159, 1160, 1161, 1162) (Pt B) (Prs 10, 13, 15).

● ——Art. 136—Sentence — Discretion — Unless discretion is improperly exercised Supreme Court would not interfere—Sentence of rigorous imprisonment for six months held not severe in the circumstances. See Penal Code (1860), S. 420. 1960 Cr L J 1148 : AIR 1960 S C 734.

● ——Art. 136 — Interference with discretionary order.

Illegally or improperly detained—Application for custody of minor illegitimate daughter by Muhammadan mother—Respondent having no legal right to custody of daughter — Welfare of child — Remedy under Guardians and Wards Act—No bar to Writ of habeas corpus — Power of High Court to order delivery of child. See Criminal P. C. (1898), S. 491. 1960 Cr L J 164 : AIR 1960 S C 93.

● ——Art. 136 — Appeal by special leave—Interference with discretion of Courts below.

Where a case comes before the Supreme Court by special leave, the Supreme Court will not interfere with the discretion of the Courts below. Razia Begum v. Sahebzadi Anwar Begum, 36 Mys L J 671 : 1958 S C J 1214 : (1958) 2 M L J (SC) 193 : (1958) 2 Andh W R (SC) 193 : 1959 S C A 46 : 1959 S C R 1111 : AIR 1958 S C 886 (895) (Pt B) (Pr 14).

● ——Art. 136 — Whether action should be taken under S. 195, Cr. P. C., is a matter primarily for the Court which hears the application and its discretion is not to be lightly interfered with even when that is competent. See Criminal P. C. (1898), S. 195. AIR 1956 S C 153.

● ——Art. 136—Interference with exercise of discretion.

It is not the practice of Supreme Court in special leave cases and in exercise of its overriding powers to interfere with a matter which rests in the discretion of the High Court except in very exceptional cases. M. Y. Shariff v. Hon'ble Judges of the Nagpur High Court, 1955 S C J 54 : 1954 Mad W N 1003 : 1955 B L J R 112 : 1955 Cr L J 133 : 1955 All W R (Sup) 6 : 1955 All L J 90 : (1955) 1 M L J (SC) 13 : 1955 An W R (SC) 13 : 1955 S C A 205 : 57 Punj L R 198 : 1955 S C R 757 : AIR 1955 S C 19 (23, 24) (Pt B) (Pr 11).

17. Appeal against decision of Income-tax Appellate Tribunal.

● ——Art. 136 — Appeal by special leave — Appeal directly to the Supreme Court from the order of the Income-tax Tribunal—Appeal entertainable in special circumstances — Income-tax Act (11 of 1922)—Purchase and sale of shares by the assessee company—Loss—Capital loss or trading loss — Question one of mixed fact and law.

The Supreme Court under Art. 136 of the Constitution would not entertain an appeal directly from an order of the Income-tax Appellate Tribunal bypassing the decision of the High Court on Reference, except in very exceptional circumstances. Where it is difficult to say that the Commissioner of Income-tax was negligent an appeal direct to the Supreme Court from the order of the Tribunal is justified by the special circumstances.

The application to the Tribunal for a reference to the High Court on certain questions of law said to arise out of the order of the Appellate Tribunal was dismissed as the same was barred by limitation. The Tribunal had no jurisdiction to extend the time. An application against the order filed in the High Court under S. 66 (3) of the Income-tax Act was also dismissed on the same ground of limitation. By the appeal by special leave, no decision of the High Court could be said to be by-passed, because the decision of the High Court related to the correctness of the decision of the Tribunal on the question of limitation, which was not a question which was sought to be raised in an indirect way by the present appeal.

Whether a particular loss is a trading loss or a loss on the capital side undoubtedly depends upon the facts of each case but the question is not one of pure fact but one of mixed question of fact and law. C. I. T., Delhi and Rajasthan v. National Finance Ltd., 1962 Supp (2) S C R 865 : (1963) 1 S C J 597 ; (1962) 44 I T R 788 : AIR 1963 S C 835 (837) (Pt B) (Pr 4).

● ——Art. 136—Appreciation of evidence—Practice of Supreme Court — Order of Tribunal under S. 33 (4), Income-tax Act — Order of High Court under S 66 (2) refusing to direct Tribunal to state a case—Appeal by special leave against order of High Court dismissed on merits—Supreme Court will not entertain or hear appeal against order of Tribunal except in exceptional circumstances.

Where the High Court passes an order under S. 66 (2) Income-tax Act, refusing to require the Tribunal

to state a case arising out of the Tribunal's order under S. 33 (4) of the Act, the Supreme Court in the exercise of its powers under Art 136 of the Constitution will not ordinarily entertain an appeal directly against the order of the Tribunal under S. 33 (4), Income-tax Act unless there are special or exceptional circumstances in the case. This principle would equally apply to a case in which an appeal is filed against the order of the Tribunal as well as against the order of the High Court and the latter appeal is dismissed on merits by the Supreme Court holding that no case is made out for calling for a statement of the case from the Tribunal. In the latter case if the Supreme Court were to proceed to decide the appeal against the Tribunal's order, it would be a departure from the well-settled rule that ordinarily the Supreme Court does not, in exercise of its jurisdiction under Art. 136, enter upon a reappraisal of the evidence on which the order of the Court or Tribunal is founded. The Legislature has expressly entrusted the power of appraisal of evidence to the Taxing authorities, and the decision of those authorities would ordinarily be regarded as final. AIR 1961 S C 1708, Foll. Soorajmull Nagarmull v. Commissioner of Income-tax (Central), Calcutta, (1964) 1 S C J 271 : (1962) Supp 3 S C R 306 : (1962) 45 I T R 220 : AIR 1963 S C 491 (492, 493) (Prs 3, 4).

● ——Art. 136—Grant of special leave in Income-tax cases — Income-tax Act (1922), S. 66 (1) and (2) — Assessee's application under S. 66 (1) to Tribunal for reference rejected — Assessee's application under S. 66 (2) also rejected by High Court — Assessee not entitled to ask for special leave to appeal from original decision complained of, when it did not move against subsequent orders of Board and High Court under S. 66.

Where after dismissing an appeal by the assessee from the order of assessment complained of, the Income-tax Appellate Tribunal rejects the assessee's application under S. 66 (1) of the Income-tax Act to make a reference to the High Court on the ground that the question on which the reference is sought, did not arise from the order of the Tribunal and the High Court also rejects the assessee's application under S. 66 (2) of Act, the assessee is not entitled to ask the Supreme Court to exercise its power under Art. 136 of the Constitution and grant special leave to appeal from the order complained, when it does not move against the orders of the Board and the High Court under S. 66 of the Act. A I R 1961 S C 1708, Foll. Indian Aluminium Co Ltd. v. Commr. of I.-T., West Bengal, (1961) 43 I T R 532 : A I R 1962 S C 1619 (1620, 1621) (Pr 7).

● ——Art. 136—Appeal from order of Income-tax Appellate Tribunal—There must be special circumstances.

An appeal against an order of the High Court deciding a question referred or against a refusal to call for a statement can be brought before the Supreme Court under S. 66-A of the Income tax Act, if the High Court decides the question referred and under Art. 136 of the Constitution, if the High Court refuses to call for a statement. However a circumstance which cannot be corrected by the procedure of a stated question of law on statement of the case to the High Court may afford a ground for invoking the jurisdiction of the Supreme Court under Art. 136 against an order of the Income-tax Appellate Tribunal itself. That ratio however does not apply, where a question of law can be raised, and is capable of being answered by the High Court or on appeal, by the Supreme Court:

Held, that no special circumstances existed, on which the assessee could claim to come to the Supreme Court against the decision of the Appellate Tribunal. AIR 1961 S C 1708 and AIR 1962 S C 1619, Rel. on. and AIR 1955 S C 65, Disting. Kanhaivalal Lohia v. Commr. of I.-T., West Bengal, (1962) 44 I T R 405 : (1962) 1 S C J 127 : A I R 1962 S C 1323 (1325, 1326) (Prs 6, 9).

● ——Art. 136 — High Court rejecting application under S. 66 (2), Income-tax Act and refusing to direct Income-tax Act Tribunal to state a case — Supreme Court will not entertain appeal from decision of Income-tax Tribunal—Income tax Act (1922), S. 66 (2).

Save in exceptional and special circumstances the Supreme Court would not exercise its power under Art. 136 in such a way as to by-pass the High Court by entertaining an appeal direct from the order of the Income-tax Appellate Tribunal and thereby ignore the decision given by the High Court.

Where the High Court rejected an application of the Commissioner of Income-tax under S. 66 (2), Income-tax Act and refused to ask the Income-tax Appellate Tribunal to state a case for its consideration of a question of law which the Commissioner said arose from the order of the Tribunal, the Supreme Court will not entertain an appeal under Art. 136 direct from the decision of the tribunal. (1961) 43 I T R 498, Rel. on. Commr. of I.-T., Bombay v. Lakhiram Ramdas, 1962 S C (Notes) 26: (1962) 44 I T R 726 (SC).

● ——Art. 136 (1) — Appeal, with special leave, against order of Tribunal refusing to state case on application made under S. 66 (1), Income tax Act — No appeal filed against order of High Court under S. 66 (2) — Maintainability of appeal — (Income-tax Act (1922), Ss. 33 (4) and 66 (1) and (2)).

Where appeals were filed, though with special leave given under Art. 136, only against the orders of the Income tax Appellate Tribunal refusing to state a case on application made to it under S. 66 (1) of the Act.

Held, that the appeals must be dismissed because if the result of the Supreme Court going into the appeals on merits were to confirm the judgment of the High Court, the appellants would be out of Court, but if it differed from High Court it would be in effect setting aside the judgment of the High Court, an eventuality contrary to all notions of comity of Courts. Chimmonlall Rameshwarlall v. Commr. of I.-T., Calcutta, (1959) 37 I T R 415 : A I R 1960 S C 280 (286, 287) (Pr 8).

● ——Art. 136 – Question of fact or law—'Adventure in the nature of trade'—Question as to—Mixed question of law and fact—Interference with the decision of Income-tax Appellate Tribunal by Supreme Court in appeal. See Income-tax Act (1922), S. 2 (4). A I R 1959 S C 1252.

● ——Art. 136—Finding on question of fact, when can be attacked — (Income-tax Act (1922), S. 66) — (Civil P. C. (1908), S. 100).

If any question of law arises on the order of the Income-tax Tribunal the decision of the Tribunal will be open to consideration by the Court under S. 66 of the Act. Stating the same proposition in a different form, if that decision is one of fact turning on the appreciation of evidence, the Supreme Court would not interfere with it in appeal under Art. 136 of the Constitution. Where the point in dispute is whether a sum received by the appellant as profits is taxable under the Act, and that, in turn, depends on whether the forward contracts were made at Gwalior or at Bombay, that would clearly be a question of fact, and the decision of the Tribunal thereon would not be liable to be challenged in these proceedings. But a finding of the Tribunal even on a question of

fact would be erroneous in law if it is perverse. Such a finding is open to attack. Jiyajeerao Cotton Mills, Ltd. v. Commr. of I.-T., Bombay, (1958) 34 ITR 888 : A I R 1959 S C 270 (272, 275) (Prs 4,5, 14).

● ——Art. 136—Scope—Application under S. 66 (2), Income-tax Act — Dismissal — Appeal against decision of Appellate Tribunal—Grounds.

Though an appeal lies under Art. 136 of the Constitution of India to the Supreme Court against a decision of the Appellate Tribunal under the Indian Income tax Act, where the appellant had moved the High Court under S. 66 (2), Income-tax Act and a decision had been pronounced adverse to him and this had become final, obviously it would not be open to him to question the correctness of the decision of the Tribunal on grounds which might have been taken in an appeal against the judgment of the High Court. V. Govindarajulu Mudaliar v. Commr., I. T., Hyderabad, (1958) 34 I T R 807 : A I R 1959 S C 248 (249) (Pt B) (Pr 3).

● ——Art. 136 — Finding of fact — Interference — New plea.

Held on facts, that the Tribunal had to decide a question which was entirely one of fact.

The appellant could not ask the Supreme Court in an appeal under Art. 136 to reassess the evidence and to come to a conclusion of its own on it.

The Tribunal was really making a concession to the appellant and gave a benefit to him to which he was strictly not entitled in view of the Tribunal's findings on the evidence led by the appellant. The Tribunal's judgment was not liable to be set aside because it held that the whole of Rs. 2,68,000 was not taxable.

The contention that the appellant could not be taxed without a finding that the income which had arisen or accrued in British India as he had been assessed as a person not residing in British India and that finding had not been made, could not be allowed to be raised before the Supreme Court for it had never been mentioned at any earlier stage of the proceedings. Sevachand Baid v. Commr. of Income-tax, (1957) 34 I T R 650: AIR 1959 S C 59 (61, 62) (Prs 5, 6, 10, 12, 13).

18. Appeal against decisions of Industrial Tribunal.

● ——Art. 136 — Dearness allowance — Employees (clerical section) in factory — If can claim at the same rates as in sales section and complain of discrimination — Discretion of Tribunal in not awarding uniform dearness allowance — Not a ground for interference under Art. 136 of the Constitution of India, (1950).

There is no identity in the work of the clerical staff in the factory and those in the sales offices. Therefore it would be open to the employer to place different values on them. The same thing could be said of the subordinate staff. The sales office being a mercantile office the employer had to fall in line with other similar establishments and pay to the employees in the sales office the same dearness allowance as other mercantile firms were paying to their employees. In the circumstances the factory employees cannot as of right demand that the benefit of the rates fixed by the Bengal Chamber of Commerce be also given to them though those rates were not intended to be applied to them.

Even assuming that an Industrial Tribunal has exercised its discretion wrongly in not awarding uniform dearness allowance to all the employees of the same employer but who are working in different establishments that is no ground for interference under Art. 136 of the Constitution of India.

There is no valid reason for compelling employers to offer uniform terms of employment to their employees working in different establishments because various considerations must enter into the question such as the value of their work to the employer, the employer's ability to pay, the cost of living, the availability of persons for doing the particular kind of work and so on. The Workmen of Western India Match Co. Ltd. v. The Western India Match Co., Ltd., (1963) 2 S C J 238 : (1963) 2 S C R 27: (1962-63) 22 F J R 395 : (1962) 5 Fac L R 129 : (1962) 1 Lab L J 661 : A I R 1966 S C 976 (980, 981, 982) (Pt B) (Prs 17, 19, 21, 22).

● ——Art. 136—Same employer having factory with office attached in suburb of Calcutta and sales office at Calcutta in commercial area — Industrial Tribunal refusing to award employees in factory, D. A. at same rate as employees in sales office—No contravention of principle of natural justice or any principle of industrial law — Interference by Supreme Court in special appeal—Held, Supreme Court will not interfere under Art. 136. Workmen, W. I. M. Co. v. W. I. Match Co., (1963) 2 S C J 238 : (1962) 1 Lab L J 661 : (1962) 5 Fac L R 129 : (1962-63) 22 F J R 395 : (1963) 2 S C R 27 : A I R 1966 S C 976 (980, 981, 982) (Pt B) (Prs 17, 19, 22).

● ——Art. 136—Finding of fact — Propriety or correctness of — Challenge in Supreme Court will not ordinarily be allowed.

Usually, the Supreme Court does not, under Art. 136 entertain a plea that the findings of fact recorded by the Industrial Tribunal are erroneous on the ground that they are based on a misappreciation of evidence. Ordinarily in such appeals the propriety or the correctness of the findings of fact is not allowed to be challenged. Tata Iron & Steel Co. Ltd. v. Modak, (1965) 2 Lab L J 128 : (1965) 2 S C W R 516 : (1966) 2 S C A 681 : (1965) 11 Fac L R 61 : (1965) 2 S C J 858 : A I R 1966 S C 380 (385) (Pt B) (Pr 16).

● ——Art. 136 — Question of fact — Supreme Court not to interfere.

The question whether there was go-slow during a certain period is a question of fact, and where the Industrial Tribunal has come to the conclusion that there was go slow during the period, ordinarily the Supreme Court will not go into the finding unless there are special reasons, as, for example, where the finding is based on no evidence. Workmen of the Motipur Sugar Factory Private Ltd. v. Motipur Sugar Factory Private Ltd., (1965) 11 Fac L R 112 : (1964-65) 27 F J R 376 : (1965) 2 Lab L J 162 : A I R 1965 S C 1803 (1808, 1809) (Pt C) (Pr 13).

● ——Art. 136 — Appeals in industrial matters — Supreme Court does not act as Court of Appeal on facts.

When the Supreme Court entertains appeals in industrial matters under Art. 136 of the Constitution, it does not act as a Court of Appeal on facts. It is only where general questions of law are raised that this Court feels called upon to pronounce its decisions on them for the guidance of industrial adjudication in this country. The decisions of Industrial Tribunals on questions of fact and their conclusions in matters within their discretion are not usually revised by this Court under Art. 136. Where the claim made by the employers by way of remuneration to the partners had not been properly established by adequate evidence, no grievance can be made by them before the Supreme Court under Art. 136, against the award of the Tribunal reducing the remuneration of the partners from Rs. 1,000 p. m. to Rs. 500 p. m. Manage-

ment of Wenger & Co. v. Their Workmen, (1963-64) 24 F J R 307 : (1963) 6 Fac L R 303 : (1963) 2 Lab L J 403 : 1963 Supp 2 S C R 862 : A I R 1964 S C 364 (870, 871) (Pt D) (Pr 16).

● ——Art. 136 — Industrial dispute — Dismissal of workman by manager held to be not in good faith by Industrial Tribunal — Supreme Court will not interfere with finding of fact. Khardah & Co. Ltd. v. The Workmen, (1963) 7 Fac L R 274 : (1963) 2 Lab L J 452 : (1963) 2 S C W R 252 : (1963-64) 25 F J R 372 : (1965) 1 S C J 97 : (1964) 3 S C R 506 ; A I R 1964 S C 719 (722, 723) (Pt A) (Prs 7, 8, 9, 10, 11).

● ——Art. 136 — Appeal by special leave against decision of Industrial Tribunal—Findings of fact are not allowed to be challenged. Sur Enamel and Stamping Works Ltd. v. Workmen, (1964) 3 S C R 616 : (1965) 1 S C J 334 : (1963) 7 Fac L R 236 : (1963) 2 Lab L J 367 : (1963-64) 25 F J R 88 : A I R 1963 S C 1914 (1916) (Pt B) (Pr 6).

● ——Art. 136 — Appeal from award of Industrial Tribunal — Ascertainment of facts by entering into evidence — Practice of Supreme Court — Civil P. C. (1908), S. 112.

In appeal by special leave from an award of the Industrial Tribunal in respect of dismissal of certain workmen on grounds of misconduct, it is not the practice of the Supreme Court to enter into evidence with a view to finding facts for itself. Meenglas Tea Estate v. Workmen, (1963) 7 Fac L R 106 : (1963) 2 S C W R 102 : (1963-64) 25 F J R 150 : (1964) 1 S C J 98 : (1964) 2 S C R 165 : (1963) 2 Lab L J 392 : A I R 1963 S C 1719 (1721) (Pt B) (Pr 7).

● ——Art. 136—Scope — Interference with award of Industrial Tribunal — Where the proper principles have been applied by the Tribunal in the matter of fixation of wage scale it is not the practice of the Supreme Court to interfere, ordinarily, with details when exercising its special jurisdiction under Art. 136 of the Constitution. Hindustan Times Ltd., New Delhi v. Their Workmen, (1963) 6 Fac L R 313 : (1964) 2 S C J 1 : (1964) 1 S C R 234 : (1963) 1 Lab L J 108 : (1963-64) 24 F J R 342 : A I R 1963 S C 1332 (1338) (Pt C) (Pr 12).

● ——Art. 136 — Applicability — Remuneration to partners of firm—Determination by Industrial Tribunal—Supreme Court will not interfere under Art. 136. Tulsi Das Khimji v. Its Workmen, (1962) 1 Lab L J 435 : (1962) 4 Fac L R 453 : (1962-63) 22 F J R 316 : A I R 1963 S C 1007 (1012) (Pt B) (Pr 7).

● ——Art. 136—Appreciation of evidence — Finding of fact based on evidence on record—Re-appreciation of evidence not permissible — Industrial Tribunal holding that transfer of workmen by the employer was as a result of victimisation—Finding based on an elaborate examination of oral evidence led by parties and on consideration of documents — Findings held could not be disturbed by re-appreciating the evidence—Industrial Disputes Act (1947), S. 10. National Radio Corporation v. Their Workmen, (1963) 6 Fac L R 358 : (1963) 1 Lab L J 282 (S C).

● ——Art. 136 — Industrial Disputes Act (1947), S. 36-A—Scope of—Does not enable tribunal to review or modify its own order — Party aggrieved by award —Proper remedy. See Industrial Disputes Act (1947), S. 36-A. 1962 Supp 1 S C R 491.

● ——Art. 136—Industrial disputes—Bonus—Ceiling cannot be fixed—Bonus award by Tribunal—Supreme Court when will interfere. See Industrial Disputes—Bonus. A I R 1961 S C 895.

● ——Art. 136—Scope—Award of Industrial Tribunal — Provision in, for leave — Interference by Supreme Court.

When industrial adjudication seeks to do social justice it cannot ignore the needs of national economy; and so in considering matters of leave, either in the form of privilege leave or sick leave, the Tribunal should not ignore the consideration that unduly generous or liberal leave provisions would affect production and obviously production of essential commodities is in the interest of not only the employers and the employees but also of the general community. These are, however, matters primarily for the Industrial Tribunal to consider and decide and unless it appears that the impugned provisions cannot be sustained on any reasonable ground or that they mark a violent departure from the prevailing practice or trend, the Supreme Court in appeal from the decision of the Tribunal would be reluctant to interfere with the decision of the Tribunal. Alembic Chemical Works Co., Ltd. v Workmen, (1961) 2 S C J 745 : (1961) 3 S C R 297 : (1961) 2 Fac L R 191 : (1961-62) 20 F J R 78 : (1961) 1 Lab L J 328 : A I R 1961 S C 647 (651, 652) (Pt E) (Pr 14).

● ——Art. 136—Question of fact—Finding by Industrial Tribunal whether person is 'workman' — No interference—Industrial Disputes Act (1947), S. 2 (s).

The question as to whether an employee is a workman as defined by S. 2 (s) of the Industrial Disputes Act is a question of fact and the finding recorded by the Industrial Tribunal on the said question, after considering the relevant evidence adduced by the parties, cannot be successfully challenged before the Supreme Court in an appeal by special leave. New India Motors (P) Ltd., New Delhi v. K. T. Morries, (1960) 1 Fac L R 186 : (1960) 2 S C A 215 : (1960-61) 19 F J R 8 : (1960) 1 Lab L J 551 : (1961) 1 S C J 107 : (1960) 3 S C R 350 : A I R 1960 S C 875 (877) (Pt A) (Pr 3).

● ——Art. 136 — Scope — If overrides — Industrial Disputes Act—(Industrial Disputes Act (1947), Ss. 17 and 17-A).

The provisions of the Industrial Disputes Act must be read subject to the overriding provisions of Art. 136 of the Constitution. Therefore, whatever finality may be claimed under the provisions of the Act, in respect of the award, by virtue of Ss. 17 and 17-A of the Act, it must necessarily be subject to the result of the determination of the appeal by special leave. The operation of Ss. 17 and 17-A of the Act is not automatically stayed by making an application for special leave. India General Navigation and Railway Co., Ltd. v. Their Workmen, (1959-60) 17 F J R 241 : (1960) 1 Lab L J 13 : (1960) 2 S C R 1 : 1960 S C J 1031 : (1960) 2 S C A 318 : AIR 1960 S C 219 (224) (Pt A) (Prs 9, 10).

● ——Art. 136 — Parties — Appeal by special leave from award of Industrial Tribunal — Government—If necessary or proper party.

In an appeal by special leave under Art. 136 against the award of the Industrial Tribunal the Government does not become either a necessary party or a proper party by reason of its giving the award the force of law. The State Government does not play any part in the proceedings, except referring the dispute to the Tribunal under S. 10 of the Act. India General Navigation & Railway Co., Ltd. v. Their Workmen, (1959-60) 17 F J R 241 : (1960) 1 Lab L J 13 : (1960) 2 S C R 1 : 1960 S C J 1031 : (1960) 2 S C A 318 : AIR 1960 S C 219 (224, 225) (Pt C) (Pr 12).

● ——Art. 136—Finding of fact — Conclusion based on consideration of provisions of Act — Question for decision, true scope of provision of Act — Finding is not mere question of fact.

Where the question before the Industrial Tribunal and the Supreme Court was the true scope and effect

of Cl. (iii) of S. 25-E of the Industrial Disputes Act, with particular reference to the expression 'in another part of the establishment' occurring therein, and the question involved a consideration of the tests which should be applied in determining whether a particular unit was part of a bigger establishment, and for the application of the tests certain preliminary facts had to be found the final conclusion to be drawn therefrom is not a mere question of fact. Associated Cement Companies, Ltd., Chaibasa Cement Works v. Their Workmen, (1959-60) 17 F J R 166 : (1960) 1 Lab L J 1 : (1960) 1 S C R 703 : 1960 S C J 1164 : A I R 1960 S C 56 (61, 62) (Pt A) (Pr 9).

● ——Art. 136—Industrial Disputes—Bonus — Question whether employees engaged in Calcutta Office of Sugar Mills in U. P. are in fact and in law employed in that Sugar Mills—Tribunal finding that head office staff at Calcutta are not employees of Sugar Mills—Normally Supreme Court is reluctant to interfere with such finding of Tribunal on such a question of fact—On consideration of evidence Tribunal's finding was found correct. Sri Sita Ram Sugar Mills Ltd., Baitalpur v. Their Workmen, (1960) 1 Lab L J 558 (SC).

● ——Art. 136—Power of Industrial Tribunal to grant interim relief — Power of Supreme Court to grant interim relief. See Industrial Disputes Act (1947), S. 10 (4). AIR 1959 S C 1342.

● ——Art. 136 -Error of law—Conclusion without adverting to evidence.

A conclusion drawn by the Industrial Tribunal without adverting to the evidence before it amounts to an error of law and cannot possibly be sustained. Crompton Parkinson (Works), Private Limited, Bombay v. Its Workmen, (1959) 2 Lab L J 382 : (1959) Supp (2) S C R 936 : (1959-60) 17 F L J 121 : AIR 1959 S C 1089 (1094, 1095) (Pt C) (Pr 10).

● ——Art. 136—Finding of fact—Interference.

The findings of fact recorded by the Industrial Tribunal cannot be successfully challenged before the Supreme Court in an appeal under Art. 136. Kays Constructions Co. (Private) Ltd. v. Its Workmen, (1958) 2 Lab L J 660 : (1958-59) 15 F J R 231 : AIR 1959 S C 208 (210) (Pt A) (Pr 8).

● ——Art. 136—Appeal against decision of Industrial Tribunal — Competency.

The Supreme Court does not sit as a regular Court of appeal over Industrial Tribunals, and does not ordinarily subject the evidence given on behalf of the parties to a fresh review and scrutiny, unless it is shown that exceptional or special circumstances exist, or that substantial and grave injustice has been done or that the case in question presents features of sufficient gravity to warrant a review of the decision appealed from. In the absence of exceptional or special circumstances or of grave injustice the Supreme Court will not be justified in interfering with what really is a finding of fact. Messrs. Indian Iron and Steel Co., Ltd. v. Their Workmen, (1957-58) 13 F J R 377 : (1958) S C J 285 : (1958) 1 Lab L J 260 : (1958) M L J (Cr) 266 : 1958 S C A 289 : 1958 S C R 667: AIR 1958 S C 130 (134, 135, 138) (Pt A) (Prs 7, 17).

● ——Art. 136—Scope—Award of compensation by Industrial Tribunal—Prayer for payment of full compensation—Held no question of principle was involved and Supreme Court would not interfere. M/s Indian Iron and Steel Co., Ltd. v. Their Workmen, (1957-58) 13 F J R 377: (1958) S C J 285: (1958) 1 Lab L J 260: (1958) M L J (Cri) 266 : 1958 S C A 289 : 1958 S C R 667 : AIR 1958 S C 130 (136) (Pt C) (Pr 10).

● ——Art. 136—Powers of Supreme Court — Decision of Industrial Tribunal — Interference—(Industrial Disputes Act (1947), Ss. 2 (k), 15)—Power of Industrial Tribunal to grant dearness allowance.

Generally the necessary pre-requisites for the Supreme Court's interference to set right decisions arrived at by Tribunals whose conclusions on question of fact are final can be classified under the following categories namely; (i) where the Tribunal acts in excess of the jurisdiction conferred upon it under the statute or regulation creating it or where it ostensibly fails to exercise a patent jurisdiction ; (ii) where there is an apparent error on the face of the decision; and (iii) where the Tribunal has erroneously applied well-accepted principles of jurisprudence.

There cannot be a hard and fast rule regarding dearness allowance applicable to all kinds of employees. Where what has been done is that in computing the dearness allowance the Tribunal has considered various methods, and adopted one of them it is difficult to say that there is any question of principle at all, and the Supreme Court will not interfere. Clerks and Depot Cashiers of the Calcutta Tramways Co., Ltd. v. Calcutta Tramways Co., Ltd., (1956) 2 Lab L J 450 : (1956-57) 11 F J R 248 : 1957 S C J 23 : (1957) S C A 49 : (1957) 1 Mad L J (S C) 23 : 1956 S C R 772 : 1956 S C C 518 : (1957) 1 An W R (S C) 23 : AIR 1957 S C 78 (80, 81, 82) (Prs 7, 8, 11, 12).

● ——Art. 136— Industrial Tribunals have to discharge quasi-judicial functions and as such are subject to the overriding jurisdiction of the Supreme Court under Art. 136 of the Constitution. See Industrial Disputes Act (1947), S. 7. AIR 1956 S C 231.

● ——Art. 136 (1) — Industrial Tribunal — Interference with decision of—(Industrial Disputes Act (1947), S. 15 (1)).

The Industrial Tribunals are Tribunals within the meaning of Art. 136 and that Article has vested in the Supreme Court exceptional and overriding power to interfere where it reaches the conclusion that a person has been dealt with arbitrarily or that a Court or Tribunal within the territory of India has not given a fair deal to a litigant. Muir Mills Co. Ltd. v. Suti Mills Mazdoor Union, Kanpur, (1955) 1 M L J (S C) 127 : 1955 S C J 214 : 1955 An W R (S C) 127: 1955 S C A 321 : 57 Punj L R 178 : (1955) 1 S C R 991 : AIR 1955 S C 170 (176) (Pt B) (Pr 20).

● ——Art. 136 — Exercise of extraordinary power given by Art. 136—Decision of Industrial Tribunal—Appeal on—Function of Supreme Court — Industrial Disputes Act (1947), S. 15.

Per Kania C. J.—Even though the Supreme Court has jurisdiction to grant leave to appeal from a decision given by an Industrial Tribunal, yet having regard to the nature of the functions of the Industrial Tribunal the Supreme Court will be very reluctant to entertain an application for leave to appeal.

Per Mahajan J.—The Supreme Court is not to substitute its decision for the determination of the Industrial Tribunal when granting relief under Art. 136. When it chooses to interfere in the exercise of these extraordinary powers, it does so because the tribunal has either exceeded its jurisdiction or has approached the questions referred to it in a manner which is likely to result in injustice or has adopted a procedure which runs counter to the well established rules of natural justice; in other words, if it has denied a hearing to a party or has refused to record his evidence or has acted in any other manner in an arbitrary or despotic fashion. In such circumstances no question arises of this Court constituting itself into a tribunal and assuming powers of settling a dispute. All that the Court when it entertains an appeal would do is to quash the award and direct the tribunal to proceed within the powers conferred on it and to

approach the adjudication of the dispute according to principles of natural justice. This Court under Art. 136 would not constitute itself into a mere Court of error. Extraordinary powers have to be exercised in rare and exceptional cases and on well-known principles. Bharat Bank v. Employees of Bharat Bank, (1950-51) 2 F J R 1 : 86 Cal L J 230: 1950 S C R 459 : AIR 1950 S C 188 (189, 190, 200) (Pt C) (Prs 3, 33).

19. Appeal against decisions of Labour Appellate Tribunal.

● ——**Art. 136 – Scope – Judgment of Labour Appellate Tribunal — Appeal by special leave pending — Compromise by parties – Validity – S. 23 of Payment of Wages Act or S. 6-C of U. P. Industrial Disputes Act – Effect of.**

The provisions of S. 23 of the Payment of Wages Act postulate certain definite rights which are not likely or liable to be modified or reversed in any pending judicial proceedings. Since this factor is absent in cases where an appeal by special leave under Art. 136 from the judgment of the Labour Appellate Tribunal is pending before the Supreme Court it would not be reasonable to rely on the said provisions and contend that they in substance prevent or prohibit amicable settlement of disputes between the parties to the appeal.

Similarly S. 6-C of the U. P. Industrial Disputes Act can have no bearing on the powers of the Supreme Court in dealing with an industrial dispute brought before it under Art. 136 of the Constitution. So long as an award is pending before a Tribunal or a Court the jurisdiction of the tribunal or the Court to deal with it in accordance with law is not affected by S. 6-C and the competence of the parties to settle their dispute pending before the Tribunal or the Court is also not affected or impaired by the said Section. Where the compromise in question is intended to be filed in the Supreme Court for the purpose of enabling the parties to request that Court to pass an order in terms of the said compromise the procedure to be followed is the procedure prescribed by the rules of the Supreme Court and it cannot attract the procedure prescribed by R. 5 (1) of the U. P. Industrial Disputes Rules, 1957. Swadeshi Cotton Mills Co., Ltd. v. Rajeshwar Parshad, (1960) 2 Lab L J 707 : (1962) 1 S C A 145 : (1961) 2 S C R 359 : (1961) 2 Fac L R 26 : (1963) 1 S C J 790 : AIR 1961 S C 429 (431, 432) (Prs 7, 8, 9).

● ——**Art. 136**—Status of workman—Mixed question of law and fact—Interference by Supreme Court with finding of Labour Appellate Tribunal if justified. Industrial Disputes—Bank (Sastri) Award—Construction —Workman whether supervisor is mixed question of law and fact—Clerks doing work of checking in audit department held not supervisors — All India Industrial Tribunal (Bank) Dispute Award Para. 164 Cl. 9. See Industrial Disputes Act (1947), Sch. 3, S. 7A. (1961) 1 Lab LJ 18 (S C).

● ——**Art. 136**—Interference with decision of Labour Appellate Tribunal—Claim for bonus—Determination — Industrial Tribunal relying on previous award— Labour Appellate Tribunal in appeal relying on a later award — Supreme Court would be reluctant to interfere with decision of Labour Appellate Tribunal on such a point. Management of the Trichinopoly Mills Ltd. v. National Cotton Textile Mills Workers Union, (1960-61) 18 F J R 99 : (1960) 2 Lab L J 46 : AIR 1960 S C 1003 (Pt B) (Pr 4).

● ——**Art. 136**—Industrial Disputes— Bonus—Determination of — Available surplus — Distribution of available surplus is determined in the light of several relevant factors — Labour Appellate Tribunal awarding bonus without taking into account all relevant factors — Records of appeal before Supreme Court containing no materials for decision of the point— Under the circumstances Supreme Court can only direct that award of the Tribunal should not be treated as a precedent in deciding similar disputes between the parties in future. See Industrial Disputes Act (1947), Sch. 3, S. 7A. AIR 1960 S C 1003.

● ——**Art. 136**— Appeal from Labour Appellate Tribunal—Claim of the appellant rejected by the Labour Appellate Tribunal on ground that sufficient material had not been placed before it by the appellant on which the claim could be examined and granted— Supreme Court will not in such a case interfere in favour of the appellant. Tinnevelly Tuticorin Electric Supply Co., Ltd. v. Their Workmen, (1960) 1 Fac L R 354 : (1960) 1 Lab L J 275 : (1960-61) 18 F J R 57 : 1960 S C J 734 : (1960) 8 S C R 68 : A I R 1960 S C 782 (788, 789) (Pt B) (Pr 18).

● ——**Art. 136**—Interference—Grounds — Industrial dispute — Decision by Labour Appellate Tribunal fixing ratio of gross profits to working fund which would justify stoppage of increments — No interference by Supreme Court. See Industrial Disputes Act (1947), Sch. 3, S. 7A. **AIR 1960 S C 653.**

● ——**Art. 136 – New point.**

Prima facie, it would be legitimate to infer that the question of jurisdiction had not been urged before the Appellate Tribunal. Supreme Court cannot allow this objection on the ground of want of jurisdiction to be raised for the first time before it. Tika Ram & Sons, Ltd. v. Its Workmen, (1959-60) 16 F J R 255 : 1959 S C R 1287 : (1960) 1 Lab L J 514 : A I R 1960 S C 198 (200) (Pt B) (Pr 10).

● ——**Art. 136** — Wrongful dismissal— Decision by appellate tribunal as to whether or not reinstatement should be ordered — Interference with decision by Supreme Court under Art. 136 of Constitution, See Industrial Disputes Act (1947), S. 2 (k). AIR 1960 S C 160.

● ——**Art. 136** — Industrial dispute between Banks and their employees referred to ad hoc tribunal—Ad hoc tribunal holding that certain claim relating to bonus was not covered by reference and also that claim to bonus was barred by law—Appellate Tribunal taking a contrary view on both points—Decision amounts to award — Appeal to Supreme Court by special leave competent. See Industrial Disputes Act (1947), S. 2 (b). **AIR 1960 S C 12.**

● ——**Art. 136—Parties — Appeal to Supreme Court against order of Labour Appellate Tribunal allowing appeal of some workmen — Workmen to whom no relief was granted by Appellate Tribunal, if to be impleaded.**

Where an appeal by the workmen before the Labour Appellate Tribunal against the order of the Industrial Tribunal was allowed in respect of some of them and the company (employer) appealed against the appellate order by special leave to the Supreme Court, the workmen to whom no relief was granted by the Appellate Tribunal and whose appeal was not allowed, cannot be joined as respondents before the Supreme Court. Ranipur Colliery v. Bhuban Singh, (1959-60) 16 F J R 176 : (1959) 2 Lab L J 231 : 1959 S C J 1139 : (1959) 2 M L J (S C) 232 : (1959) 2 Andh W R (S C) 232 : (1959) M L J (Cr) 797 : (1959) Supp (2) S C R 719 : A I R 1959 S C 833 (834) (Pt A) (Pr 3).

● ——**Art. 136—Powers of Supreme Court.**

Under Art. 136 it is open to the Supreme Court to consider as Court of Appeal whether the order of the

Labour Tribunal was vitiated by an error of law, and whether the order of the Appellate Tribunal modifying it is sound. Workmen of Burn and Co. v. Burn and Co., 1956 S C A 1175 : 1957 S C J 28 : (1957) 1 Lab L J 226 : 1956 S C R 781 : (1956-57) 11 F J R 217 : AIR 1957 S C 38 (48) (Pt G) (Pr 17).

● ——Art. 136 — Appeal against decision of Labour Appellate Tribunal.

The Supreme Court does not sit upon the decisions of Industrial Tribunals like an ordinary Court of appeal, and there must be special circumstances to justify the exercise of the special power under Art. 136 of the Constitution. Such special circumstances exist where the Labour Appellate Tribunal has not directed its mind to the real question to be decided on an application under S. 22, Industrial Disputes (Appellate Tribunal) Act and has passed an order on the basis of a somewhat irrelevant finding which has resulted in manifest injustice. Rohtas Industries v. Brijnandan Pandey, (1957) All W R (HC) 210 : 1957 B L J R 26 : 1956 S C J 740 : (1956-57) 11 F J R 209 : (1956) 2 Lab L J 444 : 1956 S C A 1089 : 1956 S C R 800 : 1957 M P C 3 : 1957 All L J 72 : AIR 1957 S C 1 (6) (Pt C) (Pr 10).

20. Appeal against decisions of Election Tribunal.

● ——Art, 136— Decision on election petition by the Election Tribunal —Appeal by special leave—Respondent, whether can support decree by grounds decided against him (Quaere)—(Civil P.C. (1908), O. 41, R. 22) — (Representation of the People Act (1951), S. 116A). Baru Ram v. Smt. Prasanni, A I R 1959 S C 93 (99) (Pt D) (Pr 11).

[Overruled in AIR 1965 S C 689].

● ——Art. 136—Finding of fact—Election dispute—Special leave for appeal against decision of Election Tribunal — Interference — Finding as to improper rejection of nomination paper Art. 329 — (Representation of the People Act (1951), S. 169 — Rules under, R. 2 (2)).

Where the Election Tribunal has found as a fact that the persons whose thumb impressions the nomination paper purported to bear had really proposed and seconded the candidate and that those thumb impressions had been attested by a Magistrate who had in fact been authorised in that behalf there is no room for the contention in appeal by special leave against the decision of the Election Tribunal that the Returning Officer was justified in rejecting the nomination paper in question. Surendra Nath Khosla v. S. Dalip Singh, 1957 S C J 162 : 1957 Ker L T 319 : 1957 Nag L J 193 : 1957 M P L J 249 : 1957 S C C 137 : 1957 S C A 433 : 1957 Andh L T 174 : 1957 S C R 179 : A I R 1957 S C 242 (244) (Pt A) (Pr 5).

● ——Art. 136 — Findings of fact — Interference— Finding by Election Tribunal as to effect of improper rejection of nomination paper — (Representation of the People Act (1951), S. 100 (1) (c)).

The Supreme Court in an appeal by special leave does not ordinarily open findings of fact recorded by a competent tribunal such as an Election Tribunal, namely that the result of an election has been materially affected by the improper rejection of the nomination paper. Surrendra Nath Khosla v. S. Dalip Singh, 1957 S C J 162 : 1957 Ker L T 319 : 1957 Nag L J 193 : 1957 M P L J 249 : 1957 S C C 137 : 1957 Andh L T 174 : 1957 S C R 179 : 1957 S C A 433 : AIR 1957 S C 242 (245) (Pt C) (Pr 7).

● ——Art. 136—Question of fact—(Representation of the People Act (1951), S. 123 (7)).

The question when a candidature commences is, as has been held over and over again, one of fact, and a decision of the Tribunal on that question is not liable to be reviewed by the Supreme Court in special appeal. It would again be a question of fact whether the payment by the candidate was a pure act of charity or was an expense incurred for election purposes. S. Khader v. Munnuswami, 1956 Mad W N 160 : 1956 S C A 433 : (1955) 2 S C R 469 : 1956 Nag L J 135 : (1955) 2 M L J (S C) 297 : (1955) Andhra W R (SC) 551 : (1955) S C J 303 (SC) : AIR 1955 S C 775 (777, 778) (Pt B) (Prs 6, 8).

● ——Art. 136—Findings of fact recorded by Election Tribunal—Interference—(Representation of the People Act (1951), Ss. 123 (6) and 124 (4)).

Ordinarily the Supreme Court will not, in special appeal under Art. 136, review findings of fact recorded by an Election Tribunal if there is evidence on which they could be reached. Hence where the Election Tribunal has held that certain candidate has committed corrupt practices mentioned in S. 123 (6) and (8) and S. 124 (4) of the Representation of the People Act and there is evidence to support these findings, the Supreme Court in appeal under Art. 136 will decline to interfere with them. T. Nagappa v. T. C Basappa, A I R 1955 S C 756 (757) (Pt A) (Pr 4).

● —Art. 136 — Representation of the People Act (1951), S. 123 (5)—Corrupt practice—Finding of fact by Election Tribunal — Special appeal to Supreme Court — Jurisdiction of Supreme Court to consider conclusions of fact. See Representation of the People Act (1951), S. 123 (5). AIR 1954 S C 686.

● ——Arts. 136 and 329 (b) — Power of Supreme Court to grant spceial leave to appeal against decision of Election Tribunal — Representation of the People Act (1951), Ss. 80 and 105—Civil P.C. (1908), S. 9).

The right of seeking election and sitting in Parliament or in a State Legislature is a creature of the Constitution and when the Constitution provides a special remedy for enforcing that right, no other remedy by ordinary action in a Court of law is available to a person in regard to election disputes. The jurisdiction with which the Election Tribunal is endowed is undoubtedly a special jurisdiction; but once it is held that it is a judicial Tribunal empowered and obliged to deal judicially with disputes arising out of or in connection with election, the overriding power of the Supreme Court to grant special leave, in proper cases, would certainly be attracted and this power cannot be excluded by any Parliamentary legislation. The non obstante clause with which Art. 329 of the Constitution begins debars the Supreme Court, as it debars any other Court in the land, to entertain a suit or a proceeding calling in question any election to the Parliament or the State Legislature. It is the Election Tribunal alone that can decide such disputes, and the proceeding has to be initiated by an election petition and in such manner as may be provided by a statute. But once that Tribunal has made any determination or adjudication on the matter, the powers of the Supreme Court to interfere by way of special leave can always be exercised.

An appeal is a creature of statute and there can be no inherent right of appeal from any judgment or determination unless an appeal is expressly provided for by the law itself. The powers given by Art. 136 of the Constitution however are in the nature of special or residuary powers which are exercisable outside the purview of ordinary law, in cases where the needs of justice demand interference by the Supreme Court of the land. The article itself is worded in the widest terms possible. It vests in the Supreme Court a plenary jurisdiction in the matter of

entertaining and hearing appeals by granting of special leave, against any kind of judgment or order made by a Court or tribunal in any cause or matter and the powers could be exercised in spite of the specific provisions for appeal contained in the Constitution or other laws. The Constitution for the best of reasons did not choose to fetter or circumscribe the powers exercisable under this article in any way. S. 105 of the Representation of the People Act certainly gives finality to the decision of the Election Tribunal so far as that Act is concerned and does not provide for any further appeal but that cannot in any way cut down or affect the overriding powers which this Court can exercise in the matter of granting special leave under Art. 136 of the Constitution.

This overriding power, which has been vested in the Supreme Court under Art. 136 of the Constitution, is in a sense wider than the prerogative right of entertaining an appeal exercised by the Judicial Committee of the Privy Council in England. In the first place Art. 136 is a constitutional provision which, unlike the prerogative right of the Crown, no Parliamentary legislation can limit or take away. In the second place the provision being one, which overrides ordinary laws, no presumption can arise from words and expressions declaring an adjudication of a particular Tribunal to be final and conclusive that there was an intention to exclude the exercise of the special powers. (1876) 2 A C 102 and AIR 1952 S C 64, Ref. to. Durga Shankar Mehta v. Thakur Raghuraj Singh, (1954) 2 M L J 385 : 1954 S C J 723 : 1955 S C A 501 : 1955 S C R 267 : A I R 1954 S C 520 (522, 523) (Pt A) (Prs 4, 5, 6).

● ——Art. 136—"The result of the election has been materially affected"—Speculative finding of Election Tribunal—Interference with by Supreme Court. See Representation of the People Act (1951), S. 100 (1) (c). AIR 1954 S C 513.

[Overruled on another point in A I R 1965 S C 669].

● ——Art. 136—Order of Election Tribunal refusing to dismiss petition for defective verification—Supreme Court if can interfere. See Representation of the People Act (1951), S. 90. AIR 1954 S C 411.

● ——Art. 136—Interference with findings of fact of Election Tribunals. See Representation of the People Act (1951), S. 123. AIR 1954 S C 411.

● ——Arts. 136 and 226—Scope—(Representation of the People Act (1951), S. 105).

Even when the Legislature states that the orders of a Tribunal under an Act like the Representation of the People Act, 1951, S. 105, shall be conclusive and final the High Court and the Supreme Court may interfere under Art. 226 and Art. 136, respectively.

The powers conferred on the Supreme Court by Art. 136 of the Constitution and on the High Courts under Art. 226 cannot be taken away or whittled down by the Legislature. So long as these powers remain discretion of the Supreme Court and that of the High Court is unfettered. Raj Krushna Bose v. Binod Kanungo, 1954 S C J 286 : (1954) 1 M L J 489 : 1954 S C A 737 : 1954 S C R 913 : Madh B L J 1954 S C D 11 : A I R 1954 S C 202 (204) (Pt C) (Pr 16).

21. Appeal against orders under Arts. 226 and 227.

● ——Art. 136 — Appeal against order of High Court under Art. 226—Question of jurisdiction can only be argued. See Ibid, Art. 226. (1964) 2 S C J 543 : A I R 1964 S C 1451.

● ——Art. 136 — Objection to hearing of appeal — High Court disposing of several writ petitions against State by common judgment giving same relief to all petitioners — State preferring appeal to Supreme Court against order in only one writ petition — Order in other petitions becoming final — Appeal is not incompetent — Finality of orders passed in other writ petitions would not be disturbed if appeal were to succeed. State of Punjab v. Joginder Singh, (1964) 1 S C J 627 : (1963) Supp 2 S C R 169 : A I R 1963 S C 913 (916, 917) (Pt B) (Pr 9).

● ——Art. 136—Appeal against order dismissing writ petition under Art. 226 challenging vires and applicability of Punjab Resumption of Jagirs Act, 1957 — Adjudication of rival claims to compensation amount will be wholly foreign to its scope — Supreme Court cannot give direction in judgment or staying payment of part amount for specified period though it had granted interim stay still disposal of appeal. See Ibid, Art. 133. A I R 1962 S C 1305.

● ——Art. 136—Scope — Summary dismissal of writ petition by High Court — Appeal to Supreme Court by special leave—Interference.

Certain employees of the appellant mill made an application to the Authority under the Payment of Wages Act claiming that they were entitled to be paid according to a particular scale. The Authority rejected the objection of the appellant to its jurisdiction to entertain such application. The appellant then filed a writ petition but that was summarily dismissed. The appellant thereafter appealed to the Supreme Court by special leave. The Supreme Court found that the view of the authority on merits was correct and as regards the other contention.

Held, that there being no failure of justice it would not interfere with the order of the High Court dismissing the writ petition of the appellant. A I R 1956 S C 227, Foll. Raipur Mfg. Co. Ltd., Ahmedabad v. M. N Nagrashna, (1961-62) 21 F J R 558 : (1959) 2 Lab L J 837 : A I R 1960 S C 407 (409) (Pr 5).

● ——Arts. 136 and 227—Special appeal — Exercise of power under Art. 227.

In a special appeal against an order of a High Court which was moved for the exercise of its power of superintendence under Art. 227, it is open to the Supreme Court to exercise the same power. Baldeo Singh v. The State of Bihar, 1957 Pat L R (SC) 90 : ILR 36 Pat 746 : 1957 S C C 375 : 1957 Cri L J 998 : 1957 S C J 535 : (1957) M L J (Cr) 485 : A I R 1957 S C 612 (614) (Pt B) (Pr 7).

● ——Arts. 136 and 226 — Order of High Court under Art. 226 Appeal to Supreme Court—Enquiry into merits of rival claims.

In an appeal from an order of a High Court on a petition under Art. 226, the Supreme Court will not enquire into the merits of rival claims of title to the property in dispute set out more appropriate for a Civil Court in a suit. Sohan Lal v. Union of India, 1957 S C R 738 : ILR (1957) Punj 1542 : 35 Mys L J 195 : 1957 S C A 417 : 1957 M P C 466 : 1957 B L J R 566 : 1957 S C J 489 : (1957) 2 M L J (SC) 50 : (1957) 2 Andh W R (SC) 50 : (1957) All W R (HC) 598 : 1957 All L J 682 : A I R 1957 S C 529 (531) (Pt A) (Pr 5).

22. Appeal against miscellaneous decisions.

● ——Art. 136 — Bihar Sales Tax Act (19 of 1947), Ss. 24, 25 Decision of Board of Revenue in revision under S. 24 Reference to High Court under S. 25 decided against appellant—Appeal by Special Leave against order of Board of Revenue—No appeal against decision of High Court — Supreme Court would not interfere.

The assessee was assessed to sales tax and against the order of assessment he took the usual appeals to

the sales tax authorities and after the appeals were rejected he took revision under S. 24, Bihar Sales Tax Act to the Board of Revenue where also he was unsuccessful. The assessee applied under S. 25 for referring six questions of law to the High Court but the Board referred only four questions to the High Court. The High Court after reframing the question answered it against the appellant. The appellant then came up in appeal by special leave to the Supreme Court against the order of the Board of Revenue only but not against the judgment and order of the High Court.

Held, that the appellant was not entitled to agitate the correctness of the decision given by the Board of Revenue in respect of the questions which were agitated before the High Court. As the assessee had not obtained Special Leave in respect of any of the orders passed by the High Court under S. 25 those orders became final and binding and the assessee could not be allowed to by-pass or go behind the orders of the High Court and such exercise would be particularly inadvisable in a case where the result may be a conflict of the decision of two Courts of competent jurisdiction which was contrary to the object of Ss. 23, 24 and 25 of the Act. The fact that the Board had not referred some of the questions to the High Court was no ground for interference direct with the orders of Board of Revenue under Art. 136 of the Constitution as it was open to the appellant to apply to the High Court for a reference under S. 25. A I R 1960 S C 280 and A I R 1961 S C 1708, Rel. on. Ballabhdas v. State of Bihar, (1962) 13 S T C 278 : 1962 B L J R 656 : (1963) 1 S C J 451 : (1962) Supp (2) S C R 967 : A I R 1966 S C 814 (815, 816) (Prs 3, 4).

● ——Art. 136—Supreme Court—Powers of—Order by Central Government under S. 33 of Displaced Persons (Compensation and Rehabilitation) Act (1954)—Whether opinion which Central Government entertained was correct or incorrect on the evidence would not fall for consideration by Supreme Court in appeal under Art. 136. Mithoo Shahani v. Union of India, (1964) 7 S C R 103 : 66 Pun L R 695 : (1964) 2 S C J 579 : 1964 (2) Cri L J 472 : A I R 1964 S C 1536 (1539) (Pt A) (Pr 7).

● ——Art. 136 — Contravention of S. 52A of Sea Customs Act — Imposition of fine in lieu of confiscation of vessel — Supreme Court would not interfere with quantum of fine when the same has not been interfered with by appellate and revisional authorities under the Act—Sea Customs Act (1878), Ss. 52A, 167 (12-A) and 183. Indo-China Steam Navigation Co., Ltd. v. Jasjit Singh, Additional Collector of Customs, Calcutta, (1965) 1 S C A 402 : (1964) 6 S C R 594 : (1964) 34 Com Cas 435 : 1964 (2) Cri L J 234 : AIR 1964 S C 1140 (1153) (Pt G) (Pr 32).

● ——Art. 136—Question of fact—Industrial dispute—Finding of Labour Court—Conclusive—Civil P. C. (1908), S. 112.

The question whether a particular workman is a protected workman or not for the purpose of S. 33, Industrial Disputes Act is a question of fact, and the finding of the Labour Court on such a question will generally be accepted by the Supreme Court in appeal from the award of the Labour Court as conclusive. P. H. Kalyani v. Air France, Calcutta, (1963) 1 Lab L J 679 : (1963) 6 Fac L R 435 : (1963-64) 24 F J R 464 : (1963) 2 S C W R 359 : (1964) 1 S C J 566 : (1964) 2 S C R 104 : A I R 1963 S C 1756 (1758) (Pt B) (Pr 5).

● ——Art. 136—Scope—The Supreme Court will not interfere in appeal under Art. 136 of the Constitution to reverse the view taken by the Labour Court unless it can be said that the view was perverse or patently wrong on the materials before the Court. See Industrial Disputes Act (1947), Sch. 3, S. 7A. A I R 1962 S C 1348.

● ——Art. 136—Special leave — Exercise of discretion—Limitation—Bihar Sales Tax Act (19 of 1947), Ss. 23, 24 and 25—Assessment to sales-tax—Dismissal of revision under S. 24 by Board of Revenue—Application under S 25 (2) to High Court for directing Board of Revenue to state a case — Dismissal — Appeal by special leave against order of Board under S. 24—Maintainability.

Held, on facts that as the appellant had not obtained special leave in respect of any of the orders passed by the High Court under S. 25, those orders had become final and binding between the parties and the appellant could not be allowed to by-pass or go behind the orders of the High Court by entertaining appeal directly against the orders of the Board of Revenue. To ignore the decision of the High Court on a question of law would really nullify the statutory provisions of S. 25 of the Act. The special leave was not properly given and the appellant was not entitled to ask the Supreme Court to exercise its powers under Art. 136. A I R 1959 S C 248 and A I R 1960 S C 280, Rel. on; A I R 1955 S C 65 and A I R 1961 S C 736, Dist.

It is no doubt open to the Supreme Court to grant special leave to appeal from the main decision of the High Court even though the High Court has refused to grant a certificate under Art. 133 of the Constitution. Chandi Prasad Chokhani v. State of Bihar, (1962) 2 S C R 276 : (1962) 2 S C A 609 : (1961) 43 I T R 498 : (1962) 1 S C J 138 : (1962) 1 Andh L T 193 : (1961) 12 S T C 506 : 1961 B L J R 721 : 1961 All L J 785 : 1961 M P C 741 : A I R 1961 S C 1708 (1711, 1712, 1713, 1714, 1715) (Pt B) (Prs 8, 9, 10, 17, 19).

● ——Art. 136—Finding of fact—Interference.

In an appeal under Art. 136, it would not be open to the appellant to challenge the correctness or the propriety of a finding of fact recorded by a labour Court but when the said finding is not supported by any legal evidence and is wholly inconsistent with the materials produced on the record, the Supreme Court may go into evidence and set aside the findings D. Macropollo & Co.. (Private) Ltd. v. D. Macropollo & Co; (Private) Ltd Employees' Union, (1958-59) 15 F J R 67 : (1958) 2 Lab L J 492 : AIR 1958 SC 1012 (1014, 1017) (Pt B) (Prs 4, 12).

● ——Art. 136—Jurisdiction—(Railways Act (1890), S. 46)—Effect of.

The provision in S. 46, Railways Act, about the finality of the Railway Rates Tribunal's decision cannot affect the Supreme Court's jurisdiction under Art. 136 of the Constitution. Raigarh Jute Mills, Ltd. v. Eastern Rly., 1959 S C R 236 : 1959 S C A 262 : 1958 S C J 720 : (1958) 2 M L J (SC) 86 : (1958) 2 An W R (S C) 86 : AIR 1958 S C 525 (528) (Pt A) (Pr 5).

● ——Art. 136—Scope—Administration of Evacuee Property Act, 1950 — Order of Custodian General under S. 27—Interference in appeal. See Administration of Evacuee Property Act, S. 27. AIR 1956 SC 77.

23. Practice and procedure.

● ——Art. 136—Reference under S. 66, Income-tax Act—Appeal to Supreme Court—Decision on merits—Practice. See Income-tax Act (1922), S. 66. AIR 1965 S C 1905.

● ——Art. 136—Practice — Supreme Court — Arguments on facts—Details of, given in judgments of

High Courts would normally be regarded as correct —Allegation that many arguments on facts brought before High Court Judges were not considered by them—Practice of making such allegations deprecated. Bashiruddin Ashraf v. Bihar Subai Sunni Majlis-Awaqf, 1965 B L J R 381 : (1965) 2 S C W R 101 : (1966) 1 S C J 72 : AIR 1965 S C 1206 (1208) (Pt B) (Pr 7).

● ——Art. 136 — Appeal by special leave against order rejecting review petition allowed — Right of of appellant to costs—Held, in the circumstances that there was no justification for the plea of the respondent State that costs should not follow the event and that the appellant should be deprived of its right to costs—Civil P. C. (1908), S. 35. Thungabhadra Industries, Ltd v. Government of Andhra Pradesh, (1964) 5 S C R 174 : 1964 S C D 179: (1964) 1 S C W R 310: AIR 1964 SC 1372 (1378, 1379) (Pt D) (Pr 13).

● ——Art. 136 — Writ petitions and appeals from orders therein — Tribunals joined as parties — Cost of lawyers—Generally not allowed. See Ibid, Art. 226. AIR 1964 SC 477.

● ——Art. 136—Application for special leave—Reasons for dismissal—Practice of Supreme Court.

It is not the practice of the Supreme Court to give reasons for the dismissal of an application for special leave. Associated Tubewells. Ltd. v. Gujarmal Modi, 1957 S C J 725 : I L R (1957) Punj 1881 : (1957) M L J (Cr) 688 : (1957) 2 M L J (SC) 137 : 1957 S C A 942 : 60 Punj L R 9 : (1957) 2 An W R (SC) 137 : AIR 1957 SC 742 (743) (Pt A) (Pr 2).

● ——Art. 136—Remand.

Held, on facts that a remand was not called for in the interests of justice, as in the case of undisputed facts it could only result in the proceedings dragging on and the relationship between the parties deteriorating Workmen of Burn and Co. v. Burn and Co., 1956 S C A 1175 : 1957 S C J 28 : (1957) 1 Lab L J 226 : 1956 S C R 781 : (1956-57) 11 F J R 217 : AIR 1957 SC 38 (45) (Pt C) (Pr 10).

● ——Art. 136—Supreme Court practice—Question as to prejudice—Relevancy.

The Supreme Court will be slow to entertain question of prejudice when details are not furnished. The fact that the objection is not taken at an early stage will also be taken into account. Sukha v. State of Rajasthan, 1956 Cr L J 923 : 1956 S C J 503 : 1956 Andh L T 583 : 1956 S C C 355 : 1956 S C A 781 : 1956 All W R (Supp) 83 : 1956 S C R 288 : AIR 1956 SC 513 (520) (Pt D) (Pr 38).

ARTICLE 137

● ——Art. 137 — Grounds of review — References to what Judges said in course of arguments—Propriety.

In a review application, it is highly improper on the part of an Advocate to refer in detail as to what, according to him, happened in Court on the prior occasion and what each Judge said in the course of the argument followed by a confident assertion how and why the application was dismissed. It is possible that a view which ultimately appeals to a Judge in coming to his conclusion is erroneous. That by itself can afford no ground for review. But what is improper is to assume and assert as to what a Judge's view is in making a particular order when the order pronounced does not set it out and to make references to what Judges say in course of arguments and make that a ground for rehearing. Associated Tubewells, Ltd. v. Gujarmal Modi, ILR (1957) Punj 1881 : 1957 S C A 942 : 1957 S C J 725 : (1957) 2 Mad L J (SC) 137 : (1957) Mad L J (Cri) 688 : 60 Punj L R 9 : (1957) 2 An W R (SC) 137 : AIR 1957 S C 742 (743) (Pt B) (Prs 4, 5).

● ——Art. 137—Supreme Court has power of review which must be exercised with due care and caution and only for advancing the public well-being in the light of surrounding circumstances of each case but it is not right to confine its power within rigidly fixed limits. See Ibid, Art. 141. AIR 1955 SC 661.

——Art. 137—Criminal P. C. (1898), S. 561A—Petition by convicted person for special leave to appeal dismissed by Supreme Court—High Court ceases to have jurisdiction to entertain review application — Power of Supreme Court under Art. 137. See Criminal P. C. (1898), S. 561-A. AIR 1962 All 193.

——Art. 137—Orders passed under Art. 226 —Review of —Maintainability—Provisions of C. P. Code — Applicability—No provision in Constitution for review of orders passed under Art. 226—Such provision is to be found, as regards Supreme Court, in Art. 137. See Ibid, Art. 226. AIR 1957 Manipur 39.

ARTICLE 139

See also Ibid, Arts. 226 and 32.

● ——Arts. 139 and 226 —Writ of certiorari—When may issue.

When the executive authority has to form an opinion about an objective matter as a preliminary step to the exercise of a certain power conferred on it, the determination of the objective fact and the exercise of the power based thereon are alike matters of an administrative character and are not amenable to the writ of certiorari. When the law under which the authority is making a decision, itself requires a judicial approach, decision will be quasi-judicial. Prescribed forms of procedure are not necessary to make an inquiry judicial, provided in coming to the decision the well-recognised principles of approach are required to be followed. Therefore, wherever any body of persons having legal authority to determine questions affecting rights of subjects and having the duty to act judicially, act in excess of their legal authority a writ of certiorari may issue. Province of Bombay v. Khushaldas. 1950 Mad W N 802 : (1950) 2 Mad L J 703 : 1950 S C J 451 : 86 Cal L J 330 : 1950 S C R 621 : 53 Bom L R 1 : AIR 1950 S C 222 (224, 225, 226) (Pt A) (Prs 6, 7).

● ——Arts. 139 and 226— Bombay Land Requisition Ordinance (V [5] of 1947), S. 3 — Decision about public purpose — Writ of certiorari, if may issue : A I R 1949 Bom 277, Reversed.

Per Kania C. J., Fazl Ali, Patanjali Sastri and Dass JJ., (Mahajan and Mukherjea JJ. contra)— The decision of the Government about a public purpose is a fact which it has to ascertain or decide, and thereafter the order of requisition has to follow. The decision of the Provincial Government as to the public purpose contains no judicial element in it. The inquiries mentioned in Ss. 10 and 12 are only permissive and the Government is not obliged to make them. Moreover, they do not relate to the purpose for which the land may be required. They are in respect of the condition of the land and such other matters affecting land. The words of S. 3 read with the proviso, and the words of S. 4 taken along with the scheme of the whole Ordinance, do not import into the decision of the public purpose the judicial element required to make the decision judicial or quasi-judicial The decision of the Provincial Government about public purpose is therefore, an administrative act, and there is no scope for an application for a writ of certiorari: A I R 1949 Bom 277, **Reversed.** Province of Bombay v. Khushaldas, (1950) 2 Mad L J 703: 1956 S C J 451:

86 Cal L J 330 : 1950 S C R 621 : 53 Bom L R 1 : AIR 1950 SC 222 (227) (Pt B) (Prs 10, 11).

● ——Art. 139 – Decision under S. 3 of Bombay Land Requisition Ordinance (5 of 1947)—Writ of certiorari lies against Provincial Government. See Bombay Land Requisition Ordinance (5 of 1947), S. 3. A I R 1950 S.C 222.

ARTICLE 141

See also Precedents.

SYNOPSIS

(Constitution of India, Art. 141).

1. Scope of the Article.
2. "Law declared by the Supreme Court."
   (a) Obiter dicta of the Supreme Court.
3. Can Supreme Court reconsider its own previous decisions.
4. Power of Legislature to alter law declared by Supreme Court.
5. All Courts in India.
6. Present authority of Privy Council and Federal Court.

1. Scope of the Article.

● ——Art. 141— Law declared by Supreme Court binds Courts in India but the Supreme Court does not enact. Rajeswar Prasad Misra v. State of West Bengal, 1965 Mad W N 210 : (1965) 2 S C W R 339 : 1965 All W R (H C) 630 : 1965 All Cri R 416 : 1965 S C D 904 : 1965 (2) Cri L J 817 : AIR 1965 S C 1887 (1891, 1892) (Pt B) (Pr 8).

● ——Art. 141—Decisions of English Court at variance with Supreme Court decisions—Effect.

The decisions of the English Courts being merely of persuasive authority, decisions of such a Court even if at variance with one of the Supreme Court, do not by themselves justify an application to reconsider an earlier decision of the Supreme Court. Manipur Administration, Manipur v. Thokohom Bira Singh, (1964) 7 S C R 123 : 1965 S C D 8 : (1965) 1 Andh L T 96 : (1965) 1 S C J 451 : 1965 Mad L J (Cri) 233 : 1965 All W R (H C) 358 : 1965 All Cri R 250 : 1965 (1) Cri L J 120 : 1964 Mad W N 557 : AIR 1965 S C 87 (91) (Pt A) (Pr 10).

● ——Art. 141— Decision on tax liability for different period — Constructive res judicata, if applies. Decision of Supreme Court has binding effect on all courts in India as law. See Civil P. C. (1908), S. 11. AIR 1964 S C 1013.

● ——Art. 141 — Powers of—Supreme Court is not precluded from considering the correctness of the decision of the High Court notwithstanding its having held the field for over forty years without question. See Precedents. AIR 1963 S C 1150.

——Art. 141—Scope.

The law which binds all the Courts now is to be as stated by the Supreme Court. 58 Cal W N 936 : AIR 1955 Cal 45 (48) (Pt A) (Pr 10) (DB).

● ——Arts. 141, 372—Decision of Judicial Committee.

A decision of the Judicial Committee is binding upon the High Court until the Supreme Court rules otherwise. 57 C W N 127 : AIR 1953 Cal 524 (526) (Pt B) (Pr 6) (DB).

——Art. 141— Division Bench decision — Power to overrule rests only with Supreme Court and none else. See Precedents. AIR 1963 Guj 28.

——Art. 141— Scope —Binding effect — Decision of one division Bench not binding on another Bench. See Precedents. 1962 (2) Cri L J 360 : AIR 1962 Guj 250 (DB).

● ——Art. 141—Supreme Court authority can overrule authorities of Privy Council as well as of Board of Judicial Advisers of J & K State— Constitution of India (Application to J & K) Order, 1954, S. 2. Master Sewanath v. Faqir Chand, 1965 Kash L J 105 : A I R 1965 J & K 62 (66) (Pt B) (Pr 21) (FB).

——Art. 141 —Decisions of Supreme Court — Decisions should be followed in interpreting similar provisions of other Acts.

When a provision of an Act is considered by the Supreme Court, the decision of that Court applies with equal force to the similar provisions of other Acts, not specifically mentioned. Although the decision relates to a particular case, it settles the law on the subject and should be followed by all subordinate Courts. 1961 M P L J (Notes) 217.

——Art. 141—Conflict of views in Supreme Court decisions—Latest view binding on Courts.

When the Supreme Court expresses its view on any particular point of law, such expression of view shall be considered as overriding contrary views expressed on the point in earlier decisions of the same Court and it is the latest pronouncement of the Supreme Court which would be binding on all Courts. 38 Mys L J 720 : I L R (1960) Mys 267 : AIR 1961 Mys 3 (7) (Pt B) (Pr 11) (DB).

2. "Law declared by the Supreme Court."

(a) Obiter dicta of the Supreme Court.

2. "Law declared by the Supreme Court".

● ——Art. 141 — Pronouncement on question not necessary for disposal of case — Duty of Supreme Court.

Per S. R. Das, C. J. and Kapur, J.—The Supreme Court should not make any pronouncement on any question which is not strictly necessary for the disposal of the particular case before it. Bashier Nath v. Commr. of Income-tax, Delhi, (1959) 35 I T R 190 : 1959 S C J 1207 : (1959) Supp (1) SCR 528 : AIR 1959 S C 149 (157) (Pt B) (Pr 12).

● ——Art. 141— Statute once declared unconstitutional by Supreme Court was not again to be shown unconstitutional in every case. See Prohibition — Bombay Prohibition Act (15 of 1949), S. 13 (b). AIR 1955 S C 123.

——Art. 141—Supreme Court decision — Not to be disregarded by lower Courts on insufficient grounds. See Precedents. 1965 (2) Cr L J 179 : AIR 1965 All 372.

——Art. 141—Decision by Supreme Court — Binding on Courts and is declaration of law—Income-tax Act (1922), S. 14 (2) (c).

Even though a particular provision is not considered still the decision given by the Supreme Court is binding on Courts in India and is a declaration of law under Art. 141 of the Constitution. (1961) 42 ITR 203 (All).

——Art. 141 — Decision of Supreme Court by only three Judges is binding in the same way as a decision of Constitution Bench (five judges). 1959 All L J 887 : 1959 All W R (HC) 681 : 1960 All Cr R 20 : 1960 Cr L J 1044 : AIR 1960 All 458 (459) (Pt B) (Prs 10, 11) (DB).

[Overruled on another point in AIR 1961 All 630 (FB)].

——Arts. 141 and 14 — Evidence Act (1872), S. 27— Validity of– Does not contravene Art. 14 of the Constitution — Scope and applicability of section as declared by Supreme Court is binding on all Courts within the territory of India. See Evidence Act (1872), S. 27. AIR 1958 All 514.

——Art. 141—Law declared by the Supreme Court —Meaning of.

Observations by the Supreme Court in process of reasoning do not amount to declaration of law as contemplated by Art. 141 of the Constitution. It is well known that a case is an authority for the point it decides. 1958 Cr L J 134 : AIR 1958 All 119 (124) (Pt D) (Pr 27) (DB)

——Art. 141 — Decision of Supreme Court—Authority of—Grounds not taken in Supreme Court.

A decision given by the Supreme Court is clearly a declaration of law applicable to the case and is consequently binding on the High Court under Art 141. The law declared by the Supreme Court is binding whether the declaration is made after discussing all possible aspects or without doing so. For instance, once the Supreme Court has declared that a particular contract of service is valid, it is not open to the High Court to examine the validity of such a contract even on any ground which may not have been considered by the Supreme Court. AIR 1953 S C 250, Ref. 1955 All L J 665 : (1957) 1 Lab L J 37 : ILR (1956) 2 All 627 : AIR 1955 All 496 (498) (Pt C) (Pr 6).

——Art. 141—Validity of S. 6. U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 6—Declaration by Supreme Court in AIR 1952 S C 252 that the entire Act is valid—High Court need not go into the reason leading to that declaration. See Tenancy Laws —U. P Zamindari Abolition and Land Reforms Act (1 of 1951), S. 6. AIR 1955 N U C (All) 2696.

——Art. 141 — Conflict between view of P. C. and F. C.—Binding nature of P. C. view in preference to F. C. view under Govt. of India Act — Passing of Constitution whether has affected this position—See Precedents AIR 1951 All 205.

[Reversed on another point in AIR 1955 S C 600].

——Art. 141 — Law declared by Supreme Court—Interpretation of.

Art. 141 says that "The law declared by the Supreme Court shall be binding on all Courts within the territory of India". It is the law declared by the Supreme Court that binds the Court and not the judgments. This is made clearer on a consideration of Art 145 (5). "The law declared" referred to in Art. 141 is the law to be gathered from any judgment in a case decided by the Supreme Court, whether it is the judgment of a Judge forming the majority or of a Judge in a minority and dissenting. 65 Bom L R 674 : (1965) 56 I T R 522 : 1964 Mah L J 157 : ILR (1964) Bom 163 : AIR 1964 Bom 170 (176) (Pt B) (Pr 23) (DB).

——Art. 141—In AIR 1962 S C 486, Supreme Court holding Cls. 1 and 2 of Notification No. MWA 1557-J, dated 11-6-1958 issued by Government of Bombay under S. 5 of the Minimum Wages Act (1948) intra vires—Subsequently clauses challenged by petitioner in a petition under Arts. 226 and 227 of the Constitution—Petitioner not party to the case which went up to the Supreme Court—Grounds on which clauses were challenged in the present petition neither considered nor even raised in the earlier case before the Supreme Court—High Court cannot shut out the petitioner on a preliminary ground that in the previous decision Cls. 1 and 2 were held to be intra vires of the Act and cannot at all be challenged in the High Court. See Ibid, Art. 226. AIR 1964 Bom 51 (DB).

——Art. 141—Law declared by the Supreme Court—Binding authority Duty of High Courts.

The House of Lords may be high authority, but as far as High Courts are concerned, the Supreme Court is a higher authority and High Courts must accept the law as laid down by that Court. Therefore, to the extent that the House of Lords has taken a different view of the law from that of the Supreme Court, High Courts must accept the law as laid down by the Supreme Court. 58 Bom L R 709 : ILR (1956) Bom 793 : (1956) 30 I T R 753 : AIR 1956 Bom 586 (589) (Pt B) (Pr 9) (DB).

——Arts. 141, 143 and 3 — Decisions given by Supreme Court in advisory jurisdiction are binding on subordinate Courts.

The decision given by the Supreme Court in its advisory jurisdiction is binding on the Courts in India under Art. 141 of the Constitution of India. The law regarding several important and difficult points arising upon the interpretation of the Constitution is "declared" by the Supreme Court even in its advisory jurisdiction. "Declared" means made clear or manifest. Hence, where the Supreme Court decided in its advisory jurisdiction that Art. 3 of the Constitution had no application to a case of cession of the Union State territories to a foreign power, and that a Parliamentary Statute was not necessary in addition to the amendment of the first schedule of the Constitution, the decision was held to be binding on the High Court. AIR 1965 Cal 282 (290) (Pt D) (Pr 19).

——Art. 141—Decision of Supreme Court — Weight of—Conflicting High Court decisions—Later Supreme Court decision — Reference to Full Bench—Necessary.

Where the previous Division Bench came to a different conclusion it was wholly unnecessary for the later Division Bench to refer the matter to a Full Bench because of the later decisions of the Supreme Court. The law declared by the Supreme Court of India is binding on all Courts in India under Art 141 of the Constitution and must therefore be applied in a subsequent decision. AIR 1958 Cal 510 (516) (Pt D) (Pr 23).

——Art. 141—Declaration of law by Supreme Court—Binding not only on the parties but also on all Courts. (1965) 6 Guj L R 505 : AIR 1966 Guj 102 (104, 105, 106) (Pt C) (Pr 4) (DB).

——Art. 141—Declaration of law made by Supreme Court — Subordinate Courts cannot ignore it on the ground that facts before them were dissimilar.

A declaration of law, if made by the Supreme Court, is binding whatever be the facts of the case decided by the Supreme Court and whatever be the nature of the facts of the case before the High Court or before the Subordinate Courts. It would be contravening the provisions of Art. 142 (sic—Art. 141) of the Constitution if a declaration made by the Supreme Court is held not to apply to a case before the High Court on the ground that the facts of the case decided by the Supreme Court are fundamentally different from the facts of the case decided before the High Court. This rule however does not apply to the observations or declarations made by the High Court. ILR (1963) Guj 1197.

——Art. 141—Supreme Court decision — Dissenting judgment—Binding force—Adjudication in dissenting judgment on aspect on which majority has expressed no view but has proceeded on assumption that it is correct—Adjudication in dissenting judgment is binding on High Courts—Precedents. (1963) 2 Ker L R 463 : 1962 Ker L J 1432 : ILR (1963) 1 Ker 84 : 1963 Ker L T 15 : AIR 1963 Ker 155 (176) (Pt B) (Pr 170).

——Art. 141 — Law declared by Supreme Court — Expression of opinion by all Judges—If necessary.

It is not necessary for a proposition of law declared by the Supreme Court to be binding on High Court that the actual decision of the case should

proceed on that proposition. Nor is it necessary, for such proposition to be the law declared by the Supreme Court, that all the Judges shall express their views one way or the other on the point. If the majority of Judges of the Supreme Court in a particular case express a view on a proposition of law then that view of the majority of the Judges would be the law declared by the Supreme Court and binding on the Court. 38 Mys L J 720 : I L R (1960) Mys 267 : A I R 1961 Mys 3 (7) (Pt A) (Pr 10) (DB).

——Art. 141—Judgment of Supreme Court — Binding authority — Judgment should be read as a whole—Precedents. 1964 B L J R 870 : A I R 1965 Pat 124 (126, 127) (Pt B) (Pr 7) (DB).

——Art. 141—Decision of Supreme Court — Binding effect on High Court. See Ibid, Art. 228. AIR 1955 N U C (Punj) 5727 (DB).

——Art. 141 — Law declared by Supreme Court can be given retrospective effect. See Precedents. 1965 (1) Cri L J 338 : AIR 1965 Raj 70.

2 (a). Obiter dicta of the Supreme Court.

● ——Art. 141 — Court should not make obiter observations on constitutional matters not directly raised before it for its decision. See Civil P. C. (1908), O. 20, R. 4. AIR 1964 S C 1573.

● ——Art. 141—Observations in the nature of obiter dicta—Binding effect.

The observations in the judgment of the Supreme Court which are in the nature of obiter dicta cannot be relied upon solely, for the purpose of showing that certain statutory Rules should be held to be valid as a result of the said observations. Ram Deka v. General Manager, North East Frontier Railway. I L R (1964) 2 All 717 : I L R (1964) 16 Assam 81 : (1964) 5 S C R 683 : (1964) 2 S C A 372 : (1964) 2 Lab L J 467 : A I R 1964 S C 600 (611, 612) (Pt D) (Pr 33).

● ——Art. 141—Obiter dicta—Binding effect.

The obiter dicta of the Supreme Court are entitled to considerable weight. Commissioner of I. T., Hyderabad v. Vazir Sultan & Sons, (1959) 2 S C A 184 : (1959) 36 I T R 175 : (1959) Supp (2) S C R 375 : 1960 S C J 1176 : (1960) 2 Andh W R (SC) 73 : (1960) 2 Mad L J (SC) 73 : AIR 1959 S C 814 (821) (Pt B) (Pr 30).

——Art. 141 — Appellate order of High Court in criminal case — Whether order was a proper order, the question before the Supreme Court — Supreme Court required in that connection to decide whether High Court had power under S. 561-A, Cr. P. Code to rehear matter on merits — Its decision of the question cannot be treated as obiter dicta — In any case the observations of the Supreme Court would amount to declaration of law within the meaning of Art. 141, Constitution and as such binding on all Courts in India. See Precedents — Obiter dicta. 1962 (1) Cri L J 390 : AIR 1962 All 193 (DB).

——Art. 141—Obiter of Supreme Court is binding on Courts in India. A I R 1953 All 613 and A I R 1955 All 543, Rel. on. A I R 1961 All 287 (288) (Pt B) (Pr 8).

——Art. 141—Scope of —'Declaration of law'—Obiter dicta or casual observation—Weight of.

Article 141 has the effect, in addition to investing the decisions of the Supreme Court with a binding force of creating a constitutional organ whose declaration of law pronounced ex cathedra shall be binding on all Courts in the Republic. Under this article it is not necessary that a pronouncement of the Supreme Court should be part of the ratio decidendi of any judgment. An obiter dictum or a mere enunciation of a principle of law would amount to a declaration of law under Art. 141.

A declaration of law may be expressed or may be indicated by clear implication. A High Court cannot circumvent a declaration of law made by the Supreme Court on the ground that it amounts to a casual observation. Any re-consideration can only be done by the Supreme Court itself. AIR 1960 All 672 (680) (Pt A) (Prs 27, 28).

——Art. 141—Supreme Court—Obiter, (Precedents).

The observations of the Supreme Court even if obiter are binding on the Courts in India. AIR 1953 All 613, Foll. 1955 Cri L J 1125 : 1955 All L J 468 : 1955 All W R (HC) 421 : A I R 1955 All 543 (545) (Pt B) (Pr 10).

——Art. 141—Law deliberately pronounced — (Precedents—Supreme Court—Obiter).

Where the Supreme Court deliberately with the intention of settling the law pronounces upon a question, the pronouncement is the law declared by the Supreme Court within the meaning of Art. 141 and is binding on all Courts in India. It cannot be treated as a mere obiter dictum.

It is true where a point has not been argued and certain general observations have been made which may seem to cover points not argued before the Court, they may not be considered to be binding, and in such cases the binding nature of the observation of the Court may be limited to the points specifically raised and decided by the Court It is also true that pronouncements made on concessions of counsel, when a point is not argued, are not binding but otherwise even what is generally called an 'obiter dictum', provided it is upon a point raised and argued, is binding upon the Courts in India. 1953 All W R (HC) 257 : 1953 All L J 273 : 1953 Cri L J 384 : ILR (1953) 2 All 735 : AIR 1953 All 613 (615, 616) (Pt D) (Prs 11, 13) (DB).

● ——Art. 141—Scope—Obiter dicta—Value of.

Clear observations of the Supreme Court, though in the nature of obiter, deserve every respect. Venkata Chalamayya v. The State of Madras, 1958 Andh L T 211 : (1958) 1 Andh W R 88 : A I R 1958 Andh Pra 173 (181, 182) (Pt F) (Pr 16) (FB).

[Reversed on another point in AIR 1962 S C 1687.]

——Art. 141 — Obiter dicta of Supreme Court — Entitled to highest esteem from the High Court. See Precedents. AIR 1956 Assam 48.

——Art. 141 — Obiter dicta of Supreme Court is binding upon High Court. A I R 1959 Bom 320 and A I R 1959 S C 814, Rel. on. 1960 Nag L J 512 : 63 Bom L R 20 : I L R (1960) Bom 994 : 22 Ele L R 821 : AIR 1961 Bom 29 (40, 41) (Pt F) (Pr 60) (DB).

——Art. 141—Obiter dictum of Supreme Court. See Precedents. AIR 1959 Bom 320 (DB).

● ——Art. 141 — "Law declared by the Supreme Court"—Obiter dictum—Passing casual observation—Distinction.

Any considered opinion by the Supreme Court, even on a point which does not strictly arise for decision, must be accepted by the High Court as laying down a statement of law which must be followed. But a passing casual observation made by the Supreme Court is not entitled to the same respect. AIR 1955 Bom 113, Rel. on. Kaikhusroo Phirozshah Doctor v. State of Bombay, I L R (1955) Bom 69 : 57 Bom L R 24 : A I R 1955 Bom 220 (224) (Pt D) (Pr 7) (FB).

——Art. 141 — Obiter of Supreme Court enunciating or declaring some principle of law is binding upon the High Court. See Precedent. **AIR 1956 Cal 93.**

——Art. 141—Declaration of law made by Supreme Court is binding on High Courts — Principles of 'Obiter' 'per incuriam' and 'distinguishable on facts' cannot be applied.

Once the Supreme Court makes a declaration of law, that is binding on all the subordinate Courts. Principles of 'obiter', 'per incuriam' and 'distinguishable on facts' which may perhaps apply to the decisions of Courts of co-ordinate jurisdiction cannot be applied to declaration of law made by the Supreme Court and such principles cannot restrict the scope of Art. 141. If a declaration of law has been made by the Supreme Court, it is also not open to subordinate Courts to hold that that declaration of law is not binding, because on facts, the case decided by the Supreme Court is distinguishable from the case before the subordinate Court. AIR 1955 Bom 113, Not Foll. **1962 (2) Cr L J 360 : AIR 1962 Guj 250 (255) (Pt A) (Pr 15) (DB).**

——Art. 141—Obiter dicta of Supreme Court—Force of.

Although even the obiter dicta of the Supreme Court are entitled to the highest of respect, they do not have the force of a ruling. **AIR 1961 Him Pra 2 (7) (Pt F) (Pr 18).**

● **——Art. 141 — Obiter dicta of Supreme Court—Duty of inferior Courts.**

Where the law is laid down progressively, one must not go by the strict rule of ratio decidendi and confine the decision only to the material facts in the case but must, if the decision is correct, use it even in spite of its broad statement of the law as a guide to future cases, and, in dealing with a case which is to be utilized, one must look not only to what was decided in the case but what was decided in previous and subsequent cases.

An inferior Court has under Art. 141 to take the law from the Supreme Court. When an inferior Court is taking the law from the superior Court, it cannot refuse to entertain or take into account a portion of the reasoning which was material for the decision of the case before the superior tribunal. Further if two reasons are given to reach a conclusion, neither is obiter and both can be treatedas the ratio. Surajmal Arjundas v. State of Madhya Pradesh, **I L R (1957) Madh Pra 507 : 1957 M P C 680 : 1957 M P L J 788 : 1957 Jab L J 1011 : AIR 1958 Madh Pra 103 (110, 111) (Pt B) (Prs 25, 26) (FB).**

——Art. 141 — Obiter dicta of Supreme Court — Weight of.

Even as obiter, the observations of their Lordships of the Supreme Court are entitled to the highest respect. **I L R (1958) Mad 1086 : (1959) 2 M L J 158: (1959) 35 I T R 322 : AIR 1959 Mad 56 (61) (Pt G) (Pr 18) (DB).**

——Art. 141 — Supreme Court — Obiter dicta of Supreme Court — The Judicial Commissioner's Court has to follow observations of the Supreme Court even if they are obiter dicta. See Precedents. **1962 (2) Cr L J 147 (Manipur).**

——Art. 141—Supreme Court decision—Obiter observations—Are binding on High Court. See Precedents. **AIR 1964 Mys 132 (DB).**

——Art. 141 — Supreme Court or Privy Council — Obiter—Binding on all subordinate Courts: AIR 1964 Guj 283, Rel. on. **I L R (1964) Cut 221 : 30 Cut L T 370 : (1964) O J D 210 : 1965 (1) Cri L J 56 : AIR 1965 Orissa 7 (13) (Pt C) (Pr 9).**

——Art. 141 — General observations of Supreme Court (Precedents)—Value of.

The general observations of their Lordships of the Supreme Court too are entitled to great weight. **I L R (1957) 7 Raj 34 : AIR 1957 Raj 189 (197) (Pt B) (Pr 21) (DB).**

3. Can Supreme Court reconsider its own previous decisions.

● **——Art. 141 — Power of Supreme Court to review and revise its earlier decisions—Considerations to be adverted in revising — Construction of statutory provision—Earlier view reasonably possible—Alternative view, pressed on subsequent occasion, also reasonably possible view — Supreme Court would be normally reluctant to revise its earlier decisions.**

In the case, it was urged that Supreme Court should revise its view as to construction of S. 66 (4), Income-tax Act, 1922, in two earlier decisions, AIR 1959 S C 1177 and AIR 1963 S C 1484. (The latter was a unanimous decision of a Bench of five Judges.) The Supreme Court conceded that the alternative view pressed for revising the earlier decisions was a reasonably possible view; but refused to revise the earlier decisions on ground that the earlier view had been followed by the Supreme Court on several occasions and had regulated the procedure on reference proceedings in the High Courts ever since the decision in AIR 1959 S C 1177, and that no reported decision was cited to support the alternative view. Keshav Mills Co., Ltd., Petlad v. Commr. of I.-T., Bombay, **(1965) 56 I T R 365 : (1965) 2 S C J 75 : (1965) 1 I T J 853 : (1965) 2 S C A 101 : AIR 1965 S C 1636 (1643, 1644, 1647) (Pt A) (Prs 23, 34).**

● **——Art. 141—Supreme Court if and how far bound by its own decisions — Doctrine of stare decisis how far applicable.**

Per Gajendragadkar, C. J., Wanchoo and Raghubar Dayal, JJ. — The Constitution does not place any restriction on the powers of Supreme Court to review its earlier decisions or even to depart from them and in matters relating to the decision of constitutional points which have a significant impact on the fundamental rights of citizens, it would be prepared to review its earlier decisions in the interest of public good. The doctrine of stare decisis may not strictly apply in this context and the said doctrine should not be permitted to perpetuate erroneous decisions pronounced by the Supreme Court to the detriment of general welfare. Even so, the normal principle that judgments pronounced by the Supreme Court would be final, cannot be ignored and unless considerations of a substantial and compelling character make it necessary to do so, the Supreme Court should be slow to doubt the correctness of previous decisions or to depart from them. In such a case the test should be; is it absolutely necessary and essential that the question already decided should be re-opened. The answer to this question would depend on the nature of the infirmity alleged in the earlier decision, its impact on public good and the validity and compelling character of the considerations urged in support of the contrary view. If the said decision has been followed in a large number of cases, that again is a factor which must be taken into account. Applying the above test the Supreme Court refused to reconsider the correctness of its earlier decision in AIR 1951 S C 458. Sajjan Singh v. State of Rajasthan, **(1965) 1 S C A 875 : (1965) 1 Mad L J (S C) 57 : (1965) 1 S C J 377 : (1965) 1 Andh W R (S C) 57 : (1965) 1 S C W R 593: AIR 1965 S C 845 (855) (Pt E) (Prs 21, 22, 23).**

● **——Art. 141 — Binding nature of Supreme Court Decisions—Power of Supreme Court to overrule its previous decision—(Precedents—Supreme Court).**

In a proper case it is permissible for the Supreme Court to go back upon its previous decision.

(Per Majority). — There is nothing in our Constitution which prevents the Supreme Court from departing from a previous decision if it is convinced of its error and its baneful effect on the general interests of the public. Article 141, which lays down that the law declared by the Supreme Court shall be binding on all Courts within the territory of India quite obviously refers to Courts other than the Supreme Court. The Supreme Court should not lightly dissent from a previous pronouncement of the Court. Its power of review, which undoubtedly exists, must be exercised with due care and caution and only for advancing the public well-being in the light of the surrounding circumstances of each case brought to its notice but it is not right to confine its power within rigidly fixed limits. If on a re-examination of the question it comes to the conclusion, that the previous majority decision was plainly erroneous then it will be its duty to say so and not to perpetuate its mistake even when one learned Judge who was party to the previous decision considers it incorrect on further reflection. It should do so all the more readily when its decision is on a constitutional question and its erroneous decision has imposed illegal tax burden on the consuming public and has otherwise given rise to public inconvenience or hardship, for it is by no means easy to amend the Constitution. The doctrine of stare decisis has hardly any application to an insolated and stray decision of the Court very recently made and not followed by a series of decisions based thereon. In any case, the doctrine of stare decisis is not inflexible rule of law and cannot be permitted to perpetuate errors of the Supreme Court to the detriment to the general welfare of the public or a considerable section thereof.

(Per contra). — **Held**, that there was no ground for reconsideration of the prior decision of the Court in AIR 1953 S C 252.

When the decision in a case given after full consideration is sought to be challenged, the first question to have been considered was whether or not there were circumstances to justify a reconsideration. It is only after the Court came at least to a prima facie conclusion on that preliminary matter that a reargument on the merits of that decision should have been permitted. The correctness of the prior decision cannot be straightaway canvassed before the Supreme Court and the question as to the competency or the desirability of such reconsideration must not occupy a later and subordinate part in the arguments.

The Supreme Court cannot differ from a previous decision of the Court because a view contrary to the one taken therein appears to be preferable. Case-Law discussed. Bengal Immunity Co., Ltd. v. State of Bihar, **(1955) S C J 672 : ILR 34 Pat 905 : (1955) 6 S T C 446 : (1955) 2 S C R 603 : 1955 S C A 1140 : (1955) 2 M L J (S C) 168 : 1955 Andhra W R (S C) 422 : AIR 1955 S C 661 (672, 673, 674, 699, 712, 715, 716, 718, 743, 744, 754, 755) (Pt F) (Prs 15, 19, 83, 115, 121, 122, 129, 185, 186, 213).**

● **——Art. 141—Supreme Court if bound by its own decisions.** See Precedents. **AIR 1954 S C 119.**

——Art 141 — Supreme Court considering and explaining its own earlier decision — Duty of inferior Courts to follow later decision—Precedents.

Where the Supreme Court has itself had an occasion to consider in a later case, its own earlier decision, no question of the binding character of such earlier decision can reasonably arise. The inferior Courts would be bound to follow the later decision which is a direct decision on the point at issue, and which considers and explains the earlier decision. **1965 (2) Cri L J 79 : AIR 1965 Cal 348 (353) (Pt E) (Pr 48) (DB).**

4. Power of Legislature to alter law declared by Supreme Court.

——Art. 141—Principle declared by highest Court of the land—It can only be displaced by legislation. See Evidence Act (1872), S. 27. **AIR 1959 Andh Pra 333.**

——Art. 141 — Law once declared by Supreme Court can be altered by any competent Legislature. See Income-Tax (Amendment) Act (71 of 1950), S. 2. **A I R 1951 Bom 438 (DB).**

——Arts. 141, 144, 245 — Punjab Development of Damaged Areas (Validation) Act (8 of 1963), S. 2—Certain schemes struck down by Supreme Court as illegal and invalid—Defect found not fundamental or against constitutional provisions — State legislature can pass appropriate legislation to remedy defect. **ILR (1964) 2 Punj 501: AIR 1965 Punj 212 (214, 216) (Pt B) (Prs 6, 11) (DB).**

5. All Courts in India.

● **——Art. 141 — Supreme Court decisions — Effect —On decisions of Mysore High Court — (Precedents) —[Civil P. C. (1908), Preamble].**

Under Art. 141 of the Constitution the law declared by the Supreme Court is binding on all the Courts within the territory of India and must now be followed in preference to any other view which might have been taken by Mysore High Court. AIR 1951 Mys 126, Ref. Hutcha Thimmegowda v. Dyavamma, **ILR (1954) Mys 70: 32 Mys L J 33 : AIR 1954 Mys 93 (99) (Pt C) (Pr 24) (FB).**

——Art. 141 — High Court of Mysore is now bound by the law laid down by the Supreme Court— (Precedents). **31 Mys L J 38 : I L R (1953) Mys 79 : 1953 Cri L J 1064 : A I R 1953 Mys 75 (78) (Pt B) (Pr 12) (DB).**

6. Present authority of Privy Council and Federal Court.

● **——Art. 141 — Present Authority of P. C. decision (Precedents).**

The reasoning and conclusion of a P. C. decision although they have not now the compelling force they had before 26th Jannary 1950, are entitled to great respect. Chief Controlling Revenue Authority v. Maharashtra Sugar Mills Ltd., **1950 Mad W N 740 : 1950 S C J 444 : 52 Bom L R 769 : (1950) 2 M L J 564 : 64 Mad L W 4 : 1950 S C R 536 : A I R 1950 S C 218 (221) (Pt A) (Pr 8).**

——Art. 141 — Privy Council decisions — Present authority of—(Precedents).

After India was constituted into a Sovereign Democratic Republic, the Courts in India are not bound by the decisions of the Privy Council and are free to consider the question on its own merits. **1954 Andh L T (Civ) 163 : (1954) 2 M L J (Andhra) 195 : A I R 1955 Andhra 49 (54) (Pt C) (Pr 25).**

[**Overruled** on another point in A I R 1955 Andhra 87 (FB), and **Reversed** on another point in **A I R** 1961 Andh Pra 430.]

● **——Art. 141** — Privy Council :decisions, if binding on High Court. See Precedents. **A I R 1955 Bom 1 (FB).**

——Art. 141—Privy council decisions — Obiter dicta —Binding effect—(Civil P. C. (1908), Preamble). See Precedents. **AIR 1958 Cal 530.**

——Art. 141—Obiter dicta of Privy Council how far binding—Observations not by way of stating the law should not be clothed with such authority. See Precedents. **AIR 1956 Cal 308.**

——Arts. 141 and 225 — Privy Council decisions—If binding after commencement of Constitution—(Government of India Act (1935), S. 212)—(Precedents).

Section 212, Government of India Act, 1935, invested the Privy Council decisions with binding authority. Art. 225 of the Constitution lays down that the law administered in any existing High Court remains the same as immediately before the commencement of the Constitution. Therefore, the law laid down by the Privy Council, which does not conflict with any decision of the Supreme Court would be binding on the Courts in India. **1955 Nag L J 32 : ILR (1954) Nag 805 : AIR 1955 Nag 293 (296) (Pt B) (Pr 14) (DB).**

——Art. 141 — Precedents — Obiter dicta of Federal Court — Present authority — See Interpretation of Statutes. **AIR 1955 Orissa 160.**

● **——Art 141—Law laid down by Supreme Court and that laid down by Judicial Committee of Union—Former when prevails over latter—Patiala and East Punjab States Union Judicature Ordinance (10 of 2005), S. 5.**

If in a certain matter the Judicial Committee has laid down the law but that matter has not gone before the Supreme Court and consequently no occasion has arisen for that Court to lay down the law on the same point, S. 5 of the Judicature Ordinance must be given effect to and the law laid down by the Judicial Committee must be followed by all the Courts in the Union, including the High Court. It is only when the law laid down by the Supreme Court on a certain point is different from that laid down by the Judicial Committee that Article 141 will come into operation and the former law will be preferred to the latter. Santu v. Sohan Lal, **2 Pepsu L R 245 : A I R 1951 Pepsu 33 (37) (Pt B) (Pr 9) (FB).**

——Arts. 141 and 374 (2) — Effect.

Article 374 (2) of the Constitution was only for the period of 'interregnum' when the proceedings which were pending before the Privy Council were removed to the Federal Court and on the Federal Court was conferred, the jurisdiction which was previously exercised by the Privy Council. It does not give an overriding authority to the judgments of the Federal Court over the judgments of the Privy Council at a time when the Privy Council was the seniormost Court of appeal and its judgments were binding on all Courts throughout the territory of India.

Hence the judgments of the Federal Court previous to the time when the Privy Council appeals were transferred to the Federal Court do not take precedence over the judgments of the Privy Council : AIR 1954 Bom 351, Approved. **ILR (1955) Punj 934 : AIR 1955 Punj 118 (119, 120, 122) (Pt B) (Prs 5, 15).**

ARTICLE 142

● **——Art. 142** — Revision order under S. 64-A of Motor Vehicles Act (1939) — Persons likely to be affected by such order must be given reasonable opportunity to be heard — Such opportunity not given — Order though bad not quashed by High Court in writ proceedings against the order—Appeal by special leave — Supreme Court acting under Art. 142 of the Constitution sent back the case to revisional authority to be dealt with in accordance with the law, so that full justice may be done between the parties — See Motor Vehicles Act (1939), S. 64-A, Second Proviso. **AIR 1965 S C 458.**

● **——Arts. 142 and 145** — Supreme Court Rules (1950), O. 35, R. 12 — Fundamental right to move Supreme Court under Art. 32 — Infringement of — Rule 12 of O. 35 in so far as it relates to giving of security in proceedings under Art. 32 infringes fundamental right under Art. 32 to move the Supreme Court and is invalid — Order for security cannot be sustained even under wide powers conferred by Art. 142 (1)—See Ibid, Art. 32. **AIR 1963 S C 996.**

● **——Arts. 142, 144 and 148 (Cl. 5)—Suspension of** Government servant — Effect of — Dismissal under, set aside by Supreme Court — Order for further enquiry and consequential suspension under R. 12 (4) of Central Civil Services (Classification, Control and Appeal) Rules (1957), R. 12 (4)—Validity — See Ibid, Art. 309. **AIR 1963 S C 687.**

● **——Art. 142** — Appeal under Art. 136 (1) from orders of Chief Commissioner of Pondicherry as appellate authority under S. 64, Motor Vehicles Act, if maintainable—Writ petition against orders — Enforcement of orders on writ petition — See Ibid, Art. 136 (1). **AIR 1963 S C 533.**

● **——Art. 142** — 'Territories as may be acquired' — Question as to whether Pondicherry is territory of India — Question forwarded to Union Government by Supreme Court — Answer received is binding on Court - Pondicherry is not territory 'acquired' within meaning of Art. 1 (3) (c)—No appeal lies to Supreme Court — Per Majority (Sarkar and Das Gupta, JJ., Contra) — No writ petition can be entertained — See Ibid, Art. 1 (3) (c). **AIR 1962 S C 797.**

● **——Art. 142 — 'Territory of India'—Meaning of.**

The term 'territory of India' has been used in several articles of the Constitution and in every article where this phraseology is employed it means the territory of India for the time being as falls within Art. 1 (3) : the phrase cannot mean different territories in different articles. N. Masthan Sahib v. Chief Commissioner, Pondicherry, **(1962) 2 S C A 401 : (1964) 1 S C J 212 : AIR 1962 S C 797 (803) (Pt B) (Pr 14).**

● **——Arts. 142, 145 and 161 — Power of Governor to suspend sentence — Petition for special leave to appeal pending before Supreme Court—Effect of — Supreme Court Rules, O. 21, R. 5 — Compliance — Criminal P. C. (1898), Ss. 401 and 426.**

(Per Majority ; Kapur, J., Dissenting).— The ambit of Art. 161 is very much wider than Art. 142 and it is only in a very narrow field that the power contained in Art. 161 is also contained in Art. 142, namely, the power of suspension of sentence during the period when the matter is sub judice in the Supreme Court. Therefore, on the principle of harmonious construction and to avoid a conflict between the two powers it must be held that Art. 161 does not deal with the suspension of sentence during the time that Art. 142 is in operation and the matter is sub-judice in the Supreme Court.

It is open to the Governor to grant a full pardon at any time even during the pendency of the case in the Supreme Court in exercise of what is ordinarily called 'mercy jurisdiction'. But the Governor cannot exercise his power of the suspension of the sentence for the period when the Supreme Court is in seisin of the case. What is covered in Art. 142 is not covered by Art. 161 and similarly what is covered by S. 426 is not covered by S. 401. On that interpretation there is no conflict between the prerogative power of the sovereign State to grant pardon and the power of the Courts to deal with a pending case judicially. There is no conflict between O. 21, R. 5, Supreme Court Rules and Art. 161, but the conflict is between the wide powers conferred on the Supreme Court by Art. 142 and similar wide powers conferred on the Governor under Art. 161. Where the Governor in exercise of his powers under Art. 161 had passed an order granting suspension of the sentence on a con-

vict on the ground that he intended to file an appeal before the Supreme Court, the order could only operate until the matter became sub-judice in the Supreme Court on the filing of the petition for special leave to appeal. After the filing of such a petition it would be for the Supreme Court when moved in that behalf, either to apply R. 5 of O. 21 or to exempt the petitioner from the operation of that rule. It would be for the Supreme Court to pass such orders as it thought fit as to whether the petitioner should be granted bail or should surrender to his sentence or to pass such other or further orders as it might deem fit in all the circumstances of the case. It follows that the petitioner for special leave cannot be exempted from the operation of O. 21, R. 5. Supreme Court Rules by reason of the order of suspension of sentence passed by the Governor under Art. 161. K. M. Nanavati v. State of Bombay, 1961 Mad W N 498 : 1960 Ker L T (S C) 75 : (1961) 1 Cri L J 173 : (1961) 1 S C A 54 : 63 Bom L R 221 : (1961) 1 S C R 497 : 1961 Mad L J (Cr) 410 : (1961) 2 S C J 100 : AIR 1961 S C 112 (121, 122, 123, 124, 125) (Prs 18, 19, 21, 22, 24, 25).

● ——Art. 142 — Criminal appeal — Decision regarding guilt of the accused — Considerable reliance by lower Courts on so-called admission of accused which had no existence in fact—Rehearing of appeal on evidence after excluding the alleged admission directed—See Ibid, Art. 134. 1953 Cri L Jour 525 : AIR 1953 S C 83.

——Art. 142 — Warrant issued under O. 45, R. 5, Supreme Court Rules read with Art. 142 — Delegation of power to admit to bail—Revision of exercise of power — (Supreme Court Rules, O. 45, R. 5) — (Criminal P. C. (1898), S. 427).

Where the warrant has been issued not under S. 427, Criminal P. C., but under O. 45, R. 5 of the Supreme Court Rules read with Art. 142 of the Constitution and Supreme Court has directed the Judicial Commissioner's Court to issue a warrant directing the production of the accused before the appropriate Court and has delegated the power of accepting bail to the 'appropriate Court' and the appropriate Court is the Court of the District Magistrate, the power to admit to bail has been delegated to the Court of the District Magistrate and not to the Judicial Commissioner's Court and the exercise of that power can be revised only by the Supreme Court. 1954 Cri L J 1232 : AIR 1954 Ajmer 52 (52) (Pr 3).

ARTICLE 143

● ——Art. 143 (1) — Reference to Supreme Court—Any question of law or fact can be referred — On such reference, Court, "may report" but is not bound to report.

The words of Art. 143 (1) are wide enough to empower the President to forward to the Supreme Court for its advisory opinion any question of law or fact which has arisen or which is likely to arise, provided it appears to the President that such a question is of such a nature or of such public importance that it is expedient to obtain the opinion of this Court upon it. However, the Supreme Court is not bound to give such advisory opinion in every case. Art. 143 (1) provides that after the questions formulated by the President are received by the Court, it may, after such hearing as it thinks fit, report to the President its opinion thereon. The use of the word "may" in contrast with the use of the word "shall" in the provision prescribed by Art. 143 (2) clearly brings out the fact that in a given case, the Supreme Court may respectfully refuse to express its advisory opinion if it is satisfied that it should not express its opinion having regard to the nature of the questions forwarded to it and having regard to other relevant facts and circumstances. In the Matter of Under Art. 143, of the Constitution of India, (1965) 1 S C J 847 : (1965) 1 S C A 447 : AIR 1965 S C 745 (755, 756) (Pt B) (Pr 15).

● ——Art. 143 (1) — Reference to Supreme Court—Questions which may be referred.

Under Art. 143 (1) it may be competent to the President to formulate for the advisory opinion of the Supreme Court questions of fact and law relating to the validity of the impugned provisions of existing laws ; it may be open to him to formulate questions in regard to the validity of provisions proposed to be included in the Bills which would come before the Legislatures ; it may also be open to him to formulate for the advisory opinion of the Court questions of constitutional importance and it may be that the President may, on receiving the answers, consider whether the Union Government or the State Government should be requested to take any suitable or appropriate action, either legislative or executive, in accordance with the opinion expressed by the Supreme Court. In the Matter of Under Art. 143 of the Constitution of India, (1965) 1 S C J 847 : (1965) 1 S C A 447 : AIR 1965 S C 745 (756, 757) (Pt C) (Pr 18).

● ——Art. 143 (1) — Indo-Pakistan Agreement relating to division of Berubari Union and Exchange of Cooch Bihar Enclaves—Whether involves cession of national territory in favour of Pakistan — Doubts arising — Question referred by President of India to Supreme Court. See Ibid, Art. 3. AIR 1960 S C 845.

● ——Art. 143 — Advisory jurisdiction of Supreme Court—Ambit and scope — Opinion on questions relating to contemplated legislation.

Article 143 (1) does contemplate the reference of a question of law that is likely to arise. It is for the President to determine what questions should be referred and if he does not entertain any serious doubt on the other provisions, it is not for any party to say that doubts arise also out of them. The Supreme Court cannot go beyond the reference and discuss those problems. The circumstance that the President has not thought fit to refer other questions as to the constitutional validity of some of the clauses of the said Bill on the ground that they infringe other provisions of the Constitution cannot be a good or cogent reason for declining to entertain the reference and answer the questions touching matters over or in respect of which the President does entertain some doubt. In re, The Kerala Education Bill, 1957, ILR (1958) Ker 1167 : 1959 S C A 450 : 1959 S C J 321 : 1959 S C R 995 : 1958 Ker L T 465 : AIR 1958 S C 956 (964, 965) (Pt A) (Prs 2, 4).

● ——Art. 143—Reference under—Construction.

Per Venkatarama Aiyar J.—Having regard to the nature of the advisory jurisdiction under Art. 143, the reference should be construed narrowly rather than broadly In re, The Kerala Education Bill, 1957, 1958 Ker L T 465: ILR (1958) Ker 1167 : 1959 S C A 450 : 1959 S C J 321 : 1959 S C R 995 : A I R 1958 S C 956 (992) (Pt P) (Pr 45).

——Art. 143—Decisions given by Supreme Court in advisory jurisdiction are binding on subordinate Courts. See Ibid, Art. 141. A I R 1965 Cal 282.

ARTICLE 144

● —Art. 144—Central Civil Services (Classification, Control and Appeal) Rules (1957), R. 12 (4) — Rule does not contravene Arts. 142, 144, 19 (1) (f), 31 and 14. See Ibid, Art. 309. AIR 1963 S C 687.

—**Art. 144 — Punjab Development of Damaged Areas (Validation) Act (8 of 1963), S. 2—Certain schemes struck down by Supreme Court as illegal and invalid — Defect found not fundamental or against constitutional provisions—State legislature can pass appropriate legislation to remedy defect. See Ibid, Art. 141. AIR 1965 Punj 212 (DB).**

ARTICLE 145

● —**Art. 145 (3)—Law on subject fully decided by Supreme Court—No substantial question of law as to interpretation of Constitution arises.**

Under Art. 145 (3) only a case involving a substantial question of law as to the interpretation of the Constitution shall be heard by a Bench comprising not less than 5 Judges. A substantial question of interpretation of a provision of the Constitution cannot arise when the law on the subject has been finally and effectively decided by the Supreme Court. Where the question raised related to the interpretation of Art. 29 (2) in the context of the expression "same offence" and there were two decisions of the Supreme Court (AIR 1958 S C 119 and AIR 1961 S C 578) wherein the Supreme Court had finally construed the article and decided the question, and what remained was only its application, it cannot be held that the question raised involved a substantial question of law as to the interpretation of the Constitution within meaning of Art. 145 (3). Bhagwan Swaruplal Bishan Lal v. State of Maharashtra, (1964) 2 S C R 378 : (1964) 2 S C J 771 : 1965 (1) Cri L J 608 : AIR 1965 S C 682 (687, 688) (Pt C) (Pr 11).

● —**Art. 145 (1) (a), Sch. VII, List I, Entry 77—Supreme Court Rules (1950), O. 4, Rr. 16, 17—Advocates Act (1961), Ss 58 (3), 52—Advocates enrolled under Bar Councils Act — Right to practise in Supreme Court — Right subject to Rr. 16 and 17 of O. 4 of Supreme Court Rules—Validity of Rules—Construction of words 'persons practising before the Court' in Cl. (a) of Art. 145 (1)—No conflict between the Rules and Legislative powers of Parliament under Entry 77 of List I— Rules held within powers under Art. 145 (1) and valid.**

Under S. 58 (3) of the Advocates Act the right conferred on Advocate enrolled under the Bar Councils Act to practise in the Supreme Court is made subject to any rules made by that Court. To reinforce this position there is a saving enacted by S. 52 of the Advocates Act which specifically saves the powers of the Supreme Court to make rules under Art. 145 of the Constitution. In view of the saving which is repeated in S. 52 there is no question of the Rules 16 and 17 of O. 4 of the S C Rules restricting the right to act to a certain class of advocates, as being contrary to a law made by Parliament within the opening words of Art. 145 (1) Secondly, the submission that the words 'the persons practising before the Court' in Art. 145 (1) (a) are narrower than the words 'Persons entitled to practise before the Court' in Entry 77 of the Union list and that by a rule made under Art. 145 (1) (a) the Supreme Court could neither entitle a person to practise nor impose qualifications as to the right to practise as these are matters entirely within Entry 77 and therefore exclusively for Parliamentary legislation, is not correct. The words used in Art. 145 (1) (a) have been taken substantially from S. 214 (1) of the Government of India Act, 1935. The words were then used in a comprehensive sense so as to include a rule not merely as to the manner of practice but also of the right to practise or the entitlement to practise. Those words which are repeated in Art. 145 (1) (a) have still the same content. On the express terms of Art. 145 (1) (a) the impugned Rules 16 and 17 are therefore, valid and within the rule-making power of the Supreme Court under Art. 145 (1). Further, there is no anomaly involved in the construction that the Supreme Court can by its rules make provision prescribing qualifications, entitling persons to practise before it, and that Parliament can do likewise. There is no question of a conflict between the legislative power of Parliament and the rule-making power of the Court, because by reason of the opening words of Art. 145, any rule made by the Supreme Court would have operation only subject to laws made by Parliament on the subject of the entitlement to practise, Lily Isabel Thomas, In re, (1964) 6 S C R 229 : 1964 (1) Cri L J 724 : (1964) 2 S C W R 367; 1964 Cur L J (S C) 133 : (1964) 2 S C A 536 : A I R 1964 S C 855 (857, 858, 859) (Pt B) (Prs 7, 11).

● —**Art. 145 — Supreme Court Rules (1950), O. 35, R. 12 — Fundamental right to move Supreme Court under Art. 32—Infringement of Rule 12 of O. 35 in so far it relates to giving of security in proceedings under Art. 32 to move the Supreme Court and is invaiid. See Ibid, Art. 32. AIR 1963 S C 996.**

● —Arts. **145, 226, 132**—Question whether the jurisdiction of the High Court under Art. 226 to quash the orders of Administrative Tribunal is confined only to circumstances under which High Court of England can issue a writ of certiorari or is much wider than the said power — Question involves substantial question of law as to the interpretation of the Constitution—Such question can be heard only by a Bench of five Judges, K. M. Shanmugam, Proprietor, K. M. S. Transport, Tanjore, Madras State v. S. R. V. S. (P), Ltd., (1964) 1 S C A 428 : (1964) 2 S C J 120 : (1964) 2 Andh W R (S C) 13 : 1964 [2 Mad L J (S C) 13 : (1964) 1 SCR 809 : AIR 1963 S C 1626 (1629) (Pt A) (Pr 6).

● —Art. 145—Power of Governor under Art. 161 to suspend sentence—Ambit of—Petition for special leave to appeal pending before Supreme Court — Governor cannot suspend sentence under Art. 161 — Supreme Court Rules, O. 21, R. 5 — Compliance of —Criminal P. C. (1898), Ss. 401 and 426. See Ibid, Art. 142. 1961 (1) Cri L J 173 : AIR 1961 S C 112.

● —**Art. 145 — Scope — Supreme Court Rules, O. IV-A, Rr. 23 and 24 as amended in 1959 — If ultra vires.**

The Supreme Court has the inherent jurisdiction to regulate its proceedings, relating to conduct of persons appearing before it, in and out of Court, in so far as such conduct has a bearing on their professional relations and ethics. Apart from the inherent jurisdiction, Art. 145 of the Constitution itself has authorised the Court to make rules for regulating generally the practice and proeedure of the Court. Hence, R. 23 which provides that an advocate shall be guilty of professional misconduct if he accepts an engagement in any legal business through a person included in the list of touts, cannot be said to be beyond the rule-making powers of the Supreme Court. So also R. 24, which lays down the procedure for publishing lists of touts and for holding an enquiry to determine whether or not a particular person should be included in such a list must be equally within the purview of the rule making power of the Supreme Court. Sant Ram, In re, (1960) 3 S C R 499 : 1961 S C D 1 : (1961) 1 M L J (SC) 1 : (1961) 1 An W R (SC) 1 : (1961) 1 S C J 98 : 1961 M L J (Cr) 33 : A I R 1960 S C 932 (934, 935) (Pt A) (Prs 7, 8).

● —**Art. 145 (3)—'Substantial question'—Question already decided by Bench of five Judges — Effect.** Abdul Rahim Ismail C. Rahimtoola v. State of Bombay, 1959 Mad W N (SC) 70 : 61 Bom L R 1547 : 1960 S C J 50 : 1960 Cr L J 124 : (1960) 1 Andh W R

(S C) 11 : (1960) 1 M L J (SC) 11 : (1960) 1 S C R 285 : AIR 1959 S C 1315 (1316) (Pt B) (Pr 6).

● ——Art. 145 (3) — Constitution Bench of five Judges can split up case by deciding constitutional questions and leaving the rest for disposal by Division Bench.

There is no general rule of indivisibility and the splitting up of cases is not generally repugnant to law and in particular to the Constitution. The proviso to Art. 145 (3) and Art. 228 of the Constitution of India clearly indicate that the splitting up of cases into different stages for hearing and decision is not repugnant to the Constitution or the general principles of procedural Law. The underlying principle of the Constitution is clear and all that it insists upon is that all constitutional questions should be heard and decided by a Bench of not less than five Judges. As long as this requirement is fulfilled there can be no Constitutional objection to the rest of the case being disposed of by a Division Bench of less than five judges, so as to save the time of the Constitution Bench of five or more judges.

In construing clause (3) of Art. 145 no quality of indivisibility need be attributed to the words "the case" used therein. As the Court is entitled to decide a case in stages there is no reason why Art. 145 (3) should be so construed as to deprive the Supreme Court of that inherent power. It will involve no violation of any principle of natural justice or of any legal principle if Art. 145 (3) is construed as requiring only that the minimum number of five Judges must sit for the purpose of deciding any case in so far and so long as it involves a substantial question of law as to the interpretation of the Constitution.

Hence a Constitution Bench of five judges before which the case happens to be posted in the first instance can split up the case by deciding the constitutional questions and leaving the rest of the case to be dealt with and disposed of by a Division Bench of less than five Judges on merits in conformity with the opinion of the Constitution Bench. It is not necessary that the Constitution Bench of five Judges must decide the whole of such case.

(Per Contra.)—The Constitution while laying down Cl. (3) of Art. 145, contemplates the whole matter in controversy arising in a case which may include substantial questions of law as to the interpretation of the Constitution as also other questions. The main Cl. (3) excepting cases coming within the purview of the proviso does not contemplate a splitting up of a case into parts, one part involving substantial questions of law as to the interpretation of the Constitution and another part or parts not involving such questions. Rao Shiva Bahadur Singh v. State of Vindhya Pradesh, 1955 Mad W N 1004 : 1955 S C J 483 : (1955) 2 M L J (SC) 41 : 1955 An W R (SC) 295 : 1955 S C A 661 : AIR 1955 S C 446 (450, 451, 452) (Prs 12, 13, 14, 16).

——Art. 145 (1) (b) — Application for certificate for leave to appeal to Supreme Court — Power of High Court to make rules governing procedure. See Ibid, Art. 225. AIR 1957 All 505 (DB).

——Art. 145 (1) (b)—Rule 3 of O. 12 of Supreme Court Rules is not ultra vires — See Supreme Court Rules (1950), O. 12, R. 3. AIR 1956 All 349.

ARTICLE 146

● ——Art. 146 (3) — Court-fees Act (1870), S. 4, Sch. II, Art. 1. cl. (e), (U. P. Amendment)—Court-fee imposed by amendment is not a tax but a fee—Nature of imposition under Arts. 146 (3) and 229 (3) indicated. See Ibid, Art. 246 (3). AIR 1960 All 462 (FB).

——Art. 146 (3) — Bombay Court-fees Act (36 of 1959), Sch. 1, Art. 16 — Levy imposed is neither tax nor fee in the strict sense — It is within legislative competence of the State under Sch. 7, List 2, Entry 3 —Tax, fee and Court-fee—Distinction explained with reference to Arts. 146 and 229. See Bombay Court-fees Act (36 of 1959), Sch. 1, Art. 16. AIR 1962 Bom 106 (DB).

ARTICLE 148

● ——Art. 148—Central Civil Services (Classification, Control and Appeal) Rules (1957), R. 12 (4) — Constitutional validity—Suspension of Government servant — Effect of — Dismissal order set aside by Supreme Court—Order for further enquiry and consequential suspension—Validity. See Ibid, Art. 309. AIR 1963 S C 687.

● ——Art. 148 — Servants of State Legislature — Art. 309 not applicable — Arts. 308 to 314, if exhaustive regarding all services — Article 148 is a special provision regarding the Indian Audit and Accounts Department and the powers of Comptroller and Auditor-General. See States Reorganisation Act (1956), S. 115. AIR 1965 Punj 444 (FB).

——Arts. 148 and 217—"Misbehaviour" — Meaning. The word "misbehaviour" is not used in Arts. 148 and 324 but, as the holders of the offices of the Comptroller and Auditor-General and the Chief Election Commissioner are removable only in the same manner as Judges of the Supreme Court, there can be no doubt that these Articles are quite relevant. The word "misbehaviour" when employed in respect of holders of high offices has a well understood and well defined meaning according to the tradition and standards maintained by members of a particular service or office. See Public Servants (Inquiries) Act (1850), S. 2. ('61) 63 Pun L R 780.

ARTICLE 149

● ——Art. 149—Budget—Form of—Failure to comply with Arts. 149, 150—Effect. See Ibid, Art. 202. AIR 1955 Nag 11 (SB).

● —Arts. 149, 150 — Defective classification of items in Budget—Does not amount to contravention of articles.

The direction given by the Rules in the Account Code to a Government to put any amount demanded by them in its appropriate classification is not of a mandatory character. Therefore, even assuming that certain amount ought to have been put under the head 'Discretionary Grants and not under 'Miscellaneous' the error or breach committed by the Government cannot result in a contravention of Arts. 149 and 150 of the Constitution. It only amounts to an irregularity. Such an irregularity cannot render the whole or part of the Grant void. Piarelal Singh v. State of M. P., ILR (1954) Nag 764 : A I R 1955 Nag 11 (20) (Pt F) (Pr 35) (SB).

——Art. 149 — Accountant-General refusing passage benefit to member of Indian Civil Service — Refusal found arbitrary — Failure of duty imposed by law— Fit case to issue mandamus. See Ibid, Art. 226. AIR 1957 Pat 515 (DB).

ARTICLE 150

● ——Art. 150 — Defective classification of items in Budget—Does not amount to contravention of articles. See Ibid, Art. 149. AIR 1955 Nag 11 (SB).

● ——Art. 150 — Budget — Form of — Failure to comply with Arts. 149, 150 — Effect — See Ibid, Art. 202. AIR 1955 Nag 11 (SB).

ARTICLE 154

SYNOPSIS

(Constitution of India, Art. 154)

1. Executive power of the State.
2. Exercise of executive power.
3. "Officers subordinate to him."
4. Executive and Judiciary — Relation between.
See also Ibid, Art. 53.
5. State Government.

1. Executive power of the State.

●——**Art. 154** — Functions of Government — Executive, legislative and judicial functions — Distinction — Functions which are not legislative or judicial must be regarded as executive. Jayantilal Amratlal v. F. N. Rana, **(1964) 5 Guj LR 481: (1964) 2 SCA 284: AIR 1964 SC 648 (655, 656) (Pt B) (Prs 10, 11).**

●——**Art. 154 (1) — Construction and scope — 'Executive' — Meaning of — Notification issued in name of Governor and authenticated as prescribed by Art. 166 (2) — Effect — Responsibility of Governor — Art. 166 (1) and (6) — Scope.**

It is no doubt correct to say that the process of making an order precedes and is different from the expression of it, and that while Art. 166 (1) merely prescribes how orders are to be made, the authentication referred to in Art. 166 (2) indicates the manner in which a previously made order should be embodied. The term 'executive' in Art. 154 (1) is used in the broader sense as including both a decision as to action and the carrying out of the decision. AIR 1945 PC 156, Rel. on.

Where an order of the Government viz. a notification under Section 3 (1), Bihar Land Reforms Act is expressed to be made 'in the name of the Governor' and is authenticated by the Additional Secretary to the Government as prescribed by Art. 166 (2), the validity of the order or instrument cannot be called in question on the ground that it is not an order or instrument made or executed by the Governor. Even assuming that the order did not originate from the Governor personally but was made by some one duly authorised by him in that behalf within Art. 154 (1), the Governor nevertheless remains responsible for the action of his subordinates taken in his name. AIR 1945 PC 156, Rel. on. State of Bihar v. Rani Sonabati Kumari, **1960 Mad WN 818: ILR 40 Pat 216: (1960) 2 Ker LR 681: 1961 BLJR 285: (1961) 1 SCA 399: (1961) 1 SCR 728: 1961 Pat LR (SC) 26: AIR 1961 SC 221 (230, 231) (Pt D) (Prs 39, 40, 42).**

——**Arts. 154, 162 and 166** — Scope — State road transport is a matter falling within the executive power of State — Publication of scheme by State Government in name of Governor — Validity. See Motor Vehicles Act (1939), S. 68-C. **AIR 1961 All 214.**

——**Art. 154** — 'President' and 'Governor' — Meaning of. See Ibid, Art. 310. **AIR 1959 All 771.**

——**Art. 154**—U. P. Government Industries Manual (1950) — Examination Rules for Government Technical Institutions, R. 4 — Nature of Rules — Amount to Government Orders — No statutory force — Effect of Art. 154 — Art. 154 is not by itself sufficient to clothe Government order with attributes of statutory notification so as to bring it within rules relating to issue of writ of mandamus. See U. P. Government Industries Manual 1950 — Examination Rules for Government Technical Institutions, R. 4. **AIR 1959 All 681.**

——**Arts. 154, 161 and 162 — Governor's powers under Constitution.**

A combined reading of the three Articles indicates that the entire executive power of the State vests in the Governor in respect of all matters in regard to which the Legislature of the State has power to make laws. In regard to the same matters he has also got the limited judicial power given under Art. 161. These are all the powers conferred on the Governor under the Constitution. **ILR (1955) Andhra 208: (1954) 2 Mad LJ (Andh) 33: 67 Mad LW 1212: AIR 1954 Andhra 9 (10) (Pt A) (Pr 10).**

●——**Arts. 154 (1) and 238 (1) — Executive powers of Rajpramukhs.**

Per Ansari J.:— The prerogative of absolute monarchy is so obviously inconsistent with a republican Constitution where the supreme powers reside in the body of the people that it cannot exist under it. The executive powers of the Rajpramukhs under the Constitution, therefore, cannot be co-extensive with those of the former Rulers of Part-B States. These powers are now circumscribed by and have to be gathered from the text of the Constitution. To this extent, there is a similarity between he Constitution of this Country and that of the United States. It is true that Articles 372 and 375 of the Constitution preserve earlier laws and functions of the former authorities. But they are also subject to the other provisions of the Constitution and cannot authorize continuance of the powers which are not conferred by the Constitution on the Governors of the States. Ahmad-Un-Nissa Begum v. State, **ILR 1952 Hyd 595: AIR 1952 Hyd 163 (169) (Pt D) (Pr. 16) (FB).**

——**Art. 154 (2)** — Collector fixing dates for election — Subsequent postponement of election on Government directive — Legality — Executive powers of Government — Extent of — See Panchayats — M. B. Panchyat Act (58 of 1949), S. 9. **AIR 1956 Madh Bha 163.**

●——**Arts. 154, 238 — Rajpramukh — Powers of — Power to decide question of succession to jagirs — R. 14 (2) of Jaipur Matmi Rules (1945) — Validity.**

Under Art. 7 (3) of the Covenant of Rajasthan, the right to resume Jagirs or to recognise succession according to law and custom to the rights and titles of the Jagirdars vested exclusively in the Rajpramukh. But on the coming into force of the Constitution the power conferred on the Rajpramukh under Art. 7 (3) of the Covenant lapsed. For with the enforcement of the Constitution the Rajpramukh was not given power to decide the question of succession to Jagirs by any provision of the Constitution.

The questions of succession to Jagir are to be decided in accordance with the personal law applicable to the last holder. This personal law includes custom or usage relating to such Jagirs. Where the custom or usage applicable to a jagir was that the adoptee should be a direct male lineal descendant of the original grantee, on the date of the holder of a Jagir without leaving any issue the grant would vest in such adopted son and the grant does not remain in suspension till Matmi is effected in the name of a successor. Even if the Jaipur Matmi Rules 1945 had the force of law the provision contained in Rule 14 (2) regarding recognition of an adoption for purposes of succession by the Ruler before the adopted son

could succeed to the grant became void on the coming into force of the Constitution. Thakur Jai Sing v. Thakur Sobhag Sing, **1961 Raj LW 168: ILR (1960) 10 Raj 1788: AIR 1961 Raj 146 (150, 152, 153) (Pt E) (Prs. 28, 29, 30, 41, 42) (FB).**

——Art. 154 — Power to recognise succession to jagirs.

It is true that the power under Art. 7 (3) of the Covenant of the State of Rajasthan is executive power, but from that it does not follow that the executive power mentioned in the Constitution in Art. 154 includes the power to recognise succession to jagirs. A dispute as to a question to a jagir can only result in a suit of a civil nature and would lie in a Civil Court unless it was expressly or impliedly barred. When Art. 7 (3) became abrogated by virtue of the Constitution coming into force on 26-1-1950 there was no bar left to the suits of this nature being filed in the Civil Court. AIR 1955 SC 504 and AIR 1955 Raj 135 (FB), Foll. **ILR (1955) 5 Raj 995: AIR 1955 Raj 203 (206) (Pt C) (Pr 9) (DB).**

2. Exercise of executive power.

——Art. 154 — Power to dismiss a public servant at pleasure is outside the scope of Art. 154 and therefore, cannot be delegated to a subordinate officer and can be exercised by him only in the manner prescribed by Constitution. See Ibid, Art. 309. **1961 (1) Cr LJ 773: AIR 1961 SC 751.**

——Art. 154 (2) (a) — S. 7 of Police Act — Validity — Powers under — If delegated by Governor.

The powers of the Superintendent, Deputy Inspector General and the Inspector General of Police under S. 7 of the Police Act having been conferred by a law existing on the date of the Constitution were not transferred to the Governor but continued to be vested in those three officers. The powers under that section are not delegated by the Governor but created by statute and therefore, subject to all the conditions and limitations prescribed by that statute. It follows that any serious violation of the conditions will invalidate any decision made under S. 7. AIR 1954 All 629, Rel. on. **AIR 1960 All 304 (311) (Pt D) (Prs. 26, 27).**

——Art. 154 — Scope — Appointment of Special Magistrate for entire State — Power to direct place of sitting. See Criminal P. C. (1898), S. 14. **1959 Cr LJ 113: AIR 1959 All 82.**

——Art. 154 — Powers of Governor — Notification under S. 14, Criminal P. C. — Power to direct at what place Special Magistrate shall exercise power — (Criminal P. C. (1898), Ss. 14 and 16).

The executive power of the Governor which is vested in him by Art. 154 includes the superintendence, direction and control of the Civil Government of the State, and it is within the ambit of this power that the Governor may direct at what place or places the officers of Government shall perform their duties, including the place or places at which a Special Magistrate shall exercise powers conferred upon him by a notification under S. 14 of Cr. P. C. The provisions of S. 16 of the Code are in no way inconsistent with this view as that section is concerned only with the power to frame rules. **1956 All LJ 247: 1956 All WR (HC) 300: AIR 1956 All 448 (448) (Pr 4) (DB).**

——Arts. 154, 161 and 162 — Exercise of executive power — Mode of — Duty of Governor.

Such powers as are to be exercised by the Governor under the Constitution can only be exercised on the advice of the Ministers except where the Constitution expressly or by necessary implication provided that he can exercise the powers in his individual discretion as in the case of the Governor of Assam with respect to the Tribunal matters. AIR 1954 Andhra 9, Foll. **(1957) 2 Andhra WR 464 : 1957 An LT 828 : AIR 1958 Andh Pra 619 (623) (Pt B) (Pr 11) (DB).**

——Arts. 154, 163 and 311 (2) — Madras Public Service Commission Regulations (1937), Reg. 20 (1) (a) and (b) — Applicability — Adverse order against public servant — Appeal.

Where an order in appeal preferred by a public servant is passed subsequent to the passing of the Constitution, the Governor of the State is not entitled to exercise his individual judgment and dispose of the appeal. The words "Provincial Government" in Reg. 20 (1) (a) and (b) should be given the same meaning and should not be construed differently. The words 'Provincial Government' should be read as the Governor acting in consultation with the Ministers. There can be no right of appeal after the Constitution against the order of the Provincial Government, i.e., the Governor acting in consultation with his Ministers, to the Governor acting in his individual judgment. Therefore, Reg. 20 (1) (a) will now have no application whatsoever to an appeal preferred to the Governor exercising his individual judgment. **(1957) 1 An WR 370: ILR (1957) Andh Pra 802: AIR 1957 Andh Pra 794 (805) (Pt F) (Pr 31).**

——Art. 154 — Governor's address before Legislature under Art. 176 — Duty of Governor. See Ibid, Art. 176 (1). **69 CWN 484: AIR 1966 Cal 363.**

——Arts. 154, 166 and 299 — Executive action in administration of Government property — Non-compliance with formalities under Art. 166 — Effect — Right of third party to challenge validity.

Although everything that is done by Government in the administration of property in its possession may be called executive action in an enlarged sense, because it is certainly not judicial or legislative, it does not follow that formality under Art. 166 should be observed strictly as long as the rights of the third parties are not affected. It is now well settled that even if the constitutional formality is not observed, the order does not become void but is only voidable, and a person who is affected might make an application to the Court, and the Court will have to be satisfied that the order has really been passed by the Government.

Assuming that the order amounted to a contract the violation of Art. 299 was a matter that concerned the contracting parties. An outsider could not come in and agitate its defects and obtain relief by way of a high prerogative writ. **64 Cal WN 1017: 1960 Cr LJ 1436: AIR 1960 Cal 668 (671, 672, 673) (Pr 6).**

——Arts. 154 and 166 — Dispensing of enquiry under S. 5-A, Land Acquisition Act — Conditions precedent for — Satisfaction of Government as to urgency and as to whether land was waste or arable — Satisfaction what is — Notification under S. 4 (1) speaking of urgency but not of land being waste or arable — Proof — Fact that there was report of subordinate officer or that there was notification issued under S. 6 not sufficient — Expressions 'waste land' and 'arable land' — Meaning. See Land Acquisition Act (1894), S. 5-A. **ILR (1964) Guj 814.**

●——**Arts. 154, 246, 238 — Prerogative — Abrogation of.**

Per Ansari and Reddy JJ.:— Where a statute empowers doing of a certain thing, which might, before have been done by virtue of prerogative, the latter is abrogated so long as the statute is operative. Per Chari J.:— Prerogative is only the ultimate resource of the Executive and when there exists a statutory provision covering precisely the same ground there is no longer room for the exercise of the Royal prerogative. Ahmad-un-Nissa Begum v. State, **('52) ILR (1952) Hyd 595: AIR 1952 Hyd 163 (175) (Pt C) (Pr 46) (FB).**

——**Art. 154 — Legislature.**

The Government can exercise only those powers which have been delegated to it by the legislature. Governments have no inherent powers of their own. They have to execute the wishes of the legislature which in fact has the sovereign authority. If the legislature does not in specific words authorise the Government to take a certain action against a person who is dealt with under some law, the power to take such action cannot be presumed without a clear provision of law. **1953 Cri LJ 1885: 12 J and K L R 73: AIR 1954 J and K 7 (9) (Pt C) (Pr 8) (DB).**

——**Art. 154 (1) — Exercise of executive powers by Governor through subordinate officers — Validity.**

The Governor acts in accordance with the Constitution when he exercises his executive powers through any subordinate officer under him. **(1962) Ker LJ 881: ILR (1962) 2 Ker 362: (1962) 2 Lab LJ 301: 1962 Ker LT 690: 1963 (1) Cri LJ 675 (679) (Pt B) (Pr 13) (DB).**

——**Arts. 154 (2) (b) and 166 (3)** — Motor Vehicles Act (1939) (as applicable to Madhya Pradesh), S. 68-D (2) (2-a) (3) — Construction and Scope — Power under — Delegation of — Power under sub-section (3) can be delegated to Officer subordinate to Governor — Delegation can be by Rules of Business made under Art. 166 (3) and independently of provisions of sub-section (2-a)— Statutory delegation is permissible under Art. 154 (2) (b) and sub-s. (2-a) is not void on ground that it affects Rules of Business made under Art. 166 (3) — AIR 1945 PC 156 and AIR 1959 SC 308, Foll.; AIR 1961 SC 751, Disting. **1965 MPLJ 434: 1965 Jab LJ 611: AIR 1965 Madh Pra 196 (201, 202, 203, 204) (Pt C) (Prs. 11, 14, 15) (DB).**

——**Art. 154 (1)** — Order of the Government — What is. See Ibid, Art. 166. **AIR 1957 Mad 48 (DB).**

——**Art. 154 (1)** — Executive power — Exercise through Minister. See East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (50 of 1948), S. 42. **AIR 1958 Punj 302.**

●——**Art. 154 — Exercise of executive power by Raj Pramukh.**

The exercise of the executive power under Art. 154 directly by the Raj Pramukh is as regards the function or functions which he can exercise in his discretion under Art. 163 (1) whichever it or they may be. Joseph Johi v. State of Travancore-Cochin, **1953 Ker LT 1: 1953 Cr LJ 752: ILR (1952) Trav-Co 884: AIR 1953 Trav-Co 130 (137, 138) (Pt C) (Pr 18) (FB).**

3. "Officers subordinate to him."

——**Arts. 154 and 166 (3)** — Government servant making aspersions on Minister — Ministers being in position of master, principles relating to master and servants apply — Dismissal of servant held proper — Principles stated — Master and servant. See Ibid, Art. 311. **AIR 1962 Guj 197 (DB).**

——**Art. 154 (1) — Officer subordinate — Adviser to Rajpramukh of State administered by President.**

The position of an Adviser to the Rajpramukh under an order of the President under Art. 356 taking over the administration of that State is analogous to that of a Minister in the ordinary constitutional set up. He must therefore, be regarded 'officer subordinate' within the scope of Art. 154 (1) of the Constitution, and the President, or the Rajpramukh exercising the powers on behalf of the President, acts in accordance with the Constitution when he exercises the executive power of the State through such a subordinate officer to him as the Adviser. AIR 1945 PC 156, Rel. on. **ILR (1954) Patiala 183: AIR 1954 Pepsu 136 (149) (Pt F) (Pr 18) (DB).**

——**Art. 154 — Minister — If officer subordinate to Governor — Art. 53.**

A Minister of a State is an officer subordinate to the Governor, Ministers' salaries and allowances are no doubt, fixed by the State legislature under Art. 164 (5) and under Art. 164 (2) Council of Ministers is collectively responsible to the Legislative Assembly. But these circumstances do not make and cannot make a Minister anything but subordinate to the Governor who has the power of appointing and dismissing him. AIR 1945 PC 156, Rel. on. **59 Punj LR 190: AIR 1958 Punj 302 (304) (Pt F) (Pr 7).**

4. Executive and Judiciary — Relation between.

See also Ibid, Art. 53

●——**Art. 154** — Quasi judicial orders — Test — Scheme proposed by Transport undertaking under S. 68-C, Motor Vehicles Act (1939) — Approval or modification — Hearing by State Government under S. 68-D (2) — State Government must act judicially. See Ibid, Art. 226. **AIR 1959 SC 308.**

——**Art. 154** — Executive and judiciary — Conflict — Duty of executive. See Ibid, Art. 53. **AIR 1953 Mad 41.**

——**Art. 154** — Authenticated order on behalf of Rajpramukh — Satisfaction of detaining authority under S. 3 of Preventive Detention Act — Onus — Evidence Act (1872), Ss. 101 to 103. See Ibid, Art. 53. **2 Pepsu LR 402: AIR 1951 Pepsu 126.**

5. State Government.

●——**Art. 154 — State Government — Meaning — General Clauses Act (1897), S. 3 (60).**

The expression 'State Government' has a meaning assigned to it under the General Clauses Act, 1897. Briefly stated, is means the authority or person authorised at the relevant date to exercise executive Government in the State, and after the commencement of the Constitution, it means the Governor of the State. State of U. P. v. Mohammad Naim, **1963 Mad WN 651: (1963) All LJ 924: 1963 All Cr R 412: 1963 All WR (HC) 717: 1964 (1) Cr LJ 549: ILR (1963) 2 All 849: (1963) 2 SCWR 203: (1964) 2 SCR 363: (1964) 1 SCA 471: AIR 1964 SC 703 (706) (Pt B) (Pr 8).**

——**Art. 154** — State Government — Different capacities of Governor—Governor exercising executive powers is State Government, not while exercising other powers — Governor exercising powers of Chancellor of University — He is not State Government. See Ibid, Art. 191 (1) (a). **AIR 1962 All 128 (DB).**

——**Art. 154** — Authority to order compulsory retirement — State Government is the proper

authority till 3-5-1960. See Rajasthan Service Rules (1951), R. 244 (2). **AIR 1962 Raj 258 (DB).**

ARTICLE 160.

——**Art. 160** — Rules of Procedure and Conduct of Business (W. B. Legislative Assembly), R. 16 — Governor's address before Legislature under Art. 176 — Address must be by delivery of speech — No deadlock possible if Governor becomes, unable to address as required under Art. 176 — President may make some other provision under Art. 160 for the discharge of the aforesaid function of the Governor. See Ibid, Art. 176 (1). **69 Cal WN 484 : AIR 1966 Cal 363.**

ARTICLE 161.

SYNOPSIS

(Constitution of India, Art. 161.)

1. Scope of the Article.

2. Power to grant pardons.

3. Suspension of sentence.

4. Remission of sentence.

5. General amnesty.

1. Scope of the Article.

●——**Art. 161** — Prerogative of Maharaja of Cochin relating to execution of death sentences — Prerogative inconsistent with Constitution —Prerogative stands repealed. See Ibid, Art. 72. **1956 Cri LJ 315 : AIR 1956 SC 142.**

——**Arts. 161 and 162** — Order of Governor commuting death sentence confirmed by High Court — Validity — Mandamus directing State to execute death sentence — Cannot be issued. See Ibid, Art. 226. **1962 (1) Cr. LJ 241 : AIR 1962 All 151.**

●——**Art. 161 — Art. 161 is wider than S. 401 Criminal P. C. — (Criminal P. C. (1898), S. 401).**

Article 161 is of much wider amplitude enabling the Governor to give an unconditional and absolute pardon, while section 401 does not empower him to do any such thing. 1956 Andh WR 682, **Reversed.** The Dy. Inspector General of Police, North Range v. D. Rajaram. **1960 Cri LJ 565 : AIR 1960 Andh Pra 259 (262) (Pt D) (Pr 16) (SB).**

——**Art. 161** — Exercise of executive power. See Ibid, Art. 154. **AIR 1958 Andh Pra 619 (DB).**

——**Art. 161** — Governor's powers under Constitution. See Ibid, Art. 154. **AIR 1954 Andhra 9.**

●——**Art. 161 — Scope of powers.**

The powers referred to in Art. 161 are not intended to be exercised arbitrarily except for good and sufficient reasons. They must be used only for the purpose for which they have been conferred and that is to promote justice and not to circumvent the due processes of law. Ordinarily they should not be exercised, when judicial proceedings are pending. They should also not be used so as to short circuit local processes and give relief, which could be granted by a Court. State v. Kawas Manekshaw Nanavati, **ILR (1960) Bom 915: 62 Bom LR 383: 1960 Nag LJ 371: 1960 All WR (Sup.) 27 : 1960 All Cr R 226 : 1960 Cr LJ 1558: AIR 1960 Bom 502 (513) (Pt L) (Pr 44) (FB).**

●——**Art. 161 — Power under — If can be exercised by Military Governor or Chief Minister.**

Under Art. 161, the powers of suspension, remission and reduction of sentences are given to the Governors (or Rajpramukhs). The Military Governor and the Chief Minister do not come under that designation. Abdul Rahim v. Joseph A. Pinto, **1952 Cri LJ 1333 : ILR (1951) Hyd 1: AIR 1951 Myd 11 (13, 14) (Pt B) (Pr 18) (FB).**

[**Overruled** on another point in AIR 1953 Hyd 33 (FB).]

——**Art. 161** — Penal Code (1860), S. 302 — Sentence — Extenuating circumstances — Youth (22 years in the instant case) not a ground in law for extenuation of sentence — But it may be justly taken note of by Government in exercise of their prerogative powers of mercy. See Penal Code (1860), S. 302. **AIR 1960 Mad 462.**

——**Art. 161** — Cognate and analogous law — American decisions. See Ibid, Art. 72. **1954 Cri LJ 1370 : AIR 1954 Mad 911 (DB).**

——**Art. 161** — Powers under — Nature of — Executive or judicial. See Ibid, Art. 72. **AIR 1958 Punj 302.**

——**Art. 161** — Scope — Travancore-Cochin Covenant Art. 21 — Power of Maharaja of Cochin to grant suspension, remission or commutation of sentence cannot be invoked or exercised after commencement of Constitution. See Ibid, Art. 72. **ILR (1955) Trav-Co. 788.**

2. Power to grant pardons.

●——**Art. 161 — Pardon and remission of sentence — Distinction — Criminal P. C. (1898), S. 401.**

It is evident from Art. 161 that the grant of pardon is not the same thing as the remission of sentence in whole or in part. They are two different things having distinct operation. Deputy I. G. of Police v. D. Rajaram. **(1959) 2 Andh WR 526 : 1959 Andh LT 916 : 1960 Cri LJ 565 : AIR 1960 Andh Pra 259 (262) (Pt C) (Pr 15) (SB).**

——**Art. 161 — General pardon — Effect — Amnesty granted by Andhra Government — G. O. Ms. No. 26, dated 12th January, 1954 — Effect.**

It is of the very essence of a pardon that it releases the offender from the consequences of his offence. If the property or interest is not vested in others, the effect of the pardon is to restore that property to the original owner. Similarly if no one has been appointed to the forfeited office, the original office-holder is entitled to claim the office. Hence, where subordinate Police Officers have been dismissed as a result of their conviction and during the pendency of their appeal, a general amnesty is granted by the Andhra Government G. O. Ms. 26, dated 12th January, 1954, they are entitled to be restored to their posts if no rights of third parties had intervened. **1956 Andh WR 682.**

[**Reversed** in AIR 1960 Andh Pra 259 (SB).]

●——**Art. 161** — Effect of pardon. See Ibid, Art. 72. **1960 Cri LJ 565 : AIR 1960 Andh Pra 259 (SB).**

——**Art. 161** — Scope — Power of Governor to grant pardon. See Ibid, Art. 72. **1957 Cri LJ 822: AIR 1957 Andh Pra 249 (DB).**

●——**Art. 161** — Power of pardon — Scope of power to suspend sentences — Exercise of power during pendency of judicial proceeding — Legality. See Ibid, Art. 72. **1960 Cri LJ 1558 : AIR 1960 Bom 502 (FB).**

●——**Art. 161** — Power of Government in respect of offences under Penal Code. See Ibid, Art. 72. **1960 Cr LJ 1558 : AIR 1960 Bom 502 (FB).**

——**Art. 161** — Pardon — Nature and extent of — Amnesty 'pending reference for confirmation of sentences' — Effect. See Ibid, Art. 161. **1954 Cri LJ 1370 : AIR 1954 Mad 911 (DB).**

3. Suspension of sentence.

●——**Art. 161** — Power of Governor under Art. 161 to suspend sentence — Ambit of — Petition for special leave to appeal pending before Supreme Court — Governor cannot suspend sentence under Art. 161 — Supreme Court Rules, O. 21, R. 5 — Compliance of. See Ibid, Art. 142. **1961 (1) Cri LJ 173 : AIR 1961 SC 112.**

●——**Art. 161** — Order by Governor suspending sentence of accused — Legality of — Power of Court to examine — Art. 362 — Effect of. See Ibid, Art. 361. **1960 Cr LJ 1558 : AIR 1960 Bom 502 (FB).**

●——**Art. 161 — Conditional order of suspension of sentence — Legality.**

The power to suspend a sentence would include the power to attach lawful conditions to it. The conditions should, however, not be illegal, immoral or impossible of performance. State v. Kawas Manekshaw Nanavati, **ILR (1960) Bom 915 : 62 Bom LR 383 : 1960 Nag LJ 371 : 1960 All WR (Sup) 27 : 1960 All Cr R 226 : 1960 Cr LJ 1558 : AIR 1960 Bom 502 (508, 509) (Pt D) (Pr 18) (FB).**

●——**Art. 161 — Aplicability — Accused subject to naval law convicted of murder by ordinary criminal Court — Order suspending his sentence subject to condition that accused was to be detained in naval custody till disposal of appeal by Supreme Court — Legality — Supreme Court Rules, O. 21, R. 5 — Applicability.**

The accused, subject to naval law, was convicted for murder by an ordinary criminal Court and sentenced to imprisonment for life. After the judgment was pronounced, the accused made an application for leave to appeal to the Supreme Court. Before the warrant issued for the arrest of the accused, who was in naval custody, could be executed, the Governor issued an order under Art. 161 of the Constitution suspending the sentence subject to the condition that the accused was to remain in naval custody till the disposal of the appeal to the Supreme Court.

Held, that the pith and substance of the condition was that the accused should remain in custody and not the mode or manner of that custody. Hence, the Governor's order was not unconstitutional and invalid.

An order made by an Authority, which was entrusted with wide powers under the Constitution and which on its face was ascribable to those powers, could not be struck down as invalid, because it contained a condition, the fulfilment of which might make someone do an act, which was not expressly authorised by law.

Held, further that as the sentence passed upon the accused had been suspended, it was not necessary for the accused to surrender to his sentence. O. 21, R. 5 of the Supreme Court Rules would not, therefore, apply in such a case. State v. Kawas Manekshaw Nanavati, **ILR (1960) Bom 915 : 62 Bom LR 383: 1960 Nag LJ 371: 1960 All WR (Sup) 27 : 1960 All Cr R 226 : 1960 Cr LJ 1558 : AIR 1960 Bom 502 (511, 512) (Pt I) (Prs 31, 33, 35) (FB).**

●——**Art. 161— Order suspending sentence — Nature of — If an order for bail.**

There is a distinction between bail and suspension of sentence and consequently, the order of the Governor, under Art. 161, which suspends the sentence, cannot be said to be an order for bail. AIR 1945 PC 94, Rel. on. Where the sentence has been suspended on the condition that the accused shall be detained in naval jail custody, the accused is not released from custody. Consequently, it cannot be said that the order made by the Governor is an order for bail. State v. Kawas Manekshaw Nanavati, **ILR (1960) Bom 915 : 62 Bom LR 383 : 1960 Nag LJ 371 : 1960 All WR (Sup) 27 : 1960 All Cr R 226 : 1960 Cr LJ 1558 : AIR 1960 Bom 502 (512, 513) (Pt K) (Prs 40, 41) (FB).**

4. Remission of sentence.

●——**Art. 161** — Scope — S. 401 Criminal P. C., — Effect of pardon — 'Remission' of sentence— — Power of Governor to grant pardon — Death sentence — Power to remit. See Ibid, Art. 226. **1960 Cri LJ 565: AIR 1960 Andh Pra 259 (SB).**

——**Art. 161 — Scope — Sentence of death if can be remitted — Criminal P. C. (1898), S. 401.**

Under Art. 161, the Governor can remit the sentence of any person convicted of any offence. Under S. 401, Criminal P. C. the appropriate Government can remit the whole or any part of the punishment to which a person has been sentenced. The sentence of death is a punishment under the Indian Penal Code and that punishment can be wholly remitted under S. 401, Criminal P. C. The fact, therefore, that the Government orders related also to condemned persons, i.e., persons doomed to death, cannot be a ground for holding that the orders did not remit the punishments imposed upon the convicted persons. **1956 Andhra WR 1071 : 1957 Cr LJ 822 : AIR 1957 Andh Pra 249 (252, 253) (Pt C) (Pr 7) (DB).**

——**Art. 161** — Remission — Effect. See Criminal P. C. (1898), S. 401. **1957 Cri LJ 822 : AIR 1957 Andh Pra 249 (DB).**

——**Art. 161** — Remission of sentence pending appeal against conviction — Government under powers vested under Art. 161 and S. 401, Cr. P. C. remitting sentence of accused without reference to High Court — Act amounted to interference with even course of justice. See Contempt of Courts Act (1952), S. 2. **ILR (1956) Hyd 577.**

——**Art. 161** — Power of Governor — Remission of sentence — Recommendation by Court — Effect. See Criminal P. C. (1898), S. 401. **1957 Cri LJ 852 : AIR 1957 Ker 102 (DB).**

5. General amnesty.

●——**Art. 161—Held that order of amnesty was not one under Art. 161 but was one under S. 401 of Criminal P. C. — Held, also that Art. 311 (2) did not apply — Under Rule 3 (b) of Madras Police S. S. D. and A. Rules Authority could dismiss police officer pending his appeal against conviction and sentence — Order of amnesty held did not touch dismissal of police officer — Criminal P. C. (1898), S. 401 — (Madras Police Subordinate Services Discipline and Appeal Rules, Rule 3 (b)) — 1956 Andh WR 682, Reversed.**

A Sub-Inspector of Police and some constables (respondents) were dismissed from service as they were convicted of certain offences. They filed appeals against their convictions and sentences in the High Court. Pending the appeals, the Andhra State was formed upon which the Government of the new State declared a general amnesty to all the prisoners by its order. After the respondents were released from jail, they withdrew their appeals as not pressed. Immediately thereafter the respondents asked the concerned Authorities for postings. Upon being told that they were already dismissed from service, they moved the High Court under Art. 226 to quash the orders of dismissal.

Held, (1) on the construction of the amnesty order that it did not purport to afford any pardon

under Art. 161 but was limited to the remission of sentences wholly and had a limited operation.

(2) that the prisoners were absolved only from the punishment that was inflicted on them but not from the other penal consequences flowing from the conviction. Therefore, the order did not touch the dismissal of the respondents AIR 1957 Andhra Pra 249, Rel. on., 1956 Andh WR 682, **Reversed.**

(3) that R. 3 (b) of the Madras Police Subordinate Services Discipline and Appeal Rules dealing with the conduct of enquiries in disciplinary proceedings did not denote that the Authority inflicting punishment of dismissal should await the disposal of the appeal and that the requirements of Art. 311 (2) were dispensed with in case of convicted persons by virtue of the Proviso to Art. 311 (2).

(4) that the order of dismissal was not rendered void by the circumstance that an appeal was pending.

(5) that sub-rule (3) of Police Standing Order No. 77, being conceived in the interests of administrative convenience had not the effect of rendering the order of dismissal null and void. Deputy Inspector General of Police, North Range Waltair v. D. Rajaram, **1960 Cri LJ 565 : AIR 1960 Andh Pra 259 (262, 263) (Pt F) (Prs 17, 19, 23, 24) (SB).**

——Arts. 161 and 226 — G. O. Ms. 26 d/- 12-1-1954 directing general amnesty to all prisoners to celebrate inauguration of Andhra State — Applicability of order — "Amnesty", meaning of — Effect of pardon on office-holder—Right to office not forfeited — Dismissal from office — Alternative remedy available but not availed of — Writ could be issued, it being a fit case. Criminal P. C. (1898), S. 401 — Words and Phrases— "Amnesty" — Madras Police Subordinate Services Discipline and Appeal Rules.

The petitioners, one of whom was a Sub-Inspector and others constables, were convicted for an offence involving moral turpitude and sentenced to imprisonment. When their appeal was pending, the D. I. G. of Police dismissed them from service. Meanwhile after the inauguration of the Andhra State, the Government of Andhra, by G. O. Ms. No. 26, dated 12th January, 1954, ordered general amnesty to all the prisoners in the State. The petitioners who were on bail under the orders of the High Court of Madras were also granted amnesty. The appeals preferred to the High Court of Madras were thereafter, dismissed as not pressed in view of the amnesty. On the question whether the general amnesty applied to them and what was its effect on their office.

Held, (i) that the amnesty granted to the prisoners was a general pardon and not a remission of the sentence only. AIR 1954 Mad 911; 24 L. Ed. 442, 59 L. Ed. 476, Rel. on.

(ii) that the effect of the pardon was that even in respect of an office it was only if it was forfeited and vested in another that it could not revert to the original office-holder.

As no one was appointed to the forfeited office, the original office-holders were entitled to claim the office. LR (1890) 24 QBD 561; 15 L Ed. 421; 23 L. Ed 388 : 18 L Ed 366; 33 L Ed 550, Considered. 24 L Ed. 442, Relied on.

(iii) that it is not every conviction that leads to a dismissal. The moral turpitude has to be taken into account before any such order is passed. It could not, therefore, be contended that as a result of the conviction by the Court of Session, the petitioners forfeited their offices. It was only as a result of the enquiry and the orders passed by the Deputy Inspector General and the District Superintendent of Police that, the petitioners were removed from office. Moreover, their removal being opposed to the terms of Standing Order No. 77, was invalid and inoperative. In such a case it could not be held that they forfeited their offices or that they were not entitled to be restored to their posts as a result of the amnesty granted. 79 ER 651; LR (1890) 24 QBD 561; 18 L Ed. 366, Ref.

(iv) that the fact that the petitioners did not avail themselves of the opportunity that was afforded to them in appeal to establish their innocence had no bearing upon the question, because it was open to them either to establish their innocence in appeal or to rely on the rights conferred upon them by law as a result of the pardon granted under Art. 161; and they chose the latter course.

(v) that though petitioners had an alternative remedy to prefer an appeal under the Madras Police Subordinate Services Discipline and Appeal Rules, this was a fit case in which writ under Art. 226 could be issued. W. P. Nos. 904 and 905 of 1952 dated 3-4-1956; AIR 1954 SC 403, Rel. on. **(1956) 2 Andh WR 682.**

[**Reversed** in AIR 1960 Andh Pra 259 (SB).]

——Art. 161— Andhra G. O. Ms. No. 26, Law (Prisons) Department, dated 12-1-1954 — "Amnesty" — (Criminal P. C. (1898), S. 401) — (Words and Phrases — "Amnesty").

As understood in common parlance, the word 'amnesty' is appropriate only where political prisoners are released and not in cases where those who have committed felonies and murders are pardoned. But the intention of the Andhra Government in G. O. Ms. No. 26 was to pardon not only political prisoners but those convicted and sentenced to the extreme penalty of the law as well as for various terms of imprisonment for non-political crimes involving moral turpitude.

Chandra Reddi, J.: The order, G. O. Ms. No. 26 Law (Prisons) Department, dated 12-1-1954 was issued in the name of the Governor of the Andhra State. Although the provisions of law under which this order was issued are not mentioned, it may be taken that it was under S. 401, Criminal P. C. and Art. 161 of the Constitution of India. It is not within the province of High Court to consider whether the use of the expression "amnesty" is appropriate in the context. **(1954) 2 MLJ 166 : 1954 Cr LJ 1370 : ILR (1955) Mad 92: AIR 1954 Mad 911 (912, 915) (Pt A) (Prs 2, 15) (DB).**

ARTICLE 162

——Arts. 162, 73, 53, 75, 202, 203, 204, 266 (3) — Scope of executive power — Executive power not confined to carrying out of laws — Power of executive Government to carry on trade or business without specific legislation sanctioning such course.

The functions of a modern State like the police States of old are not confined to mere collection of taxes or maintenance of laws and protection of the realm from external or internal enemies. A modern State is certainly expected to engage in all activities necessary for the promotion of the social and economic welfare of the community.

Neither of Articles 162 and 73 contain any definition as to what the executive function is and what activities would legitimately come within its scope. They are concerned primarily with the distribution of the executive power between the Union on the one hand and the States on

the other. They do not mean that it is only when the Parliament or the State Legislature has legislated on certain items appertaining to their respective lists, that the Union or the State executive, as the case may be, can proceed to function with respect to them. On the other hand, the language of Art. 162 clearly indicates that the powers of the State executive do extend to matters upon which the State Legislature is competent to legislate and are not confined to matters over which legislation has been passed already. The same principle underlies Art. 73 of the Constitution.

It may not be possible to frame an exhaustive definition of what executive function means and implies. Ordinarily the executive power connotes the residue of Governmental functions that remain after legislative and judicial functions are taken away. The Indian Constitution has not indeed recognised the doctrine of separation of powers in its absolute rigidity but the functions of the different parts or branches of the Government have been sufficiently differentiated and consequently it can very well be said that our Constitution does not contemplate assumption, by one organ or part of the State, of functions that essentially belong to another. The executive indeed can exercise the powers of departmental or subordinate legislation when such powers are delegated to it by the legislature. It can also when so empowered, exercise judicial functions in a limited way. The executive Government, however, can never go against the provisions of the Constitution or of any law. This is clear from the provisions of Art. 154 of the Constitution, but, it does not follow from this that in order to enable the executive to function there must be a law already in existence and that the powers of the executive are limited merely to the carrying out of these laws. Opinion of Agarwala, J. in AIR 1951 All 257 (FB), held too narrow and unsupportable.

Our Constitution, though federal in its structure, is modelled on the British Parliamentary system where the executive is deemed to have the primary responsibility for the formulation of governmental policy and its transmission into law though the condition precedent to the exercise of this responsibility is its retaining the confidence of the legislative branch of the State. The executive function comprises both the determination of the policy as well as carrying it into execution. This evidently includes the initiation of legislation, the maintenance of order, the promotion of social and economic welfare, the direction of foreign policy in fact the carrying on or supervision of the general administration of the State. In the Indian Constitution, we have the same system of parliamentary executive as in England, and the Council of Ministers consisting, as it does, of the members of the legislature is, like the British Cabinet, 'a hyphen which joins, a buckle which fastens the legislative part of the State to the executive part". The Cabinet enjoying, as it does, a majority in the legislature concentrates in itself the virtual control of both legislative and executive functions; and as the Ministers constituting the Cabinet are presumably agreed on fundamentals and act on the principle of collective responsibility, the most important questions of policy are all formulated by them.

Where the Ministry or the executive Government of a State formulates a particular policy in furtherance of which they want to start a trade or business, a specific legislation legislating such trade activities before they could be embarked upon is not always necessary. If the trade or business involves expenditure of funds, it is certainly required that the Parliament should authorise such expenditure either direcly or under provisions of a statute. What is generally done in such cases is, that the sums required for carrying on the business are entered in the annual financial statement which the Ministry has to lay before the House or Houses of Legislature in respect of every financial year under Art. 202 of the Constitution. So much of the estimates as relate to expenditure other than those charged on the consolidated fund are submitted in the form of demands for grants to the legislature and the legislature has the power to assent or refuse to assent to any such demand or assent to a demand subject to reduction of the amount (Art. 203). After the grant is sanctioned, an Appropriation Bill is introduced to provide for the appropriation out of the consolidated fund of the State of all moneys required to meet the grants thus made by the Assembly (Art. 204). As soon as the Appropriation Act is passed, the expenditure made under heads covered by it would be deemed to be properly authorised by law under Art. 266 (3) of the Constitution.

It is true that the Appropriation Acts cannot be said to give a direct legislative sanction to the trade activities themselves. But so long as the trade activities are carried on in pursuance of the policy which the executive Government has formulated with the tacit support of the majority in the legislature, no objection on the score of their not being sanctioned by specific legislative provision can possibly be raised. Objections could be raised only in regard to the expenditure of public funds for carrying on of the trade or business and to these the Appropriation Acts would afford a complete answer.

Specific legislation may indeed be necessary if the Government require certain powers in addition to what they possess under ordinary law in order to carry on the particular trade or business. Thus when it is necessary to encroach upon private rights in order to enable the Government to carry on their business, a specific legislation sanctioning such course would have to be passed.

Where the entire expenses necessary for carrying on the business of printing and publishing the text books for recognised schools in Punjab were estimated and shown in the annual financial statement and the demands for grants, which were made under different heads, were sanctioned by the State Legislature and due Appropriation Acts were passed for the purpose of carrying on the business, the Government do not require any additional powers and whatever is necessary for their purpose, they can have by entering into contracts with authors and other people. This power of contract is expressly vested in the Government under Art. 298 of the Constitution. In these circumstances, the carrying on of the business of printing and publishing textbooks cannot be said to be beyond the competence of the executive Government without a specific legislation sanctioning such course. 31 CLR 421 and 52 CLR 533, Disting. AIR 1951 All 257 (FB), Considered. Ram Jawaya Kapur v. State of Punjab, **1955 Mad WN 973 : 1955 SCA 577: 1955 SCJ 504 : (1955) 2 MLJ (SC) 59 : 1955 2 SCR 225 : 57 Punj LR 444 : 1955 An WR (SC) 313 : AIR 1955 SC 549 (553, 554, 555, 556, 557) (Pt A) (Prs 6, 7, 12, 13, 15, 16, 17, 18).**

——**Art. 162** — Order of Governor commuting death sentence confirmed by High Court — Validity — Mandamus directing State to execute death sentence — Cannot be issued. See Ibid, Art. 226. **1962 (1) Cri LJ 241: AIR 1962 All 151.**

——**Arts. 162, 154 and 166** — Motor Vehicles Act (1939), S. 68-C — Scheme for road transport — Publication of scheme by State Government in name of Governor — Validity. See Motor Vehicles Act (1939), S. 68-C. **AIR 1961 All 214.**

——**Art. 162** — Scope — State Government issuing notification reserving mining area for public sector — Validity — Right of Government to carry on trade. See Ibid, Art. 73. **AIR 1959 Andh Pra 485.**

——**Arts. 162, 226 — Executive functions of State Government — Scope and extent — Enunciating pollcies and carrying them out — If legislation — G. Os. relating to admission to colleges — If laws.**

The functions and duties of the executive extend to subjects not only in regard to which there have been enacted legislatations but to all topics in regard to which the State Legislature is competent to legislate. But the existence of a legislation is not a prerequisite to the exercise of executive functions in regard to any subject. AIR 1955 SC 549 and AIR 1951 All 257 (FB), Rel. on.

It is the primary duty of the Executive to take stock of the educational needs of the people in the State, and lay down a policy in regard thereto in furtherance of the educational advancement of its people. If the field is not occupied by a statute, the State Government functions in its executive capacity in that regard. It follows that the G. O. Ms. No. 1071 (Health), dated 26th May, 1958 and G. O. No. 1155, dated 4th June, 1958, issued by the Government of Andhra Pradesh regulating admissions to certain courses in the colleges cannot be regarded to be laws in any sense of the term, nor can they be disregarded on the ground that they lack legislative sanction.

Held, further that as the colleges in question were maintained by the Government and not by the University the State Government was empowered to make the rules with regard to the admission into those colleges. **ILR (1959) Andh Pra 137 : (1959) 2 Andh WR 15 : AIR 1959 Andh Pra 437 (439, 440, 442) (Pt B) (Prs 8, 9, 10, 11, 27) (DB).**

——**Arts. 162, 166 — Executive or administrative directions — Publication not necessary (Madras General Clauses Act (I of 1891), S. 21).**

It is axiomatic that every statute or rules having the statutory force ought to be brought to the notice of the people by publication as they are expected to obey the laws. But the same cannot be posited with regard to executive or administrative directions unless there is any obligation cast on the authorities concerned by any statute or the rules made thereunder.

Held, that the rules framed by the Governor under Art. 166 of the Constitution do not contemplate publication of the G. Os. **ILR (1959) Andh Pra 137 : (1959) 2 Andh WR 15 : AIR 1959 Andh Pra 437 (441) (Pt C) (Pr 18) (DB).**

——**Art. 162** — Exercise of executive power. See Ibid, Art. 154. **AIR 1958 Andh Pra 619 (DB).**

——**Art. 162** — Governor's powers under Constitution. See Ibid, Art. 154. **AIR 1954 Andhra 9.**

——**Art. 162** — Housing member of Foreign consulate Staff constitutes a public purpose — All executive functions relating to diplomatic consular and trade representation can only be undertaken by Union Government. See Houses and Rents — Bombay Land Requisition Act (33 of 1948), S. 6 (4) (a). **AIR 1953 Bom 337 (DB).**

——**Art. 162** — Executive power not confined to carrying out laws. See Ibid, Art. 73. **AIR 1963 Cal 165.**

●——**Art. 162** — Reorganisation of States and integration of State Services — Powers of Central Government and State Government — Extent of — Integration of services — Meaning of — Process of integration when becomes complete — Equation of posts — Not conditions of service — State Government has power to integrate its own service subject to powers of Central Government under S. 115 (5) and S. 117, States Reorganisation Act (1956) — Bombay Government Order dated 1-4-1960 — Validity. See Ibid, Art. 3. **AIR 1965 Guj 23 (FB).**

●——**Art. 162** — T. C. General Sales Tax Act (11 of 1125), Ss. 2 (e), 2 (f), 2 (k), 2 (1), 3 — T. C. General Sales Tax Rules (1950), R. 4 (3) — Levy of sales-tax on works contract — Validity after coming into force of the Constitution—Act and rules held saved by Arts 372 & 277. See Sales Tax — T. C. General Sales Tax Act (11 of 1125 M. E.), S. 2 (e). **AIR 1962 Ker 72 (FB).**

[**Reversed** in AIR 1964 SC 207.]

——**Arts. 162 and 73 — Kerala Education Bill submitted for assent of President — Executive order embodying provisions — Validity.**

The Government Order Ed. (C. Spl.) 1-20599/57/EHD, dated 12th October, 1957, does not directly or indirectly seek to achieve the result of the Presidential assent by making law of Cl. 3 of the Kerala Education Bill, which was awaiting the assent of the President. All that the order does is to do what the State Government has the power to do even without such a law. The power of the State Legislature to make laws on the subject of education remains altogether unaffected by the fact that a bill it has passed on the subject is yet to become law. The executive power of the State still extends to the whole subject of education, even to matters covered by the Education Bill, and until the Bill becomes law unaffected by it. Articles 73 and 162 of the Constitution do not mean that it is only when Parliament or the State Legislature has legislated on matters within their respective limits that the Union or the State execuive as the case may be can proceed to function in respect of them. Consequently the fact that the State Legislature is in the process of making a law governing the matters covered by the orders does not in any manner affect the executive power of the State in respect of those matters until the law is actually made. **1958 Ker LT 233 : 1958 Ker LJ 357 : ILR (1958) Kerala 558 : AIR 1958 Ker 290 (300, 301) (Pt H) (Prs 46, 47) (DB).**

——**Arts. 162, 277, Sch. 7 , List I, Entry 84, List 2 Entry 8 — Madras Government Notification No. 941, dated 18th November, 1952 — Imposing duty on medicinal preparations, validity — [Madras Prohibition Act (10 of 1937), S. 18-A — Government of India Act (1935), Sch. 7, List 2, Entries 31 and 40 (c)).**

The Madras Government Notification No. 951, dated 18th November, 1952, is ultra vires and unenforceable to the extent that it imposes duty on medicinal preparations. The duty payable under Notification No. 473 was in respect of the spirit contents of medicinal preparation at Rs. 35 per gallon, whereas the duty under Notification No. 941 is in respect of potable medicinal preparations at Rs. 3 per bulk gallon. The two duties are so dissimilar that it is not possible to treat the one as substantially identical with the other. The tax on the spirit contents of medicinal preparations is in reality a tax on intoxicating liquors which has always been within the competence of the State Legislature (Vide Entry No. 31 in List 2 in Sch. 7 to the Government of India Act, 1935

and Entry No. 8 in List 2 in Sch. 7 to the Constitution). The duty on bulk gallon imposed by Notification No. 941 is clearly excise duty on medicinal preparations and that is under the Constitution, within the exclusive competence of the Union under Entry 84, in List I. As neither the Legislature nor the Government of Madras had on that date any competence to impose a duty on medicinal preparations, the imposition under Notification No. 941 is not within the saving of Art. 277 and must be held to be ultra vires. **1953 Mad WN 909 : (1953) 2 MLJ 724 : AIR 1954 Mad 643 (649, 650) (Pt E) (Prs 24, 27) (DB).**

——**Art. 162** — Executive and judiciary — Conflict — Duty of executive. See Ibid, Art. 53. **AIR 1953 Mad 41.**

——**Art. 162** — Disposal of applications for import licence — State Government constituting committee including State Government Officer who was acting as sponsoring authority under Import and Export (Control) Act — Order constituting committee amounted to encroachment upon exclusive jurisdiction of Union Government and sponsoring authority ought to have exercised its own individual judgment. See Ibid, Art. 226. **AIR 1965 Mys 143 (DB).**

——**Arts. 162, 246** — States Reorganization Act (37 of 1956), Ss. 115 (5) and 117 — Integration of State services upon reorganisation — S. 115 (5) constitutes Central Government the exclusive authority for this purpose — State's powers under Art. 162 are to this extent taken away — S. 115 (5) does not contravene the Constitution — Delegation by Central Government of its powers — Extent of. See States Reorganisation Act (1956), S. 115 (5). **AIR 1961 Mysore 210.**

——**Arts. 162, 265, 346 (3) and Sch. 7, List 2 Entry 51 — Bihar and Orissa Excise Act (2 of 1915) (as adapted) Ss. 27 and 28 — Notification No. 14223-IIJ/Ex. 1/61 R. dated 1-4-1961 levying increased duty on imported liquor — Not unconstitutional.**

The notification No. 14223-IIJ/Ex. 1/61 R dated 1-4-1961 issued by the Government of Orissa in exercise of their powers under S. 27 of the Bihar and Orissa Excise Act 2 of 1915 levying countervailing duty payable as from that date on imported foreign liquor at an increased rate of Rs. 70 per London Proof Gallon is not invalid as being unconstitutional.

The contention that the word "Countervailing" occurring in Entry 51 of List II should be given its full meaning and unless duty was actually paid for liquor manufactured in Orissa there could be no question of levying a countervailing duty on the same liquor imported into Orissa is fallacious. The power to levy duty itself is not derived from entry 51 in List II of the Seventh Schedule. The entry merely refers to the legislative power of the State Legislature. The Bihar and Orissa Excise Act 2 of 1915 is an 'existing law'. It is only when a law has been so made by the Legislature that the power of Government to levy either a duty or a countervailing duty would arise. It is true that the Executive power of the Government of a State is co-terminous with the legislative power of the State Legislature (see Article 162). But by virtue of Article 265 of the Constitution no tax can be levied or collected except by authority of law. Hence unless there is first a law validly made by the competent Legislature, in exercise of the power conferred by Entry 51 of List 2, Government cannot, merely on the strength of the aforesaid entry alone, exercise their executive power to levy duty.

Being a pre-Constitution Act, it was adapted by the President with a view to conform to the provisions of the Constitution. Sections 27 and 28 of the Act would therefore, be the relevant provisions authorising the levy of Excise duty as well as countervailing duty. A law may provide for levy of excise duty on liquor manufactured in Orissa even though at the time of the coming into force of the said law no liquor is, in fact, manufactured in Orissa. The law is meant to apply later whenever liquor is manufactured. Similarly the same law may provide for the levy of a countervailing duty on the same class of liquor imported into a State. That also will only apply when liquor is actually imported into the State. It would not be correct to say that unless the liquor is actually manufactured in Orissa, the Legislature will not have the power to make a law providing for the levy of an excise duty thereon.

As admittedly the rate of duty on liquor produced in Orissa as levied by the State Government, is identical with the countervailing duty required by the Notification to be paid in respect of imported liquor there is nothing unconstitutional in the Government Notification. **29 Cut LT 76 : ILR (1963) Cut 93 :(1963) 5 Ori JD 168.**

——**Art. 162 and Sch. 7, List 1, Item 56 and List 2, Item 17 — Scope of — State's power to legislate — Project relating to water, for preventing floods — Constitutionality of project and notification for acquisition — (Land Acquisition Act (1894), S. 4).**

Entry 17 of List 2 includes what is contemplated in Item 56 of list 1. Unless the Parliament declares the extent to which the regulation and development of inter-State rivers and the river valleys are to be expedient in the public interest, the State has full power with regard to all legislation regarding water as contemplated by Entry 17 of List 2.

Therefore a project which is essentially a project relating to water for purposes of preventing the floods is clearly within the competence of the State Legislature and as such the executive action in notifying the same for acquisition and the contemplated project cannot be held to be unconstitutional under Entry 56 of List 1 and Art. 162 of the Constitution. **ILR (1956) Cut 443 : AIR 1956 Orissa 114 (118) (Pt A) (Pr 11) (DB).**

——**Art. 162** — Government transferring premises to purchaser — Latter to hold them as absolute owner — Premises cannot be said to be public premises — Government cannot resume premises by reference to S. 4, Punjab Act 31 of 1959 — Purchaser cannot be evicted in exercise of executive power. See Houses and Rents — Punjab Public Premises and Land (Eviction and Rent Recovery) Act (31 of 1959), S. 2 (3). **ILR (1965) 1 Punj 215.**

ARTICLE 163

●——**Art. 163** — Quasi-judicial orders — Test — Scheme proposed by Transport undertaking under Sec. 68-C, Motor Vehicles Act, 1939 — Hearing by State Government under S. 68-D (2) — Duty whether judicial — Objections to scheme — Hearing by Secretary in charge of Transport Department — Final decision by Minister in charge — Principles of natural justice — Whether vitiated — Scheme framed whether ultra vires the Act. See Ibid, Arts. 226 and 32. **AIR 1959 SC 308.**

——**Art. 163 (3) — Advice tendered by Ministers to Governor shall not be enquired into any Court.**

The fact that the Minister of Justice had given concurrence to another counter proposal of a matter is a matter which the Court is precluded from examining under Art. 163 (3) which says that the question whether any, if so what, advice was tendered by Ministers to the Governor shall not be enquired into in any Court. **(1964) 8 Fac LR 375 (All).**

——**Art. 163** — 'President' and 'Governor' — Meaning of. See Ibid, Art. 310. **AIR 1959 All 771.**

——**Art. 163** — Adverse order against public servant — Appeal by — Applicability of Reg. 20 (1) (a). Madras Public Service Commission Regulations, to such appeal. See Ibid, Art. 154. **AIR 1957 Andh Pra 794.**

——**Arts. 163, 171 — Nomination of members by Governor to State Legislative Council — Governor is to act on advice of Council of Ministers and not in his own discretion — (Evidence Act (1872), S. 114).**

Article 171 does not state that in making nominations the Governor is bound to act in his discretion. Unless a particular article expressly so provides, an obligation to act in his discretion cannot be imposed upon the Governor by mere implication. Art. 163 makes it quite clear that except in cases the Governor is required to act in his discretion, he is to act on the advice of his Ministers and so it must be presumed that in making the nominations he must have acted on the advice of his council of Ministers. The Court is entitled to presume the regularity of official acts. **56 Cal WN 651 : AIR 1952 Cal 799 (801) (Pt A) (Pr 6).**

——**Arts. 163, 164 and 356 — Assumption of Governor's powers by President — Election to Assembly — Governor's deliberation with party leaders — Report to President after deliberation is not illegal and unconstitutional.**

After the assumption of the Governor's powers by the President by Proclamation, there is no impediment to the Governor attempting to ascertain the possibility of a constitutional Government in the State before he submits his report contemplated in Art. 356 of the Constitution. In such an attempt the Governor does not exercise any function under Art. 163 or 164. The attempt is not to set up a constitutional Government but only to assess the possibility of one such Government being set up by the Legislature constituted by the general election. Governor's deliberations with the party leaders and his report to the President cannot be characterised as illegal and unconstitutional. **1965 Ker LT 460: 1965 Ker LJ 502: AIR 1965 Ker 229 (230, 231) (Pt B) (Pr 5).**

——**Art. 163 (3)** — Nominations of members to State Legislative Council — Selection of names made by Chief Minister with approval of Council of Ministers — Subsequent publication of notification stating that Governor has nominated those members — Nominations are deemed to have been made by Governor and Court cannot enquire into advice, if any, given by Council of Ministers to Governor. See Ibid, Art. 171 (3) (e). **AIR 1965 Pat 321 (DB).**

——**Art. 163 (3)** — Orders not containing advice of Rajpramukh relating to affairs of State. See Evidence Act (1872), S. 123. **AIR 1955 NUC (Pepsu) 259.**

——**Art. 163 (3) — Order of dismissal by Governor.**

Order of dismissal by Governor cannot be questioned on ground that Governor had not made said order under advice of his Ministers. **AIR 1960 Punj 646 (649) (Pt B) (Pr 6) (DB).**

——**Arts. 163 (3) and 166 (2), 226 — Investigation into mala fides of Minister-in-Charge — Jurisdiction of Court — (Municipalities — Punjab Municipal Act (3 of 1911), S. 238 (1)).**

In view of the provisions of Arts. 163 (3) and 166 (2) of the Constitution the mala fides, if any, of the Minister-in-Charge cannot be investigated by the High Court or by any Court when an order, such as under S. 238 (1), Punjab Municipal Act, to supersede a Municipal Committee, has been issued in the name of the Rajpramukh as laid down in the Constitution. **AIR 1957 Punj 100 (101) (Pt A) (Pr 2).**

——**Art. 163 (3)** — Removal of Vice-President of Municipality — Discretion of State Government — Advice by Minister cannot be inquired into. See Municipalities — Punjab Municipal Act (3 of 1911), S. 16. **AIR 1955 NUC (Punj) 4990.**

——**Arts. 163 (3) and 166 (3) — "In his discretion".**

The retention of the words 'in his discretion' in Arts. 163 (3) and 166 (3) may be said to be a drafting anomaly, as no Governor, except the Governor of Assam acting under Sch. 6, Paras. 9 (2) and 18 (3), has any authority to act in his discretion. **ILR (1952) Trav-Co. 756: AIR 1953 Trav-Co 140 (145, 146) (Pt H) (Pr 20) (DB).**

● ——**Arts. 163 (3) and 167 (a) — Advice by Minister.**

Arts. 163 (3) and 167 (a) read together show that the question as to the tendering of advice is a matter purely between His Highness the Raj Pramukh and his council of Ministers. Whether there is or there is not a communication of the decisions under Art. 167 and if so what the advice tendered under Art. 163 was, is not justiciable as Art. 163 (3) clearly provides. The precise date when and the particular manner in which the communication was made to the Raj Pramukh is beyond the jurisdiction of the Court to consider as it comes within the prohibition contained in Art. 163 (3). Joseph John v. State of Travancore-Cochin, **1953 Ker LT 1 : 1953 Cr LJ 752 : ILR (1952) Trav-Co 884 : AIR 1953 Trav-Co 130 (137) (Pt B) (Pr 17) (FB).**

ARTICLE 164

——**Art. 164** — Word 'Minister' applies to Chief Minister also — Article does not prohibit appointment of a person who is not a member of the legislature as Chief Minister — Person so appointed can under clause (4) hold office for six months without being a member of the legislature. **1961 All LJ 927: AIR 1962 All 301 (302, 303) (Pt A) (Pr 5).**

——**Arts. 164 and 226** — Person not a member of Legislative Assembly appointed as Chief Minister pending his election to that house within six months — Person appointed commanding the support of the Assembly — Appointment is neither prohibited by the Constitution nor does it violate the basic principle of Parliamentary Government — Whether such a stop-gap arrangement is politically desirable or not is not a matter for the Court to consider. **1961 All LJ 927: AIR 1962 All 301 (304) (Pt B) (Pr 11).**

——**Art. 164** — Assumption of Governor's powers by President—Election to Assembly — Governor's deliberation with party leaders — Report to President after deliberation is not illegal. See Ibid, Art. 163. **AIR 1965 Ker 229.**

——**Art. 164** — Quaere — Act of Governor calling a person to form ministry — It is extremely doubtful whether action can be subject-matter of any petition in a Court of law. **(1952) 2 MLJ 671: AIR 1953 Mad 94 (95) (Pt B) (Pr 4) (DB).**

——**Arts. 164 and 171 — Rights of Legislator.**

As a Legislator a person has no right to see that the nominations to the Legislature are made properly or that any particular individual does not form a ministry which may be entrusted with the Government of the State. **(1952) 2 MLJ 671 : AIR 1953 Mad 94 (96) (Pt C) (Pr 6) (DB).**

ARTICLE 165

●——**Arts. 165 (1) and 217** — One member Tribunal — Qualifications as to age for membership — Advocate over sixty not disqualified — Distinction between Art. 165 and Art. 217 pointed out. See Industrial Disputes Act (1947) (As it stood prior to Amendment Act of 1956), S. 7 (3) (c). **AIR 1962 SC 1100.**

——**Art. 165** — Order of Advocate-General granting or refusing sanction under S. 92, Civil P. C. — Application for writ of certiorari not maintainable. See Ibid, Art. 226. **AIR 1962 Mad 320.**

——**Art. 165 — Powers and duties of Advocate-General — (Criminal P. C. (1898), S. 417).**

The Advocate-General is entitled to file an appeal to the High Court against an acquittal by virtue of Art. 165, Constitution of India, read with Mysore Government Notification, dated 13th April, 1950, which authorises him to perform all acts necessary in or for a case without restriction. Nonmention of Advocate-General in S. 417, Criminal P. C. is of no effect. **ILR (1952) Mys 394 : 1953 Cr LJ 1040 : 32 Mys LJ 42 : AIR 1953 Mys 42 (43) (Prs 1, 2).**

——**Arts. 165 (1) and 361 (1)** — "Purporting to be done" — Meaning of — Appointment purporting to be made under Art. 161 (1). See Ibid, Art. 361 (1). **AIR 1952 Nag 330 (DB).**

——**Arts. 165 and 220 — Appointment of Advocate-General — Retired Judge of High Court — If disqualified.**

A person who had retired as a Judge of the High Court before the commencement of the Constitution, can be appointed Advocate-General. The bar contained in Art. 220 of the Constitution does not come in his way. **ILR (1952) Nag 409: AIR 1952 Nag 330 (336) (Pr 31) (DB).**

——**Art. 165 (1) — Appointment of Advocate-General — Legality — Enquiry into — Power of High Court.**

There is no provision in the Constitution prohibiting the High Court from enquiring into the legality of the appointment of an Advocate-General. In the absence of any prohibition, express or implied, the Court is bound to consider the question of the legality of any appointment purporting to be made under the law if such a question is properly raised before it. The Court cannot refuse to enquire into the legality of an appointment merely because the appointment in question is to a very high office. **ILR (1952) Nag 409: AIR 1952 Nag 330 (332) (Pt B) (Pr 6) (DB).**

——**Arts. 165 and 217 — Appointment of Advocate-General — Person above 60 years — If disqualified.**

Art. 217 (1) cannot be read with Art. 165 (1) of the Constitution so as to disqualify a person from being appointed Advocate-General after the age of sixty years. **ILR (1952) Nag 409: 1952 Cri LJ 749 : AIR 1952 Nag 330 (335, 336) (Pt J) (Prs 25, 26, 27, 30) (DB).**

——**Art. 165 (1)** — Advisory Board — Appointment as member — Qualifications — Age limit if bar. See Ibid, Art. 22 (4) (a). **AIR 1952 Orissa 60 (DB).**

——**Arts. 165, 226 — Advocate-General acting under S. 92, Civil P. C.—(Civil P. C. (1908), S. 92).**

Under the Indian Constitution the Advocate-General is only an officer of the State charged with certain duties. This is clear from Art. 165 of the Constitution. In discharging the functions assigned to him under S. 92 of the Code of Civil Procedure, he is discharging duties of a legal character as contemplated by clause 2 of Art. 165. When the jurisdiction is conferred under Art. 226 on the High Court to issue writs in appropriate cases even as against a Government, there is no point in contending that such writs will not lie against the Advocate-General acting under S. 92, Civil P. C., who is only an officer under Government. His orders regarding consent are undoubtedly liable to scrutiny by the High Court and are amenable to appropriate writs under Art. 226, provided that there are justifiable grounds calling for such interference by the High Court. **ILR (1954) Trav-Co 369 : AIR 1954 Trav-Co 331 (336) (Pt A) (Pr 9) (DB).**

[**Overruled** in AIR 1962 Ker 90 (FB).]

ARTICLE 166

SYNOPSIS

(Constitution of India (1950), Art. 166.)

1. Scope.
2. "All executive action of the Government of a State".
3. Non-compliance with Clause (1) — Effect.
4. Authentication of Government orders.
5. Rules of Business of Government.

1. Scope.

●——**Art. 166** — Illegal detention — Quaere — Whether the decision recorded under R. 30-A (8), Defence of India Rules should be communicated to the detenue and whether the orders passed under R. 30(1)(b) and the record of the decision reached under R. 30-A (8) should comply with Art. 166. See Defence of India Rules (1962), R. 30-A (8). **1965 (1) Cri LJ 501 : AIR 1965 SC 596.**

●——**Art. 166** — 'Government' — Meaning — Council of Ministers. See Travancore Public Servants (Inquiries) Act (11 of 1122), S. 1. **AIR 1955 SC 160.**

●——**Art. 166 (1) — Scope — Order for detention under S. 3 of the Preventive Detention Act (4 of 1950) — Proper form — Order that "Government of the State was satisfied" and "Government of the State is pleased to direct" detention of a person — Validity — Proof of order — Other evidence — Affidavit of Secretary — Sufficiency— Minister in charge — If to be called — Affidavits — Verification — Form.**

Art. 166 (1) of the Constitution does not require a magic incantation which can only be expressed in a set formula of words. It is sufficient if the substance of the requirements is there. S. 3 of the Preventive Detention Act (1950) provides that the State Government may if satisfied make an order directing that such person be detained. It is therefore, appropriate that an order of detention should set out that the "Government of Bombay was satisfied" and that "the Government directed the detention." It is also proper that the order should have been executed under the Orders of the Governor authenticated by the signature of the Secretary, though the addition of

the words "and in his name" to the words "by order of the Governor of Bombay" would have placed the matter beyond controversy. An order purporting to be an order of the Governor cannot fail to be otherwise than in his name.

Where the order produced is sought to be proved by other evidence, it is impossible to lay down any rule regarding either the quantum or nature of the evidence necessary to satisfy the Court. That is a question of fact which must be different in each case. It is not necessary in every case to call the Minister in charge to depose to the facts. If the secretary, or any other person, has the requisite means of knowledge and his affidavits are believed that will be enough.

The verification of such affidavit should invariably be modelled on the lines of O. 19, R. 3 of the Civil P. C. whether the Code applies in terms or not. And when the matter deposed to is not based on personal knowledge the source of information should be clearly disclosed. State of Bombay v. Purushottam Jog Naik, **(1952) SCR 674 : 54 Bom LR 869 : 1952 Cr LJ 1269 : (1952) SCJ 503: (1952) 2 MLJ 338: AIR 1952 SC 317 (318, 319) (Pts A, B, C) (Prs 11, 13, 15, 16).**

——Art. 166 — Applicability—Decision of Government under R. 30-A (9), Defence of India Rules, 1962 that detention should continue — Art. 166 does not apply.

Art. 166 of the Constitution of India has no application when the Government on a review of the order of detention comes to the conclusion that the detention should be continued, as Sub-R. (9) of R. 30-A of Defence of India Rules, 1962 does not require any formal expression of the decision. Where only a decision has to be taken and no order has to be formally expressed the Article does not apply. **1964 All LJ 107 : 1964 All WR (HC) 53 : 1964 All Cri R 77 : 1964 (2) Cri LJ 11 : AIR 1964 All 327 (328) (Pt B) (Prs 7, 9) (DB).**

——Art. 166 (1) — Scope — Directory or mandatory.

The provisions of Art. 166 are only directory and not mandatory or imperative. If the order is not expressed in strict compliance of Art. 166, it is not invalid or void; it may need proof, and it may be vulnerable and could be challenged, and in that event, it cannot claim immunity granted to it by Art. 166 (2), but what the Constitution requires is substantial compliance of the provisions and not a literal one. **1959 Cr LJ 113 : AIR 1959 All 82 (87) (Pt A) (Pr 30).**

——Art. 166 — Applicability — U. P. Road Transport Services (Development) Act (9 of 1955), S. 4.

Art. 166 which deals with the executive action of Government, does not apply in case of notification published under S. 4 of the U. P. Road Transport Services (Development) Act. 1955. **AIR 1957 All 320 (333) (Pt L) (Pr 45) (DB).**

[Reversed on another point in AIR 1959 SC 648.]

——Art. 166 — Executive or administrative directions — Publication, not necessary. See Ibid, **Art. 162. AIR 1959 Andh Pra 437 (DB).**

——Arts. 166 (3), 311, 154 — Government servant making aspersions on Ministers — Ministers being in position of master, principles relating to master and servants apply — Dismissal of servant held proper — Principles stated — Master and servant. See Ibid, Art. 311. **AIR 1962 Guj 197.**

——Art. 166 — Memorandum of State appeal — Signature of Rajpramukh — Necessity of — (Criminal P. C. (1898), S. 417).

The signature of the Rajpramukh is not necessary under Art. 166 on the memorandum of a State appeal against acquittal for, in such matters, the direction in that Article is only declaratory and not mandatory and, moreover, that Article refers to executive acts and the filing of an appeal is evidently a judicial and not an executive Act. **1953 Cri LJ 477: ILR (1953) Hyd 131: AIR 1953 Hyd 59 (60) (Pt A) (Pr 3) (DB).**

——Art. 166 — Scope.

The provisions of Art. 166 are directory and the failure on the part of the State Government to issue a proper order in the name of the Governor and in the case of a Part B State in the name of the Rajpramukh, or to notify that order by publishing it in the Government Gazette does not affect the validity of the order AIR 1952 SC 181, Rel. on. **ILR (1953) Patiala 588: AIR 1953 Pepsu 196 (199) (Pt B) (Pr 4).**

——Art. 166 — Scope — Sanction under S. 6 (b) of Prevention of Corruption Act (1947) — Validity — Article 166 is not complete bar to questioning of validity of sanction — Sanction can be questioned on ground that sanctioning authority had not applied its mind to the facts of the case.

Article 166 of the Constitution does not operate as a bar to the validity of sanction under S. 6 of the Prevention of Corruption Act being questioned in a Court of law save on the limited ground mentioned therein. Where the two conditions laid down in Art. 166 are satisfied, then an irrebuttable presumption arises that the order purporting to have been made by the Governor was made by him and the same cannot be questioned. But the immunity is available so far as that particular ground goes and no further. Thus the sanction does not enjoy immunity from attack on any other ground, e. g., that the sanctioning authority had not applied its mind to the facts of the case before according the sanction, **1962 (2) Cr LJ 786 : ILR (1962) 12 Raj 327 : 1962 Raj LW 307 : AIR 1962 Raj 250 (253, 254) (Pt A) (Pr 6) (DB).**

——Art. 166 — Scope of — 'Governor' in the article means Governor himself as distinguished from any other authority.

The word 'Governor' as used in the context was intended to be used for the Governor himself as contradistinguished from any other authority and what was intended to be conveyed thereby was that the papers had been placed before the Governor himself and that his own satisfaction had been obtained. If there is another competent authority under the Rules of Business made by the Governor whose satisfaction would be required or was obtained before a valid sanction could be or was given, this article does not require it to be mentioned and such a mention cannot be justified on the language of the article. Hence when the mention of the Governor being satisfied on the papers placed before him was made in the sanction, it would not necessarily amount as a matter of fact or law to this that the material papers had been put before the Minister concerned and/or that the latter's satisfaction had really been obtained as it should have been. **1962 (2) Cri LJ 786: ILR (1962) 12 Raj 327: 1962 Raj LW 307: AIR 1962 Raj 250 (257, 258) (Pt I) (Pr 20) (DB).**

2. "All executive action of the Government of a State."

● **——Art. 166** — Letter signed by Under-Secretary to Selection Board communicating decision

by Government to prescribe interviews for regulating admission to colleges — Validity of interview challenged not on the ground that no such order by Government existed but on the ground that letter was not issued in the name of Governor — **Held**, objection was without merits — AIR 1952 SC 181, AIR 1952 SC 317, AIR 1959 SC 65 and AIR 1963 SC 35, Rel. on. Chitralekha v. State of Mysore, **(1965) 1 SCA 132: (1964) 6 SCR 368: AIR 1964 SC 1823 (1828, 1829, 1835, 1836, 1837) (Pt A) (Prs 4, 5, 26, 27).**

● ——**Art. 166 — Order of the State Government —Two essential ingredients of—Action taken by Council of Ministers when becomes action of State — Communication of order to person concerned — This is essence of order.**

Before something amounts to an order of the State Government two things are necessary. The order has to be expressed in the name of the Governor as required by Cl. (1) of Art. 166 of the Constitution and then it has to be communicated. It is not till this formality is observed that the action can be regarded as that of the State. Constitutionally speaking, the Minister is no more than an adviser and that the head of the State, the Governor is to act with the aid and advice of his Council of Ministers. Therefore, until such advice is accepted by the Governor whatever the Minister or the Council of Ministers may say in regard to a particular matter does not become the action of the State. It is of the essence that the order has to be communicated to the person who would be affected by that order before the State and that person can be bound by that order. For, until the order is communicated to the person affected by it, it would be open to the Council of Ministers to consider the matter over and over again and, therefore till its communication the order cannot be regarded as anything more than provisional in character. AIR 1961 SC 493, Rel. on. Bachhittar Singh v. State of Punjab, **(1962) Supp 3 SCR 713: AIR 1963 SC 395 (398) (Pt B) (Pr 10).**

● ——**Arts. 166 (3) and 226** — Natural justice — Bias — Judge in his own cause — Position in India—Chief Minister hearing objections to scheme of nationalisation—There is no violation of principle of natural justice — Motor Vehicles Act — Effect of. See Ibid, Art. 226. **AIR 1959 SC 1376.**

● ——**Arts. 166 and 226** — Quasi judicial orders—Test—Scheme proposed by Transport Undertaking under S. 68-C Motor Vehicles Act, 1939—Hearing by State Government under S. 68-D (2) — Duty whether judicial — Objections to scheme — Hearing by secretary-in-charge of Transport Department — Final decision by Minister in-charge — Principles of natural justice — Whether vitiated — Scheme framed whether ultra vires the Act. See Ibid, Arts. 226 and 32. **AIR 1959 SC 308.**

● ——**Art. 166 (1) — "Expressed to be taken in the name of" — Meaning — Order of detention issued as 'directed by Government' and 'by order of the Governor' — Validity — (Public Safety — Preventive Detention Act (1950), S. 3 (1)).**

One of the meanings of "expressed' is to make known the opinions or the feelings of a particular person and when a secretary to Government apprehends a man and tells him in the order that it is being done under the order of the Governor, he is in substance saying that he is acting in the name of the Governor and, on his behalf, is making known to the detenu the opinion and feelings and orders of the Governor. The Constitution does not require a magic incantation which can only be expressed in a set formula of words. What the Court has to see is whether the substance of the requirements of Art. 166 (1) is there.

An order of detention under S. 3 (1) of the Preventive Detention Act, 1950 stated in the preamble "whereas the Government of Bombay was satisfied . . . . . ." and its operative part read as follows.

"Now, therefore, ... the Government of Bombay is pleased to direct that the said Shri . . . . . be detained.

By order of the Governor of
Bombay
Sd/- X.X.X.X.
Secretary to the Government of
Bombay, Home Department."

Held that the order was "expressed" to be made in the name of the Governor as required by Art. 166 (1) because it said "By order of the Governor."

Further that though the addition of the words "and in his name" to the words. "By order of the Governor of Bombay" would have placed the matter beyond controversy, the order which purported to be an order of the Governor of Bombay could not be otherwise than in his name. State of Bombay v. Purushottam Jog, **1952 SCJ 503: (1952) 2 Mad LJ 338: 1952 SCR 674: 54 Bom LR 869: 1953 SCA 893: 1952 Cri LJ 1269: AIR 1962 SC 317 (318, 319) (Pt B) (Prs 11, 13).**

——**Art. 166** — Motor Vehicles Act (1939), S. 68-C — Scheme for road transport — Publication of scheme by State Government in name of Governor — Validity. See Motor Vehicles Act (1939), S. 68-C. **AIR 1961 All 214.**

——**Art. 166**— Notification expressed in the name of Governor — Validity. See Municipalities — U. P. Town Areas Act (2 of 1914), S. 36 (1). **AIR 1958 All 502.**

——**Arts. 166, 238 — Government acts — Form of expression — Individual Minister — Power to issue order in own name — Rules under Art. 166 of the Constitution — Hyderabad State Rules Rr. 3, 13, 14.**

By reason of Art. 166 read with Art. 238, the Rajpramukh was empowered to make rules for the conduct of governmental business of a State. The allocation of distinct subjects to different Ministers is only for the sake of convenience and any order passed by any Minister shall be deemed to have been made by the Governor on the advice of his Council of Ministers.

The acts of the Government of a State, either Part A or Part B State, were to be expressed in the form of an order and that order was to be issued by the Secretary or some other officer authorised in that behalf in the name of the Governor or the Rajpramukh. Under the concerned rules, the Minister in charge of the portfolio might be mainly responsible for tendering advice to the Rajpramukh for the disposal of the business relating to the subjects allotted to him but whether the advice was accepted by the Rajpramukh or not could not be investigated by a Court. An individual Minister could not issue orders in his own name independently of the Secretariat even in regard to matters that are within the portfolio allotted to him. **ILR (1960) 1 Andh Pra 42: AIR 1960 Andh Pra 234 (242, 243) (Pt G) (Prs 45, 47, 48) (DB).**

——**Art. 166** — Notice of terminating of service of temporary Government servant headed as office memorandum signed by Secretary but not expressed to be signed in name of Administrator if vitiat-

ed. See Government of Union Territories Act (1963), S. 46. **AIR 1965 Him Pra 55.**

——**Arts. 166 and 226 — 'Executive action' — Meaning of — (Motor Vehicles Act (1939), Section 64-A).**

The expression "executive action" in Art. 166 is comprehensive enough to include even orders which emerge after, and embody the results of a judicial or quasi-judicial disposal by Government.

In this view, an order passed by the State Government under S. 64-A of the Motor Vehicles Act is an executive action within Art. 166. AIR 1945 PC 156, Rel. on. **69 Mad LW 623: (1956) 2 Mad LJ 430: ILR (1957) Mad 115: AIR 1957 Mad 48 (51) (Pt A) (Pr 7) (DB).**

——**Art. 166 (3)** — Decision of Government — Order made not by entire body of Ministers but by one only — Validity. See Municipalities — Mysore Town Municipalities Act (XXII of 1951), S. 14 (3). **AIR 1955 Mys 105 (DB).**

——**Art. 166 (1)** — Communication addressed to detenu not in the name of Governor but merely referring to decision taken by State Government to continue the detention — Detention not valid. AIR 1952 SC 181 Distinguished. **1964 Cur LJ 52: 66 Pun LR 429: 1964 (1) Cri LJ 535: AIR 1964 Punj 198 (206, 207) (Pt D) (Pr 35).**

——**Art. 166** — Industrial Disputes Act (1947), S. 10 — Order of reference — Order issued under signature of Under Secretary 'by order' — Validity — Not a case of further delegation of power. See Industrial Disputes Act (1947), S. 10. **AIR 1960 Punj 76.**

——**Art. 166 (2) — Governor's order conveyed by Deputy Secretary — Effect.**

When a particular order purports to be an order of the Governor, merely because the Deputy Secretary has conveyed the order to the petitioner it does not cease to be the Governor's order and does not on this account become invalid. **1959 Cri LJ 1018: ILR (1959) Punj 1318: AIR 1959 Punj 375 (378) (Pt B) (Pr 5).**

——**Art. 166** — Authority to order retirement — State Government is the proper authority till 3-5-1960. See Rajasthan Service Rules (1951), Rule 244 (2). **AIR 1962 Raj 258 (DB).**

——**Art. 166 — 'Executive action' — Meaning of.**

The expression 'executive action' in Art. 166 of the Constitution is comprehensive enough to include orders which emerge as a result of a quasi-judicial decision by the Government. Such decisions can only be made on the advice of the Ministers, as there is no provision in the Constitution requiring the Governor to exercise quasi-judicial functions in his discretion. AIR 1957 Mad 48, Rel. on. **1959 Raj LW 25: ILR (1959) 9 Raj 120: AIR 1959 Raj 121 (124) (Pt D) (Pr 13) (DB).**

[**Overruled** on another point in AIR 1963 SC 64]

——**Arts. 166 and 163** — Ministers' note for taking action — Not an order of Government of the State. See Ibid, Art. 226. **AIR 1953 Raj 46 (DB).**

——**Art. 166 — Order of detention signed by Home Secretary — Technical defect.**

Where an order of detention is signed by the Home Secretary to the Government of Rajasthan and over his signature it is explicitly mentioned that the order had been issued by his Highness the Rajpramukh, the omission to issue the order expressly in the name of His Highness the Rajpramukh as required by Art. 166 of the Constitution is a defect of a highly technical character. **1952 Cri LJ 370: 1951 RLW 263: ILR (1951) 1 Raj 193: AIR 1952 Raj 33 (34) (Pt A) (Pr 3) (DB).**

——**Art. 166 (3)** — "In his discretion" — Meaning See Ibid, Art. 163 (3). **AIR 1953 Trav-Co 140 (DB).**

3. Non-compliance with Clause (1) — Effect.

●——**Art. 166 — Nature of — Non-compliance with — Effect.**

Clauses (1) and (2) of Art. 166 are directory only and non-compliance with them does not result in the order being invalid, and in order to determine whether there is compliance with these provisions all that is necessary to be seen is whether there has been substantial compliance with those requirements. AIR 1952 SC 181, Rel. on.

Held, that the notice signed by the Chief Secretary of the State and expressed to be on behalf of the Government and giving opportunity to the petitioner to show cause against the action proposed to be taken against him was in substantial compliance with the provisions of the Article. P. Joseph John v. State of Trav Co., **1955 SCJ 221: 1955 Andh WR (HC) 134: 1955 1 Mad LJ (SC) 134: 1955 SCA 85: 1955 SCR 1011: 1955 Ker LT 351: AIR 1955 SC 160 (164) (Pt B) (Pr 8).**

●——**Art. 166 (1) — Executive order of Government of State — Proof of — Calling of Minister in charge — Necessity.**

It is not necessary in every case to call the Minister in charge. If the Secretary or any other person, has the requisite means of knowledge and his affidavit is believed, that will be enough to prove that the order was validly made by the Government of the State. State of Bombay v. Purushottam Jog, **(1952) 2 Mad LJ 338: 1952 SCR 674: 54 Bom LR 869: 1953 SCA 893: 1952 SCJ 503: 1952 Cri LJ 1269: AIR 1952 SC 317 (319) (Pt B) (Pr 15).**

●——**Art. 166 (1) — Executive order of State Government — Proof of — Form of verification of affidavit — (Civil P. C. (1908), O. 19, R. 3).**

The verification of an affidavit filed by a Government officer to prove that certain order was validly made by the State Government should invariably be modelled on the lines of Order 19, Rule 3, of the Civil Procedure Code, whether the Code applies in terms or not. And when the matter deposed to is not based on personal knowledge the sources of information should be clearly disclosed. ILR 37 Cal 259, Ref. State of Bombay v. Purushottam Jog, **(1952) 2 Mad LJ 338: 1952 SCR 674: 54 Bom LR 869: 1953 SCA 893: 1952 SCJ 503: 1952 Cri LJ 1269: AIR 1952 SC 317 (319) (Pt C) (Pr 16).**

●——**Art. 166** — Non-compliance with — Effect. See Preventive Detention Act (4 of 1950), S. 11. **1952 Cri LJ 955: AIR 1952 SC 181.**

——**Art. 166 — Scope — If directory or mandatory.**

An omission to make and authenticate an executive decision in the form mentioned in Art. 166 does not make the decision itself illegal for the provisions of that Article are merely directory and not mandatory.

The erratum issued by the Government by a notification purported to be signed by the Deputy Secretary to Government and the memorandum purported to be that of the Government of Andhra Pradesh (Home Labour II) Department:

Held, that though in the body of the memorandum the words 'Government of Andhra Pradesh'

did not appear nor was it issued in the name of the Governor, this was not fatal to the validity of the correction sought to be made by the Government. AIR 1952 SC 317 and AIR 1952 SC 181 and AIR 1947 FC 38, Foll. **(1960) 1 Fac LR 494: (1960) 1 Lab LJ 599: AIR 1960 Andh Pra 556 (559) (Pt C) (Pr 9).**

——**Arts. 166 (1) and (2), 226** — Provisions of Art. 166 only directory — Validity of order made or executed by Governor cannot be called in question — Bar of judicial enquiry — Writ proceedings — Plea as to validity cannot be allowed to be raised for first time at the stage of argument. **AIR 1962 Assam 88 (90) (Pt B) (Pr 4) (DB).**

[**Reversed** on another point in AIR 1963 SC 1612.]

——**Art. 166** — Scope — Non-compliance—Effect. See Motor Vehicles Act (1939), S. 44. **AIR 1961 Assam 56 (DB).**

——Art. 166 (1) — Omission and irregularity.

It is clear from Art. 166 (1) that all executive action of the Government of a State shall be expressed to be taken in the name of the Governor. So far as the Governor is concerned, he can exercise his discretion only in matters which are left to his discretion by some express provision in the Constitution. In all other matters, the decision is to be arrived at with the aid and advice of the ministers as is provided in Art. 163.

An omission or irregularity in not complying with the requirement of Art. 166 (1), is not fatal to the validity of the order where the actual decision culminating in the order is that of the Government. **1955 Cri LJ 1474: AIR 1955 Assam 240 (243) (Pt E) (Pr 11) (DB).**

——Art. 166 (1) — Order of appointment by Governor to be effective until further orders—Reversion from the post by inter-departmental letter without mentioning name of Governor — Validity.

An order of the Governor, in view of Art. 166 (1) can be valid only if it is expressed in the name of the Governor, by the use of such words as 'By order of the Governor'. An order of appointment by the Governor until further orders, can be terminated or varied only if a further order of the Governor is issued. An inter-departmental letter issued by an Under-Secretary without mentioning the name of the Governor at all will not be a valid order. An order of dismissal, removal or reduction in rank which affects the legal rights of an employee which have even secured constitutional protection under Art. 311 cannot be made by an inter-departmental correspondence. AIR 1959 SC 65, Rel. on. **AIR 1964 Cal 265 (271, 272) (Pt B) (Pr 12).**

——Art. 166 — Executive order affecting third parties — Essentials — Order under S. 58-A, Motor Vehicles Act held not in accordance with law — (Motor Vehicles Act, 1939, S. 58-A introduced by Motor Vehicles (West Bengal Amendment) Act (19 of 1951), S. 58-A).

Both Cls. (1) and (2) of Art. 166 are directory and not mandatory. Non-compliance with the provisions of either of the clauses only leads to the result that the order in question loses the protection which it would otherwise enjoy, had the proper mode for expression and authentication been adopted. Strict compliance with the requirements of Art. 166 gives an immunity to the order, in that it cannot be challenged on the ground that it is not an order made by the Gov- error. If, therefore, the requirements of that Article are not complied with, the resulting immunity cannot be claimed by the State.

When, however, an executive decision affects an outsider or is required to be officially notified or to be communicated, it should normally be expressed in the form mentioned in Art. 166 (1) i.e., in the name of the Governor and duly authenticated. In such a case, if the provisions of Cls. (1) and (2) are not satisfied it does not follow that the order is bad, but it would be subject to the provisions mentioned above and the immunity granted by Cls. (1) and (2) of Art. 166 will be lost and the onus would be on the State Government to prove to the satisfaction of the Court that the order has been made by the Governor.

Section 58-A, introduced by Motor Vehicles (West Bengal Amendment) Act (19 of 1951) in the Motor Vehicles Act requires an order to be made by Government directing the Regional Transport Authority or the State Transport Authority to grant a stage carriage permit to the State Government or any local authorities specified in the order. Such an order cannot be made verbally. When the order under S. 58-A, affected third parties, it should be in the form provided for under Cls. (1) and (2) of Art. 166. **('61) 65 Cal WN 1179.**

——**Art. 166** — Executive action in administration of Government property — Non-compliance with formalities under Art. 166 — Effect — Third party cannot challenge validity. See Ibid, Art. 154. **1960 Cri LJ 1436: AIR 1960 Cal 668.**

——**Art. 166** — Scope — If mandatory — The provisions of Art. 166 are merely directory and not mandatory. See Imports and Exports (Control) Act (1947), S. 3. **1957 Cri LJ 1238: AIR 1957 Cal 83 (DB).**

●——**Arts. 166 (1) and 226 — Chief Minister by order accepting report of Commission relating to succession — Nature of order — Quashing of, under Art. 226 — Nizam's prerogative right to sanction recommendations of Commission — Survival of — Power of executive to confirm successions — Form of order — Validity — (Tenancy Laws — Hyderabad (Abolition of Jagirs) Regulation (69 of 1358 F), S. 21 (2) Proviso)—(Hyderabad Atiyat Enquiries Act (10 of 1952), S. 13 (2)).**

Per Reddy J.: Any order which affects the rights of any person, and has as its basis a judicial enquiry or an enquiry whereby the person making it is required to apply a judicial process by not only taking evidence of both parties, but by hearing them and directing his mind to the records so constituted and coming to a conclusion uninfluenced by any extraneous matter other than the record itself would be quasi-judicial order. Case law discussed.

On the death of a big jagirdar and nobleman of Hyderabad, the Nizam issued a Firman on 18-2-44 appointing a Commission to inquire into his succession and report. After the Police Action another Commission was appointed by a Firman of 22-11-1948. It reported on 9-11-49 and on 3-5-50 the Chief Minister of Hyderabad by an order accepted the opinion of the majority recognising the persons recommended by it as heirs and the quantum of their shares also. The order sanctioning the succession having been challenged by applications for the writs of certiorari, prohibition and mandamus.

Held (1) that the order was quasi-judicial and the High Court had jurisdiction to quash it under Art. 226.

Per Ansari, Siadat Ali Khan and Reddy JJ.: (2) that after the Constitution came into force the Nizam has no prerogative right of sanctioning recommendations by the Commissions which were

hearing Jagir succession cases at the time the Jagir Abolition Regulation was passed.

Per Chari and Deshpande JJ.:— Even before the Jagir Abolition Regulation, the Nizam was only exercising his right as the head of the State and even if it be assumed that he had any prerogative right there was no question of the exercise of such prerogative right when after the Jagir Abolition Regulation the question of the grant of a jagir to a jagirdar did not arise.

Per Ansari, Chari, Deshpande and Reddy JJ.:— (3) that the right to grant successions in pending proceedings being statutory still survives under the Constitution to the Hyderabad State and the Rajpramukh has power to confirm successions for the purpose of granting commutations, etc.

Per Siadat Ali Khan J.:— The executive of the Hyderabad State has no power under Constitution to confirm succession proceedings though it has power to sanction commutation after succession is settled by the law Courts.

Per Ansari, Chari, Deshpande and Reddy JJ.:— (4) that Art. 166 (1) is only directory and therefore, the order in question was not invalid merely because of the fact that it was not expressed to be made in the name of the Rajpramukh.

Per Siadat Ali Khan J.:— As the order sanctioned succession, it was ultra vires the powers of the executive. Ahmad-un-Nisa Begum v. State, **ILR 1952 Hyd 595: AIR 1952 Hyd 163 (168, 171, 176, 181 to 183, 185, 186) (Pt A) (Prs 13, 23, 25, 52, 62, 64, 70, 79) (FB).**

——Arts. 166, 15 (4) — Order under Art. 15 (4) made by Minister — Provisions of Art. 166 not complied with — Effect — Order not invalid.

An omission to make and authenticate an executive decision in the form mentioned in Art. 166 does not make the decision itself illegal, for the provisions of that Article like their counterpart in the Government of India Act, are merely directory and not mandatory. AIR 1952 SC 181 and AIR 1947 FC 38 and AIR 1959 All 82, Rel. on.

Where therefore the Court is satisfied that an order under Art. 15 (4) of the Constitution has been made by the Minister who was authorised to make it under the Rules of Business, mere fact that the same has not been expressed in the manner contemplated in Art. 166 is not sufficient to hold that the order in question is invalid. The only effect of the non-compliance is that the Government is put to the task of proving the existence of that order. **(1963) 2 Mys LJ 302: AIR 1964 Mys 132 (142, 143) (Pt H) (Prs. 26, 27) (DB).**

——Art. 166 (1) — Municipalities — Mysore Town Municipalities Act (22 of 1951), S. 14 (3) — Decision by Government — Compliance with Art. 166 (1).

Strict compliance with the requirements of Art. 166 (1) gives an immunity to the order in that it cannot be challenged on the ground that it is not an order made by the Governor: If, therefore, the requirements of that Article are not complied with, the resulting immunity cannot be claimed by the State; this, however, does not vitiate the order itself or render an executive action a nullity.

Thus, where the decision has in fact been taken by the appropriate Government and there has been in the circumstances no breach of the procedure established by law the mere circumstance that the copy of the order produced by the petitioner purports to be issued under the name of an Assistant Secretary to Government cannot affect the validity of the order. AIR 1952 SC 181, Ref. **ILR (1955) Mys 198: AIR 1955 Mys 105 (107) (Pt D) (Pr 6) (DB).**

——Art. 166 — Bihar and Orissa Municipal Act (7 of 1922), S. 389 (c) — Appointment of members of Notified Area Committee—Latent ambiguity in the name in State Government Notification — Letter from Dy. Secretary to Government cannot be used as extrinsic evidence to prove intention of Government where it does not comply with provisions of Art. 166 of Constitution — Evidence Act (1872), S. 93. 1964 BLJR 890: AIR 1965 Pat 174 (175, 176) (Pr 3) (DB).

——Art. 166 (1) — Provisions are directory.

The provisions of the Article are directory and not mandatory and if the order is made by a competent authority it cannot be treated as invalid merely because it is not couched in the proper form. **ILR (1953) Patiala 639: AIR 1954 Pepsu 129 (130) (Pt A) (Pr 4).**

——Art. 166 (1) — Scope — Non-compliance with — Effect.

If an order is expressed to be in the name of the Governor or Raj Pramukh and is authenticated properly, then it is immune from being called in question in any Court of law under Art. 166 (2) of the Constitution. But the non-compliance with the formality only results in depriving the order of its immunity and does not render it invalid. If on enquiry it is found that there was an order passed by the proper authority it would be valid even though it is not issued in a particular form. AIR 1952 SC 181, Rel. on. **AIR 1956 Trav-Co. 35 (42) (Pt G) (Pr 27).**

4. Authentication of Government orders.

——Art. 166 — Authentication of order — Rules of authentication only provide that the order should be signed by a Secretary, Deputy-Secretary or Under-Secretary to Government, and that the order should be in the name of the Governor **AIR 1960 Punj 646 (658, 659) (Pt E) (Pr 11) (DB).**

——Art. 166 (2) — Order made in the name of Governor also authenticated as prescribed by Article — Validity of order cannot be called in question on ground that it is not an order made or executed by Governor. **(1964) 8 Fac LR 375 (All).**

●**——Art. 166 (2)**—Rules of Executive Business, 1937 (U. P.), Rr. 14 and 15 — Authentication of notification by Secretary is valid — Omission of words 'of the Governor' after the words 'By order' — **Held** not material — 1961 All LJ 506: 1961 All WR (HC) 542 held no longer good law after decision of Supreme Court in AIR 1961 SC 1381; AIR 1961 SC 221, Rel. on. Jaswant Sugar Mills v. Presiding Officer, Industrial Tribunal III, U. P. All. **ILR (1962) 1 All 601: 1961 All LJ 900: 1961 AllWR (HC) 699: AIR 1962 All 240 (245, 246, 247) (Pt B) (Prs 12, 13, 14) (FB).**

——Art. 166 (2) — Appointment of Public Prosecutor under S. 492, Criminal P. C. — Requirements — Compliance with Art. 166 (2). See Criminal P. C. (1898), S. 4 (1) (t). **1965 (1) Cri LJ 150: AIR 1965 Cal 79.**

——Art. 166 (2) and (1) — Provisions directory — Only substantial compliance necessary — Authentication of Government orders — Order under S. 58-A Motor Vehicles Act — Chief Secretary instead of signing actual order putting his signature on a note submitted for issue of order along with draft order — Order held complied with Art. 166.

Provisions of Art. 166 (1) and (2) are directory and not mandatory in their nature and a substantial compliance of the requirements of that

Article is all that is necessary. AIR 1952 SC 181 and AIR 1952 SC 317, Rel. on. The rules relating to making or execution of orders or instruments by or on behalf of the Government of West Bengal which have been made in exercise of the powers conferred by Cl. (2) of Art. 166 of the Constitution contained in the notification dated 25th August, 1951 (published in the Calcutta Gazette Extraordinary) enjoin that for the purpose of authentication of an order it is essential that the officers empowered to authenticate an order or instrument of the Government of West Bengal will have to sign the order of the instrument. Consequently where a dealing assistant submitted to the Assistant Secreary and through him to the Chief Secretary a note with a draft order to be issued under S. 58-A of the Motor Vehicles Act, and the Chief Secretary instead of signing the draft order which was to be issued in his name put his signature on the note sheet and not the draft order.

Held, that the requirements of Art. 166 (2) had been complied with and the order which was made and authenticated by the Chief Secretary to the Government of West Bengal did not lose the protection provided in Cl. (2) of Art. 166 and was therefore, immune from challenge in a Court of law on the ground that it had not been made or executed by the Governor of the State. **AIR 1964 Cal 155 (159) (Prs 12, 13) (DB).**

——Arts. 166 (2) and 311 (2) — Order expressed to be by order of Governor — Even so it cannot be held to be beyond challenge.

Merely because an order is expressed to be "by order of the Governor" and executed in his name and authenticated in the manner specified in rules made by the Governor, it cannot be held to be beyond challenge on any ground whatsoever. Art 166 (2) takes away the right to challenge the legality of the order or instrument on the ground that it is not an order made or executed by the Governor. Where, however, the order is executed and authenticated in the proper manner and the affidavits of the Secretaries filed in a writ petition go to show that before the making of the order the matter had been considered according to the normal Rules of Business the petitioner cannot challenge the same on the ground that it was not considered by the Governor personally. AIR 1945 PC 156, Rel. on. **('63) 67 Cal WN 859.**

——Art. 166 (2) — Satisfaction contemplated under the proviso to Art. 311 (2) is not personal satisfaction of the Governor but of Government — Order dismissing a Government servant under Art. 311 issued in the name of the Governor and duly authenticated by a Secretary of the Government is in compliance with Art. 166 (2). See Ibid, Art. 311 (2), Proviso (c). **AIR 1962 Cal 481.**

——Art. 166 — Matter relating to preventive detention — Order of approval and order of confirmation of the detention order duly authenticated as required by rules framed under Art. 166 (2) — No objection can be taken.

Presumably Art. 166 (3) relates to rules made for the more convenient transaction of the business of Government and for allocation of such business among Ministers. Those are what may perhaps be described as domestic rules. In the case of a matter relating to preventive detention, the Court is concerned with other rules made under Art. 166 (2) and in exercise of the power conferred by that clause, the Governor was pleased to make the rules on the 25th of August, 1951. Where under these rules the order of approval as also the order of confirmation of the detention order made by the State Government were duly authenticated by the Deputy Secretary and Joint Secretary no objection can be taken to them. **ILR (1961) 1 Cal 276 : 1962 (1) Cri LJ 311 : AIR 1962 Cal 162 (165, 166) (Pt F) (Prs. 11, 12) (DB).**

——Art. 166 (2) — Authentication of Government orders — Presumption as to.

Art. 166 (2) of the Constitution precludes challenge of an authenticated order issued in the name of the Governor on one ground and on one ground only, namely, on the ground that the order is not an order made or executed by the Governor. It does not preclude challenge of the order on the ground that the condition precedent to the validity of the order has not been fulfilled.

Under Art. 166 (2) what the authentication makes conclusive is that the order has been made by the Governor. Whether in making the order the Governor has acted in accordance with law remains open. There is no doubt that where the authentication order states, that the Governor is satisfied of a certain matter, the presumption is that the Governor has been so satisfied. This, however, is only a presumption and can be rebutted. AIR 1945 PC 156, Rel. on. **ILR (1960) 1 Cal 685: AIR 1959 Cal 552 (554, 556) (Pt A) (Prs 4, 25) (DB).**

——Art. 166 — Notification issued under S. 4 (1) read with S. 17 (4) of Land Acquisition Act — Satisfaction of appropriate Government on question whether land was waste or arable, not proved — Urgency clause held not validly applied — Notification would fail to the extent of urgency and not to its entirety. See Land Acquisition Act (1894), S. 5-A. **(1964) 5 Guj LR 924: ILR (1964) Guj 814.**

——Arts. 166 (2), (3)—Motor Vehicles Act (1939), S. 68-D (2) — M. P. Government Rules of Business, Rr. 6 and 7 — Order approving or modifying schemes — Authentication of — Authentication by officer not authorised under rules — Order is invalid unless authorisation apart from rules is proved — Order, even if duly authenticated can also be challenged on ground of non-compliance with conditions precedent to passing of such order. **1965 MPLJ 434: 1965 Jab LJ 611: AIR 1965 Madh Pra 196 (205, 206) (Pt E) (Pr 18) (DB).**

——Art. 166 — Publication of several notifications together — Signature of authentication officer at the end — Authentication is of all notifications.

Where the notifications although of different dates are grouped together according to usual practice and appear together in the Gazette under the signature of the authentication officer at the end of the series, there is proper authentication of all such notifications. **1959 MPLJ (Notes) 96: ILR (1959) Madh Pra 697: 1960 MPLJ 1384: 1961 Jab LJ 124: 1961 MPC 171: AIR 1961 Madh Pra 140 (141) (Pt A) (Pr 4) (DB).**

——Art. 166 (2) — Notice of charges and order of supersession of Janapada Sabha — Authentication of — Presumption as to. See Evidence Act (1872), S. 114 Illus (e). **1959 MPC 258.**

——Arts. 166 (2), 310 (1), 311 — Govt. servant — Compulsory retirement — Order not conforming with requirements as to notice under Service Rules — Not invalid — Order in name of Governor signed by Secretary to Government — Finality — Mysore Civil Service Rules (1958), R. 285 — 'Note 1' — See Ibid, Art. 310 (1). **1962 Mys LJ (Supp) 437.**

——Art. 166 — Rule 8 of State Transport Undertakings (Mysore) Rules (1960) — Validity— Rule is not ultra vires — Motor Vehicles Act (1939), Ss. 68D, 68I — Mysore Government Rules

of Business and Secretariat Instructions — Rr. 5, 7.

If the State Government, according to the General Clauses Act, means the Governor, orders of the Governor are the orders of the State Government, and Art. 166 declares that a properly authenticated order in the name of the Governor shall not be questioned as invalid on the ground that it is not an order of the Governor. This constitutional finality, therefore, prevents even an enquiry into the source of an order. Further Rule 8 of the State Transport Undertakings (Mysore) Rules, 1960, which have been issued in the name of the Governor, may itself be taken as having the same force as a rule made under Art. 166 (3) allotting to the Chief Minister the business of the State Government of approving a proposed Scheme for nationalisation under S. 68-D of the Motor Vehicles Act. Therefore, it is not possible to hold that either rule 8 of the State Transport Undertakings (Mysore) Rules, 1960, is ultra vires or that the Chief Minister was incompetent to discharge the function of the State Government under S. 68-D of the Motor Vehicles Act. **ILR (1961) Mys 786.**

——Art. 166 (2) — Rules under — Orissa Government Rules of Business, Rr. 11 and 12 — Authentication of Government order — Manner of — Effect of non-compliance.

A letter purporting to be a show cause notice under Art. 311 (2), by the Secretary to Government in the Works Department had not stated anywhere that the letter was issued under 'the direction of the Government. In the last portion of that letter also he had not settled that it was issued 'By order of the Governor':

Held, that the letter was not authenticated in the manner indicated by Rr. 11 and 12 of the Rules of business of Government. Hence the bar on judicial scrutiny imposed by Cl. (2) of Art. 166 of the Constitution will not apply. **ILR (1960) Cut 13 : AIR 1960 Orissa 37 (38) (Pt A) (Pr 4) (DB).**

——Art. 166 — Order passed by Minister — When takes effect — Absence of provision for publication — Effect — (Tenancy Laws — Madras Estates Land Act (1 of 1908), S. 180 (1)).

Any order passed by the Minister in order to take effect must issue in an authenticated form as required by Art. 166 of the Constitution. Where there is no clear provision as to the mode of publication of the direction and the determination of Government, the reasonable view would be that the order becomes effective only from the date on which it is made known to the person affected thereby. Where the statutory order has the effect of saddling landholders and ryots in large areas with liability to pay heavy expenses, such as one under S. 180 (1) of the Madras Estates Land Act, 1908, it will be idle to contend that the liability to incur those expenses arose as soon as the Minister passed an order to that effect on the file: **ILR (1956) Cut 721: AIR 1957 Orissa 263 (267) (Pt C) (Pr 10) (DB).**

——Art. 166 (2) — Scope of — Challenge to the validity of order.

What Art. 166 (2) of the Constitution prevents is the challenge to the validity of properly authenticated order on the ground that it is not an order or instrument made or executed by the Governor; but that does not prevent a challenge to the validity of the said order on the ground that such an order was not based on the satisfaction of the appropriate authority who under the law, can legally act for the Provincial Government. AIR 1945 P. C. 156, foll. The presumption that all official acts are to be taken to have been regularly performed is one that "may" be drawn by a Court. In a matter so fundamental and important as the liberty of a subject, which can be deprived of only by strict compliance with the statutory requirements of S. 3 of the Preventive Detention Act, the High Court will not be prepared to uphold the validity of an order of detention by reliance on any such presumption.

Even though the Secretary deals with such cases, they have to be submitted to the Chief Minister and Governor, and if there is no proof of the same, the orders are invalid.

Having regard to Art. 166 (3) of the Constitution and R. 8 of the main Rules of Business made by the Governor, in exercise of the powers conferred by Art. 166 of the Constitution, the satisfaction of the concerned Minister, i.e., the Chief Minister in the present case, must be taken to be the satisfaction of the Provincial Government. but there is no legal provision at all for the delegation of that responsibility from the Chief Minister to the Home Secretary. **ILR (1952) Cut 353 : 18 Cut LT 307 : 1952 Cri LJ 1051 : AIR 1952 Orissa 200 (201, 202) (Pts A, B, C, D) (Prs 3, 4, 5, 6) (DB).**

——Art. 166 — Order authorising Senior Superintendent of Police to make complaint under Section 153-A Penal Code — Such order signed by Deputy Secretary to Government — Assistant who was acquainted with Deputy Secretary's signature could prove it — Sanction held not invalid merely because file was not sent to Governor. See Criminal P. C. (1898), S. 196. **1965 (2) Cri LJ 401 : AIR 1965 Pat 393.**

——Art. 166 (2) — Bihar Rules of Executive Business (1952), Rr. 8, 12, 13, 28 (6), Sch. II Item 30 — Nominations of members to State Legislative Council — Selection of names made by Chief Minister with approval of Council of Ministers — Subsequent publication of notification stating that Governor has nominated those members — Nominations are deemed to have been made by Governor and Court cannot enquire into advice, if any, given by Council of ministers to Governor. See Ibid, Art. 171 (3) (e). **AIR 1965 Pat 321 (DB).**

——Art. 166 (2) — Order by Governor — Authentication — Signature of Under Secretary — If sufficient — Under the rules for authentication under Art. 166, an order of detention made in the name of the Governor, if signed by an Under-Secretary, is properly authenticated. **1952 Cri LJ 1251 : ILR 29 Pat 410 : AIR 1950 Pat 332 (341) (Pt C) (Pr 38) (DB).**

——Art. 166 — Preventive Detention Act (1950), S. 3—Satisfaction of detaining authority — Onus — Evidence Act (1872), Ss 101 to 103 — See Public Safety — Preventive Detention Act (1950), S. 3. **AIR 1951 Pepsu 126.**

——Art. 166 (2) — Scope — Order of dismissal on face of it showing that it was of Governor — Validity of the authenticated order could not be called into question on the ground that it was not an order made by Governor. **AIR 1960 Punj 646 (649) (Pt A) (Pr 6) (DB).**

——Art. 166 — Notification in name of Governor — Sufficiency.

Where the notification has been issued in the name of the Governor of the Punjab and it has

been authenticated in accordance with law (Art. 166 of the Constitution) it must be held that the Government has fixed the minimum rates in accordance with law, and it is not open to the High Court to inquire as to what advice the particular Minister or the Chief Minister tendered to the Governor **AIR 1958 Punj 425 (429) (Pt G) (Pr 14).**

——**Art. 166 (2)** — Investigation into 'mala fides' of Minister-in-charge — Jurisdiction of Court. See Ibid, Art. 163 (3). **AIR 1957 Punj 100.**

——**Art. 166 (2)** — Bar under — Scope of — Provisions relating to mode of exercise of executive power and delegation can be questioned in Court of law — Sanction by Chief Minister held proper — Prevention of Corruption Act (1947), S. 6 — Government of Rajasthan Rules of Business, Rule 31. AIR 1945 PC 156; AIR 1952 SC 181; AIR 1952 SC 317; AIR 1962 Raj 250, Rel. on. **ILR (1963) 13 Raj 109 : 1963 Raj LW 8.**

——**Arts. 166, 309, 310 and 311** — Compulsory retirement—Rules vesting absolute authority in Government — Only Governor and Chief Minister competent to exercise power — Order not in conformity with Rules — Where Government is the appointing authority order of compulsory retirement on Government servant without submitting his case to the Governor is invalid and ineffective — Rajasthan Service Rules, 1951 framed under Art. 309—R. 244 (2) — Business Rules 1951 (R. 31 (vii)) framed under Art. 166 — Rajasthan Civil Service (Classification, Control and Appeal) Rules 1959, Rule 14 (v). **1961 Raj LW 182: ILR (1961) 11 Raj 536.**

[**Reversed** in AIR 1963 SC 1332.]

——Art. 166 — Authentication by Secretary to Government — Effect.

The authentication of certain rules by a Secretary to the Government does not do away with the necessity of promulgating the rules in the name of the Government or in the name of the Rajpramukh, as the case may be. **ILR (1956) Raj 74 : 1956 Raj LW 497 : AIR 1956 Raj 104 (106) (Pt D) (Pr 14) (DB).**

——Art. 166 (2) — Order by Government — Authentication — (Jaipur District Boards Act (as amended by Act 8 of 1950), S. 4-A).

Dissolution of District Board by order of Government — Order authenticated under signature of Secretary, Self-Government Department and purporting to have been made by order of Raj Pramukh — Authentication is proper and cannot be called in question on ground that it is not an order made by the Raj Pramukh. **1954 Raj LW 140 : ILR (1953) 3 Raj 682 : AIR 1954 Raj 166 (167) (Pt A) (Pr 6) (DB).**

——Art. 166 (2) — Order purported to be made by Rajpramukh — Extent of immunity from being challenged in Court.

The provision in Art. 166 (2) makes the order purported to have been made by Government of a State immune from challenge on one ground only viz., that the order was not made by the Rajpramukh. It does not oust the jurisdiction of the Court to examine the validity of the order on any other ground. Similarly, where an order is said to embody the prior decision of the Chief Secretary as approved by the Minister and is accordingly claimed to be valid, the question whether such approved decision has really been embodied in the order in question, can legitimately form the subject of a judicial enquiry. AIR 1943 FC 75 (92) Relied on. **1955 Ker LT 901 : AIR 1957 Trav-Co 209 (211) (Pt A) (Pr 9).**

——Art. 166 — Authentication of executive order.

An executive order not expressed in terms of Cls. (1) and (2) of Art. 166 is not null and void for that reason. The defect is one curable by extraneous evidence to the effect that the decision was taken by competent authority. AIR 1952 SC 181 and AIR 1952 SC 317, Foll. **ILR (1953) Trav-Co 756 : AIR 1953 Trav-Co 140 (145) (Pt G) (Pr 20) (DB).**

5. Rules of Business of Government.

●——**Art. 166 — Allocation of business by Governor —Principle — It is not necessary to make allocation after every new legislation has been passed by Parliament — Power to detain under R. 30, Defence of India Rules — Allocation made before promulgation of Ordinance — Validity.**

Allocation of Business under Art. 166 (3) of the Constitution is not made with reference to particular laws which may be in force at the time the allocation is made. It is made with reference to the three lists of the Seventh Schedule to the Constitution, for the executive power of the Centre and the State together extends to matters with respect to which Parliament and the Legislature of a State may make laws. Such allocation may be made even in advance of legislation made by Parliament to be available whenever Parliament makes legislation conferring power on a State Government with respect to matters in List I of the Seventh Schedule. Consequently, it is not necessary that there should be an allocation of power to detain under the Defence of India Ordinance, Act and Rules after they were passed. It will be enough if the allocation of the subject to which the Defence of India Ordinance Act and rules refer has been made with reference to the three Lists in the Seventh Schedule and if such allocation already exists, it may be taken advantage of, if and when laws are passed. Smt. Godavari Shamrao Parulekar v. State of Maharashtra, **1965 MPLJ 134: 1965 Mah LJ 78: (1965) 1 SCA 390 : 1965 SCD 477 : (1965) 2 SCJ 523 : 1965 Mad WN 244 : 1964 (2) Cri LJ 222 : 66 Bom LR 453: AIR 1964 SC 1128 (1133, 1134) (Pt D) (Pr 8).**

●——**Art. 166** — Rajasthan Rules of Business under R. 31 (ii) (a) — Applicability — Compulsory retirement of Government Servant under R. 244 (2) of Service Rules — Not one by way of penalty — R. 31 (vii) (a) not applicable — Order not invalid even if matter is not submitted to Governor : ILR (1961) 11 Raj 536, **Reversed.** State of Rajasthan v. Sripal Jain, **(1963) 1 SCWR 772: (1964) 1 SCJ 208: (1964) 1 SCR 742: (1963) 1 Lab LJ 285: 1963 (2) Cri LJ 347: AIR 1963 SC 1323 (1325, 1326) (Pt A) (Pr 5).**

●——**Art. 166** — Rajasthan Rules of Business under R. 21 — Defect in form of Government order — Effect — Order of compulsory retirement of police Officer under R. 244 (2) — Order though passed by Government conveyed by D. I. G. — Order held not invalid. State of Rajasthan v. Sripal Jain, **(1963) 1 SC WR 772 : (1964) 1 SCJ 208 : (1964) 1 SCR 742 : (1963) 1 Lab LJ 285 : 1963 (2) Cri LJ 347 : AIR 1963 SC 1323 (1326) (Pt B) (Pr 6).**

●——**Art. 166 (3) — Punjab Rules of Business Rules 28 (1) and 4 — Powers of Chief Minister— His right to call for record and pass orders.**

The question whether though grave charges had been proved against an official he should be removed from service forthwith or merely reduced in rank raises a question of policy. The Chief Minister is, therefore, entitled under R. 28 (1) (ii) of the Punjab Rules of Business to call up the file of his own accord and pass orders thereon.

There is also Cl. (xix) which confers a wide discretion upon the Chief Minister to call for any file and deal with it himself. Thus the order passed by the Chief Minister, even though it is on a matter pertaining to the portfolio of another Minister, will be deemed to be an order of the Council of Ministers. So deemed its contents would be the Chief Minister's advice to the Governor, for which the Council of Ministers would be collectively responsible. The action taken thereon in pursuance of R. 8 of the Rules of Business made by the Governor under Art. 166 (3) of the Constitution would then be the action of the Government. Bachhittar Singh v. State of Punjab, **(1962) Supp 3 SCR 713 : AIR 1963 SC 395 (399) (Pt B) (Pr 13).**

●——**Art. 166 (1)** — Detention order purporting to be made by Governor and signed by Home Secretary — Communication of grounds may be made through recognised channels prescribed by the administrative rules of business — See Publice Safety — Preventive Detention Act (1950), S. 3. **1953 Cri LJ 146 : AIR 1952 SC 350.**

——**Arts. 166 (2) and 238** — Rules framed under Art. 166 (2) by Rajpramukh of Rajasthan, R. 1 — Chief Secretary is Secretary within Rule. **1953 AM LJ 63 : AIR 1954 Ajmer 5 (5) (Pt B) (Pr 2).**

——**Art. 166 (3)** — Provisions of Motor Vehicles Act are not opposed to principles of natural justice — Bombay Rules under Art. 166 (3), R. 10 —Position of minister in charge of particular department. See Motor Vehicles Act (1939), Ch. 4-A. **AIR 1961 Bom 80 (DB).**

——Art. 166 (3) — West Bengal Rules of Business, Rr. 19 and 20 — Standing orders by Minister-in-charge in the department of Land and Land Revenue — Validity — (West Bengal Land Development and Planning Act 1948, (21 of 1949), S. 6).

Under the West Bengal Land Development and Plannning Act, 1948, the Government has power to sanction a development scheme and to issue a declaration under S. 6 of the Act, after being satisfied of certain matters. The duty to be satisfied is certainly a statutory duty. The Minister deals personally with the most important matters, but matters of ordinary import are dealt with by other officials. There can be no doubt that the Secretary or the Assistant Secretary is an important official. The Standing Orders whereby the Minister has determined as to which matters are to be put before him personally and which are to be dealt with by his subordinates, are valid, and the Assistant Secretary could be satisfied on behalf of the Government and also sanction the plan on behalf of Government AIR 1952 Orissa 200, not foll. **62 Cal WN 640 : AIR 1960 Cal 113 (116, 117, 118) (Pt A) (Prs 8, 11, 12).**

——**Art. 166 (3)** — Rules of business framed by West Bengal Government, Rr. 19 and 20 —Standing order under paras. 2 and 5 — Interpretation. See West Bengal Land Development and Planning Act (21 of 1948), S. 4. **AIR 1959 Cal 552 (DB).**

——Art. 166 (3) — Rules of business of Government — Minister if can delegates his duty of according sanction.

Per Das Gupta, C. J.: The duty of according sanction can be delegated by the Minister to whom the relevant business of the Government of the State has been allocated by the Governor by the Rules of Business provided such delegation is in purusance of authority given by the Rules of Business. AIR 1945 PC 156, Rel. on; AIR 1952 Orissa 200 Diss. from. **ILR (1960) 1 Cal 685 : AIR 1959 Cal 552 (555) (Pt B) (Pr 12) (DB).**

——**Art. 166 (3)** — Motor Vehicles Act (1939) (as applicable to Madhya Pradesh), S. 68-D (2) (2-a) and (3) — Power under sub-section (3) can be delegated to officers subordinate to Governor — Delegation can be by Rules of Business made under Art. 166 (3). See Ibid, Art. 154 (2) (b). **AIR 1965 Madh Pra 196 (DB).**

——Arts. 166, 154 (1) — Order of the Government — What is — Rules of Business of Government — Noting of decision by a Minister on the file is not decision or order of Government — Motor Vehicles Act (1939), S. 64-A — Petition under — Decision by Minister prior to repeal of S. 64-A by Madras Act (39 of 1954) — Order by Secretary embodying decision after repeal took effect — Validity — (Madras Government Business Rules and Secretariat Instructions, R. 12)— (General Clauses Act (1897), S. 3 (60) (b).)

Under the Madras Government Business Rules and Secretariat Instructions framed under Art. 166 (2) and (3) of the Constitution, the Governor is the head and symbol of the executive administration, and it is an order issued by or under his authority that constitutes an order of the Government. He discharged these functions with the aid and advice of his Ministers who are collectively responsible for the advice they tender (R. 7). The 'advice' that is tendered and the 'decision' that is taken by the Minister will not amount to an order of the Government unless it is embodied in a formal order issued on the authority of the Governor. The Secretaries of the departments are to carry out the orders of the Ministers, and in that sense there is a delegation of the functions of the Governor and by the issue of the order by the Secretary it becomes an order of the State Government. This is in line with Art. 154 (1), which vests the executive power in the Governor, and also in the line with the definition of State Government in the General Clauses Act in S. 3 (60) (b). Under R. 12 of the Business Rules read in conjunction with Art. 166 (2), the signatures of the Secretary or that of any of the other officers designated under the rules serve a double purpose : (1) of substance and (2) proof. The voting by a Minister on the file is not a decision of the Government or an order of the Government. Under the Constitution, no Minister can issue an order which could be treated as an order of Government. What he could issue is only a direction to the Secretary, and it would of course be carried out under the Business Rules, subject to the exceptions laid down there; but it is only when the Secretary or those under him carry out this duty that an order of Government results.

Hence, where on revision petitions filed under S. 64-A of Motor Vehicles Act, the Minister concerned had noted his 'decision' on the file before the repeal of S. 64-A by the Madras Amending Act (39 of 1954) took effect but the order issued by the Secretary embodying the decision was passed after the repeal took effect, the order of the State Government must be taken to have been passed after the repeal took effect. The proceedings in respect of the revision petitions must be held to have been pending before the Government on the date the repeal took effect and these stood automatically transferred to the new Tribunal under S. 5 of Act (39 of 1954), and the Government had no jurisdiction to pass any order in relation to them at the time when the impugned orders were issued **69 Mad LW 623 : (1956) 2 Mad LJ 430 : ILR (1957) Mad 115 : AIR**

1957 Mad 48 (57, 58, 59, 60) (Pt B) (Prs 42, 43, 49, 51, 52, 53) (DB).

——Art. 166 — Business Rules of Mysore State, Rr. 12, 13, 14, 18 — Order passed by Minister of State — Not formally expressed as laid down in Art. 166 or R. 13 — Review — Power of.

It cannot be contended that an order passed by a Minister of the State is not an order of the Government because it was not put in the form in which it is required to be done under Art. 166 of the Constitution or under R. 13 of the Business Rules, or, because it was liable to be reopened at the instance of the Governor under R. 18. The order is still an order of the Government. How the order has to be expressed and whether or not it is liable to be reopened by the Governor are different matters. They do not affect the question whether or not an order has been made by Government. Mere non-compliance with Art. 166 does not vitiate the order itself and does not render the action in question a nullity. AIR 1952 SC 181, Rel. on.

Further, the Government having once passed an order, which is still a valid order, cannot review it on a subsequent application. AIR 1953 Mys 156 (FB), Foll. **38 Mys LJ 433: ILR (1959) Mys 356 : AIR 1960 Mys 243 (244, 245) (Prs 7, 8) (DB).**

●——**Art. 166 (3)** — Breach of Finance Rules—Not unconstitutional — Advisability of following the procedure, pointed out. See Finance Rules, R. 534. **AIR 1955 Nag 11 (SB).**

——**Art. 166 (3)** — Rules of business of Orissa Government — Rule 2 (2) of subsidiary Rules. See Public Safety — Preventive Detention Act (1950), S. 2. **1953 Cri LJ 49: AIR 1953 Ori 33 (DB).**

——Art. 166 (3) — Rules of Business of Orissa Government, Rule 14 — Subsidiary Rules of Business R. 2 — Order of detention passed by Home Secretary — Validity — Presumption as to implied authority — (Evidence Act (1872), S. 114, Illustration (e)) — (Public Safety — Preventive Detention Act (1950), S. 3).

The presumption that all official acts to be taken to have been regularly performed is one that "may" be drawn by a Court. In a matter so fundamental and important as the liberty of a subject, which can be deprived of only by strict compliance with the statutory requirements of S. 3 of the Preventive Detention Act, the High Court will not be prepared to uphold the validity of an order of detention by reliance on any such presumption.

Thus R. 2 of the Subsidiary Rules of Business cannot validate an order of detention passed by the Home Secretary, as the authority of the Minister in charge who could have passed the order to the Home Secretary to deal with the case cannot be presumed. **18 Cut LT 307: ILR (1951) Cut 624 : 1952 Cri LJ 1051 : AIR 1952 Orissa 200 (204) (Pt B) (Pr. 4) (DB).**

——Art. 166 (3) — Rules of Business of Orissa Government, R. 14 — Subsidiary Rules of Business Rr. 2 and 8 (b) (iii) — Secretary dealing with cases of detention — No submission to Chief Minister or Government — Validity of orders passed — (Public Safety — Preventive Detention Act (1950), S. 3.)

If orders of preventive detention fall under Cl. (iii) of sub-R. (b) of R. 8 of the Subsidiary Rules, it would follow that even though the Secretary deals with such cases, they have to be submitted to the Chief Minister and Governor, and if there is no proof of the same, the orders are invalid. **18 Cut LT 307 : ILR (1951) Cut 624 : 1952 Cri LJ 1051 : AIR 1952 Orissa 200 (202) (Pt C) (Pr 5) (DB).**

——**Art. 166 (3)** — Bihar Rules of Executive Business (1952), Rr. 8, 12, 13, 28 (6), Sch. II Item 30 — Nominations of members of State Legislative Council — Selection by Chief Minister with approval of Council of Ministers — Publication of — Notification in the name of Governor — Nomination deemed to have been made by Governor. See Ibid, Art. 171 (3) (e). **AIR 1965 Pat 321 (DB).**

——Arts. 166, 238 — Rules of Executive Business framed by Rajpramukh, R. 16 — Order within executive functions — Competent authority to make order.

An order within the executive functions of the State Government, when it is expressed in the name of the Rajpramukh and is properly authenticated, cannot be attacked on the ground that it is not made by the person who purports to have made it. In such a case it is immaterial if in fact it was made only by a Minister. **ILR (1955) Patiala 416 : AIR 1955 Pepsu 97 (100) (Pt C) (Pr 10).**

——Arts. 166 (2) and (3) and 238 — Rules of Business framed by Rajpramukh R. 34 — Minister not bound to submit case to Rajpramukh — Finality of his order.

All cases do not and need not go to the Rajpramukh and every Minister is competent to administer his department and give appropriate orders except in those cases which according to the Rules of Business must be submitted to the Rajpramukh. It is the essence of all democratic Constitutions of the kind we have in this country that even in matters which must be submitted to the Head of the State for his approval the latter is bound to follow the advice given to him by his Ministers but in a case in which the Minister was not bound even to submit the case to the Rajpramukh the orders made by him are final and must be enforced. The fact that the order was not communicated to the person affected by a competent authority in the form provided by the Constitution is immaterial and cannot affect the legality of the order which was otherwise final. **ILR (1953) Patiala 639: AIR 1954 Pepsu 129 (130, 131) (Pt B) (Pr 5).**

——**Art. 166** — Power to pass order under Preventive Detenton Act — Delegation by Rajpramukh under Rules of Business made by him. See Public Safety — Preventive Detention Act (4 of 1950) S. 3 (1). **1952 Cri LJ 1215: AIR 1951 Pepsu 147.**

——**Art. 166** — Bank of Patiala Regulation and Management Order (1954), Cl. 4 (iii), Rules under — Bank of Patiala (Staff) Rules (1954) — Validity — Rules not required to be submitted to Chief Minister as required under R. 30 of Government of Pepsu Rules of Business made under Art. 166. See Ibid, Art. 309. **AIR 1963 Punj 345 (DB).**

——**Art. 166 (3)** — Motor Vehicles Act (1939), S. 133 — Publication of Rules of Business framed by Governor under Art. 166 (3) of Constitution — S. 133 does not apply. See Motor Vehicles Act (1939), S. 133. **AIR 1961 Raj 168.**

ARTICLE 167.

●——**Art. 167 (a)** — Advice of Minister — Communication—Justiciability under Art. 163 (3). See Ibid, Art. 163 (3). **1953 Cri LJ 752: AIR 1953 Trav-Co. 130 (FB).**

ARTICLE 168.

——Art. 168 — State Government — Different capacities of Governor — Governor exercising executive powers is State Government, not while exercising other powers — Governor exercising powers of Chancellor of University is not State Government. See Ibid, Art. 191 (1) (a). **AIR 1962 All 128 (DB).**

——Arts. 168, 194, 200, 208, 212 and 371 — Andhra Pradesh Regional Committee Order (1958) and bye-laws made thereunder — Andhra Pradesh Legislative Assembly Rules — 'Regional' bill referred to Regional Committee — Bill passed by Legislature after considering Regional Committee's report — Absence of notice to some members of the Regional Committee about its meeting — Effect — Proceedings of Committee, if null and void — Injunction to restrain Council of Ministers from presenting the Bill to the Governor for assent — Power of High Court.

The Andhra Pradesh State Legislative Assembly passed two 'Regional Bills' after considering the report of the Regional Committee constituted under Art. 371 (1) of the Constitution. At this stage, petitioners, who are some of the members of the Regional Committee questioned the validity of the report, before the High Court, on the ground that no notice of the meeting of the Committee was given to them as required by rules. They sought directions from the Court to declare the proceedings of the Committee null and void and to compel the Chairman of the Committee to convene a fresh meeting after proper notice to all the members. They also sought another direction restraining the Council of Ministers represented by the Chief Minister, from presenting those Bills to the Governor for assent, pending disposal of the Writ Petition.

Held, R. 35 of the Assembly Rules expects every member of the Assembly to turn up to participate in the deliberations of the Assembly and therefore, contents itself with placing the notice "on meeting days" in the Notice Office, or in the alternative with distrubuting the notices to the members in the Assembly itself. It is not the case of the second petitioner that he informed the Speaker or the Assembly Secretariat that he would not attend the session and communications meant for him should be sent to his residence in the muffasil. On the facts, it cannot be said that the petitioners have been wholly ignorant of the meeting. Decisions of Courts rendered in respect of inferior and subservient bodies cannot be applied to the Legislature or its committees. Art. 212 (1) of the Constitution enjoins that the validity of any proceedings in the Legislature of a State shall not be called in question on the ground of any alleged irregularity of procedure. The matter of giving notice in pursuance of bye-law No. 4 made by the Regional Committee, is essentially a matter of procedure. A committee of the Legislature is only an agency or instrument through which the Legislature functions. The proceedings of a committee are therefore, in substance and effect the proceedings of the Legislature itself. Art. 212 therefore, applies equally to both the proceedings. Even if the Regional Committee's report to Legislative Assembly was bad for non-compliance with correct procedure or non-observance of a bye-law, the Legislative Assembly could still in its wisdom accept that report and make it the basis of its legislation. In such a case, it will be futile for a Court of law to declare the report of the Regional Committee to be bad, for, that would be an ineffective declaration, a mere brutum fulmen, and a Court of law will surely not make an order which it knows will be ineffective.

The members of the Regional Committee are members of the Legislative Assembly and they share the rights and privileges of the members of that House and are amenable to its discipline and jurisdiction. The primary legislative activities of the members of the Committee are performed in the Legislative Assembly as members thereof. The Committee is only an agency through which the Assembly functions. It is therefore, not tenable to say that the Regional Committee itself is a separate House of the State Legislature. Even if the Regional Committee is to be regarded as a House of the Legislature itself, the absence of intimation to the members of that Committee will be only an irregularity of procedure on which an attack against the validity of its proceedings cannot be grounded in view of Art. 212 (1) of the Constitution.

The attempt of the petitioners is to persuade the Court to interfere with the proceedings of the Legislature in the formative stages of an enactment. The Court cannot and should not accede to this request. The sovereignty of the Legislature vouchsafed by Arts. 194, 208 and 212, not to speak of the general scheme and structure of our Constitution, is a potent factor and a decisive answer against the petitioners in this regard.

Under Art. 168 of the Constitution, the Governor is an essential part of the State Legislature. Art. 200 enjoins that a Bill passed by both Houses of Legislature of the State shall be presented to the Governor. This is undoubtedly an essential legislative process and a Court of law will not interfere with it. Moreover, it does not appear that the responsibility of presenting the bills to the Governor under Art. 200 is cast by the Constitution on the Council of Ministers. It is for the Houses of the Legislature represented by its Presiding Officers to submit a Bill to the Governor. It is a matter of internal arrangement whether the responsibility for submission of a Bill to the Governor should be placed on the Speaker or his Secretariat. Therefore, the relief sought by the petitioners against the Council of Ministers is neither appropriate nor effective. **(1965) 1 Andh WR 304: AIR 1965 Andh Pra 306 (310, 313, 314, 315) (Prs 10, 11, 16, 19, 21, 22).**

●——Art. 168 — Legislature — If includes Governor. See Ibid, Art. 389. **ILR (1956) 8 Assam 379 (FB).**

——Arts. 168 and 173 — Amendment of Constitution — Ratification by State Legislatures — Assent of Governor not required — Legislature does not include Governor — Constitution — (Fifteenth Amendment) Act (1963) — Amendment valid. See Ibid, Art. 368. **AIR 1964 Cal 500.**

——Art. 168 (1) (a) — Scope — Validity.

It was by amendment by Constitution (7th Amendment) Act, 1956, that the words 'Madhya Pradesh' were introduced in sub-cl. (a) of Cl. (1) of Art. 168. The language of sub-cl. (2) of S. 8 of the Act makes it clear that the words 'Madhya Pradesh' became a part of sub-cl. (a) of Cl. (1) of Art. 168 only after a notification has been made by the President. Cls. (3) and (4) of S. 33 States' Reorganisation Act provide that certain preliminary actions can be taken by the President after the appointed day for constituting the Legislative Council. 'Appointed day' for the purpose of the States Reorganisation Act means 1st November, 1956. The day for establishing a Legislative Council is to be appointed by the President and the appointment of such day has nothing to do with the definition of 'appointed day' in S. 2 of

the Act. No day has yet been appointed by the President. The appointment of a day for the purpose of S. 33 (1) of the States Reorganisation Act and the day to be appointed by public notification under S. 8 (2) of the Constitution (Seventh Amendment) Act, 1956, are two different actions to be taken by the President. Unless a public notification is made appointing a day for the purpose of S. 8 (2) of the Seventh Amendment, Art. 168 does not stand amended and the Legislature of Madhya Pradesh continues to consist of only one House. Consequently the fact that the M. P. Municipalities (Amendment) Act (14 of 1958) was passed by only one House of legislature does not make the Act ultra vires. **1959 MPLJ 710: ILR (1959) Madh Pra 343: 1959 Jab LJ 453: 1959 MPC 458: AIR 1959 Madh Pra 353 (355, 356) (Pt B) (Prs 11, 12) (DB).**

——**Art. 168 (1)** — Passing of Bill, into law — Assent of Governor. See Tenancy Laws — Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Bill. **AIR 1955 NUC (Nag.) 1341.**

——**Art. 168** — Law enacted by provisional Legislature — Duration and validity. See Ibid, Art. 382. **AIR 1953 Pat 386 (DB).**

ARTICLE 169.

●——**Art. 169** — Three classes of amendments contemplated by Constitution — Procedural difference between — Agency which can effect amendment of Constitution. See Ibid, Art. 368. **AIR 1951 SC 458.**

ARTICLE 170.

——**Art. 170** — Andhra Pradesh and Madras (Alteration of Boundaries) Act (1959), Ss. 11, 15 and 17 — Provisions do not touch matters dealt with by Arts. 80, 81, 170 and 171 of Constitution — There is no repugnancy between these sections and any of these articles of Constitution — They are valid. See Andhra Pradesh and Madras (Alteration of Boundaries) Act (1959), S. 11. **AIR 1961 Andh Pra 50.**

——**Art. 170** — Re-organization of States — Provision for indirect election — Provision is not void, as being inconsistent with Art. 170. See States Re-organization Act (37 of 1956), S. 28 (4). **AIR 1957 Bom 165 (DB).**

ARTICLE 171.

——**Art. 171** — Quo warranto — Nomination of person to Legislative Council — Petitioner not showing that the person was disqualified or that the Governor had no power to nominate him but merely showing that nomination was made for political reasons — **Held** that was not sufficient to issue a writ of quo warranto. See Ibid, Art. 226. **AIR 1962 All 301.**

——**Art. 171 (5)** — Even practical experience in spheres enumerated in clause makes a person eligible for nomination to the council even though he has no special knowledge in them — Person who has taken active part in politics and the governance of the State for several years — Presumption is that he has practical experience in matters of social service and he is therefore, qualified to be nominated as a member of the council. **1961 All LJ 927: AIR 1962 All 301 (305) (Pt C) (Pr 17).**

——**Art. 171** — Clauses (3) (e) and (5) make an inroad into the principle of election which is the foundation of the system of Parliamentary Government established by Constitution — Clause (5) was not enacted to enable a minister who has been defeated in election to enter legislature by nomination or to enable the party in office to increase its numerical strength in the legislature — Clause (5) was intended to make membership available in public interest to persons having special knowledge or practical experience in the spheres mentioned so that they may not contest election. **1961 All LJ 927: AIR 1962 All 301 (305) (Pt D) (Prs. 19, 21).**

——**Art. 171** — Andhra Pradesh and Madras (Alteration of Boundaries Act (1959), Ss. 11, 15 & 17 — Provisions do not touch matters dealt with by Arts. 80, 81, 170 and 171 of the Constitution — There is no repugnancy between these sections and any of these articles of the Constitution — They are valid. See — Andhra Pradesh and Madras (Alteration of Boundaries) Act (1959), Section 11. **AIR 1961 Andh Pra 50.**

——**Art. 171** — Nomination of members by Governor of State Legislative Council — Governor is to act on advice of Council of Ministers and not in his own discretion. **56 Cal WN 651: AIR 1952 Cal 799 (801) (Pt A) (Pr 6).**

——**Arts. 171 (3) (e) and 361—Nomination of members of Legislative Council by Governor — Enquiry into validity — Power of Court.**

Nomination of members of the Legislative Council of the State made by the Governor under Cl. 3 (e) of Art. 171 read with Cl. (5) thereof of the Constitution, is an act done by him in his official capacity. The Governor not being answerable to Court by reason of Art. 361 of the Constitution it follows that the validity or invalidity of the nominations cannot be enquired into by the Court. The Governor not being liable to justify the nominations is not bound to disclose any facts relating to such nominations. The words "purporting to be done" in Art. 361 are of very wide application and even though the act done is outside or in contravention of the Constitution, it comes within the protection of that article, if the act is professed to be done in pursuance of the Constitution. Accordingly an application for a writ in the nature of mandamus directing the Governor to recall the nominations is wholly incompetent, if it cannot be said that the Governor acted mala fide in exercising his power under Art. 171 of the Constitution.

So long as the notification containing the nominations stands, it will be a complete answer to a writ of quo warranto against the nominated members. **56 Cal WN 651: AIR 1952 Cal 799 (802, 803) (Pt C) (Prs. 10, 14, 15).**

——**Art. 171 (3) (e) and (5)** — There is nothing in the article to indicate that the Governor has no power of nomination until the elections are over — Nominations need not be postponed until after elections are over. **56 Cal WN 651: AIR 1952 Cal 799 (802) (Pt E) (Pr 13).**

——**Art. 171 (3) (e)** — Power of High Court — Questions of fact — Whether members nominated to State Legislative Council under Art. 171 (3) (e) possess required qualifications is question of fact — High Court cannot decide it under Art. 226. See Ibid, Art. 226. **AIR 1965 Pat 321 (DB).**

——**Arts. 171 (3) (e), (5), 163 (3), 166 (2) and (3)** — Bihar Rules of Executive Business (1952), Rules 8, 12, 13, 28 (6), Schedule II, Item 30 — Nominations of members to State Legislative Council on advice of ministers — Selection of names made by Chief Minister with approval of Council of Ministers — Subsequent publication of notification stating that Governor has nominated those members — Nominations are deemed to have been made by Governor and Court cannot enquire into advice if any, given by council of ministers to

Governor. **AIR 1965 Pat 321 (324) (Pt A) (Pr 4) (DB).**

——**Art. 171 (5)** — Categories mentioned are not exhaustive — Each of subjects is not required to be represented in every case. **AIR 1965 Pat 321 (326, 327) (Pt B) (Pr 6) (DB).**

——**Art. 171** — Rights of legislator. See Ibid, Art. 164. **AIR 1953 Mad 94 (DB).**

ARTICLE 172.

●——**Arts. 172 (2), 174 (2) (b), 83 — Bicameral State Legislature — Legislative Council is not subject to dissolution — English Law distinguished.**

Under the Constitution, where the State Legislature is bicameral the Legislative Council is not subject to dissolution and this is a feature which distinguishes the State Legislatures from the English Houses of Parliament. The same is the position under Art. 83 in regard to the House of the People and the Council of State. Purushottaman Nambudiri v. State of Kerala, **40 Mys LJ 193: (1962) 1 SCJ 477: (1962) 1 Mad LJ (SC) 180: (1962) 1 Andh WR (SC) 180: (1962) 1 SCA 681: 1962 Ker LT (SC) 1: (1962) 1 Ker LR 1: 1962 Ker LJ 86: AIR 1962 SC 694 (700) (Pt C) (Pr 10).**

●——**Arts. 172, 174 — Prorogation and dissolution of Legislative Assembly — Difference.**

The prorogation of the Assembly does not mean its dissolution. The House remains the same; only its sessions are interrupted by prorogation of the House according to the exigencies of public demands on the time and attention of the members of the Assembly and the volume of business of the Assembly itself. M. S. M. Sharma v. Dr. Shree Krishna Sinha, **(1961) 1 Ker LR 8: 1961 SCD 79: (1961) 2 SCA 582: (1961) 1 SCR 96: (1961) 2 SCJ 73: AIR 1960 SC 1186 (1191) (Pt C) (Pr 12).**

——**Arts. 172 and 174 — Dissolution of State Legislature before its being summoned to hold meeting — Assembly becomes capable of being dissolved once it is constituted — Representation of the People Act (1951), S. 73.**

Neither Art. 172 nor Art. 174 prescribes that a dissolution of a State Legislature can only be after commencement of its term or after the date fixed for its first meeting. Section 73 of the Representation of the People Act, 1951, provides that upon the issue of a notification by the Election Commission in the Official Gazette of the names of the members elected for the various constituencies the Legislative Assembly 'shall be deemed to be duly constituted', though it begins to function only after it has been summoned to meet under Art. 174 of the Constitution. Once the Assembly is constituted it becomes capable of dissolution. A Legislature can be summoned to meet only if it is in esse at the time. A dissolved Legislature is incapable of being summoned to meet under Art. 174 of the Constitution. **1965 Ker LT 460: 1965 Ker LJ 502: AIR 1965 Ker 229 (230, 231) (Pt A) (Pr 5).**

ARTICLE 173.

●——**Art. 173** — Election challenged on ground that the elected candidate was below 25 years of age on date of filing nomination paper and thus disqualified under Art. 173 — Burden to prove that the age was below 25 years on relevant date is on election petitioner — Burden held not discharged — AIR 1964 Pat 2 **Reversed** on evidence. Brij Mohan Singh v. Priya Brat Narain Sinha, **(1965) 1 SCA 378 : 1964 BLJR 538 : (1964) 1 SCWR 588 : (1964) 2 SCJ 644 : (1964) 2 Mad LJ (SC) 140 : (1964) 2 Andh WR (SC) 140 : (1964) 2 Andh LT 410: AIR 1965 SC 282 (287) (Pt C) (Pr 21).**

——**Art. 173 (b) — Disqualification on ground of underage.**

A person whose age was below 25 years on the date of filing nomination papers and on the date of election, is a disqualified candidate under Art. 173 (b) and his election cannot stand. **(1958-59) 14 ELR 99: 62 Cal WN 336: AIR 1958 Cal 533 (535) (Pt B) (Pr 15) (DB).**

——**Art. 173 (b)** — Elections — Representation of People Act (1951), S. 101 (a) — Votes cast in favour of candidate who was disqualified on ground of non-age under Art. 173 (b) — Such candidate elected —Votes cast in his favour if can be treated as thrown away votes and the next candidate if can be declared elected — Doctrine of "thrown away votes" — Applicability. See Representation of the People Act (1951), S. 101 (a). **AIR 1958 Cal 533.**

——**Art. 173 (b) — Candidate below the age of twentyfive years — Not qualified to be a candidate — Election set aside.**

Where it appears from the date of birth as mentioned in the Matriculation certificate which was more consistent with the trend of evidence adduced by both the parties, that the person who was elected was not qualified to be a candidate for the State Legislative Assembly, being below the age of 25 years on the date of filing the nomination, his election is hit by Art. 173 of the Constitution, and has to be set aside. **AIR 1964 Pat 2 (9, 10) (Pt B) (Prs 12, 18) (DB).**

[**Reversed** on evidence in AIR 1965 SC 282]

——**Art. 173** — Representation of the People Act (1951), Ss. 100 (1) (a), 36 (7), 5 — Nomination papers of person not citizen of India accepted by Returning Officer — Order no bar to challenging his election by election petition. See — Representation of the People Act (1951), S. 100 (1) (a). **AIR 1959 Punj 175.**

——**Art. 173** — Representation of the People Act (1951), Ss. 81 (1), 100 (1) — Election dispute on ground of want of qualifying age of candidate — Burden of proof. See Representation of the People Act (1951), S. 81 (1). **AIR 1964 Raj 126.**

——**Art. 173 — Representation of the People Act (1951), S. 36 (2) (a) — Eligibility to stand for election — Age-limit — Material point of time.**

The material point of time at which a candidate for election for a seat in the Legislative Assembly must have completed the minimum prescribed age of twenty-five years is the date fixed for the scrutiny of nomination papers and not any other date. **ILR (1964) 14 Raj 26: AIR 1964 Raj 126 (133) (Pt A) (Pr 21) (DB).**

——**Arts. 173, 324, 326 — Representation of the People Act (1951), S. 36 (7) — Representation of the People Act (1950), S. 30 — Election challenged on ground of want of qualifying age — S. 36 (7) of 1951 Act no bar for inquiry into — Entries in electoral rolls — Conclusiveness and evidentiary value of — Failure to raise objection at earlier stage as to age — Effect — No estoppel.**

There is nothing in S. 36 (7) of the Representation of the People Act of 1951 or S. 30 of the Act of 1950 or in any other provisions of the said Acts to hold that the age of the candidate as mentioned in the previous electoral roll should be accepted to be conclusive at an election dispute where his election is challenged on the ground that the said candidate was not qualified to stand at the election of Legislative Assembly because he lacked one of the essential conditions provided under Art. 173 of the Constitution, viz., that he was less than 25 years of age at the material time. The question of the qualifying age of a

candidate whenever it is sought to be raised before an Election Tribunal would properly fall to be decided on all the materials which may be before it and the entry as to his age in the electoral rolls in force will be just one piece of evidence admissible under S. 35 of the Evidence Act, but no presumption that it must be accepted as conclusive proof of the age entered therein or that the candidate was at least 21 years of age at the date of his enrolment or on the qualifying date vis-a-vis the electoral roll in force can legitimately attach to it.

Under S. 36 (7) of the R. P. Act of 1951 a certified copy of an entry in an electoral roll shall be conclusive evidence of the fact that the individual referred to in that entry is registered as 'an elector' for the constituency. This, in other words means at the highest that his status as an elector for that constituency cannot be challenged before the Returning Officer. The conclusiveness of the presumption created by S. 36 (7) does not and cannot extend any further so as to bar an inquiry. It would depend entirely on the kind of the totality of evidence offered at the enquiry by the rival parties as to what value can be properly attached to the entries made as to age in the electoral rolls as compared with the other proofs offered at the trial, and no hard and fast rule can be laid down as to whether the one kind of evidence should prevail or the other. That must depend on the facts and circumstances of each case. It cannot be said that the entries regarding age in electoral rolls should always be assigned a greater value than like entries in educational records any more than the latter should prevail over the former. Any other view would render S. 100 (1) (a) of the R. P. Act of 1951 and Art. 173 of the Constitution as nugatory.

Section 30 of the R. P. Act of 1950 is also no bar to the jurisdiction either of the Election Tribunal or of the High Court to decide any question as to the age of the candidate; for neither the Election Tribunal trying an election dispute as a tribunal of original jurisdiction nor the High Court while hearing an appeal from its decision, can be said to be a Civil Court as such. In the second place, the question is not whether any person was or was not entitled to be registered in any electoral roll for a constituency or as to the legality of any action taken by or under the authority of an election registration officer or of any decision given by any authority appointed under the Act for the revision of any such roll within the meaning of S. 30. But the question is whether the candidate was qualified to stand for the election, inasmuch as he lacked the minimum qualifying age of 25 years as required by Art. 173 of the Constitution. Section 30 of the Act of 1950 has no relevance in a matter of this kind.

The failure to raise an objection either at the stage of the making of the entry as to age in the relevant electoral roll or at the time of the scrutiny of the nomination papers cannot in any manner adversely effect the conclusion, for there can be no estoppel against the statute and therefore, even if such an objection may not have been raised earlier, it can legitimately be raised before the Election Tribunal under the scheme of the election law. Doabia's Ele. Cases. 1962, p. 511, Disting and Expl. **ILR (1964) 14 Raj 26: AIR 1964 Raj 126 (131, 132, 134, 140) (Pt B) (Prs 15, 17, 18, 24, 48) (DB).**

ARTICLE 174.

●——**Art. 174 (2) (a) and (b) and 196**—'Dissolution' and 'Prorogation' of Legislature — Effect of, under English Constitution, on pending business. See Ibid, Art. 107. **AIR 1962 SC 694.**

●——**Art. 174 (2) (b), 172 (2) and 83**—Bicameral State Legislature — Legislative Council is not subject to dissolution — English Law distinguished. See Ibid, Art. 172 (2). **AIR 1962 SC 694.**

●——**Art. 174** — Prorogation and dissolution of Legislative Assembly — Difference. See Ibid, Art. 172. **AIR 1960 SC 1186.**

——**Art. 174 — Prorogation of Legislative Council — Effect of.**

The prorogation of a House does not mean its dissolution. The effect of the prorogation only is to interrupt the proceedings which are revived on a fresh motion to carry on or to renew the proceedings. AIR 1960 SC 1186, Rel. on. **ILR (1963) 2 All 151: AIR 1963 All 75 (85, 86) (Pt E) (Pt 56) (DB).**

——**Art. 174** — Dissolution of State legislature before its being summoned to hold meeting — Assembly becomes capable of being dissolved once it is constituted — Representation of the People Act (1951), S. 73. See Ibid, Art. 172. **AIR 1965 Ker 229.**

ARTICLE 176.

——**Arts. 176 (1), 212, 154, 160 and 208 (1) — Rules of Procedure and Conduct of Business (W. B. Legislative Assembly), R. 16 — Governor's address before Legislature — Address must be by delivery of speech — No deadlock possible if Governor becomes unable to address — Address is not idle formality or mere directory provision — Governor attempting to deliver speech — Disturbances in House — Walk out by Governor — Copy of address laid on table of House — Duty under Art. 176 (1) is merely irregularly performed — Mere irregularity cannot be questioned under Art. 212 (1).**

On reading Art. 176 of the Constitution with sub-rules (1) and (2) of Rule 16 of the Rules of Procedure and Conduct of Business in W. B. Legislative Assembly there can be little doubt that the address by the Governor, under Art. 176, shall be by delivery of a speech, may be by reading out from a prepared text. It is true that there is no Deputy Governor to discharge the functions of the Governor, but if the Governor becomes unable to deliver the address, as required under Art. 176, the President may make some other provision under Art. 160 for the discharge of the aforesaid function of the Governor.

The Constitution lays down the purpose for the address under Art. 176, namely, informing 'the Legislature of the causes of its summons'. Such an informative speech, which serves as the springboard for discussion in the legislature, either for approval or disapproval of administrative policies, cannot be an idle formality or a mere ceremony. Art. 176 casts upon the Governor the constitutional duty of delivering a special address at the annual opening session of the Legislature and the provisions for such address, in Art. 176 should not be interpreted as merely directory. The Legislature in India cannot ordinarily be said to have met until the mandatory preliminaries under Art. 176 have been gone through: AIR 1952 Orissa 234, Rel. on.

Unless the Governor delivers a speech informing the Legislature of the causes of the summons, the Legislature cannot meet to transact legislative business. A Governor cannot decline to deliver a speech and thus refuse to perform a constitutional duty. But when the Governor makes due attempt to perform the duty under Art. 176 but fails and walks out of the House and makes up the failure by publication of the address to the members of the Legislature by a well-known method, namely,

by laying the address on the table of the House, the duty is merely irregularly performed and such an irregularity cannot be called in question under Art. 212 (1). Unless there grows a constitutional convention that the Governor's address shall be heard with attention, respect and ceremony due to the constitutional head of the State, there may be occasions when members of the Legislature may indulge in loud shoutings and unruly behaviour when the Governor comes to address. To hold that Legislature must not be deemed to have met when a Governor is unable to begin or to finish the address under Art. 176 and is compelled otherwise to publish the address is to put a value on such disturbances which they do not deserve. **(1965) 69 Cal WN 484: AIR 1966 Cal 363 (368, 369, 370) (Pt B) (Prs 9, 10, 11, 12, 13, 16, 17).**

——Art. 176 (1) — Orissa Legislative Assembly Rules of Procedure and Business, Rule 10 — "At the commencement of every session" — Meaning — Constitution of India, Art. 212, if a bar to the jurisdiction of the High Court to issue a writ against the Speaker of the Assembly or the Secretary of the Assembly under Art. 226.

There is nothing in the language of Art. 176 (1) which says that the first Session of the Orissa Legislative Assembly commenced from the date on which the newly elected members were summoned to take their oaths. The expression "Commencement of every Session" is deliberate and the Session is said to commence with the address of the Governor under Art. 176 (1). The rules of Business of the Assembly also warrant the above interpretation.

Art. 212 of the Constitution operates as a bar to the jurisdiction of the High Court being invoked for the issue of a writ against the Speaker of the Assembly or the Secretary of the Assembly while functioning in his capacity as such inside the Legislature to regulate the conduct of business of the Assembly by virtue of the powers vested in him by the Constitution of India, Art. 226. **ILR (1952) Cut 209: AIR 1952 Orissa 234 (236, 237) (Prs. 3, 4, 5, 9) (DB).**

ARTICLE 178.

——Arts. 178, 385 — Applicability of Art. 178.

Article 178 is attracted only when a legislative Assembly is constituted under the provisions of the Constitution. Art. 385 purports to continue the old legislative body as a whole. Hence Art. 178 has no application in such a case. **ILR (1952) Madh Bha 145: AIR 1952 Madh Bha 31 (35) (Pt C) (Pr 8) (DB).**

[**Overruled** on another point in AIR 1959 SC 395]

ARTICLE 183.

——Arts. 183, 185, 194 (3) and 208 (1) — Rule 143 of the Rules of procedure and conduct of business of U. P. Legislative Council framed under Art. 203 (1) — Validity — Rule is not ultra vires but is constitutionally valid. AIR 1962 SC 694, Rel. on. **ILR (1963) 2 All 151: AIR 1963 All 75 (86) (Pt B) (Pr 57) (DB).**

——Art. 183 — Notice of resolution to remove Chairman given by nine members — Term of office of one of such members expiring pending consideration of resolution by council in session — Such member re-elected and again taking his seat next day — Notice given does not lapse with the expiry of term of office of such member unless membership of all nine members lapsed simultaneously. **ILR (1963) 2 All 151: AIR 1963 All 75 (85) (Pt D) (Pr 55) (DB).**

ARTICLE 185.

——Art. 185 — Rule 143 of the Rules of Procedure and Conduct of Business of U. P. Legislative Council framed under Art. 208 (1) — Validity — Rule is not ultra vires but is constitutionally valid. See Ibid. Art. 183. **AIR 1963 All 75 (DB).**

ARTICLE 187.

●——Art. 187 — Audit and account services — Art. 309 not applicable — Arts. 308 to 314 not exhaustive regarding all services — It was not necessary for Parliament to include Arts. 98, 148 and 187 of Constitution in sub-s. (7) of S. 115 of States Reorganisation Act. See States Reorganisation Act (1956), S. 115. **AIR 1965 Punj 444 (FB).**

ARTICLE 188.

●——Art. 188 — Madhya Bharat Legislative Assembly — Continuance after Constitution.

The Madhya Bharat Legislative Assembly which passed the Madhya Bharat Zamindari Abolition Bill was a valid Legislative body under the Constitution, because the members of the body substantially complied with the requirements of Art. 188 about oath and it was presided over by a person who had taken an oath and who was entitled to continue in the office of Speaker of the Assembly after the coming into force of the Constitution. AIR 1952 Madh Bha 31, Rel. on. Ram Dubey v. Govt. of the State of M. B. **ILR (1952) Madh Bha 178: AIR 1952 Madh Bha 57 (74) (Pt S) (Pr 86) (FB).**

——Art. 188 — Applicability — Article 188 is essentially meant to apply to legislatures constituted under the Constitution. It does not apply to old legislatures continued by virtue of Art. 372 and 385. If the members or the speaker had taken oath in accordance with the provisions of interim Legislative Assembly Act, they can validly continue to be members or speaker of the said Assembly even after the commencement of the Constitution. **ILR (1952) Madh Bha 145: AIR 1952 Madh Bha 31 (36, 37) (Pt H) (Pr 15) (DB).**

[**Overruled** on another point in AIR 1959 SC 395]

——Arts. 188, 226 — Refusal to take oath — Information in the nature of quo warranto — Interim Legislative Assembly Act (23 of 1949), Section 11.

If the oath under Art. 188 is not taken, a member does not cease to be a member. The penalty is prescribed in Art. 193. Under S. 11 of the Interim Legislative Assembly Act also the Government has been given a discretion to declare his seat vacant. But failure to make the oath does not ipso facto render his seat vacant. In these circumstances even if a member did not take the requisite oath an information would be futile in its results and hence no information in the nature of a quo warranto would lie. **ILR (1952) Madh B 145: AIR 1952 Madh B 31 (37) (Pt I) (Pr. 16) (DB).**

(**Overruled** on another point in AIR 1959 SC 395.)

——Arts. 188, 226 — "According to the form"— Meaning of.

(Per Dixit, J.:) The expression "according to the form" does not mean "in the form" that is a verbal and literal following of the form set out in the Third Schedule. It means the substantial following of the form. In other words, the Article means that the form set out in the Third Schedule or any form as near thereto as circumstances admit, shall be used in taking an oath or

affirmation under the Article. **ILR (1952) Madh B 145 : AIR 1952 Madh B 31 (43) (Pt O) (Pr 41) (DB).**

[**Overruled** on another point in AIR 1959 SC 395.]

——Arts. 188, 212 — Failure to take oath — Jurisdiction of Court to interfere.

(Per Dixit, J.) If the Speaker has not taken an oath in conformity with Art. 188, it is for the Legislature to prevent him from taking his seat and performing the duties and exercising the powers of the Speaker and the High Court has no jurisdiction to interfere in this matter falling within the ambit of the internal affairs of the House. **ILR (1952) Madh B 145: AIR 1952 Madh B 31 (44) (Pt R) (Pr 44) (DB).**

[**Overruled** on another point in AIR 1959 SC 395.]

ARTICLE 190.

●**——Arts. 190 (3), 192 (1) — Scope.**

Arts. 190 (3) and 192 (1) are applicable only to disqualification to which a member becomes subject after he is elected as such, and neither the Governor nor the Commission has jurisdiction to enquire into a member's disqualification which arose long before his election. Election Commission, India v. Saka Venkata Rao. **1954 Mad WN 427 : 1953 SCJ 293 : (1953) 1 MLJ 702 : 66 Mad LW 378 : 1953 SCA 203 : 1953 SCR 1144 : AIR 1953 SC 210 (215) (Pt C) (Pr 16).**

——Arts. 190 (3), 208 (1) — U. P. Legislative Assembly Rules of Procedure and Conduct of Business (1958), Rule 278 (1), (2), (4), (5) and (6), Validity of — Rules are not violative of Art. 190 (3) and are also intra vires. Art. 208 (1). **AIR 1965 All 536 (539, 540, 541, 542) (Pt A) (Prs 12, 13, 16, 17, 20, 21).**

——Art. 190 (3) (b) — Resignation expressed to be operative from future date is valid — 'Addressed to Speaker' — Connotation of — Resignation becomes effective only if it is received by Speaker — 'Shall thereupon become vacant' — Meanin of — 'Thereupon' means in consequence of resignation and cannot be construed in sense of 'resign his office' as used in Arts. 124 (2), 179 (b), 56 (1) Proviso (a), 67 and 156 (2) — Provision in Rules 278 (3) of U. P. Legislative Assembly Rules of Procedure and Conduct of Business regarding specifying date and time of resignation is not contrary to provisions of Art. 190 (3) (b). AIR 1964 Ker 194, Rel. on. **AIR 1965 All 536 (540, 541) (Pt B) (Prs 14, 15).**

——Art. 190 (4) — Continued detention of members of Parliament and State Legislature, under R. 30 (4) of D. I. Rules is valid even though they forfeit seats by continued absence. See ibid, Art. 101 (4). **69 Cal WN 913: 1966 Cri LJ 826.**

——Art. 190 (3) (b) — Resignation of his seat by a member of a legislature — Resignation expressed to operate in future is valid — Such a resignation takes effect from the date mentioned in it and not earlier — 'Addressed to the Speaker', connotation of—'Shall thereupon become vacant' meaning of — Withdrawal of resignation before the date it was expressed to take effect renders it non est in law.

A resignation under Art. 190 (3) of the Constitution to be valid need not operate in praesenti; a resignation expressed to take effect on a future specified date is well within the ambit of the article.

The expression 'addressed to the Speaker', in Art. 190 (3) means conveyed to the Speaker and not mere naming of the Speaker in the heading of the letter of resignation. For the resignation to be effective actual receipt of the letter of resignation by the Speaker is necessary. If the letter of resignation is expressly made to take effect on a specified date, the seat of the member becomes vacant only on such specified date and not immediately on its receipt by the Speaker. The word 'thereupon' in the expression 'shall thereupon become vacant' in the Article means in consequence of the resignation and not immediately or without delay or lapse of time. R. 162 of Kerala Legislative Assembly Rules of Procedure and Conduct of Business dealing with resignation of seat by a member and providing a form for resignation strengthens this view. Consequently where a member tenders his resignation on a prior date to take effect on a subsequent date specified therein it takes effect only on the date specified by the member and therefore, if the member tendering the resignation withdraws the same in writing addressed to the Speaker before the specified date when it is to take effect, the withdrawal nullifies the entrustment or deposit of the letter of resignation in the hands of the Speaker rendering the resignation non est in the eye of law. The absence of specified provision for withdrawal of prospective resignation in the Constitution or the Rules is immaterial, as basic principles of law and procedure apply wherever they are relevant. The effect of withdrawal of the letter of resignation before it breathed effect being thus to render it as non est in law, the seat of the member resigning does not become vacant and therefore, a notification published in the Gazette about vacancy of the seat without giving any head to the letter of withdrawal is not warranted in law and is, therefore, null and void. **1964 Ker LJ 130: 1964 Ker LT 140: ILR (1964) 1 Ker 662 : AIR 1964 Ker 194 (196, 197) (Pt A) (Prs 6, 7, 8, 9).**

——Art. 190 (4) — Member of Legislative Assembly arrested and detained under due process of law — No privilege to be allowed to attend session of Assembly — Writ of mandamus — Whether danger of his losing the seat under Cl. (4) can constitute a basis for affording relief to him. See Ibid, Art. 194 (3) **AIR 1955 Trav-Co 154 (DB).**

——Art. 190 (3) (b) — Letter of resignation—Requirements of — Power of speaker to enquire about genuineness.

What is contemplated in the section is a resignation with the full consent of the writer of his or her own volition and not any letter of resignation. Provision in Art. 190 (3)(b) necessarily indicates that the letter of resignation must proceed from the member and that the resignation must relate to a membership held by the person who sends the same. A person cannot resign prospective status which he or she may or may not get in the ordinary course of events. The mere receipt by the Speaker of a letter of resignation purporting to be from a member will not cause that member's seat to become vacant. It is open to the speaker to enquire whether that is a genuine letter or a forged letter, or one obtained by fraud or force or is only a void document.

Held, on facts that the letter of resignation was not intended to be one resigning the seat, and it was void document and by virtue of that, the petitioner had not lost seat in the assembly. **ILR (1952) TC 66 : 1952 Ker LT 166 : AIR 1952 Trav-Co 166 (169, 170) (Pt C) (Prs 7, 9).**

ARTICLE 191.

SYNOPSIS

(Constitution of India Art. 191.)

1. Scope.
2. "Office of profit."
3. "Government of any State".
4. Law by State Legislature removing disqualification.
5. Disqualification under law of Parliament.

1. Scope.

●——**Art. 191 (1) — Scope — Disqualification must be incurred subsequent to election.**

The disqualification referred to in Art. 191 (1) must be incurred subsequent to the election of the member. This follows from Art. 190 (3) (a). AIR 1953 SC 210, Rel. on. Brundaban Nayak v. Election Commission of India. **(1965) 2 SCWR 960 : (1965) 2 SCA 177 : 1965 SCD 961 : 31 Cut LT 976 : AIR 1965 SC 1892 (1894, 1895) (Pt E) (Pr 7).**

——**Arts. 191 and 192** — Scope — Power of Election Tribunal to enquire into corrupt practice— Not affected by Art. 192. See Representation of the People Act (1951), S. 7. **AIR 1957 All 292 (DB).**

——**Art. 191 — Object of.**

The object of the provision in Art. 191 is to secure independence of the members of the Legislature and to ensure that the Legislature does not contain persons, who have received favours or benefits from the executive and who, consequently, being under an obligation to the executive, might be amenable to its influence. The provision appears to have been made in order to eliminate or reduce the risk of conflict between duty and self-interest amongst the members of the Legislature. **60 Bom LR 217: 13 ELR 334 : ILR (1958) Bom 1294 : AIR 1958 Bom 314 (316) (Pt A) (Prs 2, 3) (DB).**

2. "Office of profit."

——**Art. 191 (1) (a)** — Membership of Legislative Assembly or Council — Disqualification for — Power given to State Government to exercise control and supervision over University working — Officer holding office of profit in University — He is not disqualified. **ILR (1962) 1 All 265: 1961 All LJ 999 : AIR 1962 All 128 (131) (Pt B) (Pr 13) (DB).**

——**Art. 191 (1) (a)** — Membership of Legislative Council of State — Disqualification for standing as a member of the U. P. Legislative Council from the U. P. Graduates constituency — Office of profit under State Government — Member holding salaried office of Vice Chancellor of Agra University — Office of Vice Chancellor cannot be said to be under the State Government, on account of the appointment having been made by the Governor in another capacity — No disqualification. **ILR (1962) 1 All 265: 1961 All LJ 999: AIR 1962 All 128 (129, 130, 131, 132) (Pt A) (Prs 2, 8, 15, 18, 20) (DB).**

——**Art. 191 (1) (a) — Office of profit under the Government.**

The salary paid to the member makes the office of the member of the Legislative Council as an office of profit. But it is not an office of profit under the Government. The source from which the salary is paid to a person holding office is not necessarily the sole test to determine whether he is holding an office under the State Government. The principal criterion is whether the appointment to the office and removal therefrom of a person is under the control of the State Government. AIR 1954 SC 653, Dist. **60 Bom LR 770 : 1958 Nag LJ 115 : ILR (1958) Bom 58 : AIR 1958 Bom 325 (327, 328) (Pt A) (Prs 7, 8, 11) (DB).**

——**Art. 191 (1) (a) — 'Office' — Meaning of.**

The word 'office' has been judicially construed in several different senses and in each case a meaning has been assigned to it, having regard to the language used in the enactment and its object. The word 'office' does not necessarily imply that it must have an existence apart from the person, who may hold it. In order to make use of the special knowledge, talent, skill or experience of certain persons, posts are created, which exist only for so long as they hold them. It will be difficult to hold that such persons are not holders of offices. Hence, a person cannot be said not to hold an office, because the post of an Insurance Medical Practitioner which he holds, will cease to exist as soon as he gives it up or because, other persons cannot be appointed to it. **60 Bom LR 217: 13 ELR 334: ILR (1958) Bom 1294 : AIR 1958 Bom 314 (316, 318) (Pt C) (Prs 5, 9) (DB).**

——**Art. 191 (1) (a) — 'Office of profit under the Government' — Test for deciding.**

The principal tests for deciding whether an office is under the Government, are (1) what authority has the power to make an appointment to the office concerned, (2) what authority can take disciplinary action and remove or dismiss the holder of the office and (3) by whom and from what source is his remuneration paid. Of these, the first two are more important than the third one. **60 Bom LR 217: 13 ELR 334: ILR (1958) Bom 1294 : AIR 1958 Bom 314 (318, 319) (Pt E) (Pr 12) (DB).**

——**Art. 191 (1) (a) — Insurance Medical Practitioner functioning under Employees' State Insurance Act — Whether holds office of profit under Government — (Employees' State Insurance Act (1948), S. 17).**

An Insurance Medical Practitioner functioning under the Employees' State Insurance Act, 1948, is a holder of an office. The fact that he is allowed practice will not alter the character of his appointment. Hence, an Insurance Medical Practitioner is disqualified for being chosen as, and for being a member of the Legislative Assembly of the State of Bombay. **60 Bom LR 217 : 13 ELR 334 : ILR (1958) Bom 1294 : AIR 1958 Bom 314 (322, 323, 324) (Pt F) (Prs 30, 36, 38) (DB).**

—**Art. 191 (1)** — Employee of company under control of Central Government — Does not hold office of profit under Government — Not disqualified under R. 7 (h) of the Himachal Pradesh Municipal Election Rules (1957). See Municipality — Punjab Municipal Act (3 of 1911), S. 242. **AIR 1962 Him Pra 52.**

——**Art. 191 (1) (a)** — Office of profit under the Government — Employee of the Life Insurance Corporation of India (Representation of the People Act (1951), Ss. 7, 8) **(1958) 1 Mad LJ 367 : 1958 Mad WN 329 : ILR (1958) Mad 513 : (1958-59) 14 ELR 21: AIR 1958 Mad 343 (349, 350, 355, 358) (Pt A) (Prs 17, 18, 19, 27, 37, 39) (DB).**

——**Art. 191 (1) (a)** — Disqualification for contesting election — Principle — Orissa Gram Panchayats Act (15 of 1948), S. 10 (g) (c) — Election of Sarpanch — Deed writer licensed under Orissa Licensing of Deed Writers' Rules, 1950 —

Not a person holding office of profit : **ILR (1961) Cut 391 : (1963) 3 Orissa JD 248 : 27 Cut LT 301: AIR 1961 Orissa 205 (207, 208) (Prs 5, 8) (DB).**

——Art. 191 (1) (a) — Office of profit — Office of Sarabarakar.

The true test to determine whether a person holds an office of profit under the State is the power of the Government to appoint the person to the office or to revoke his appointment. Payment of remuneration to him from a source other than Government revenue is not always the decisive factor.

A sarabarkar is a holder of an office of profit under the State inasmuch as he is appointed and is removable by it. The fact that his remuneration comes out of the collections of revenue made by him is not a ground for holding him to be otherwise. Hence, the disqualification prescribed by Art. 191 (1) (a) applies to him and he cannot be a member of the State Legislature. **AIR 1958 Orissa 260 (264, 165, 266) (Pt B) (Pr 9) (DB).**

[**Reversed** on another point in AIR 1959 SC 589.]

——Art. 191 (1) (a) — Office of profit — Candidate for election holding office of Ghatwal — Termination of office by Government notification — Candidate challenging right of Government and filing suit without giving over charge of estate— Returning officer rejecting nomination papers — Held, order of rejection was correct. See Representation of the People Act (1951), S. 36 (2) (a). **AIR 1965 Pat 277 (DB).**

——Art. 191 — Ghatwal — If holds office of profit.

The character and incidents of Ghatwali tenures, show unmistakably that Ghatwals must be regarded as persons holding office of profit under the Government. The two main characteristics of the Ghatwali tenures are the creation of the office of Ghatwals for the performance of certain duties of police and military nature and grant of land for support and remuneration of a Ghatwal. These tenures are not transferable and also not heritable in the strict sense of the term. The appointing authority is the Government, and the Government also assigns lands for the remuneration of the services. These Ghatwali tenures are further liable to resumption and Ghatwals are liable to removal on the ground of incompetence or misconduct. All these clearly establish that Ghatwals hold office of profit under the Government within the meaning of Art. 191 of the Constitution of India, so that they are disqualified from membership to the Legislative Assembly of the State AIR 1958 SC 937, Rel. on. **21 Ele LR 64 : ILR 38 Pat 1007 : AIR 1961 Pat 41 (54) (Pt F) (Pr 30) (DB).**

——Art. 191 (1) (a) — Office of profit under Government — Grant of Meena Bara Gaon.

In order to hold a certain person disqualified under Art. 191 (1) of the Constitution of India it must be proved that he was holding an office, that the office was under the Government of India, or the State Government and that it also carried profits with it. An office under the Government cannot be both heritable and partible under personal law. If a particular post is created by the Government and then a grant of land is made to the person holding that post, to remunerate him for his services in lieu of cash payment, then it may be held that he is holding an office under the Government. If, however, a grant of land is made by the Government to a certain person out of regard for his meritorious services or some other personal consideration for the grantee and if in such a case some service is also required from him, then it cannot be said in every case that he is holding any particular office under the Government. The grant of 'Meena Bar Gaon' is both heritable and partible. It is impossible to hold that it is an office under the Government, AIR 1958 Bom 314 and AIR 1958 SC 937, Distinguished; AIR 1931 PC 157, Followed. **ILR (1959) 9 Raj 348 : 1959 Raj LW 362 : AIR 1959 Raj 250 (252, 253, 254) (Pt A) (Prs 9, 12) (DB).**

3. "Government of any State".

——Art. 191 (1) (a) and Arts. 154, 168 and 213— State Government — Different capacities of Governor — Governor exercising executive powers is State Government, not while exercising other powers—Governor exercising powers of Chancellor of University — He is not State Government in spite of the term 'State Government' as defined in S. 3 (60) of the General Clauses Act, 1879, **ILR (1962) 1 All 265: 1961 All LJ 999: AIR 1962 All 128 (136, 137) (Pt C) (Prs 14, 16, 18) (DB).**

4. Law by State Legislature removing disqualification.

——Art. 191 (1) — Scope — Powers given to Parliament and State Legislature — State Legislature is given power to remove and not to create disqualification — Elections — U. P. State Legislature Members (Prevention of Disqualification) (Supplementary) Act, 1956 (U. P. Act 3 of 1957), S. 2 — Effect of amendment of S. 2 by U. P Act 5 of 1960.

Persons disqualified for being chosen as, and for being a member of the Legislative Assembly or Legislative Council of a State, are detailed in Cls. (a) to (d) of Art. 191 (1) of the Constitution. The power conferred on the State Legislature under Cl. (a) is to declare by law that the disqualification laid down in clause (a) shall not apply to and shall not disqualify the holders of certain offices of profit. When the State Legislature has the power to make a law to remove the disqualification of the holders of any office of profit, it cannot pass a law directly laying down which holders of the office shall also stand disqualified. Hence, the deletion by U. P. Act 5 of 1960 of Cl. (b) of S. 2 of the U. P. Act of 1956, cannot by implication or directly, lay down the additional offices of profits, the holders of which cannot be chosen as and for being members of the State Legislature. **ILR (1962) 1 All 265 : 1961 All LJ 999 : AIR 1962 All 128 (129) (Pt D) (Pr 7) (DB).**

——Art. 191 (1) (a) — Legislative Assembly of T. C. (Removal of Disqualification) Act (T. C. Act 15 of 1951), S. 2 (4) — Teacher in aided school, if holds office of profit.

The aided schools in Kerala notwithstanding the restrictions, control, limitation and supervision still retain that individuality, and they would not be treated as Government institutions. The employees of such institutions would still enjoy the benefits allowed to any educational institution other than a Government institution.

The employees of the aided schools in Kerala enjoy the benefit of the exemption, even though the Kerala Education Act was enacted after the Legislative Assembly of T. C. (Removal of Disqualification) Act, T. C. Act, 15 of 1951. If the exemption be concerning a genus, those under the new Act, if part of the genus, would enjoy the exemption. The educational institutions other than Government institutions form a genus, and

than the aided schools would be covered should they be preserving their juristic individuality under the enactment. **1961 Ker LJ 288: ILR (1961 1 Ker 460 : 1961 Ker LT 297 : AIR 1961 Ker 242 (246, 247) (Pt C) (Pr 15) (DB).**

——**Art. 191** — Hyderabad Legislative Assembly (Prevention of Disqualification) Act (18 of 1955) —Not operative after re-organisation of States— Not available for removing disqualifications of members for being chosen to Legislative Assembly of re-organised State of Mysore. See States Reorganisation Act (1956), S. 119. **AIR 1963 Mys 81 (DB).**

5. Disqualification under law of Parliament.

——**Art. 191** — Rule 23 of Government Servants' Conduct Rules, 1926, if disqualifies a Government servant for election. See Government Servants' Conduct Rules (1926), R. 23. **AIR 1955 Cal 382 (DB).**

——**Art. 191 (1) (e)** — "Disqualified by or under any law made by Parliament" — (Life Insurance Corporation Act (1956), S. 49 — Regulations under — Reg. 29) — (Words and Phrases — "Disqualified by or under any law made by Parliament"). **(1958) 1 Mad LJ 367: ILR (1958) Mad 513 : 1958 Mad WN 329 : (1958-59) 14 ELR 21 : AIR 1958 Mad 343 (359, 360) (Pt B) (Prs 46, 48) (DB).**

ARTICLE 192

●——**Art. 192 (1) — Scope — Who can raise question — Ordinary citizen or voter can raise question under Art. 192 (1).**

What the first clause of Art. 192 (1) requires is that a question should arise; how it arises by whom it is raised, in what circumstances it is raised, are not relevant for the purpose of application of this clause. Such a question can be raised not only on the floor of the Legislative Assembly by members of the Assembly but also by an ordinary citizen or voter in the form of a complaint to the Governor. Any question of the type contemplated by clause (1) shall be decided by the Governor and Governor alone and by no other authority. The decision of the said question as such cannot fall within the jurisdiction of the Courts. Person who has incurred any of the disqualifications specified by Art. 191 (1) cannot continue to be a member of the Legislative Assembly of a State and the obligation to vacate his seat as a result of his subsequent disqualification having been imposed by the Constitution itself by Art. 190 (3) (a), any citizen can make a complaint to the Governor alleging that, such member of the Legislative Assembly has incurred one of the disqualifications mentioned in Art. 191 (1) and should, therefore, vacate his seat. Brundaban Nayak v. Election Commission of India. **(1965) 2 SCWR 960 : (1965) 2 SCA 177 : 1965 SCD 961 : 31 Cut LT 976 : AIR 1965 SC 1892 (1895, 1896) (Pt A) (Prs 9, 12, 13, 14).**

●——**Art. 192 (2) — Scope — Opinion by Election Commission — It is Election Commission and not the Governor which is to hold enquiry to arrive at such opinion.**

The scheme of Article 192 (1) and (2) is absolutely plain. The decision on the question raised under Art. 192 (1) has no doubt to be pronounced by the Governor, but that it must be in accordance with the opinion of the Election Commission. It is the opinion of the Election Commission, which is in substance decisive. When the Governor receives the complaint, and he forwards the same to the Election Commission, it can be assumed that the Election Commission should proceed to try the complaint before giving its opinion. It would not therefore, be correct to say that it is the Governor who should hold the enquiry and then forward to the Election Commission all the material collected in such an enquiry to enable it to form its opinion and communicate the same to the Governor. Brundaban Nayak v. Election Commisison of India, **(1965) 2 SCWR 960 : (1965) 2 SCA 177 : 1965 SCD 961 : 31 Cut LT 976: AIR 1965 SC 1892 (1896, 1897) (Pt B) (Prs 15, 16).**

●——**Art. 192 (2)** — Election Commission receiving complaint and order of reference by Governor — Election Commission acts within jurisdiction in sending notice to other party — Jurisdiction of Election Commission to hold enquiry is not affected merely because copies of complaint and order of reference have not been sent along with such notice. Brundaban Nayak v. Election Commission of India, **(1965) 2 SCWR 960 : (1965) 2 SCA 177 : 1965 SCD 961 : 31 Cut LT 976 : AIR 1965 SC 1892 (1897) (Pt C) (Pr 17).**

●——**Art. 192 (1) (2)** — Scope — Complaints made under Art. 192 (1) must be disposed of as expeditiously as possible. This is clear from Art. 190. Brundaban Nayak v. Election Commission of India. **(1965) 2 SCWR 960 : (1965) 2 SCA 177 : 1965 SCD 961 : 31 Cut LT 976 : AIR 1965 SC 1892 (1897, 1898) (Pt D) (Pr 20).**

●——**Art. 192 (1)** — Disqualification arising long before member's election — Jurisdiction of Governor and Election Commission to enquire into See Ibid, Art. 190 (3). **AIR 1953 SC 210.**

——**Art. 192** — Jurisdiction of Election Commission to enquire into corrupt practice—Whether affected by this Article. See Representation of the People Act (1951), S. 7. **AIR 1957 All 292 (DB).**

——**Arts. 192 (1), 191 (1) (a) — Remedy under, open — Writ of quo warranto not issued.**

Where the Constitution provides an adequate remedy in Art. 192 by way of a reference to the Rajpramukh, which remedy was both speedy and effective, redress to them by way of issue of writ of quo warranto could not be allowed. AIR 1954 SC 207, Rel. on. **ILR (1955) Hyd 292 : AIR 1955 Hyd 36 (39, 40) (Pt B) (Prs 13, 14, 15) (DB).**

ARTICLE 193

——**Art. 193 — Scope — Not exhaustive of penal powers of State Legislature.**

Article 193 merely places a restriction upon the power and privilege of the State Legislatures to punish persons sitting or voting in the Legislature unauthorisedly. This article cannot be read as exhaustive of all the penal powers of the State Legislatures. **(1965) 2 Cri LJ 170: ILR (1965) 2 All 281 : 1965 All WR (HC) 286 : 1965 All Cri R 213 : AIR 1965 All 349 (353) (Pt C) (Pr 7) (DB).**

ARTICLE 194

SYNOPSIS

(Constitution of India, Art. 194.)

1. Freedom of speech in the Legislature.
2. Publication of speech made in the Legislature.
3. Clause (3).
(a) Law made by State Legislature.
(b) Legislative functions of officers and members—Power of Court to Interfere.
(c) Power to punish for breach of privilege.
(d) Action for contempt—Interference by Court.
4. Freedom from arrest.

1. Freedom of speech in the Legislature.

●——**Art. 194 (1) and (2) and Art. 19 (1) (a) — Scope of Art. 194 (1) — It confers on legislators freedom of speech independently of Art. 19 (1) (a).**

Clause (1) of Art. 194, makes it clear that the freedom of speech in the Legislature of every State which it prescribes, is subject to the provisions of the Constitution, and to the rules and standing orders, regulating the procedure of the Legislature. While interpreting this clause, it is necessary to emphasise that the provisions of the Constitution subject to which freedom of speech has been conferred on the legislators, are not the general provisions of the Constitution but only such of them as relate to the regulation of the procedure of the Legislature. The rules and standing orders may regulate the procedure of the Legislature and some of the provisions of the Constitution may also purport to regulate it; these are, for instance, Arts. 208 and 211. The adjectival clause "regulating the procedure of the Legislature" governs both the preceding clauses relating to "the provisions of the Constitution" and "the rules and standing orders". Therefore, clause (1) confers on the legislators specifically the right of freedom of speech subject to the limitation prescribed by its first part. By making this clause subject only to the specified provisions of the Constitution, the Constitution makers wanted to make it clear that they thought it necessary to confer on the legislators freedom of speech separately and in a sense, independently of Art. 19 (1) (a). If all that the legislators were entitled to claim was the freedom of speech and expression enshrined in Art. 19 (1) (a), it would have been unnecessary to confer the same right specifically in the manner adopted by Art. 194 (1); and so, it would be legitimate to conclude that Art. 19 (1) (a) is not one of the provisions of the Constitution which controls the first part of clause (1) of Art. 194. Further the Constitution-makers attached so much importance to the necessity of absolute freedom in debates within the legislative chambers that they thought it necessary to confer complete immunity on the legislators from any action in any Court in respect of their speeches in the legislative chambers in the wide terms prescribed by clause (2). Thus, clause (1) confers freedom of speech on the legislators within the legislative chamber and clause (2) makes it plain that the freedom is literally absolute and unfettered. In the Matter of Under Art. 143 of the Constitution of India, **(1965) 1 SCJ 847: (1965) 1 SCA 447: AIR 1965 SC 745 (760) (Pt D) (Pr 31).**

●——**Art. 194 —Art. 194, whether is subject to other provisions of Constitution.**

All the four clauses of Art. 194, are not in terms made subject to the provisions contained in Part III. In fact, clause (2) is couched in such wide terms that, in excreising the rights conferred on them by clause (1), if the legislators by their speeches contravene any of the fundamental rights guaranteed by Part 3, they would not be liable for any action in any Court. Nevertheless, if for other valid considerations, it appears that the contents of clause (3), may not exclude the applicability of certain relevant provisions of the Constitution, it would not be reasonable to suggest that those provisions must be ignored just because the said clause does not open with the words "subject to the other provisions of the Constitution." In dealing with the effect of the provisions contained in clause (3) of Art. 194, wherever it appears that there is a conflict between the said provisions and the provisions pertaining to fundamental rights, an attempt will have to be made to resolve the said conflict by the adoption of the rule of harmonious construction. In the Matter of Under Art. 143 of the Constitution of India, **(1965) 1 SCJ 847: (1965) 1 SCA 447 : AIR 1965 SC 745 (761, 806, 807) (Pt F) (Prs 36, 196).**

——**Art. 194 — Scope and extent of privilege.**

Art. 194 of the Constitution makes it clear that the immunity from liability to prosecution extends to only what is said within the walls of the Legislature. It helps to secure a free, frank and fearless discussion in the Legislature. Similarly, official publications of the proceedings of the Legislature carry immunity for all concerned or connected with such publication. **ILR (1957) 3 Cal 529 : 60 Cal WN 971 : AIR 1956 Cal 433 (435) (Pt A) (Pr 12).**

——**Art. 194 (2) and (3) — Scope — If mutually exclusive.**

Clauses (2) and (3) of the Article are mutually exclusive and the powers, privileges and immunities of the latter clause can have nothing whatever to do with those of clause (2). The two clauses cannot possibly cover the same field. **ILR (1957) 3 Cal 529 : 60 Cal WN 971 : AIR 1956 Cal 433 (436) (Pt C) (Pr 19).**

——**Art. 194 — Member of Legislative Assembly — Extent of rights and privileges in respect to speech and publication.**

A member cannot be prosecuted for anything said in the Assembly Chamber nor can he be held liable in respect of any publication under the authority of the House of any report or proceedings. As a member of the Assembly the petitioner cannot have any further or higher constitutional rights of speech and publication than those guaranteed under clauses (1) and (2) of Art. 194. **ILR (1957) 3 Cal 529 : 60 Cal WN 971 : AIR 1956 Cal 433 (437) (Pt D) (Pr 22).**

——**Art. 194 (1) and (2) — Freedom of speech in legislature — Protection from legal proceedings.**

Cls. (1) and (2) of Art. 194 protect absolutely and completely a member in respect of any speech made by him in the Legislative Assembly or in any committee of the Legislature—His words spoken within the four walls of the Assembly are clearly and absolutely privileged and no proceeding either civil or criminal may be taken in respect of them. **55 Cal WN 745: 52 Cri LJ 1522: AIR 1951 Cal 176 (178) (Prs 21, 22) (DB).**

——**Art. 194 (1) — Scope — If controlled by Art. 211 — Freedom of speech in State Legislature — — Restrictions on.**

The freedom of speech referred to in Cl. (1) of Art. 194 is subject to the restrictions imposed by Art. 211. And the rules made by the State Legislature may further restrict that freedom of speech. Cl. (i) of R. 189 of the said Rules is intended to prevent discussion of any matter wider is sub judice in law Courts and Cl. (iv) is wider in its language than Art. 211 of the Constitution, inasmuch as it prohibits any reflection on any Court of law (not only of High Courts) in exercise of its judicial functions. **1958 Cri LJ 1055: ILR (1958) Cut 195 : AIR 1958 Orissa 168 (172, 173) (Pt C) (Pr 10) (DB).**

——**Art. 194 (1) and (2) — Scope.**

The Constitution deliberately uses the restrictive words, namely 'subject to the other provisions', etc., only in Cl. (1) of Art. 194 but omits the same from Cl. (2). Hence there is considerable force in the contention that the intention

of the framers of the Constitution is that the immunity conferred by Cl. (2) of Art. 194 should be unfettered.

Held on facts (i) that the Chief Minister was entitled to claim immunity under Cl. (2) of Art. 194. (ii) that the Editor, the Printer and Publisher of the newspaper had committed contempt of Court by publishing the speech of the Chief Minister as they could not claim immunity under Cl. (2) of Art. 194. **1958 Cri LJ 1055: ILR (1958) Cut 195: AIR 1958 Orissa 168 (175, 176, 177) (Pt E) (Prs 16, 17, 21, 22) (DB).**

——Art. 194 (2) and (3) — Speech in State Legislature amounting to contempt — Jurisdiction of High Court.

Per Barman, J.:— The High Court has no jurisdiction to take action against a Member of the Legislature for his speech in the Legislature even if it amounts to contempt. The appropriate procedure would be to leave the matter to the State Legislative Assembly to be referred to its Committees of Privileges in accordance with its own rules of procedure and the provisions of the Constitution. **1958 Cri LJ 1055: ILR (1958) Cut 195: AIR 1958 Orissa 168 (179, 180, 181) (Pt F) (Prs. 34, 36, 37, 38) (DB).**

——Art. 194 — Orissa Legislative Assembly Rules, R. 49 — Disallowing question relating to matter within Speaker's jurisdiction.

The right of freedom of speech conferred by Art. 194 (1) on the members of Assembly is subject to the other provisions of the Constitution and the rules framed by the Legislature.

Under Art. 194 (3) the powers and privileges of a member of a Legislature are same as those of a member of the House of Commons and as no question dealing with matters within the jurisdiction of the Speaker are allowed to be put by any written or public notice in the House of Commons the Speaker does not act in excess of the powers conferred on him by R. 49 in disallowing such question. **19 Cut LT 183: ILR (1953) Cut 404: AIR 1953 Orissa 111 (115) (Pt F) (Pr 9) (DB).**

2. Publication of speech made in the Legislature.

●——Art. 194 — Publication by member of question disallowed by speaker of Legislative Assembly — No absolute privilege — Penal Code (1860), S. 499.

So long as Parliament does not crystallise the legal position by its own legislation, the privileges, powers and immunities of a House of a State Legislature or Parliament or of its members are the same as those of the House of Commons. There is no absolute privilege attaching to the publication of extracts from proceedings in the House of Commons. So far as a member of the House of Commons is concerned, he has an absolute privilege in respect of what he has spoken within the four walls of the House, but there is only a qualified privilege in his favour even in respect of what he has himself said in the House, if he causes the same to be published in the public press. There is no absolute privilege in favour of a member of the Legislature in respect of a publication of a question at the instance of the member who had sought to put it in the house, but was disallowed by the Speaker, when that question contains defamatory imputations regarding the character of a person. (1794) 1 Esp 226 (228) and (1813) 1 M. and S. 273 (277, 278) and (1868) 4 QB 73, Rel. on: AIR 1959 SC 395, Dist. AIR 1956 Cal 433, Affirmed. Such a publication is not excepted by any of the exceptions contained in S. 499, I. P. C. from the law of defamation. Dr. Jatish Chandra Ghosh v. Hari Sadhan Mukherjee, **1961 SCD 216: (1962) 1 SCJ 411: 1962 Mad LJ (Cri) 298: (1961) 3 SCR 486: (1962) 2 Andh LT 35: 1961 (1) Cri LJ 743: 1961 All WR (HC) 231:1961 All Cr R 108: (1961) 1 Ker LR 370: AIR 1961 SC 613 (616, 617) (Prs 6, 7).**

●——Art. 194 (3) — Breach of privilege.

A report of the whole speech including the expunged portion in derogation to the orders of the Speaker passed in the House may, prima facie, be regarded as constituting a breach of the privilege of the House arising out of the publication of the offending news item. M. S. M. Sharma v. Sri Krishna Sinha, **(1959) 2 Mad LJ (SC) 125: (1959) 2 Andh WR (SC) 125: 1959 Mad LJ (Cr) 660: 1959 SCJ 925: (1959) Supp (1) SCR 806: AIR 1959 SC 395 (412) (Pt H) (Pr 32).**

●——Art. 194 — Breach of privilege.

It will be for the House on the advice of its Committee of Privileges to consider the true effect of the Speaker's directions that certain portions of the proceedings be expugned. It will again, be for the House to determine whether the Speaker's ruling made distinctly and audibly that a portion of the proceedings be expunged amounts to a direction to the Press reporters not to publish the same, and whether the publication of the speech directed to be expunged, is or is not a breach of the privilege of the House amounting to a contempt of the Speaker and the House. M. S. M. Sharma v. Sri Krishna Sinha, **(1959) 2 Mad LJ (SC) 125: 1959 SCJ 925: 1959 Mad LJ (Cr) 660: (1959) 2 Andh WR (SC) 125: (1959) Supp (1) SC R 806: AIR 1959 SC 395 (412, 413) (Pt J) (Pr 34).**

——Art. 194 — Publication of proceedings in legislature by a member — Extent of privilege — Questions sought to be put asked in Legislative Assembly but disallowed — Publication of — Member if can claim privilege in respect of such questions — (Penal Code (1860), S. 499).

Immunity from liability to proceedings in Court can only be claimed on proof of the fact that what was said was a part of the proceedings of the Legislature or that the offending words were part of the proceedings published under authority. The express constitutional provisions in Cls. (1) and (2) of Art. 194 are a complete and conclusive code as respects the privilege of free speech and immunity from liability to proceedings in Court. The petitioner, a member of a Legislative Assembly whose questions about the conduct of a Sub Divisional Magistrate were disallowed in the Legislative Assembly had them subsequently published in a newspaper. On a prosecution under S. 500, Penal Code, the member claimed a privilege under Art. 194 of the Constitution.

Held, that the Indian law of defamation does not exempt publication of the proceedings of the Legislature from the purview of the law. **ILR (1957) 3 Cal 529: 60 Cal WN 971: AIR 1956 Cal 433 (435, 436, 437) (Pt B) (Prs 13, 15, 18, 20).**

——Art. 194 (1), (2) and (3) — Speech by member of State Legislature — Extent of privilege — Publication in newspaper — Criminal proceedings if barred — Penal Code, Ss. 449 and 500.

Cls. (1) and (2) of Art. 194 of the Constitution protect absolutely and completely a member in respect of any speech made by him in the Legislative Assembly or in any Committee of the Legislature. His words spoken within the four walls of the Assembly are clearly and absolutely privileged and no proceeding, either civil or criminal, may be taken in respect of them.

It is clear from the words of Cl. (2) of Art. 194 that no publication of reports of proceedings of

a legislature is protected unless such is a publication authorised by the legislature. This clause has, therefore, no application whatsoever to the publication of such reports in a newspaper unless it was made under the authority of the legislature.

Clause (3) of Art. 194 can have no application to the case of publishers of a newspaper because it only applies to privileges, powers and immunities of members of the Legislative Assembly. It would apply to a member of the Legislative Assembly as such. If he makes a speech in the Assembly, he cannot possibly be held liable for its publication in a newspaper when he has himself done nothing to cause such publication. But if he in his private capacity causes his speech to be published in the newspaper, he would be liable in spite of Cl. (3) of Art. 194.

The rule of English law that a faithful report in a public newspaper of a debate in either House of Parliament is privileged, does not apply to India. That rule finds no place in the I. P. Code and, therefore, reports of proceedings of a legislature in an Indian newspaper, unless such are expressly authorised by the House are not the subject-matter of privilege and may found a complaint for defamation under S. 500, I. P. Code. **52 Cri LJ 1422: 55 CWN 745: AIR 1951 Cal 176 (178) (Pt A) (Prs 18, 21, 22, 28) (DB).**

3. Clause (3).

(a) Law made by State Legislature.
(b) Legislative functions of officers and members—Power of Court to interfere.
(c) Power to punish for breach of privilege.
(d) Action for contempt — Interference by Court.

3. Clause (3).

●——Art. 194 (3) — Powers, privileges and immunities — Inquiry as to.

The second part of Cl. (3) of Art. 194 requires that the powers, privileges and immunities which are claimed by the House of Legislature must be shown to have subsisted at the commencement of the Constitution, i.e., on the 26th January, 1950. In every case where a power is claimed it is necessary to enquire whether it was an existing power at the relevant time. It must also appear that the said power was not only claimed by the House of Commons, but was recognised by the English Courts. It would obviously be idle to contend that if a particular power which is claimed by the House of Legislature was claimed by the House of Commons but was not recognised by the English Courts, it would still be upheld under the latter part of Cl. (3) only on the ground that it was in fact claimed by the House of Commons. In the Matter of under Art. 143 of the Constitution of India, **(1965) 1 SCJ 847: (1965) 1 SCA 447: AIR 1965 SC 745 (761) (Pt E) (Pr 34).**

● ——Arts. 194 (3) and 13—Privileges claimed by House of Legislature — How far are they subject to fundamental rights.

Per Majority—So far as the question, namely, if it appears that any of the powers, privileges and immunities claimed by the House of Legislature are inconsistent with the fundamental rights guaranteed by the Constitution, how is the conflict going to be resolved, is concerned, a partial answer is to be found in Sharma's case, AIR 1959 SC 395. The majority decision in that case does not lay down a general proposition that whenever there is a conflict between the provisions of the latter part of Art. 194 (3) and any of the provisions of the fundamental rights guaranteed by Part 3, the latter must always yield to the former. The majority decision is to be taken to have settled that Art. 19 (1) (a) would not apply, and Art. 21 would.

Per Sarkar, J. :— Article 13 makes a law bad if it conflicts with fundamental rights. It cannot be argued that since Art. 13 might make laws made under Cl. (3) of Art. 194 void, the privileges conferred by the second part of that clause must also be void. Article 13 has no application to a provision in the Constitution itself. It governs only the laws made by a State Legislature which Art. 194 (3) is not. Therefore it cannot be held that because a law defining privileges if made, would be void if in conflict with fundamental rights, the privileges incorporated in Art. 194 (3) must also have been intended to be subject to the fundamental rights. If such was the intention, Cl. (3) would have started with a provision that it would be subject to the Constitution. In the Matter of under Article 143 of the Constitution of India, **(1965) 1 SCJ 847: (1965) 1 SCA 447: AIR 1965 SC 745 (765, 803, 804) (Pt H) (Prs 54, 184).**

●——Arts. 194 (3), 196 — Distinction between — 'Powers' meaning of — Dissolution of State Legislature, effect of — English practice cannot be availed of.

The powers, privileges and immunities of State Legislatures and their members with which Art. 194 deals have no reference or relevance to the legislative procedure which is the subject-matter of the provisions of Art. 196. In the context, the word 'powers' used in Art. 194 (3) must be considered along with the words 'privileges and immunities' to which the said clause refers, and there can be no doubt that the said word can have no reference to the effect of dissolution of the State Legislature. The two topics are entirely different and distinct and the provisions in respect of one cannot be invoked in regard to the other. Therefore, there is no constitutional basis for the argument that unless the Legislature by law has made a contrary provision the English convention with regard to the effect of dissolution shall prevail in this country. Purushothaman Nambudiri v. State of Kerala, **1962 Sup (1) SCR 753: 40 Mys LJ 193: (1962) 1 SCJ 477: (1962) 1 Mad LJ (SC) 180: (1962) 1 Andh WR (SC) 180: (1962) 1 SCA 681: 1962 Ker LT (SC) 1: (1962) 1 Ker LR 1: 1962 Ker LJ 86: AIR 1962 SC 694 (699, 700) (Pt B) (Pr 9).**

●——Art. 194 (3) — Legislature of States and their members — Powers, privileges and immunities of — (Per majority; Subba Rao, J., Contra).

The latter part of Art. 194 (3) confers all the powers, privileges and immunities on the House of the Legislature of the State. Its members and Committees shall have all the powers, privileges and immunities of the House of Commons at the date of the commencement of our Constitution. After finding that at the relevant time the House of Commons had a particular power, privilege or immunity to deny that to the House of the Legislature of the State will be not to interpret the Constitution but to re-make it. M. S. M. Sharma v. Sri Krishna Sinha, **(1959) 2 Mad LJ (SC) 125: (1959) 2 Andh WR (SC) 125: 1959 Mad LJ (Cr) 660: 1959 SCJ 925: (1959) Supp (1) SCR 806: AIR 1959 SC 395 (407, 421, 422) (Pt B) (Prs 23, 54).**

●——Art. 194 — Scope — Art. 19 (1) (a) subject to Art. 194 (3). AIR 1952 Madh Bha 31, Overruled.

Article 19 (1) (a) and Art. 194 (3) have to be reconciled and the only way of reconciling the same is to read Art. 19 (1) (a) as subject to the

latter part of Art. 194 (3). AIR 1952 Madh Bha 31. **Overruled;** 1954 Cri LJ 1704: AIR 1954 SC 636. Not foll. M. S. M. Sharma v. Sri Krishna Sinha. **(1959) 2 Mad LJ (SC) 125: 1959 Mad LJ (Cr) 660: (1959) 2 Andh WR (SC) 125: 1959 SCJ 925: (1959) Supp (1) SCR 806: AIR 1959 SC 395 (408, 409, 410, 417, 418) (Pt C) (Prs 26, 28, 43, 44).**

● ——Art. 194 (3) — Claim of privilege — Burden of proof is on claimant — (Per Subba Rao, J.)— M. S. M. Sharma v. Sri Krishna Sinha. **(1959) 2 Mad LJ (SC) 125: (1959) 2 Andh WR (SC) 125: 1959 Mad LJ (Cr) 660: 1959 SCJ 925: (1959) Supp (1) SCR 806: AIR 1959 SC 395 (419) (Pt K) (Pr 47).**

——Art. 194 (3) — 'Offence' in Art. 20 (2) — Meaning — Breach of parliamentary privilege — Double punishment for — Applicability of Art. 20 (2). See Ibid, Art. 20 (2). **1954 Cri LJ 691: AIR 1954 All 319 (DB).**

——Art. 194 (3) — Parliamentary privilege — What is.

Parliamentary privilege of the House of Commons in the United Kingdom is the sum of the fundamental rights of the House and of its individual members as against the prerogatives of the Crown, the authority of the ordinary Courts of law and the special rights of the House of Lords.

They are rights which a sovereign legislature must possess for the due execution of its powers. Some of them are enjoyed by individual members for the obvious reason that the House cannot perform its functions without an unimpeded use of their services and others by such House for the protection of its members and the vindication of its own authority, prestige, power and dignity.

Though the distinction between privilege and functions is not always apparent, the more convenient course is to reserve the term 'privilege' to certain fundamental rights of each House which are generally accepted as essential for the exercise of its constitutional functions. **ILR (1955) 1 All 25: 1954 Cri LJ 691: AIR 1954 All 319 (325) (Pt E) (Prs 9, 10) (DB).**

——Art. 194 (3) — Procedure followed by British Parliament — Binding effect on Indian Legislatures.

Though Art. 194 declares that the privileges of each House of the State Legislature and the members thereof shall be, save in respect of matters specified in Cls. (1) and (2) of Art. 194, the same as those enjoyed by the British House of Commons and its members, it does not follow that the Speaker and the State Legislature are bound to follow the procedure in the British Parliament in every detail. After all, there is nothing sacrosanct about that procedure. **ILR (1955) 1 All 25: 1954 Cri LJ 691: AIR 1954 All 319 (327, 328) (Pt I) (Prs 14, 15) (DB).**

——Arts. 194 (3), 20 (2)—Art. 194 (3) not governed by Art. 20 (2).

Fundamental rights cannot govern, except of course where it is specifically or by implication intended that they should, various part of the Constitution. The frame of Art. 194, remembering the rules of grammatical construction, cannot be ignored. The omission of the words "subject to any provision of the Constitution" as governing Cls. (2), (3) and (4) of Art. 194 has a significance which cannot be omitted from consideration. It is thus clear that Art. 194 (3) is not governed by Art. 20 (2) of the Constitution. (Blitz case) and AIR 1941 Rang 151, Distinguished.

(Per Contra).— If there had been double punishment of the petitioner for the same offence—offence as contemplated by Art. 20 (2) of the Constitution—then the petitioner would have been entitled to relief by the Court because the privileges, immunities and powers of the House or its Speaker could not override the positive prohibitions contained in the Constitution nor could they make the provisions of Part 3, the fundamental right, nugatory, even though Art. 194 (3) has not been made specifically subject to the other provisions of the Constitution. To hold otherwise would be to place the Speaker or the Legislature of a State, above the Constitution which can never be held. **ILR (1955) 1 All 25: 1954 Cri LJ 691: AIR 1954 All 319 (330, 331, 340) (Pt K) (Prs 27, 30, 68) (DB).**

——Art. 194 (3) — Use of English precedents — (C. P. Code (1908), Preamble.).

Apart from the persuasive authority of great value of English decision there is a definite provision in Art. 194 (3) of the Constitution which enjoins the Courts to look to those authorities in order to know for certain what the powers, privileges and immunities of the Legislatures of the States are. **ILR (1955) 1 All 25: 1954 Cri LJ 691: AIR 1954 All 319 (338) (Pt R) (Pr 65) (DB).**

——Art. 194 — Court dealing with limitations of powers and privileges of State Legislature — American precedents cannot be depended on. ILR (1958) 10 Assam 461: AIR 1958 Assam 160 (168, 169) (Pt F) (Pr 12) (DB).

——Arts. 194 (3), 12 and 79 — Words "other authorities" as referred in Art. 12 — Meaning of — House of Legislature is separate entity not coming under Art. 12 or 79. See Ibid, Art. 12. **60 Bom LR 279: ILR (1957) Bom 218.**

——Art. 194 — Privileges of members — Extent of.

(Per Dixit J.)— Under Art. 194, the powers, privileges, and immunities of State Legislatures and their members are not absolute. They are subject to the provisions of the Constitution and are modified by the fundamental principle, that it is the Constitution which is supreme and not the Legislature. It cannot, therefore, be inferred from the possession of certain powers and privileges by the House of Commons of the Parliament of the United Kingdom, that the like powers necessarily belong to the Legislatures under the Constitution. If a power or privilege claimed by the Legislature is clearly repugnant to the Constitution, then notwithstanding the fact that it is one which the House of Commons enjoyed at the commencement of the Constitution, it must be denied to the Legislature. **ILR (1952) Madh Bha 145: AIR 1952 Madh B 31 (43, 44) (Pt Q) (Pr 43) (DB).**
[**Overruled** in AIR 1959 SC 395.].

——Arts. 194, 226 — Privileges of member — Determination — Jurisdiction of High Court.

(Per Somasundaram, J.:)— The obligation to ascertain and determine the privileges of a member of the House rests primarily and in the first instance with the House and House only and jurisdiction of the High Court comes in only later, i.e., when the House fails to perform its duties or refuses to perform its duties or performs it contrary to clause 3 of Art. 194. **ILR (1953) Mad 93: 64 Mad LW 1031: 1951 Mad WN Cr 258: 1951**

Mad WN 838 : 1952-1 Mad LJ 1 : AIR 1952 Mad 117 (119) (Pt C) (Pr 10) (DB).

3 (a). Law made by State Legislature.

●——**Arts. 194 (3) and 13 — Law made by State Legislature in exercise of power conferred by first part of Art. 194 (1) — It will be governed by Art. 13.**

If the Legislature of a State were to make a law in pursuance of the authority conferred on it by clause (3) of Art. 194, it would be law within the meaning of Art. 13, and clause (2) of Art. 13 would render it void if it contravenes or abridges the fundamental rights guaranteed by Part III. In other words if a law is made under the purported exercise of the power conferred by the first part of Cl. (3), it will have to satisfy the test prescribed by the fundamental rights guaranteed by the Constitution. AIR 1959 SC 395, Rel. on. In the Matter of, under Art. 143 of the Constitution of India, **(1965) 1 SCJ 847 : (1965) 1 SCA 447 : AIR 1965 SC 745 (761, 762, 766) (Pt G) (Prs 37, 56).**

●——**Arts. 194, 208 — Deprivation of personal liberty — Art. 21.**

The Bihar Legislative Assembly has framed rules in exercise of its powers under Art. 208. It follows that Art. 194 (3) read with the rules has laid down the procedure for enforcing its powers, privileges and immunities. If the petitioner is eventually deprived of his personal liberty as a result of the proceedings before the Committee of Privileges, such deprivation will be in accordance with procedure established by law and the petitioner cannot complain of the breach of his fundamental right under Art. 21. M. S. M. Sharma v. Sri Krishna Sinha, **(1959) 2 MLJ (SC) 125 : (1959) 2 Andh WR (SC) 125 : 1959 MLJ (Cr) 660 : 1959 SCJ 925 : (1959) Supp (1) SCR 806 : AIR 1959 SC 395 (410, 411) (Pt E) (Pr 29).**

——**Arts. 194 (3), 183, 185 and 208 (1)**—Rule 143 of the rules of procedure and conduct of business of U. P. Legislative Council framed under Art. 208 (1) —Validity — Rule is not ultra vires but is constitutionally valid. See Ibid, Art. 183. **AIR 1963 All 75.**

——**Arts. 194 (3), 20 (2), 13 (3) — Resolution of House — Nature of.**

A resolution is an expression of the opinion of the House or at best a recommendation on any particular matter. It has not the status of a law. (1839) 9 Ad. and E. 1 at p. 14, Rel. on.

Held, that the resolution of a State Legislature suspending a member was not a law subject to the provisions of Art. 20 (2) or a judgment of a Court of Justice.

Further, that even having regard to the very wide language in which the word 'Law' is used in Art. 13 (3), a resolution could not be accurately described as a law, for it was a mere expression of opinion which could have a binding effect in cases of privileges. **ILR (1955) 1 All 25: 1954 Cr LJ 691 : AIR 1954 All 319 (331, 332) (Pt L) (Prs 31, 32) (DB).**

3(b). Legislative functions of officers and members—Power of Court to interfere.

●——**Arts. 194 and 212 — Irregularity of procedure in Legislature — Immunity from legal proceedings — Art. 32.**

The Legislature has the jurisdiction to go into the question whether there has been complete jurisdiction to carry on its proceedings in accordance with its Rules of Business. Non-compliance of the procedure laid down in the Rules of Business cannot be a ground for interference by the Supreme Court under Art. 32 of the Constitution. AIR 1951 SC 217, Rel. on. M. S. M. Sharma v. Dr. Shree Krishna Sinha, **(1961) 1 Ker LR 8 : 1961 SCD 79 : (1961) 2 SCA 582 : (1961) 1 SCR 96 : (1961) 2 SCJ 73 : AIR 1960 SC 1186 (1190, 1191) (Pt B) (Pr 10).**

——**Art. 194 (3) — Breach of parliamentary privilege — Jurisdiction of Court.**

Though neither House in England has ever expressly renounced the claim not only to be the judge of the breach of its own privileges but of their very existence or limits, the Courts have nevertheless consistenly taken the view that neither House of Parliament has power by any vote, resolution or declaration to create for themselves new privileges not justified by the known laws and customs of Parliament.

Each house in Britain possesses (a) the right of being the exclusive judge of the legality of its own proceedings, (b) the right to punish its own members for their conduct in Parliament, and (c) the right to settle its own proceedings. It is settled law that the House of Commons is not responsible to any external authority for following the rules it lays down for itself for the transaction of its own business. It is open to the House to depart from them at its own discretion. Even where the procedure of the House or the right of its members to take part in its proceedings is dependent on statute—and this is important—the House is immune from scrutiny by Courts as to the manner in which it interprets them. It follows from this that for such purposes the House can practically change or supersede the law. (1704) 24 D Ravn 1105; (1811) 14 East 1 at p. 145; (1939) 9 Ad. & E. 1 at p. 14; (1840) 11 Ad. and E. 273 and (1884) 12 QBD 271, Ref. **ILR (1955) 1 All 25 : 1954 Cr LJ 691 : AIR 1954 All 319 (326) (Pt F) (Pr 11) (DB).**

——**Art. 194 (3) — Breach of privilege —Finality of decision of Speaker.**

Even an erroneous decision by Mr. Speaker of the House in respect of a breach of privilege cannot be the subject-matter of scrutiny by a Court of law. Finality attaches where under cover of it no new privilege is created by the House to a decision of the House in respect of a matter relating to its privileges. (1884) 12 QBD 271 and (1935) 1 KB 594, Rel. on.

Obviously, the High Court is not, in any sense whatever a Court of appeal or revision against the legislature or against the rulings of the Speaker who, as the holder of an office of the highest distinction, has the sole responsibility cast upon him of maintaining the prestige and dignity of the House. **ILR (1955) 1 All 25: 1954 Cri LJ 691: AIR 1954 All 319 (326, 327) (Pt G) (Prs 12, 13) (DB).**

——**Arts. 194 (3), 121, 211 — Matter exclusively in Speaker's jurisdiction — Correct etiquette for Courts.**

As it is right and proper that judicial authorities should be free from criticism so far as their judicial work is concerned in the State Legislature or Parliament, correct etiquette requires that the judiciary, on its part too, should refrain from comments in regard to a matter which is exclusively within the jurisdiction and authority of the speaker and the State Legislature, **ILR (1955) 1 All 25 : 1954 Cr LJ 691 : AIR 1954 All 319 (327) (Pt H) (Pr 13) (DB).**

——**Art. 194** — Andhra Pradesh Regional Committee Order (1958) and bye laws made thereun-

der — Andhra Pradesh Assembly Rules — 'Regional' Bill referred to Regional Committee—Bill passed by Legislature after considering Regional Committee's report — Absence of notice to some members of the Regional Committee about its meeting — Effect — Proceedings of Committee if null and void — Injunction to restrain Council of Ministers from presenting the Bill to the Governor for assent — Power of High Court. See Ibid, Art. 166. **AIR 1965 Andh Pra 306.**

——**Arts. 194, 203, 212, 226** — Passage of Bill in Legislature — Matter of internal procedure of Legislature—High Courts have no power to interfere. **(1965) 1 Andh WR 304: AIR 1965 Andh Pra 306 (314) (Pt E) (Pr 19).**

——**Art. 194 (3)** — Proceedings inside Legislative Chamber — Extent of powers and privileges of Legislature — Proceedings not merely irregular but illegal or unconstitutional — High Court is competent to issue mandate upon Legislature. See Ibid, Art. 226. **(1965) 69 Cal WN 484: AIR 1966 Cal 363.**

——**Art. 194** — Writ against legislative body to prevent it from making certain law. See Ibid, Art. 226. **AIR 1956 Cal 378.**

——**Art. 194** — Officers and members of Parliament or Legislature — Power of Court to interfere with their legislative functions. See Ibid, Art. 105. **AIR 1956 Hyd 186 (DB).**

——**Arts. 194 (3), 226, 201 — Kerala State Legislature — Legislative proceedings — Immunity from judicial process — Complaint that intended legislation contravenes constitutional provisions — No interference by High Court under Art. 226.**

In the absence of any legislative enactment in respect of the privileges and immunities of the Kerala Assembly, the Kerala Assembly, under Art. 194 (3), enjoys the privileges and immunities similar to those enjoyed by the British House of Commons on the date the Constitution was inaugurated. The immunity of the House of Commons from the judicial process was not doubted in 1950. (1871) 6 CP 576, (1884) 12 QBD 271, AIR 1951 All 228, AIR 1952 Orissa 234, AIR 1953 Orissa 111, AIR 1953 Assam 162, AIR 1954 All 319, AIR 1959 SC 395 and AIR 1960 SC 1186, Rel. on; AIR 1925 Cal 373 and AIR 1946 Cal 121, Not foll.

The reconsideration of a bill after it is returned to the Assembly with a direction by the President under Art. 201 Proviso, is within proceedings of the Assembly so as to preclude the High Court from interfering with those proceedings under Art. 226. **1960 Ker LT 1157: 1960 Ker LJ 1531: ILR (1961) 1 Ker 298: AIR 1961 Ker 324 (327, 328, 329, 330) (Pt A) (Prs 10, 13, 17) (DB).**

——**Art. 194 (3) — Immunity of Speaker from Jurisdiction of Court.**

Clause (3) of Art. 194 of the Constitution confers on the House of Legislature (during the interim period) the same powers, privileges and immunities which the House of Commons possesses. Therefore, the Orissa Legislative Assembly may justifiably claim immunity from interference by the Courts in the administration of those statutory rules which have relation to its own internal proceedings under Art. 194 (3), apart from the provision of Art. 212 (2).

Though the Clause does not refer to the officers of the Legislature, it refers to the privileges and immunities of a House of Legislature as distinct from the privileges and immunities of the members of the Legislature. A Legislature cannot act by itself in a body; it must act through its officers and it is difficult to conceive of the immunities of a Legislature as distinct from the immunities of the Speaker who is representative of the House in its powers, proceedings and dignity.

(Provisions of Art. 194 (3) compared with those of S. 71 (2). Government of India Act, 1935), **19 Cut LT 183: ILR (1953) Cut 404: AIR 1953 Orissa 111 (116, 117) (Pt I) (Prs 12, 13) (DB).**

——**Arts. 194 (3), 212 (2)** — Immunity of Speaker — Whether the immunity under Art. 194 (3), is wider than that under Art. 212 (2) (Quaere). **19 Cut LT 183: ILR (1953) Cut 404: AIR 1953 Orissa 111 (116, 117) (Pt J) (Pr 12) (DB).**

3 (c). Power to punish for breach of privilege.

——**Arts. 194 (3) and 20 (2)—Rules of Procedure of U. P. Assembly, R. 189 — State Assembly — Not a Court of Justice.**

The State Legislature is not a Court of law or of justice except of course, in the most strictly limited sense that in the exercise of regulating its proceedings it can proceed against a person or even a stranger for breaches of privilege. (1884) 12 QBD 271, Rel. on. **ILR (1955) 1 All 25: 1954 Cr LJ 691: AIR 1954 All 319 (333) (Pt N) (Pr 37) (DB).**

——**Arts. 194, 212, 226** — Breach of privilege of legislature — Powers of the House to punish — Extent of — Unauthorised publication by newspapers of certain committee report — Motion for breach of privilege — Matter referred to Privilege Committee for investigation and report —Committee issuing show cause notice to editors — Writ petition against notice — Held, Court had no jurisdiction to interfere at that stage. AIR 1958 Assam 160, Rel. on. **AIR 1965 Assam 74 (77, 78) (Prs 11, 12).**

——**Art. 194 — Privileges under — Not affected by provisions of fundamental rights.**

There is no expression used nor is there anything implied to suggest that anywhere in the Constitution, Art. 194 has been qualified or cut down. Art. 194 (1) alone is made subject to the provisions of the Constitution and sub-head (3) is not made subject to the provisions of the Constitution and it is a legitimate inference to draw that the Framers of the Constitution did so deliberately. In sub-cl. (3) of that Article there appear the words "in other respects" which clearly indicate a clear dividing line indicating the clear adoption of the absolute privilege of the House of Commons. In these circumstances, the only conclusion one can come to is that none of the Articles relating to fundamental rights apply to the House of the Legislature and control Art. 194 and that there is no express limitation on the House although limitations are to be found on the powers of the State, on the powers of the judiciary and on the powers of the executive, nor can be found anywhere in the Constitution that there is any such limitation by implication. It is therefore, clear that construction of Articles set out in the Constitution with reference to fundamental rights must be made to reconcile with Art. 194, namely leaving the privileges of the House inviolate and not make the privileges nugatory by such reading of other Articles. English Case-laws Discussed. **60 Bom LR 279: ILR (1957) Bom 218.**

3 (d). Action for contempt—Interference by Court.

●——**Art. 194 (3)** — Power to punish for contempt should be cautiously exercised — Same principles which guide Courts in the matter also gov-

erns the legislature. See Ibid, Art. 129. **AIR 1965 SC 745.**

●——**Arts. 194 (3) and 226 — Contempt of Legislative Assembly — Committal of citizen for contempt of Legislative Assembly on general warrant — Petition to High Court by citizen's Advocate to issue writ of habeas corpus — Citizen released on bail by High Court — Assembly holding Judges of High Court, Advocate and citizen responsible for having committed its contempt — Reference of case to Supreme Court by President — Opinion of Supreme Court — Held, contempt was not committed.**

K printed and published a pamphlet. The Speaker of the Legislative Assembly administered a reprimand to K, who was not a member of the Assembly, for having committed contempt of the Assembly, and also for having committed a breach of the privileges of members of the Assembly by the publication of the pamphlet. Later on the same day, the Speaker directed that K be committed to prison for committing another contempt of the Assembly by his conduct therein. A warrant was issued over the signature of the Speaker directing that K be detained in the jail for a period of seven days and in execution of the warrant K was detained in the jail. Thereafter a petition, under S. 491, Criminal P. C., and Art. 226 of the Constitution was presented to the High Court by an Advocate on behalf of K alleging that his detention in jail was illegal. This petition was taken before a Division Bench of the High Court which passed an order that K should be released on bail on furnishing two sureties. On receiving the information of the release of K on bail, the Assembly by a resolution took the view that the two Judges of the High Court, K and his Advocate had committed contempt of the Assembly, ordered that K should immediately be taken into custody and the two Judges and the Advocate be brought in custody before the Assembly. On hearing about this order the two Judges and the Advocate made separate petitions to the High Court under Art. 226 contending that the resolution passed by the Assembly amounted to contempt of Court that it was wholly without jurisdiction, that it should be set aside and that by an interim order its implementation should be stayed. On these petitions the Full Bench of the High Court ordered by a notice restraining the Speaker of the Assembly from issuing the warrant in pursuance of the direction of the Assembly and from securing execution of the warrant if already issued. When the incidents reached this stage, the President of India decided to exercise his power to make a reference to the Supreme Court under Art. 143 (1). The controversy disclosed by the five questions formulated by the President was whether the Assembly was the sole and exclusive judge of the issue as to whether its contempt had been committed where the alleged contempt had taken place outside the four walls of the Assembly and whether if in enforcement of its decision the Assembly issues a general or unspeaking warrant, the High Court was entitled to entertain a habeas corpus petition challenging the validity of the detention of the person sentenced by the Assembly. The Supreme Court expressed its opinions on the facts and circumstances of the case as follows: (1) that it was competent for the Division Bench of the High Court to entertain and deal with the petition of K challenging the legality of the sentence of imprisonment imposed upon him by the Legislative Assembly for its contempt and for infringement of its privileges and to pass orders releasing K on bail pending the disposal of his said petition; (2) that K by causing the petition to be presented on his behalf to the High Court, the Advocate by presenting the said petition, and the two Judges of the Division Bench by entertaining and dealing with the said petition and ordering the release of K on bail pending disposal of the said petition, did not commit contempt of the Legislative Assembly; (3) that it was not competent for the Legislative Assembly to direct the production of the said two Judges and the Advocate before it in custody or to call for their explanation for its contempt; (4) that it was competent for the Full Bench of the High Court to entertain and deal with the petitions of the said two Judges and the Advocate, and to pass interim orders restraining the Speaker of the Legislative Assembly and others from implementing the aforesaid direction of the said Legislative Assembly; and (5) that in a case arising out of a contempt alleged to have been committed by a citizen who is not a member of the House of Legislature outside the four walls of the legislative chamber, a Judge of a High Court who entertains or deals with a petition challenging any order or decision of a Legislature imposing any penalty on the petitioner or issuing any process against the petitioner for its contempt, or for infringement of its privileges and immunities, or who passes any order on such petition, does not commit contempt of the said Legislature; and the said Legislature is not competent to take proceedings against such a Judge in the exercise and enforcement of its powers, privileges and immunities. In the Matter of under Article 143 of the Constitution of India, **(1965) 1 SCJ 847: (1965) 1 SCA 447: AIR 1965 SC 745 (791, 807, 808) (Pt A) (Prs 143, 197, 200 to 204).**

●——**Art. 194 (3) — Privilege of Legislature — Power to take action against Judge of High Court for contempt.**

Per Majority: Where a Judge of a High Court in the discharge of his duties passes an order or makes observations which in the opinion of the House of Legislature amount to contempt, and the House proceeds to take action against the Judge in that behalf, such action on the part of the House cannot be protected or justified by any specific provision made by the latter part of Art. 194 (3). Whatever may be the extent of the powers and privileges conferred on the House by the latter part of Art. 194 (3), the power to take action against a Judge for contempt alleged to have been committed by him by his act in the discharge of his duties cannot be included in them. In the Matter of under Art. 143 of the Constitution of India, **(1965) 1 SCJ 847: (1965) 1 SCA 447: AIR 1965 SC 745 (769, 770, 808, 809) (Pt M) (Prs 67, 69, 205, 210).**

●——**Arts. 194 (3), 226, 21 and 32—Privilege of Legislature — Power to punish citizen for contempt on general warrant — History of such power possessed by House of Commons — Conflict between exercise of such power by Legislature and fundamental right of citizen — (Per Majority) Exercise of such power by Legislature is not conclusive (Per Sarkar, J. — Contra).**

The House of Commons of the Parliament of the United Kingdom being part of the High Court of Parliament is a superior Court and the general warrants issued by it cannot be subjected to the close scrutiny, just as similar warrants issued by other superior Courts of record are held to be exempt from such scrutiny. The right claimed by the House of Commons not to have its general warrants examined in habeas corpus proceedings has been based more on the consideration that the House of Commons is in the position of a

superior Court of record and has the right like other superior Courts of record to issue a general warrant for commitment of persons found guilty of contempt. Like the general warrant issued by superior Courts of record in respect of such contempt, the general warrants issued by the House of Commons in similar situations should be similarly treated. It is on that ground that the general warrants issued by the House of Commons were treated beyond the scrutiny of the Court in habeas corpus proceedings. However, even while recognising the validity of such general warrants, Judges in the United Kingdom have frequently observed that if they were satisfied upon the return that such general warrants were issued for trivolous or extravagant reasons, it would be open to them to examine their validity.

The House of Legislature and indeed all the Legislative Assemblies in India, never discharged any judicial functions and their historical and constitutional background does not support the claim that, they can be regarded as Courts of Record in any sense. If that be so, the very basis on which the English Courts agreed to treat a general warrant issued by the House of Commons on the footing that it was a warrant issued by a superior Court of Record, is absent in the present case, and so, it would be unreasonable to contend that the relevant power to claim a conclusive character for the general warrant which the House of Commons, by agreement, is deemed to possess, is vested in the House of Legislature.

The impact of the fundamental constitutional right conferred on Indian citizens by Art. 32 on the construction of the latter part of Art. 194 (3) is decisively against the view that a power or privilege can be claimed by the House, though it may be inconsistent with Art. 21. In this connection, it may be relevant to recall that the rules which the House has to make for regulating its procedure and the conduct of its business have to be subject to the provisions of the Constitution under Article 208 (1). Where a citizen has the right to move the High Court or the Supreme Court against the invasion of his fundamental rights, the statutory right of the Advocate conferred by section 30, Advocates Act, 1961 to assist the citizen steps in and helps the enforcement of the fundamental rights of the citizen. In the enforcement of fundamental right guaranteed to the citizens the legal profession plays a very important and vital role, and so, just as the right of the judicature to deal with matters brought before them under Art. 226 or Art. 32 cannot be subjected to the powers and privileges of the House of Legislature under Art. 194 (3), so the rights of the citizens to move the judicature and the rights of the Advocates to assist that process must remain uncontrolled by Art. 194 (3). That is one integrated scheme for enforcing the fundamental rights and for sustaining the rule of law in this country. Therefore, the right to punish a citizen for contempt on a general warrant which the House of Legislature claims to be, an integral part of its power or privilege is inconsistent with the material provisions of the Constitution and cannot be deemed to have been included under the latter part of Art. 194 (3). On the construction of the latter part of Art. 194 (3) and in the light of the assistance which is derived from the other relevant and material provisions of the Constitution, it is necessary to hold that the particular power claimed by the House of Legislature that, its general warrants must be held to be conclusive cannot be deemed to be the subject-matter of the latter part of Art. 194 (3).

Per Sarkar, J.: There is no authority to support the contention that the power to commit by a general warrant with the consequent deprivation of the jurisdiction of the Courts of law in respect of that committal is something which the House of Commons had because it was a superior Court. The House of Commons was not itself ever a Court. The History of that House does not support such a contention. The power to commit by a general warrant with the consequent deprivation of the Court's jurisdiction to adjudicate on the legality of the imprisonment is a matter of privilege of the House and not as a right possessed by it as a superior Court. This privilege is possessed by the Legislative Assembly by reason of Art. 194 (3) of the Constitution.

When there is a conflict between a privilege conferred on a House by the second part of Art. 194 (3) and a fundamental right, that conflict has to be resolved by harmonising the two provisions. It would be wrong to say that the fundamental right must have precedence over the privilege simply because it is a fundamental right or for any other reason. In the present case the conflict is between the privilege of the House to commit a person for contempt without that committal being liable to be examined by a Court of law and the personal liberty of a citizen guaranteed by Art. 21 and the right to move the Courts in enforcement of that right under Art. 32 or Art. 226. If the right to move the Courts in enforcement of the fundamental right is given precedence, the privilege which provides that if a House commits a person by general warrant that committal would not be reviewed by Courts of law, will lose all its effect and it would be as if that privilege had not been granted to a House by the second part of Art. 194 (3). This cannot be. In the Matter of under Article 143 of the Constitution of India. **(1965) 1 SCA 447 : (1965) 1 SCJ 847 : AIR 1965 SC 745 (780, 781, 786, 787, 788, 796, 797, 798, 802, 806, 807) (Pt N) (Prs 107, 109, 125, 127, 132, 134, 160, 161, 175, 196).**

——**Art. 194 (3)** — Member of U. P. Legislative Assembly convicted by the Assembly for its contempt — Petition for writ of habeas corpus under Art. 226 — Conviction cannot be challenged on ground of violation of Art. 21 or of principles of natural justice. See Ibid, Art. 21. **(1965) 2 Cri LJ 170 : AIR 1965 All 349 (DB).**

——**Art. 194 (3) — Legislative Assembly — Powers of — Has power to punish for its contempt.**

The Legislative Assembly has, by virtue of Art. 194 (3) the same power to commit for its contempt as the House of Commons has.

There is no provision in the Constitution which contains any express or implied prohibition against the exercise by the Legislative Assembly of the privilege enjoyed by the House of Commons to commit for its contempt. The fact that the power or privilege to commit for contempt is in the nature of a judicial power is not a compelling reason for denying the power to the Legislative Assembly as there is no rigid separation of powers under our Constitution. The mere fact that, the action of the House is justiciable before a Court of law can be no ground for holding that the Legislature has no power to take such action. There is no warrant for the proposition that unless the House has complete immunity inside and outside, it cannot be held to possess the power to commit for contempt. AIR 1965 SC 745 and AIR 1959 SC 395, Rel. on. **(1965) 2 Cri LJ 170 : ILR (1965) 2 All 281 : 1965 All WR (HC) 286 : 1965 All Cr R 213 : AIR 1965 All 349 (352, 353, 354) (Pt B) (Prs 6, 8, 10) (DB).**

——Arts. 194 and 105 — Rights and privileges of Houses of Parliament and Houses of State Legislatures — Speaker's right to take notice of contempt and commit.

By virtue of the Indian Constitution, the powers and privileges to commit a person for contempt of its high authority and for breach of its privileges are enjoyed by the Houses of Parliament in India and the Houses of the State Legislatures. Ordinarily the Speaker would not take notice of an alleged contempt or breach of privilege, except where it is committed, in the House itself, provided the matter is brought to his notice. He himself can take notice of such contempt and set the machinery in motion for appropriate action. **ILR (1958) 10 Assam 461 : AIR 1958 Assam 160 (163, 164) (Pt A) (Pr 5) (DB).**

——Art. 194 (3) — Contempt matters — Privilege of House — Warrant issued by Speaker can be executed outside State.

The privilege of the House in contempt matters must be on a par with the power of the High Court under section 5 Contempt of Courts Act. Jurisdiction of High Court is limited so that, the Courts may not reach out of the territorial limitations of State in particular matter. There is no such limitation on the exercise of privilege by the House. It is true that, in England a writ or warrant could be executed if issued by the Speaker only throughout Great Britain and not beyond the realm. But there is no reason why a limit, unless imposed by the Constitution should be imposed on the writ of a Court of Record composed of a House of the Assembly. Art. 194 (3) is in identical terms with Art. 105 (3) which provides for the powers, privileges, etc., of the Houses of Parliament, namely, the Central Assembly and there is no indication whatever in the Constitution to show that any limitation is expressly or impliedly imposed whereby the writ cannot run outside the territory of the State. Execution of the order of the House is incidental to the power of exercising privilege and in the absence of any provision as regards territorial limitation either express or implied it would be tantamount to affecting the content of the privilege itself if the Legislature is denied execution thereof outside the range of the boundaries of the State. To hold to the contrary would be to cut down the privilege itself. Article 194 makes sub-Art. (1) subject to the provisions of the Constitution but sub-Art. (3) is not made subject to the provisions of the Constitution. It is clear therefore, that the House of the Legislative Assembly of a State is fully entitled to protect its dignity by the exercise of the privilege expressly conferred on it under Art. 194 and in exercise of that privilege it can issue a warrant which on the face of it may state that it is for contempt of the House and, therefore, that warrant being a general warrant is not subject to scrutiny and that such warrant can be validly executed outside the borders of the State. The power to punish for contempt must imply and implies procedure to enforce it and it must be part of the privilege of the House to make its orders effective. AIR 1952 MB 145 and 1952 Cuttack 209, Dist. Other case laws disc. **ILR (1957) Bom 218 : 60 Bom LR 279.**

——Art. 194 (3) — Punishment for contempt — Powers of Legislature — Enforcement of order — Mode of — Rules of Procedure of the U. P. Legislative Assemly, Rr. 189 and 198.

Previously the powers of the Legislature had been expressly limited under the Government of India Act, 1935, in connection with privileges and the right to commit for contempt. The Constitution removed all these disabilities of the Legislature in the Centre as well as in the States and although the Constitution as cast is more akin in its frame work to the Constitution of the United States of America yet as far as this particular question of privilege is concerned, the Framers of the Constitution went to the House of Commons as a model. Under Art. 194 (3) when it prescribed that the privileges shall be those of the House of Commons of the Parliament of United Kingdom, the power to punish for contempt is expressly conferred on the House in clear and unequivocal terms and, therefore, the exercise of that power is identical with that of the House of Commons. English case law disc.

Under Rr. 189 and 198 of Rules of Procedure of the U. P. Legislative Assembly the Speaker may employ for that purpose and call in aid for that purpose any outside agency and an officer engaged by the speaker on behalf of the House for the enforcement such an order is entitled in his turn to ask for outside aid. Use of force for the purpose of enforcing the orders of the Assembly is an absolute ingredient of the privilege to commit and punish for contempt and merely because there are no officers corresponding to that of the serjeant-at-arms, it does not follow that the content of the privilege is thereby lessened or destroyed, but the point of the privilege remains entirely unaffected. **ILR (1957) Bom 218 : 60 Bom LR 279.**

——Arts. 194 (3), 208 (2) and 212 (1) — Working of Legislature — Procedure for — Business transacted prior to prorogation does not lapse — Applicability of Art. 212 (1).

The Constitution, although it grants the privileges and immunities of the House of Commons under Art. 194 (3), does not assimilate the procedure of the House of Commons for the purposes of the working of a House of the State under the Constitution. Under Art. 208 (2) until rules are made as regards procedure by the Legislature, the procedure of the former Legislature applies and not the procedure of the House of Commons of the United Kingdom. The prorogation of the House and th re-assembling of the House does not amount to a new session and the business transacted prior to prorogation does not lapse. It must be remembered that although a new Session is referred to, the same House reassembles and meets again. Therefore, whether the business lapses or not is entirely a matter of procedure. The contention that business pending in one Session cannot be taken up by another, is of a sustainable one, because the House or the constitution of the House does not end with the prorogation and it does not come to an end merely because the House ceases to do business and function as a House for a particular period of time. But even otherwise where it is a matter of procedure, even if it is wrong procedure Art. 212 (1) is a complete answer. **ILR (1957) Bom 218 : 60 Bom LR 279.**

4. Freedom from arrest.

——Art. 194 (3) — Members of Parliament and State Legislature cannot claim privilege from detention under Defence of India Rules (1962), R. 30 (4). See Ibid, Art. 105 (3). **(1965) 69 Cal WN 913.**

——Art. 194 — Preventive Detention — Right to attend sittings of House.

A member of the Legislative Assembly can claim no privilege from arrest and the detention under

Preventive Detention legislation. Once a member of a Legislative Assemly is arrested and lawfully detained, though without actual trial under any Preventive Detention Act, there can be no doubt that under the law as it stands he cannot be permitted to attend the sittings of the House. A declaration by the High Court that he is entitled to do so, even under armed escort is entirely out of the question. If, however, a party in power detains a political opponent or continues his detention with the mala fide object of stifling opposition and prejudicing the party to which he belongs in a forthcoming election, there would be an undermining of the basis of the Constitution. ILR 1951 Mad 135. Ref. **ILR (1953) Mad 93 : 64 Mad LW 1031 : 1951 Mad WN Cr 258 : 1951 Mad WN 838 : 1952-1 Mad LJ 1 : AIR 1952 Mad 117 (118, 119) (Pt A) (Prs 4, 7) (DB).**

——Art. 194 (3) — Right of detenu member to correspond with legislature.

As long as a detenu continues to be a member of a Legislature, drawing the emoluments of his office, receiving summons to attend, he is entitled to the right of correspondence with the Legislature, and to make representations to the Speaker and the Chairman of the Committee of Privileges and no executive authority has any right to withhold such correspondence. This right flows not merely from principles of natural justice which will be violated by such correspondence being withheld, but as a continuing member of the House, he would also appear to be entitled to this privilege under Art. 194 (3) of the Constitution under which English Parliamentary practice has to be followed until a law is enacted by the Legislature defining the powers, privileges and immunities of the House, its committees and its members. **ILR (1953) Mad 93 : 64 Mad LW 1031 : 1951 Mad WN Cr 258 : 1951 Mad WN 838 : 1952-1 Mad LJ 1 : AIR 1952 Mad 117 (119) (Pt B) (Pr 8) (DB).**

——Arts. 194 (3), 238, 190 (4) and 226 — Member of Legislative Assembly arrested and detained under due process of law — No privilege to be allowed to attend session of Assembly — Writ of mandamus.

Where a member of Legislative Assembly has been arrested and detained and his detention is legal and under due process of law, he cannot claim that his detention should be subordinated to his right to attend the proceedings of the Legislative Assembly. He cannot therefore, pray for a writ of mandamus directing the State Government to enable him to attend the session of the Legislative Assembly. There is no statutory provision granting such privilege or immunity.

So long as the detention is legal the danger of his losing the seat under Art. 190 (4) or the certainty of his losing his daily allowance cannot possibly form the foundation for relief against the normal or probable consequences of that detention. **ILR (1955) T.-C. 336 : 1955 Ker LT 211 : AIR 1955 Trav-Co 154 (154, 155) (Prs 4, 8) (DB)**

ARTICLE 196

●——**Art. 196** — "Dissolution" and "Prorogation" of Legislature—Effect of, under English Constitution on pending business, discussed. See Ibid Art. 107. **AIR 1962 SC 694.**

●——**Arts. 196, 200 and 201 — Scope of — Bill passed by Legislative Assembly pending assent of President does not lapse on dissolution of Assembly — Successor House can reconsider the Bill — Kerala Agrarian Relations Act (4 of 1961).**

Under Cl. (3) of Art. 196 a Bill pending in the Legislature of a State will not lapse by reason of the prorogation of the House or Houses thereof. Under this clause the pending business may be pending either in the Legislative Assembly or in the Legislative Council or may be pending the assent of the Governor. At whichever stage the pending business may stand, so long as it is pending before the Legislature of a State it shall not lapse by the prorogation of the Assembly.

Clause (4) deals with the case of a Bill which has originated in the Legislative Council and has yet to reach the Legislative Assembly; and so the Constitution provides that in regard to such a Bill which has yet to reach, and be dealt with by, the Legislative Assembly the dissolution of the Legislative Assembly will not affect its further progress.

Clause (5) deals with a Bill pending in the Legislative Assembly of a State or pending in the Legislative Council; and that clearly means that a Bill pending assent of the Governor or the President. A Bill pending assent of the Governor or President is outside clause (5) and cannot be said to lapse on the dissolution of the Assembly.

If the effect of Art. 196 is that the Bills pending assent do not lapse on the dissolution of the House then the relevant provisions of Art. 200 must be read in the light of that conclusion. There is nothing in the proviso to Art. 201 which is inconsistent with the basic concept of democratic Government in asking a successor House to reconsider the Bill with the amendments suggested by the President because the proviso makes it perfectly clear that it is open to the successor House to throw out the Bill altogether. It is only if the Bill is passed by the successor House that the stage is reached to present it to the Governor or the President for his assent, not otherwise.

Therefore, the validity of the Kerala Agrarian Relations Act cannot be attacked on the ground that it was passed by the successor House upon reconsideration of the recommendation of the President to whom it was sent for his assent after the passing of Bill by the predecessor House before its dissolution. Purshothaman Nambudiri v. State of Kerala, **1962 Supp (1) SCR 753 : 40 Mys LJ 193 : (1962) 1 SCJ 477 : (1962) 1 Mad LJ (SC) 180 : (1962) 1 Andh WR (SC) 180 : (1962) 1 SCA 681 : 1962 Ker LT (SC) 1 : (1962) 1 Ker LR 1 : 1962 Ker LJ 86: AIR 1962 SC 694 (700, 701, 702, 703) (Pt D) (Prs 11 to 14, 16, 17).**

——Art. 196 (5) — Scope — Bills awaiting assent not affected by dissolution of Assembly.

Under Art. 196 (5), the dissolution of the Assembly affects the Bills pending in the Assembly, and not those awaiting assent. **1960 Ker LT 1157 : 1960 Ker LJ 1531 : ILR (1961) 1 Ker 298 : AIR 1961 Ker 324 (330, 331) (Pt B) (Pr 18) (DB).**

ARTICLE 199

●——**Art. 199** — Fee or tax — Difference between. See Municipalities — U. P. Municipalities Act (2 of 1916), S. 294. **AIR 1962 All 277 (FB).**

——**Art. 199 (2)** — Scope — Taxation Laws — Delegation to municipal corporation of power to fix rate of tax, to select cases for exemption and to determine manner of calculation — Validity. See Ibid, Art. 110 (2). **AIR 1959 Cal 704 (DB).**

——Arts. 199 (4) and 212 (1) — Certificate of Speaker — Requirement as to — Money bill transmitted to Legislative Council with certificate of presiding member acting as Speaker instead of Speaker — Irregularity — Validity of proceedings of Legislature cannot be called in question.

Where it was submitted that a State Act could not be said to have been validly passed by the State Legislature and was unconstitutional because the Bill, transmitted to the Legislative Council under Art. 198 contained a certificate not of the Speaker but of the Presiding member acting as Speaker, who had no authority to give a certificate under Art. 199 (4).

Held, that the omission, if true, was no more than a mere irregularity of procedure and the validity of the proceedings of the Legislature could not be called in question in view of Art. 212 (1) of the Constitution. AIR 1952 SC 252. Foll. **1963 BLJR 73 : ILR 43 Pat 509 : AIR 1963 Pat 16 (23) (Pt B) (Pr 12) (DB).**

ARTICLE 200

●——**Arts. 200, 201** — Kerala Agrarian Relations Bill had not lapsed before it was assented to by the President and therefore validly became law — AIR 1962 SC 694. Foll. Karimbil Kunhikoman v. State of Kerala, **1962 Supp (1) SCR 829 : 40 Mys LJ 17 : (1962) 1 SCJ 510 : (1962) 1 Mad LJ (SC) 213 : (1962) 1 Andh WR (SC) 213 : (1962) 2 SCA 1 : 1962 Ker LT (SC) 42 : (1962) 1 Ker LR 67 : 1962 Ker LJ 59 : AIR 1962 SC 723 (729) (Pt A) (Pr 8).**

●——**Arts. 200, 196 and 201** — Scope of —Bill passed by Legislative Assembly pending assent of President, does not lapse on dissolution of assembly — Successor House can reconsider the Bill. See Ibid, Art. 196. **AIR 1962 SC 694.**

●——**Art. 200** — Rajasthan Land Reforms and Resumption of Jagirs Act (6 of 1952) — Validity — Art. 200 lays down the procedure to be followed when a bill has been passed by a Legislative Assembly or Legislative council of a State and is by its very terms inapplicable when there is no House of Legislature. See Ibid, Art. 385. **AIR 1955 SC 504.**

●——**Arts. 200 and 210** — Authoritative Text of Bills, Acts, etc.—Uttar Pradesh—Hindi and English Versions of Bill, Act etc., published in official gazette — Both versions are authorised — English version is to be treated as authoritative only in case of conflict between two versions — Procedure under Art. 200 indicated. See Ibid. Art. 348 (3). **AIR 1962 All 240 (FB).**

——**Arts. 200, Proviso and 213, Proviso (c)** — U. P. Ordinance (1 of 1959) — Validity — Ordinance does not affect powers of High Court and is not hit by Art. 213—Proviso (c) read with Art. 200 Proviso. See U. P. Universities Ordinance (1 of 1959). **AIR 1960 All 205 (DB).**

——**Arts. 200, 168, 212, 226** — Bill passed by Legislative Assembly — Presentation to Governor is essential legislative process — Prayer for injunction against Council of Ministers for preventing such presentation — Courts will not allow it — Andhra Pradesh Government Business Rules. R. 51. See Ibid, Art. 168. **AIR 1965 Andh Pra 306.**

——Arts. 200, Proviso, 31 (3) and 13 — Scope — Hyderabad Tenancy and Agricultural Lands Act (21 of 1950) — Act not valid.

Art. 31 (3) is on par with the proviso to Art. 200 — Failure to conform to the procedure envisaged by Art. 31 (3) has the same results as those that follow from the violation of Proviso to Art. 200 — State law relating to acquisition and requisitioning of property — Requirement as to assent of President under Art. 31 (3) — Nature of — Assent not obtained — Whole Act becomes ultra vires — Question of severability does not arise. See Ibid, Art. 31 (3). **AIR 1961 Andh Pra 523.**

——Art. 200 — Bill reserved for President's consideration and assent received — Assent of Governor — Necessity for validity of Act.

Where the Governor reserves a bill for consideration of the President under Art. 200 and the President gives the assent, the Act is valid and cannot be challenged on the ground that it did not receive the assent of the Governor. **ILR (1960) 12 Assam 396 : AIR 1961 Assam 16 (17) (Pt A) (Pr 4) (DB).**

——**Art. 200** — Madras Act 34 of 1955 — Power of transfer of case pending before Presidency Magistrate given to Sessions Judge, Madras — Validity — Act derogating from powers of High Court — Constitution, if has provision to make such laws. See Code of Criminal Procedure (Madras Amendment) Act (Madras Act 34 of 1955) — Validity. **1959 Cri LJ 731 : AIR 1959 Mad 261 (DB).**

●——**Art. 200**—Passing of Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Bill, into law — Assent of Governor — Bill reserved for consideration of President — The President having given his assent, Bill must be deemed to have been passed into law. **AIR 1955 NUC (Nag) 1341 (FB).**

——Arts. 200 and 201 — Reservation of Act for and assent of President — (Evidence Act (1872), Section 35).

Under S. 35 of the Evidence Act, the statement made in the Gazetted Notification that an Act has been assented to by the President is proof of that fact. Further, in view of the normal presumption that all official acts are to be presumed to have been regularly done, it is also proof that the Bill of that Act was reserved by the Governor for the assent of the President, for, that is the only way in which an Act of the State Legislature goes up for the assent of the President as a perusal of Arts. 200 and 201 of the Constitution shows. Therefore, the fact of reservation by the Governor and of assent by the President must be presumed on the issue of the Gazetted Notification. **ILR (1953) Cut 71 : AIR 1953 Orissa 185 (194) (Pt F) (Pr 17) (DB).**

——Arts. 200 and 201 — "Declare".

What is indicated by the word 'declaration' is not anything by way of a public notification. To declare an assent is nothing more than an assertion by the President or the Governor as the case may be, that in fact he has so assented. It does not involve any idea that that assertion must be made with any publicity or in any particular form. **ILR (1953) Cut 71 : AIR 1953 Orissa 185 (194) (Pt G) (Pr 18) (DB).**

——Arts. 200, 201, 255 — Assent to Bill — When to be obtained.

A careful perusal of Articles 200, 201 and 211 clearly leads to the conclusion that the assent contemplated thereunder is an assent before a Bill becomes an Act and that there can be no question of a Bill being assented to by the President after it has been passed as an Act. The curative effect of Art. 255 applies to those cases where a previous sanction of the President has not been taken before the introduction of the Bill but nevertheless his subsequent assent has been obtained by the Governor reserving it for the assent of the President before the Bill becomes an Act. **ILR (1965) 15 Raj 285 : 1965 Raj LW 118.**

——Art. 200 — Assent to Bills — Proof of — Onus.

Where certain Acts as published in the State Gazette show that the assent to them was given on a particular date by the Head of the State and an affidavit to that effect is also filed on behalf of the State, it cannot be held that the Acts did not receive the assent on that date. The burden under these circumstances lies heavily on the party disputing the fact.

The mere fact that the head of the State was not present in the capital is in itself not enough to prove that his assent could not be obtained as there are other methods of obtaining his assent, viz., telephone, or by telegram or by sending a special messenger. **ILR (1954) 4 Raj 274: 1954 Raj LW 268: AIR 1954 Raj 117 (120) (Pt A) (Pr 5) (DB).**

——**Art. 200** — Travancore-Cochin Public Safety Measures Act (5 of 1950), S. 4 — Validity —Art. 200 refers only to bills which have not become law by assent thereto declared by Governor. That Article cannot, therefor, be relied upon as giving any guidance to the construction of Cl. (3) of Art. 31 which relates to the reservation of a law for the consideration of the President. See Public Safety — Travancore-Cochin Public Safety Measures Act (1950), S. 4 **AIR 1954 Trav-Co 145.**

——**Art. 200** — Travancore-Cochin High Court (Amendment) Act (1952), Preamble — The Bill which was passed into Act (1 of 1952) had been reserved for the assent of the President and this implies the declaration contemplated in Art. 200. See Travancore-Cochin High Court (Amendment) Act (1 of 1952), Preamble. **AIR 1953 Trav-Co 63 (DB).**

ARTICLE 201

●——**Arts. 201 and 200** — Kerala Agrarian Relation Bill had not lapsed before it was assented to by the President and therefore validly became law—AIR 1962 SC 694, Foll. Karimbil Kunhikoman v. State of Kerala, **1962 Ker LT (SC) 42: (1962) 1 SCJ 510: (1962) 1 Ker LR 61: 1962 Ker LJ 59: (1962) 2 SCA 1: (1962) 1 An WR (SC) 213: (1962) 1 Mad LJ (SC) 213: AIR 1962 SC 723 (727) (Pt A) (Pr 3).**

●——**Arts. 201, 196 and 200** — Scope of — Bill passed by Legislative Assembly pending assent of President, does not lapse on dissolution of Assembly — Successor House can reconsider the Bill. See Ibid, Art. 196. **AIR 1962 SC 692.**

●——**Arts. 201, 212-A (1) — Applicability.**

Under Art. 212-A (1), the proviso to Art. 201 has no application to those Part B States where there was no House of the Legislature. Amarsinghji v. State of Rajasthan, **1955 SCA 766: 1955 SCJ 523: AIR 1955 SC 504 (518) (Pt C) (Pr 21).**

——**Art. 201 — Scope — Bombay Tenancy and Agricultural Lands (Amendment) Act (13 of 1956) — If void on ground of violation of Art. 201.**

The Bombay Tenancy and Agricultural Lands Act cannot be impugned on the ground of violation of Art. 201 of the Constitution. Under Art. 201, the High Court is concerned with the question whether in fact assent has been given by the President, and, if assent has been given, it is not for the High Court, to consider whether recommendations to amend the Bill were made by the Government of India and those recommendations were ignored by the Government of Bombay. The alleged failure of the Government of Bombay to submit the Bill for considering the recommendations made by the Government of India does not affect the validity of the Bill which has become an Act of the Bombay Legislature by the assent of the President. **59 Bom LR 616: AIR 1957 Bom 252 (259) (Pt A) (Pr 15) (DB).**

(Overruled on another point in AIR 1959 SC 459.)

——**Art. 201** — Kerala State Legislature — Legislative proceedings — Immunity from judicial process — Complaint that intended legislation contravenes Constitutional provisions — No interference by High Court under Art. 226 — The reconsideration of a Bill after it is returned to the Assembly with a direction by the President under Art. 201, Proviso, is within proceedings of the Assembly so as to preclude the High Court from interfering with those proceedings under Art. 226. See Ibid, Art. 194 (3). **AIR 1961 Ker 324 (DB).**

——**Art. 201** — Reservation for and assent of President — Presumption — (Evidence Act (1872), S. 35). See Ibid, Art. 200. **AIR 1953 Orissa 185 (DB).**

——**Art. 201** — "Declare" — Interpretation of. See Ibid, Art. 200. **AIR 1953 Orissa 185.**

——**Art. 201** — Assent of President to Bill — Should be obtained before it becomes an Act and not after its becoming an Act. See Ibid, Art. 200. **1965 Raj LW 118.**

ARTICLE 202

●——**Art. 202** — Power of executive Government to carry on trade or business — Trade or business involving expenditure of funds — Authorization of such expenditure by Parliament—Procedure under Art. 202 indicated. See Ibid, Art. 162. **AIR 1955 SC 549.**

——**Arts. 202 and 266 — Land Revenue — Character of.**

Under Art. 266 of the Constitution all revenues received by the State Government form part of the consolidated fund and moneys out of their fund could be appropriated in the manner prescribed in the Constitution. Land revenue to be collected would form part of the estimated receipts under Art. 202 and grants would be made for the excess over the receipts and the Appropriation Act would put the grants on a statutory basis. **ILR (1958) Mad 798: (1958) 2 Mad LJ 117: 71 Mad LW 672: ILR (1958) Mad 798: AIR 1958 Mad 539 (542) (Pt B) (Pr 11) (DB).**

●——**Art. 202 — Statement of purpose for items of expenditure — Necessity.**

There is nothing in Art. 202 of the Indian Constitution (as there is in S. 56 of the Australian Constitution) which requires the statement of the purpose of the appropriation in respect of every item included in a demand. 71 CLR 237, Disting. Piarelal Singh v. State of M. P., **ILR (1954) Nag 764: AIR 1955 Nag 11 (18) (Pt D) (Pr 23) (SB).**

●——**Arts. 202, 149, 150 — Budget — Form of — Failure to comply with Arts. 149, 150 — Effect.**

Article 202 of the Constitution must be read with Arts. 149 and 150 of the Constitution and thus the Budget or "the annual financial statement" must give such particulars of the receipts and expenditure as would be necessary to satisfy the requirements of the Comptroller and Auditor-General for maintaining the accounts. In other words, the receipts and expenditure must be classified in the Budget in the way indicated in the List of Major Heads of Account. Failure to do so will amount to a non-compliance with Arts. 149 and 150 which are as much binding on the State Government and the Legislature as any other provision in the Constitution bearing on the powers of the Government and the Legislature.

The Rule that the Budget must follow the pattern of the List of Major and Minor Heads does not however imply that a separate grant must be made in respect of each head of the account comprised in the Budget or that money expedible under each head of account prescribed by the List must be sought in a single demand. What each demand should comprise of is dealt' with in R. 109 (1) of the Assembly Rules which ordinarily requires that a separate demand should be made for each department of the Government but permits the Finance Minister to include in one demand grants for two or more departments. Piarelal Singh v. State of M. P., **ILR (1954) Nag 764: AIR 1955 Nag 11 (18) (Pt E) (Prs. 26, 27) (SB).**

ARTICLE 203

●——**Art. 203** — Power of executive Government to carry on trade or business — Trade or business involving expenditure fund — Authorisation of expenditure by Parliament — Power of reduction of amount. See Ibid, Art. 162. **AIR 1955 SC 549.**

●——**Art. 203 — Requirements under.**

The only requirements of Art. 203 are that every demand shall be recommended by the Governor and that it shall be put separately to the vote of the Assembly. The article refers to 'demands' only and makes no reference whatsoever to the separate items constituting the demands, or to the purpose for which each item is required. Piarelal Singh v. State of M. P., **ILR (1954) Nag 764: AIR 1955 Nag 11 (21) (Pt G) (Pr 39) (SB).**

ARTICLE 204

●——**Art. 204** — Power of executive Government to carry on trade or business — Expenditure on such trade or business — Introduction of Appropriation Bill after sanction of grant — Procedure indicated. See Ibid, Art. 162. **AIR 1955 SC 549.**

——**Arts. 204 and 27** — Specific appropriation in Art. 27 refers only to appropriation contemplated by Art. 204 and not any other independent or specific appropriation, not permitted or warranted by the Constitution. See Madras Hindu Religious and Charitable Endowments Act (19 of 1951), Section 20. **AIR 1952 Mad 613 (DB).**

●——**Art. 204 — Appropriation Act — Purpose and effect of.**

The Appropriation Act is the second stage in the authorization of expenditure, the first being the voting of grants by the Assembly. After the Act is passed the limitation of the expenditure under a head is to be determined by reference to the Schedule of the Act.

Again, an expenditure can be incurred by the Government on an object provided that it can be ascribed to any of the heads mentioned in the Schedule. Where it can be so ascribed and the limit of expenditure prescribed in the Schedule has not exceeded, its constitutionality cannot be questioned. In other words money appropriated towards a particular head in the Schedule is to be spent on that head only and no other unless the Schedule is amended by an appropriate law or perhaps unless such a course is permitted by any rule consistent with the Constitution. Piarelal Singh v. State of M. P., ILR (1954) Nag 764: **AIR 1955 Nag 11 (22) (Pt I) (Pr 44) (SB).**

ARTICLE 205

●——**Art. 205 — Applicability — Need arising before the Budget.**

The provision of Art. 205 can be availed of only if the money already voted for a particular purpose in the Budget is insufficient or when a need arises after the Budget was passed for incurring a particular expenditure or when some new service not contemplated in the Budget has been started.

Where the Memorandum accompanying the Budget clearly states that a need has already arisen and that a new service is already contemplated, Art. 205 of the Constitution cannot come in and a provision for the expenditure has to be made in the Budget itself. Piarelal Singh v. State of M. P., **ILR (1954) Nag 764 : AIR 1955 Nag 11 (23) (Pt J) (Pr 45) (SB).**

ARTICLE 207

●——**Art. 207** — Introduction of Bill — Sanction of Governor not appearing on face of it — Effect. See Government of India Act (1935), Section 87. **ILR (1956) 8 Assam 379 (FB).**

——**Arts. 207 and 212** — Bengal Finance (Sales Tax), (Second Amendment) Act, 1955 — Governor's recommendation — Bill imposing tax on certain articles introduced without Governor's recommendation — Governor's assent published in Gazette — Defect cured by assent — Act not invalid. See Ibid. Art. 255. **(1965) 69 Cal WN 273 : AIR 1966 Cal 81.**

——**Art. 207 — Sales Tax — (Kerala) General Sales Tax Act (11 of 1125) — Ss. 3 (1) (b), 4, Sch. I, Item (1) — Amendment to, by Kerala Act 14 of 1959 — Validity of Act.**

Art. 207 forms part of the legislative procedure in financial matters and Courts are precluded by Art. 212 from enquiring into any alleged irregularity of such procedure. Therefore, complaint against the constitutionality of the Kerala Act 14 of 1959, amending the General Sales Tax Act 1125 based on the absence of Governor's recommendation of the Bill cannot be accepted. **AIR 1961 Ker 36 (40) (Pt D) (Pr 15).**

——**Art. 207**—Bills requiring previous recommendation—Absence of recommendation — Subsequent assent — Sufficiency and effect of. See Ibid, Art. 225. **1957 Raj LW 518.**

ARTICLE 208

●——**Art. 208 (1) — Rules of procedure framed by Legislature — These must be subject to provisions of Part III.**

Article 208 (1) provides that a House of the Legislature of a State may make rules for regulating, subject to the provisions of this Constitution, its procedure and the conduct of its business. This provision makes it perfectly clear that if the House were to make any rules as prescribed by it, those rules would be subject to the fundamental rights guaranteed by Part 3. In other words, where the House makes rules for exercising its powers under the latter part of Art. 194 (3), those rules must be subject to the fundamental rights of the citizens. In the Matter of under Article 143 of the Constitution of India. **(1965) 1 SCA 447: (1965) 1 SCJ 847: AIR 1965 SC 745 (767) (Pt L) (Pr 61).**

●——**Art. 208 — Rules under — Rule 207 — Specific matter of recent occurrence.**

The subject-matter of a privilege motion must obviously be left to the discretion of the Speaker of the House of Legislature to determine whether the subject-matter of that motion is or is not a specific matter of recent occurrence. M. S. M. Sharma v. Sri Krishna Sinha, **(1959) 2 MLJ (SC) 125: (1959) 2 Andh WR (SC) 125: (1959) Mad LJ**

(Cr) 660: 1959 SCJ 925: (1959) Supp (1) SCR 806: AIR 1959 SC 395 (411) (Pt F) (Pr 29a).

●——**Art. 208 — Rules under — R. 215 — 'At any time'.**

The words 'at any time' occurring in the second proviso quite clearly indicate that extension of time may be within the time fixed by the house or, on its failure to do so, within the time fixed by the first proviso or even thereafter, but before the report is actually made or presented to the House. Further, the question of time within which the Committee of Privileges is to make its report to the House is a matter of internal management of the affairs of the House and a matter between the House and its Committee and confers no right on the party and this is so particularly when the House has the power to extend time 'at any time'. ILR 13 All 300 (PC). Rel. on. M. S. M. Sharma v. Sri Krishna Sinha, **(1959) 2 Mad LJ (SC) 125: (1959) 2 Andh WR (SC) 125: 1959 Mad LJ (Cr) 660: 1959 SCJ 925: (1959) Supp (1) SCR 806: AIR 1959 SC 395 (411, 412) (Pt G) (Pr 31).**

——**Art. 208 (1)** — U. P. Legislative Assembly — Rules of Procedure and Conduct of Business R. 74 — Cannot be challenged on ground of violation of principles of natural justice. See Ibid, Art. 226. **(1965) 2 Cri LJ 170: AIR 1965 All 349 (DB).**

——**Art. 208 (1)** — Rule 143 of the Rules of Procedure and Conduct of Business of U. P. Legislative council framed under Art. 203 (1) — Validity — Rule is not ultra vires but is constitutionally valid. See Ibid, Art. 183. **AIR 1963 All 75.**

——**Arts. 208, 212 — Rules of Procedure of U. P. Assembly, Rr. 67, 189 (3) — Reference by Speaker to Committee of Privileges — Validity — Jurisdiction of Court.**

A, a member of a State Legislature insisted on the immediate consideration of a certain motion but his request was not granted by the Speaker. On about three occasions A was asked by the Speaker to sit down; but, as he was not prepared to take notice of even the points of order raised, the Speaker asked him to withdraw from the House. A did not comply with that direction. Thereafter the Speaker drew the attention of the House to the defiant attitude adopted by A and ordered the police to remove him from the Assembly Hall by using the minimum amount of force necessary for that purpose. On being so ordered, the police forcibly removed A by bodily lifting him from the Assembly Hall, he having squatted on the floor of the House. Similar scenes happened in the case of two other members who were also ejected forcibly from the Hall. After their removal from the House the Speaker drew the attention of the House to the intransigent attitude that they had adopted and observed that in his opinion, their conduct constituted a breach of the privileges of the House. As he did not think that the incident should be ignored, he referred the matter to the Committee of Privileges. On the recommendation of the Committee the House passed a resolution suspending A till the sitting of the House. A applied under Art. 226 of the Constitution for a writ against the Speaker on the ground that the resolution was void and the order passed upon it unconstitutional. It was further argued that the reference to the Committee of Privileges by the Speaker of a matter which could be dealt with by the standing order of rules of the House was wrong and contrary to established Parliamentary practice and that it constituted, the creation of a new privilege for the House.

Held, that (1) The Speaker could, under R. 67 of the Rules of Procedure, refer any question of privilege to the Committee of Privileges for examination, investigation or report. Whether the question was one of privilege or not was a matter solely for the Speaker to decide.

(2) That even if there had been no such express rule the High Court had no jurisdiction to issue a writ, direction or order relating to a matter which affected the internal affairs of the House as under Art. 212 both the Speaker and the other officers were protected from scrutiny by a Court of law for what was done in the House.

(3) That there was no creation of a new privilege in the procedure adopted by the Speaker or the State Legislature.

(4) That the matters complained of were only of procedural character and that the resolution of the House did not go beyond a matter of procedure.

(5) That while there was no doubt that the right of a member to continue to represent his constituency in Paliament gets affected by his suspension for whatever period, yet even on that assumption there is no legal remedy open to a member if his rights get affected by something done within the walls of the legislature. Art. 212 (2) of the Constitution was decisive on the point.

(6) That there are good reasons why the Courts should not interfere with the mode in which the Legislature conducts its internal affairs. In the ultimate analysis, it is in an assiduous education of the tremendous forces generated by a vast electorate that remedies against real or supposed highhandedness on the part of any particular legislature lies. With all those matters, which are of a political nature the Courts have no concern. **ILR (1955) 1 All 25: 1954 Cr LJ 691: AIR 1954 All 319 (327, 328, 335) (Pt J) (Prs. 15, 16, 45) (DB).**

——**Art. 208** — Passage of Bill in Legislature — Matter of internal procedure of Legislature — High Courts have no power to interfere. See Ibid, Art. 194. **AIR 1965 Andh Pra 306.**

——**Art. 208** — Rules of Procedure and Conduct of Business (Framed by Assam Legislative Assembly) — Language of Article is wide enough to cover Rules. **ILR (1958) 10 Assam 461: AIR 1958 Assam 160 (166, 167, 168) (Pt C) (Pr 9) (DB).**

——**Art. 208 — Rules of Procedure and Conduct of Business (Framed by Assam Legislative Assembly) Rr. 158, 163, 175, 176 and 181 — Person in contempt — Speaker's authority to summon such person.**

Held, on facts that under the Rules of Procedure and Conduct of Business in the Assam Legislative Assembly, the Speaker and the Secretary of the Legislative Assembly, in the absence of any resolution of the House, had authority to summon the petitioner to appear before the Privileges Committee. **ILR (1958) 10 Assam 461: AIR 1958 Assam 160 (162, 166, 167, 168) (Pt D) (Prs 3, 9, 10) (DB).**

——**Arts. 208 and 226 — Rules of Procedure and Conduct of Business (framed by Assam Legislative Assembly) R. 314 — Interpretation of Rules.**

The question of interpretation of the rules lies with the Speaker so that even if the procedure adopted by the Speaker is irregular, it would not be open to the High Court to go into the matter, because the decision of the Speaker has a finality on the point. **ILR (1958) 10 Assam 461:**

AIR 1958 Assam 160 (166, 167, 168) (Pt E) (Pr 9) (DB).

——**Art. 208 (2)** — Working of Legislature — Procedure for — Business transacted prior to prorogation does not lapse —Applicability of Art. 212 (1). See Ibid, Art. 194 (3). **ILR (1957) Bom 218.**

——**Art. 208 (1)** — Rules of Procedure and Conduct of Business (W. B. Legislative Assembly), R. 16 — Governor's address before Legislature under Art. 176 — Address must be by delivery of speech. See Ibid, Art. 176 (1). **(1965) 69 Cal WN 484: AIR 1966 Cal 363.**

——**Arts. 208 and 212** — The powers, privileges and immunities of the State legislatures and their members have been laid down in the Constitution. Within the legislature members have absolute freedom of speech and discussion. Subject to the provisions of the Constitution they can regulate their own procedure. In such matters and within their allotted spheres they are supreme and cannot be called into account by the Court, of the land. **AIR 1956 Cal 378 (384) (Pt G) (Pr 23).**

● ——**Arts. 208 (2), 212 (1) — Irregularity in passing a Bill — Effect.**

(Per Dixit J.) :— The form, content or subject-matter of a Bill at the time of its introduction into or of its consideration by the Assembly on the report of the Select Committee, is not a matter with which a Court of law is concerned. The question, whether the Assembly should have passed the Bill as reported, by the Select Committee or recommitted it to the Select Committee or dropped the Bill, is a domestic matter relating to the procedure followed by the Assembly in the course of legislation. If there is any irregularity in the procedure followed by the Assembly in passing the Bill it does not make the culminating Act invalid or ultra vires. Ram Dubey v. Government of the State of M. B. **ILR (1952) Madh Bha 178: AIR 1952 Madh Bha 57 (73, 74) (Pt R) (Pr 84) (FB).**

●——**Art. 208 (1)**—Breach of Finance Rules—Not unconstitutional — Advisability of following the procedure. See Finance Rules, R. 534. **AIR 1955 Nag 11 (SB).**

●——**Art. 208 (1)** — The provisions of Art. 208 are merely enabling ones. Moreover they relate only to procedural matters. Where a body has been given complete powers to regulate its own procedure, it has by implication also the power to waive or condone the breach of its procedural rules — Non-compliance with Budget — Effect of — Power of Legislature to condone irregularity in its procedure — Jurisdiction of Court. See M. P. Legislative Assembly Rules (1950), R. 109 (2). **AIR 1955 Nag 11 (SB).**

——**Arts. 208 (2), 212 (2) — Extent of immunity of Speaker — (Words and Phrases — 'With respect to' and 'in relation to Legislature').**

The words 'with respect to the Legislature' and 'in relation to the Legislature' in Art. 208 (2) have wider significance than the words 'in the Legislature. Clause (2) of Art. 208 therefore, includes within its scope not only the rules dealing with procedure and conduct of business during the actual session of the Legislature but all other incidential or ancillary matters. 76 CLR 1, Rel. on.

The immunity of the Speaker in respect of actions taken by him in exercise of the powers conferred by the Orissa Legislative Rules which are validly kept in force by Art. 208 (2) is limited to those rules of procedure and conduct of business which deal with proceedings in the Legislature and does not extend to those rules which deal with incidental or ancillary matters. **19 Cut LT 183: ILR (1953) Cut 404: AIR 1953 Orissa 111 (114) (Pt A) (Pr 5) (DB).**

——**Art. 208 (2) — 'Rules of procedure' — Meaning — Orissa Legislative Rules, Rr. 45, 49 are in force — (Orissa Legislative Rules, Rr. 45, 49) — (Words and Phrases — "Rules of procedure") — (Interpretation of Statutes).**

As words and phrases should be given the same meaning throughout a statute it is obvious that the expression 'rules of procedure' occurring in Cl. (2) of Art. 208 should be given the same meaning given to that expression in the marginal note to Cl. (1). As a matter of construction, therefore, the expression 'rules of procedure' means rules regulating the procedure and conduct of business of the Legislature. The omission of the words 'conduct of business' in that clause does not affect the survival of Rules 45 to 49 of the Orissa Legislative Rules dealing with the conduct of business in the Assembly, which are therefore, validly in force after the commencement of the Constitution. **19 Cut LT 183: ILR (1953) Cut 404: AIR 1953 Orissa 111 (115) (Pt D) (Pr 7) (DB).**

——**Art. 208 (2)** — Rules adapted by Speaker under Cl. (2) of Art. 208 — Primary function of Speaker to regulate the conduct of business and procedure of Assembly. See Ibid, Art. 176. **AIR 1952 Orissa 234 (DB).**

ARTICLE 210

——**Art. 210** — English version of Government gazette showing 3-8-1959 as date of appointment of 'A' as Public Analyst — Hindi version showing 3-4-1959 as date of his appointment — In case of divergence, English version prevails over Hindi version. See Prevention of Food Adulteration Act. (1954), S. 8. **1965 (1) Cri LJ 418: AIR 1965 All 170.**

●——**Art. 210** — Authoritative text of Bills, Acts etc. — Hindi and English versions of Bill, Act etc. published in official gazette — Both versions are authorised — English version is to be treated as authoritative only in case of conflict between two versions 1961 All LJ 506: 1961 All WR (HC) 542 **Overruled**. See Ibid, Art. 348 (3). **AIR 1962 All 240 (FB).**

——**Art. 210** — Framing of law is an important business that a State Legislature has to transact and when the State Legislature is allowed to use Hindi language in transacting its business it must be assumed that it can pass laws also in that language — M.B. Panchayat Rules, R. 38 — Rules promulgated in Hindi — English translation not given —Validity. See Ibid, Art. 348. **AIR 1957 Madh Bha 26 (DB).**

ARTICLE 211

——**Art. 211** — Freedom of speech in State Legislature — Limits to. See Ibid, Art. 194 (1). **1958 Cri LJ 1055: AIR 1958 Orissa 168 (DB).**

ARTICLE 212

SYNOPSIS

(Constitution of India, 1950, Art. 212)

1. Irregularity of procedure in Legislature — Effect — Clause (1).

2. "Officer or member of the Legislature".

3. Immunity from legal proceedings — Clause (2).

1. Irregularity of procedure in Legislature — Effect — Clause (1).

●——**Arts. 212, 255 — Mysore Existing Laws (Construction of References to Values) Act (XII of**

1957), Ss. 3, 2 — Substitution of Naya Paisas in place of pies in Mysore Sales Tax Act — Effect — Tax expressed in terms of Naya Paisas cannot be challenged as unconstitutional.

The levy of sales tax under the Mysore Sales Tax Act in terms of naya paisa in place of pies, after the enactment of the Mysore Act XII of 1957, which has made a provision for charging the tax in terms of naya paisa instead of pies, is not unconstitutional, nor is the latter Act a taxing measure but it deals merely with the conversion of the old coinage into new coinage. By substitution of new coinage, i.e., naya paisas in place of annas, and pies no enhancement of tax was enacted but it was merely a substitution of one coinage by another of equivalent value. Even assuming that it is a taxing measure its validity cannot be challenged on the grounds that it offends Arts. 197 to 199. Art. 212 prohibits the validity of any proceedings in a legislature of a State from being called in question on the ground of any alleged irregularity of procedure and Art. 255 lays down that requirements as to recommendation and previous sanction are to be regarded as matters of procedure only. Consequently, the tax cannot be challenged on the ground that it is contrary to the provisions of the Constitution. Mangalore Ganesh Beedi Works v. State of Mysore, **(1963) 2 SCJ 309: (1963) 1 Mys LJ (SC) 27 : (1963) 1 SCWR 76: (1963) Supp 1 SCR 275: (1963) 14 STC 198: AIR 1963 SC 589 (590, 591) (Prs 5, 6, 7).**

●——**Art. 212 (1) — Irregularity of procedure — Omission to put question by Speaker as required by rules governing legislative business.**

One of the Ministers moved that the C. P. and Berar Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Bill as considered by the House be passed into law. Thereupon the Speaker read the motion to the House and this was followed by several speeches welcoming the measure. The official report of the proceedings did not record that the Speaker put the question as required by R. 20 (1) of the Rules governing the legislative business and that the motion was carried. The original bill signed and authenticated by the Speaker however contained an endorsement by the Speaker that the bill was passed by the Assembly on 5-4-1950. The endorsement was signed by the Speaker on 10-5-1950. The official report of the proceedings was prepared on 21-6-1950 and was signed by the Speaker on 1-10-1950.

Held, that the omission as to the motion having been put and carried could not, in the face of the explicit statement by the Speaker endorsed on the bill, be taken to establish that the bill was not put to the House and carried by it. In any case, the omission to put the motion formally to the House, even if true, was, in the circumstances, no more than a mere irregularity of procedure as it was not disputed that the overwhelming majority of the members present and voting were in favour of carrying the motion and no dissentient voice was actually raised. State of Bihar v. Kameshwar Singh, **1952 SCJ 354 : ILR 31 Pat 565 : 1952 SCR 889: 1953 SCA 53: 65 Mad LW 527: AIR 1952 SC 252 (266, 267) (Pt S) (Pr 22).**

——**Arts. 212 (1) and 226** — Proceedings in Legislative Council of State — Mere irregularity of procedure or non-compliance with rules of procedure for conduct of its business will not affect its validity and will not be a ground for issuing a writ under Art. 226 — But if there is a violation of the constitutional requirement or Chairman has acted in excess of his powers under Constitution, Court may interfere by issuing a writ. **ILR (1963) 2 All 151: AIR 1963 All 75 (77, 78) (Pt A) (Prs 11, 12) (DB).**

——**Art. 212** — Passage of Bill in Legislature — Matter of internal procedure of legislature—High Courts have no power to interfere — See Ibid, Art. 194. **AIR 1965 Andh Pra 306.**

——**Art. 212 (1)** — Andhra Pradesh Regional Committee Order (1958), Pr. 3 — Regional Committee constituted under Pr. 3 — Defect in procedure in holding its meetings — Bill in pursuance of its report passed into an Act — Art. 212 (1) applies — Validity cannot be questioned on ground of irregularity of procedure — See Ibid, Art. 371 (1). **AIR 1965 Andh Pra 306.**

——**Art. 212** — Breach of privilege of Legislature — Powers of the House to punish — Extent of — Unauthorised publication by newspapers of certain committee report — Motion for breach of privilege—Matter referred to Privilege Committee for investigation and report — Committee issuing show cause notice to editors — Writ petition against notice — Held, Court had no jurisdiction to interfere at that stage. See Ibid, Art. 194. **AIR 1965 Assam 74 (DB).**

——**Arts. 212, 226** — Objection as to validity of proceedings of Legislature — Objection founded on plea that members not entitled to vote had voted on a Bill — Competency of High Court to entertain — (Quaere). **59 Bom LR 355 : AIR 1957 Bom 165 (166) (Pt A) (Pr 4) (DB).**

——**Art. 212 (1)** — Working of Legislature — Procedure for — Business transacted prior to prorogation does not lapse — Applicability of Art. 212 (1). See Ibid, Art. 194 (3). **ILR (1957) Bom 218.**

——**Art. 212 (1)** — Governor's address before Legislature — Governor attempting to deliver speech — Disturbances in House — Walk out by Governor — Copy of address laid on table of House — Duty under Art. 176 (1) is merely irregularly performed — Mere irregularity cannot be questioned under Art. 212 (1). See Ibid, Art. 176 (1). **(1965) 69 Cal WN 484 : AIR 1966 Cal 363.**

——**Art. 212 (1)** — Proceedings inside Legislative Chamber — Extent of powers and privileges of Legislature — Proceedings not merely irregular but illegal or unconstitutional — High Court is competent to issue mandate upon Legislature. See Ibid, Art. 226. **(1965) 69 Cal WN 484 : AIR 1966 Cal 363.**

——**Arts. 212 (1), 226, and 194 (3)**— Proceedings inside Legislative Chamber — Extent of powers and privileges of Legislature — Proceedings not merely irregular but illegal or unconstitutional — High Court is competent to issue mandate upon Legislature : AIR 1965 SC 745, Foll. **(1965) 69 Cal WN 484 : AIR 1966 Cal 363 (367) (Pt A) (Pr 6).**

——**Art. 212** — Writ against Legislative body to prevent it from passing certain law. See Ibid, Art. 226. **AIR 1956 Cal 378.**

——**Art. 212** — Sales-tax—(Kerala) General Sales-tax Act (11 of 1125), S. 3 (1) (b) — Amendment to, by Kerala Act (14 of 1959) — Validity — Held, did not offend Art. 207 of the Constitution — Courts are precluded by Art. 212 from enquiring into any alleged irregularity of procedure. See Sales Tax—(Kerala) General Sales Tax Act (11 of 1125), S. 3 (1) (b). **AIR 1961 Ker 36.**

——**Art. 212 — Jurisdiction of Court.**

(Per Dixit, J.) : The validity of the proceedings of the Legislature can be called in question on a ground other than the ground of an irregularity of procedure. Thus, the proceedings would not be protected if they are held in defiance of the provisions of the Constitution or by exercising some powers which the Legislature under the Cons-

tution does not possess. **ILR (1952) Madh B 145: AIR 1952 Madh B 31 (43, 44) (Pt P) (Pr 43)(DB).**

●——**Art. 212** — Non-compliance with Budget — Effect of — Power of Legislature to condone irregularity in its procedure — Jurisdiction of Court. See M. P. Legislative Assembly Rules (1950), R. 109 (2). **AIR 1955 Nag 11 (SB).**

●——**Art. 212 (1)** — Art. 212 (1) bars the Court from questioning the validity of any proceedings on the ground of alleged irregularity of procedure. See Tenancy Laws — Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Bill. **AIR 1955 NUC (Nag) 1341 (FB).**

●——**Art. 212 (1)** — Amendments to Bill in Select Committee — Adoption by Assembly — It might be at most irregularity in procedure — Court cannot question it under Art. 212 (1). **AIR 1955 NUC (Nag) 1341 (FB).**

——**Art. 212 (1)**—Money bill transmitted to Legislative Council with certificate of presiding member acting as Speaker instead of Speaker — Irregularity — Validity of proceedings of Legislature cannot be called in question. See Ibid, Art. 199 (4). **AIR 1963 Pat 16 (DB).**

——**Art. 212** — Powers of Speaker under R. 171-A of Rules of Procedure and Conduct of Business in the Punjab Legislative Assembly — Proceedings of legislature — Art. 212 bars enquiry by Courts. See Panchayats — Punjab Gram Panchayat Amendment Act (1959), S. 1. **ILR (1962) 1 Punj 45.**

2. "Officer or member of the Legislature."

——**Art. 212** — Officers and members of Parliament or legislature — Court cannot interfere with their legislative function. See Ibid, Art. 105. **AIR 1956 Hyd 186 (DB).**

——**Art. 212 (2)** — 'Officer of the Assembly' — Speaker is the premier officer. **19 Cut LT 183 : ILR (1953) Cut 404 : AIR 1953 Orissa 111 (113) (Pt C) (Pr 4) (DB).**

——Art. 212 — Scope of — Powers of Speaker in respect of conduct of proceedings, or Legislative Assembly — Bar of jurisdiction of Court.

Art. 212 of the Constitution operates as a bar to the jurisdiction of the High Court being invoked for the issue of a writ under Art. 226 against the Speaker of the Assembly or the Secretary of the Assembly in the matter of the conduct of proceedings in Council. The Secretary of the Assembly, is an officer of the Legislature within the meaning of Art. 212 (2). A point of order raised by a Member as to whether a certain matter should be discussed or not in the Assembly relates to the conduct of the business of the Assembly. **ILR (1952) Cut 209 : AIR 1952 Orissa 234 (236, 237) (Prs 3, 4, 5, 9) (DB).**

——Art. 212 (2) — Officer of Legislature —Right to remain in office in question — Courts' jurisdiction to deal with matter (Obiter).

Obiter—When the matter in controversy has nothing to do with the exercise by an officer of the Legislature of the powers vested in him, but is concerned with a relevant provision of law which is alleged to affect his legal right to continue in office, a Court of law does have jurisdiction to deal with the matter. **1951 Ker LT 612 : AIR 1952 Trav-Co 205 (207) (Pt D) (Pr 10) (DB).**

——Arts. 212 (2) and 178 and 188 — Officer of legislature — Speaker administering oath.

The officers of the assembly are mentioned in Article 178. The Speaker is an officer of the assembly and the ruling that he gives in the conduct of business may not be subject to the control of the Civil Courts. But the oath to the member is to be administered under Art. 188 by His Highness the Rajpramukh or by some one appointed by him in that behalf. It may be that His Highness the Rajpramukh may appoint the Speaker to administer the oath. But the administration of the oath is not a function exercised by the Speaker in his official capacity. And will not give him any special prerogative to seek shelter under Article 212. 12 QBD 271, Disting. **ILR (1952) TC 66 : 1952 Ker LT 166 : AIR 1952 Trav-C 166 (169) (Pt B) (Pr 6).**

3. Immunity from legal proceedings—Clause (2).

——**Art. 212 (2)** — Whether High Court has jurisdiction to interfere with decision of Speaker of a House of Legislature under R. 278 (2) of U. P. Legislative Assembly Rules of Procedure and Conduct of Business (1958). AIR 1954 Ker 194 and AIR 1952 Trav-Co 166, Ref. (Quaere). **AIR 1965 All 536 (542) (Pt C) (Pr 23).**

——**Art. 212 (2)** — Reference by Speaker to Committee of Privileges — Validity — Jurisdiction of Court. See Ibid, Art. 208. **1954 Cr LJ 691 : AIR 1954 All 319 (DB).**

——**Art. 212** — Bill passed by Legislative Assembly — Presentation to Governor is essential — Prayer for injunction against Council of Ministers for preventing such presentation — Courts will not allow it. See Ibid, Art. 168. **AIR 1965 Andh Pra 306.**

——Arts. 212 (2) and 252 (2) — Protection under Art. 212 (2) — Nature of — Immunity under Art. 252 (2) — When available.

Protection to the Speaker and Officers under Art. 212 (2) is evidently based on the complete supremacy of the House. The orders of the House have to be executed through the Speaker. Thus when the Speaker signs a warrant merely for the purpose of carrying out the Order of the House, it is not in any sense an external act. Where, therefore, he acts as an officer of the House and signs the warrant in performance of the duty arising in connection with the internal affairs of the House, the immunity provided by Art. 252 (2) is available and complete. The immunity is an absolute one and officers are protected even if the warrant is wrongly executed by others and this is a clear bar under the constitution and stands on a different and a higher footing to a bar under a Statute. AIR 1952 Madh Bha 145 and AIR 1954 All 319 (DB). **Diss. 60 Bom LR 279 : ILR (1957) Bom 218.**

——Arts. 212, 385 — Question regarding status of member — Jurisdiction of Court.

(Per Dixit, J.:)— Under the Constitution, it is the duty of the High Court faithfully to expound and give effect to it according to its own terms. The question as to the legality of the continuance of a person in the office of Speaker under Art. 385 is not one relating to the internal affairs of the Assembly. The question raised is one of declaring the status of a person on the interpretation of the Constitution and the High Court can declare whether under the Constitution a person has or has not the status of the Speaker of the Assembly. **ILR (1952) Madh B 145 : AIR 1952 Madh B 31 (45) (Pt S) (Pr 46) (DB).** [**Overruled** on another point in AIR 1959 SC 395.]

——**Art. 212 (2)** — Extent of Immunity of Speaker — (Words and Phrases — "With respect to" and "in relation to Legislature". See Ibid, Art. 208 (2). **AIR 1953 Orissa 111 (DB).**

——**Art. 212 — 'In the Legislature' — Rule regulating notice of questions — (Orissa Legislative Assembly Rules, R. 45).**

The giving of notice of questions by a member of the Assembly is part of the proceedings in the Assembly and consequently any rule regulating the notice of questions is a rule regulating the conduct of business in the Legislature. **19 Cut LT 183 : ILR (1953) Cut 404 : AIR 1953 Orissa 111 (114) (Pt B) (Pr 6) (DB).**

——**Art. 212 (2) and Art. 194 (3)** — Immunity of Speaker — Whether the immunity under Art. 194 (3) is wider than that under Art. 212 (2) (Quaere). **19 Cut LT 183 : ILR (1953) Cut 404: AIR 1953 Orissa 111 (117) (Pt J) (Pr 12) (DB).**

——**Art. 212 (2) — Conduct of business — Taking of oath under Art. 188.**

The taking of oath under Art. 188 is not an item in the conduct of business mentioned in Art. 212. It is only a condition precedent to entitle the members to sit in the assembly and conduct the business. **ILR (1952) TC 66 : 1952 Ker LT 166 : AIR 1952 Trav-Co 166 (169) (Pt A) (Pr 5).**

ARTICLE 212-A

(Inserted by the Constitution (Removal of Difficulties) Order, No. 2 (1950)).

●——**Art. 212-A (1)** — Applicability. See Ibid, Art. 201. **AIR 1955 SC 504.**

●——**Art. 212-A (1)** — Rajasthan Land Reforms and Resumption of Jagirs Act (6 of 1952) — Validity. See Ibid, Art. 385. **AIR 1955 SC 504.**

●——**Art. 212-A (2) — Preparation of Bill by Rajpramukh — Rajasthan Land Reforms and Resumption of Jagirs Act (6 of 1952) —Validity.**

Under Art. 212-A (2) the Rajpramukh has not himself to draft the Bill, and he might delegate that work to others. But questions of policy which are of the essence of the legislation should at least be decided by him. Whether a Bill is in the first instance prepared by the Rajpramukh or whether he adopts what had been prepared by the Ministers as his own, the position in law is the same. Under Art. 212-A (2) the Rajpramukh has to do two distinct acts: Firstly he has to prepare the Bill and secondly he has to reserve it for the considering of the President. When he himself prepares the Bill, he has, in order to comply with Art. 212-A (2), merely to reserve it for the consideration of the President. In such a case, no question of approval to the Bill by him can arise, but when the Bill has not been prepared by him, he has firstly, if he thinks fit, to adopt it before he could pass on to the second stage and reserve the Bill for the consideration of the President; and the very purpose of his endorsing his approval on the Bill is to show that he has thought fit to adopt it.

There is no provision in Art. 212-A (2) for the Rajpramukh approving of a Bill, and in the context, therefore, an endorsement of approval on the Bill must signify its adoption by him. If it is open to the Rajpramukh to adopt a Bill prepared by his Ministers, the only matter that will have to be considered is whether, in fact, he did so. And when the Bill is produced with an endorsement of approval under his signature, the question must be held to be concluded and any further discussion about the legislative or executive state of mind of the Rajpramukh must be ruled out as inadmissible. It cannot be said that the function of the Rajpramukh at the stage of preparation of the Bill was purely executive, and that it became legislative only when he had to decide whether he would assent to the Bill or withhold his assent therefrom, or reserve it for the consideration of the President. The position under Art. 212-A (2) has been assimilated to that under Art. 200, the preparation of the Bill by the Rajpramukh taking the place of the passing of the Bill by the Legislative Assembly and the one is as much a legislative function as the other. The Act is not bad for non-compliance with Art. 212-A (2). Amar Singhji v. State of Rajasthan, **1955 SCA 766 : 1955 SCJ 523 : AIR 1955 SC 504 (516, 517, 518) (Pt B) (Prs 17, 18, 19, 20).**

——**Art. 212-A inserted by the Constitution (Removal of Difficulties) Order No. 2)).** — Enforcement of Police Act in Rajasthan after coming in force of the Constitution — Validity. See Ibid, Art. 372 (1). **AIR 1957 Raj 28 (DB).**

——**Art. 212-A** — Irregularity in exercise of power by Rajpramukh — Validity of law. See Ibid, Art. 385. **AIR 1954 Raj 224 (DB).**

——**Art. 212-A** — Extension of duration of Rajasthan (Protection of Tenants) Ordinance by notification — Validity of extension. See Tenancy Law — Rajasthan (Protection of Tenants) Ordinance (9 of 1949), S. 1 (3). **AIR 1954 Raj 224 (DB).**

●——**Art. 212-A (2) — Compliance with — Presumption as to — Rajasthan Act (15 of 1951)— Validity (Tenancy Law — Rajasthan Produce Rents Regulating Act (15 of 1951), S. 1).**

When it was notified on the 4th of June that the Rajasthan Act (15 of 1955) had been made by His Highness the Rajapramukh on the 2nd of June, 1951, the Court may very well infer, that the bill was prepared under his direction, and that he assented to the bill so prepared on the 2nd of June, 1951, and thus the formalities required by Art. 212-A (2) have been properly complied with. 34 CLR 420, Disting. Raj Sahiban Shersingh v. State of Rajasthan, **ILR (1954) 4 Raj 365 : 1954 Raj LW 296 : AIR 1954 Raj 65 (67, 68) (Pt A) (Prs 11, 12, 13) (FB).**

ARTICLE 213

●——**Art. 213 (1)** — Municipalities — Orissa Municipal Election Validation Ordinance (1 of 1959) — Ordinance was within 'ordinance issue power' of Governor even though it was issued with view to override judgment of High Court under Art. 226. See Municipalities — Orissa Municipal Election Validation Ordinance (1 of 1959). **AIR 1962 SC 945.**

——**Art. 213** — Under Ch. 4 of Part 6, Governor can promulgate ordinances in the exercise of the legislative power. The Governor shall invariably accept the advice of the Ministers while promulgating an ordinance for the simple reason that the Ministers enjoy the confidence of the legislature and any ordinance promulgated without the concurrence of the Ministers shall not later become law. See Ibid, Art. 191 (1) (a). **AIR 1962 All 128 (DB).**

——**Arts. 213, Proviso (c), 200**—U. P. Universities Ordinance (1 of 1959) — Validity — Ordinance does not affect powers of High Court and is not hit by Art. 213, Proviso (c) read with Art. 200, Proviso. See U. P. Universities Ordinance (1 of 1959). **AIR 1960 All 205.**

——**Art. 213 — Condition for promulgation of ordinance — Satisfaction of Governor — If justiciable.**

The validity of an Ordinace promulgated by a Governor cannot be questioned in a Court of law. The only condition by which a Governor is restricted and which is an absolute condition, is that the Legislature must not be in session at that line. Even if the Legislature is in Session the Governor may prorogue the Legislature and thereafter make the Ordinance. AIR 1950 FC 59, AIR 1945 PC 48; and AIR 1931 PC 111 Rel. on. **ILR (1959) 2 All 267 : AIR 1960 All 205 (207, 208) (Pt B) (Prs 9, 11) (DB).**

——**Art. 213** — U. P. Ordinance, 1 of 1949, was ultra vires the Governor — Ordinance not validated by Government of India (3rd Amendment) Act. See U. P. Administration of Evacuee Property Ordinance (1 of 1949). **AIR 1957 All 561 (DB).**

——**Arts. 213, 123 — Satisfaction of Governor— Must be his own satisfaction.**

The satisfaction of the Governor referred to in Art. 213 is subjective satisfaction and the Court is, therefore, not entitled to enquire into the reasons for that satisfaction or into the sufficiency of those reasons. **ILR (1956) 2 All 665 : 1956 ALJ 556 : 1956 All WR (HC) 570 : AIR 1956 All 557 (560) (Pt A) (Pr 22) (DB).**

——**Arts. 213, 123 — Governor's satisfaction — Proof of existence as fact — Powers of Court.**

The statement in the Ordinance in question 'whereas the Governor is satisfied that circumstances exist' is presumptive proof of the factum of satisfaction. Though the Court may inquire into the fact of Governor's satisfaction, it cannot inquire into the reasons for that satisfaction or into the sufficiency of those reasons. **ILR (1956) 2 All 665 : 1956 All LJ 556 : 1956 All WR (HC) 570 : AIR 1956 All 557 (561) (Pt B) (Pr 28) (DB).**

——**Arts. 213, 123 — Existence of satisfaction when House is in session — Effect.**

All that Art. 213 requires is that the satisfaction of the Governor must exist at the time when either both or one of the Houses of Legislature are or is not in session. **ILR (1956) 2 All 665 : 1956 All LJ 556 : 1956 All WR (HC) 570 : AIR 1956 All 557 (561) (Pt C) (Pr 29) (DB).**

——**Arts. 213, 123 — Proroguing of Council — Powers of Governor — Very short interval between proroguing of Council and promulgation of Ordinance — Effect on bona fides of Governor— Validity of U. P. Ordinance No. 9 of 1956 — (Sales Tax — U. P. Sales Tax (Amendment) Ordinance (9 of 1956), S. 1).**

Under Art. 174 the Governor is authorised to prorogue the Council at any time that he thinks fit. Assuming that the assembly in U. P. was prorogued deliberately with a view to enable the Governor to promulgate the U. P. Ordinance, 9 of 1956, even so the exercise of the power by the Governor cannot be dubbed as fraudulent, colourable or mala fide. AIR 1950 Mad 243, Rel. on. So long as the power to prorogue the Legislature and to promulgate an Ordinance is exercised bona fide in the interest of the State itself, there is no violation of the provisions of the Constitution. **ILR (1956) 2 All 665 : 1956 All LJ 556 : 1956 All WR (HC) 570 : AIR 1956 All 557 (561, 562) (Pt D) (Prs 32, 33, 34, 35, 38) (DB).**

——**Art. 213 (1) Proviso** — Madhya Pradesh Tendu Patta (Vyapar Viniyaman) Niyamavali Sanshodhan Adhyadesh (1965), (Ordinance No. III of 1965), S. 3 — Constitutional validity — Ordinance is not invalid — Previous instructions of President for its promulgation were not required. See Madhya Pradesh Tendu Patta (Vyapar Viniyaman) Niyamavali Sanshodhan Adhyadesh (1965) Ordinance (No. 3 of 1965). **1965 MPLJ 994 : AIR 1966 Madh Pra 110 (DB).**

——**Art. 213 (1)** — City of Bangalore Improvement (Amendment) Act (XIII of 1960), Ss. 2, 3 —Introduction of S. 27-A in Parent Act validating retrospectively acquisition of land under Mysore Land Acquisition Act, for purposes of city improvement, in contravention of Ss. 14, 15, 16, 17 or 18 or 27 of Parent Act — Provisions are in respect of 'existing law' within meaning of Art. 254 (2) — Amendment Act not reserved for assent of President in accordance with proviso, to Art. 213 (1), is invalid. See City of Bangalore Improvement (Amendment) Act (13 of 1960), S. 2. **AIR 1962 Mys 218 (DB).**

——**Art. 213 (2) (a)** — Legislation or Ordinance cannot be struck down as being usurpation of judicial power — Bill to replace Ordinance — Leave to introduce refused — Refusal does not amount to disapproving Ordinance — Ordinance does not cease to be operative — Rules of Procedure. See Ibid, Art. 213 (1). **AIR 1960 Orissa 46 (DB).**

——**Art. 213 (1)** — S. 5 (1) of Orissa Ordinance (1 of 1959), is repugnant to existing laws in concurrent list — No instructions under Art. 213 (1) — S. 5 (1) is void to the extent of repugnancy— Assent of President under Art. 254 (2) avoids inconsistencies in laws of legislature. See Municipalities — Orissa Municipal Election Validation Ordinance (1 of 1959), S. 5 (1). **AIR 1960 Orissa 46 (DB).**

——**Art. 213 (1), (2) (a)** — Legislation or Ordinance cannot be struck down as being usurpation of judicial power — Bill to replace Ordinance — Leave to introduce refused — Refusal does not amount to disapproving Ordinance — Ordinance does not cease to be operative — Rules of Procedure and Conduct of Business of Procedure — (Orissa Legislative Assembly — R. 96 (i) — Constitution of India, Art. 245). **ILR (1959) Cut 203 : AIR 1960 Orissa 46 (51) (Pt A) (Prs 8, 9) (DB).**

——**Art. 213 (2) — Scope — Bihar Buildings (Lease, Rent and Control) Continuance Ordinance (5 of 1952) — Validity.**

Bihar Ordinance (V of 1952) issued on 10-5-1952 under Art. 213 of the Constitution with retrospective effect from 15th March, 1952 was validated on 9th March, 1953 by Bihar Act (V of 1953), as stipulated in clause 2 (a) of Art. 213 of the Constitution and that Act incorporated all the provisions which had been enacted under Ordinance (5 of 1952). Therefore, during that period, Act (3 of 1947) was in any case kept alive in the rest of Bihar if not by Ordinance (5 of 1952), at least by Bihar Act (V of 1953). **1956 Pat LR 291 : 1956 BLJR 410 : AIR 1956 Pat 496 (500, 501) (Pt C) (Pr 9) (DB).**

——**Art. 213 — "Satisfied" — Meaning.**

Per Sarjoo Prasad J. :— Wherever a legislation uses the word "satisfied" it must mean reasonably satisfied. It cannot import an arbitrary or irrational state of being satisfied. It is, therefore, obvious that if it is found on the very face of an Ordinance that it is an irrational and an unreasonable piece of legislation, a Court of law would certainly be entitled to hold that the legislation is invalid and pronounce against it

being enforceable. **1951 Cri L. J. 1251: ILR 29 Pat 410: AIR 1950 Pat 332 (345) (Pt F) (Pr 51) (DB).**

——Arts. 213, 385 — Applicability — Tenancy Laws — (Rajasthan (Protection of Tenants)) Ordinance (9 of 1949), S. 1 (3).

Sub-s. (3) of section 1 of Rajasthan (Protection of Tenants) Ordinance (9 of 1949) does not purport to grant any power to the Rajpramukh. That subsection declares, in the first place the period for which the Ordinance shall remain in force, and by way of caution mentions that the period may be extended by the Rajpramukh. On the date, when the Notification of 14th June, 1951, was made the Constitution of India was in force; but the Legislative Assembly, which was the only House provided for Rajasthan, had not been constituted. Under Art. 385, therefore, the same authority, which functioned as the legislative authority prior to the Constitution, continued to exercise legislative powers, and under Art. 10 of the Covenant, by which the State of Rajasthan was formed the Rajpramukh was vested with legislative powers. On the date of the commencement of the Constitution the individual States had merged into the State of Rajasthan, and the Rajasthan State was the Indian State referred to in Art. 385 of the Constitution. His Highness the Rajpramukh was, therefore, fully empowered to function as the legislative authority in Rajasthan until the Constitution and meeting of the first Session of the Legislative Assembly. Art. 213 is not applicable to such a case. Hence the extension of the Ordinance notified by the said Notification was a valid piece of legislation made by His Highness the Rajpramukh. **ILR (1953) Raj 772: 1954 Raj LW 154: AIR 1954 Raj 169 (169, 170) (Prs 3, 4, 5) (DB).**

ARTICLE 214

■ **——Art. 214** — Applicability. See United State of Travancore and Cochin High Court Act (5 of 1125 M. E.) S. 8. **AIR 1954 SC 526.**

——Art. 214 — Order passed under Part 1 — U. P. Zamindari Abolition and Land Reforms Act — High Court's revisional jurisdiction. See Tenancy Laws — U. P. Zamindari and Land Reforms Act (1 of 1951), S. 330. **AIR 1957 All 495.**

[**Overruled** on another point in AIR 1962 All 315 FB]

——Art. 214—Andhra Pradesh and Madras (Alteration of Boundaries) Act (1959), Ss. 18 and 19 —Provisions do not violate Art. 214 of the Constitution but in fact give effect to that article by making the jurisdiction of each High Court coterminous with territories of that State. See Andhra Pradesh and Madras (Alteration of Boundaries) Act (1959), S. 18. **AIR 1961 Andh Pra 50.**

——Arts. 214 and 225 — High Court of Saurashtra becoming High Court of Part B State and Part 6 of Constitution with certain modification mentioned in Art. 238 became applicable to High Court — Effect of Art. 225 on appellate jurisdiction. See States Re-organisation Act (1956), S. 49. **AIR 1965 Guj 87 (DB).**

——Arts. 214 (2) and 366 (14) — Scope — "High Court" — Definitions — If different from each other. See Ibid, Art. 124 (3), Expl. **1952 Cri LJ 540: AIR 1951 Pat 305.**

——Art. 214 (2) — "Shall be deemed to be" — Meaning of.

Article 214 (2) does not relate to the period of time after the commencement of the Constitution and the words "shall be deemed to be" indicate that it is not meant for converting the Provincial High Court into a State High Court. **ILR 29 Pat 904: 1952 Cri LJ 540: AIR 1951 Pat 305 (306) (Pt A) (Pr 5) (DB).**

——Arts. 214 (2) and 224 — Construction and scope — Judge retiring and resigning office of High Court of Province on 24th January, 1950, and not sitting on 25th January, 1950 — Apppointment again as Judge under Art. 224 — Validity — If unconstitutional.

Under Art. 214 (2) of the Constitution of India, the Provincial High Court which was exercising jurisdiction immediately prior to the commencement of the Constitution is to be deemed to be a State High Court. Art. 224 authorises the appointment of any person who "has held" office as a Judge of a High Court. It is not necessary that he should have held office on the day prior to the date on which the Constitution came into force. If he has held office of Judge of a Provincial High Court, that would be sufficient. Where a Judge resigned his office and retired as Chief Justice on 24th January, 1950 and did not hold office as Judge on 25th January, 1950, but is appointed to sit again as a Judge of that High Court, that is to say, of the High Court which came into existence after the commencement of the Constitution, under Art. 224, it cannot be said that because he did not hold office on 25th January, 1950, immediately before the commencement of the Constitution, his appointment under Art. 224 is invalid and that therefore, he has not been a Judge of the High Court under Art. 224. Even though he was not Judge of the Provincial High Court on 25th January, 1950, he having held office as a Judge of that Court before, and the identity of the provincial High Court not having been changed between 24th January, when he resigned and the 25th, the day immediately preceding the commencement of the Constitution, the appointment is not invalid or unconstitutional and must be held to be a Judge validly appointed and holding office as such. **1952 Cri LJ 540: ILR 29 Pat 904: AIR 1951 Pat 305 (306) (Pt B) (Pr 6) (DB).**

——Arts. 214 (2), 366 (14) and Expln. (b) to Art. 217 (2) — Scope of Expln. (b) to Art. 217 (2).

Explanation (b) to Art. 217 (2) does not conflict with the definitions in Art. 214 (2) and Art. 366 (14). **ILR 29 Pat 904: 1952 Cri LJ 540: AIR 1951 Pat 305 (307) (Pt E) (Pr 11) (DB).**

ARTICLE 215

See also under Contempt of Courts Acts 1926 and 1952.

SYNOPSIS

(Constitution of India, Art. 215.)

1. Scope.
2. Court of Record.
3. Contempt of Court — Essentials.
(a) Nature of contempt proceedings.
(b) Scandalising the Court.
(c) Disobedience to orders of Court.
(d) Interference with due administration of justice.
(e) Comments and reports.
(f) Attempts to influence decision in pending cases.
4. Power of High Court to punish contempts — General.
(a) Practice and procedure.
(b) Necessary parties.
5. Evidence and mode of proof.
(a) Defence in contempt proceedings.

6. Exercise of power is discretionary.
7. Jurisdiction.
8. Punishment — Principles.
9. Apology.
10. Appeal.

1. Scope.

●——**Art. 215 — High Court Judge appointed as Industrial Tribunal — Contempt of Tribunal — Use of powers under Art. 215 — [Industrial Disputes Act (1947), S. 7].**

The appointment of a Judge of the High Court as an Industrial Tribunal under S. 7 of the Industrial Disputes Act does not alter the status of the Industrial Tribunal or equate it with the High Court itself. The proceedings before the Judge who constitutes the Industrial Tribunal are not proceedings of the High Court, of which he is no doubt a Judge and any contempt committed in relation to such proceedings would be contempt of that Industrial Tribunal. True, it would also be in contempt of the Judge who presided over that Tribunal. But nonetheless it is only contempt of the Tribunal and not contempt of the High Court.

Where, therefore, a Judge of the High Court is appointed as the sole member of an Industrial Tribunal under the Industrial Disputes Act, he has not the powers of a Judge of that High Court to punish persons for contempt of the Tribunal under Art. 215 of the Constitution. Case-law fully discussed. In the matter of Hayles, Editor of "the Mail". **1955 Mad WN 1051 (2): ILR (1955) Mad 1: (1955) 1 Mad LJ 375: 1955 Cri LJ 1: AIR 1955 Mad 1 (16, 17, 21, 22) (Pt A) (Prs 56, 65, 83, 94) (FB).**

——**Arts. 215, 132 (1) — Power of Nagpur High Court to punish for contempt is not derived from Art. 215 — Question of interpretation of Constitution does not arise every time High Court exercises this power. ILR (1952) Nag 130: 1952 Cri LJ 749: AIR 1952 Nag 130 (131) (Pt A) (Pr 4) (DB).**

——**Art. 215 —** Contempt of Courts Act (1952), S. 3—Contempt of Court by corporation—Liability of its officers and servants. See Contempt of Courts Act (1952), S. 3. **AIR 1958 Punj 180.**

2. Court of Record.

——**Art. 215 —** Power of High Court — Clerical error in High Court's decree — If can be corrected after its execution — The High Court as a Court of record, owes a duty to itself to ensure that its record is free from any blemish or error. If any such error is brought to its notice in any manner whatsoever and at any time whatsoever, it has the power to correct errors of a clerical nature. See Civil P. C. (1908), S. 151. **AIR 1960 All 385.**

——**Art. 215 —** High Court is a Court of record created by the Constitution, and not a Civil Court. See Civil P. C. (1908), O. 45, R. 1. **AIR 1957 All 505 (DB).**

——**Art. 215 —** Civil P. C. (1908) Section 151 — Inherent powers of High Court—Objectionable passages in High Court judgment by single judge — Power to expunge — Not vested in Division or Full Bench — High Court is a Court of record and judgment of such judge is part of the record of the High Court. See Civil P. C. (1908), S. 151. **AIR 1960 Mad 73.**

——**Art. 215 —** Court of record — By the Government of India Act 1935 as well as by Art. 215, the Supreme Court of India and the High Courts are the Courts of record. See Ibid, Art. 19 (2). **1955 Cri LJ 547: AIR 1955 Orissa 36 (DB).**

3. Contempt of Court — Essentials.
(a) Nature of Contempt Proceedings.
(b) Scandalising the Court.
(c) Disobedience of orders of Court.
(d) Interference with due administration of Justice.
(e) Comments and reports.
(f) Attempts to influence decision in pending case.

3. Contempt of Court — Essentials.

●——**Arts. 215 and 226 —** Law declared by High Court — It is binding on lower Courts and Tribunals. See Ibid, Art. 227. **AIR 1962 SC 1893.**

●——**Art. 215 —** Contempt of Court — What constitutes — Contempt by subordinate Court — Knowledge of superior Court's order and intentional disobedience necessary. **AIR 1961 SC 1367.**

●——**Art. 215 —** Contempt of Court — What constitutes. See Ibid, Art. 129. **AIR 1957 SC 478.**

——**Art. 215 —** Writ petition by X for restraining prescribed authority under U. P. Act (34 of 1958) from demolishing certain constructions made by X without permission — X giving undertaking to Court that he would make no further constructions and in view of undertaking interim order passed by Court restraining prescribed authority from demolishing constructions already made by X — **Held** that X had committed breach of solemn undertaking by making additional constructions and was guilty of contempt of Court — **Held** further that constructions were not made under bona fide belief that they were not constructions within meaning of undertaking — Even if they were made under bona fide belief, that might be relevant only in determining sentence. See Contempt of Courts Act (1952), S. 3. **1964 All WR (HC) 504.**

——**Art. 215 —** Magistrate passing order of attachment of suit property along with preliminary order under S. 145, Cr. P. C. — Revision against both orders — Additional District Magistrate (Judicial) and Additional District Magistrate (Executive) staying further proceedings till pendency of revision application — Order of attachment reaching police for execution before stay order could reach Magistrate — Police referring Magistrate on being confronted with difficulty of having warrant of attachment for execution and stay order of A. D. M. (J) both bearing same date — Magistrate considering reference as unwarranted and foolish and directing police to execute orders passed by his Court — On execution of orders, proceedings for contempt against police and Magistrate for disregarding orders of A. D. M. (J) and A. D. M. (E) taken —**Held,**—Proceedings could not be taken against police as he was complying with orders of Magistrate — Magistrate, however, acted improperly when he took perverse view of police report and made unwarranted remarks against police — Though conduct of Magistrate in not interpreting stay order in its true spirit deserved censure contempt proceedings could not be taken against him, all the more, when any harm done to applicant could be set a right. See Contempt of Courts Act (1952), S. 3. **1964 All WR (HC) 450.**

——**Art. 215 —** Contempt — Mere intention to commit contempt — Not an offence. **1959 All LJ 849: AIR 1959 All 686 (688) (Pt C) (Pr 5).**

——**Art. 215 —** Contempt of Courts Act (1952), S. 3 — Contempt of Court — What constitutes — (Criminal P. C. (1898), Ss. 4 (1) (m), 6, 352). See Contempt of Courts Act (1952), S. 3. **AIR 1958 All 417.**

——**Art. 215** — Judgment of concurrence by one of members of Revenue Board quashed on ground that he did not hear parties — Case sent back to Board for the disposal according to law — State Legislature passing Act (30 of 1953), authorising member who had not heard the parties to sign concurrence with judgment written by another member who had heard the parties -- Judgment in case signed by another member purporting to act under the new Act — There is no disregarding of the decision of the High Court. See Ibid, Art. 226. **AIR 1954 All 660 (DB).**

——**Art. 215** — Contempt of Court — Suppression of application intended for a Court of law by a person is a contempt of Court. See Contempt of Courts Act (1952), S. 3. **AIR 1954 All 351 (DB).**

——**Art. 215** — Contempt of Court — What amounts to. See Contempt of Courts Act (1952), S. 3. **1955 Cri LJ 1028: AIR 1955 Andh 156 (DB).**

——**Art. 215** — Contempt of Court by public officers. See Contempt of Courts Act (1952), S. 3. **1955 Cri LJ 1028: AIR 1955 Andh 156 (DB).**

——**Art. 215** — Contempt of Court — Matter sub judice — Parallel enquiry by executive officer. See Contempt of Courts Act (1952), S. 3. **1955 Cri LJ 1028: AIR 1955 Andhra 156 (DB).**

——**Art. 215** — Questions put by Court — Answers by advocate — Not contempt of Court. See Contempt of Courts Act (1952), S. 3. **1955 Cri LJ 1028: AIR 1955 Andhra 156 (DB).**

——**Art. 215** — Contempt of Court — Acts and conduct of District Magistrate calculated to lower authority or subordinate Court and weakening sense of public confidence in administration of justice — On facts held was gross contempt. See Contempt of Courts Act (1952), S. 1. **1964 (2) Cri LJ 660: AIR 1964 Cal 572 (DB).**

——**Art. 215** — Contempt of Court — Contravention of Order under S. 145, Criminal P. Code — Contempt proceedings — Order not precise — Effect. See Contempt of Courts Act (1952), S. 1. **1958 Cri LJ 1162: AIR 1958 Cal 474.**

——**Art. 215** — Violation of order under S. 145, Criminal P. C. — Proceedings for contempt. See Contempt of Courts Act (1952), S. 3. **AIR 1958 Cal 474.**

——**Art. 215** — Contempt of Court — Bailiff using force in obtaining delivery of possession. See Contempt of Courts Act (1952), S. 3. **AIR 1956 Cal 249.**

——**Art. 215 — Compromise petition supported by affidavit filed in High Court — Appeal disposed of under O. 23, R. 3 Civil P. C., relying on petition — Petition containing unconditional undertaking — Breach of — Contempt of Court — (Civil P. Code (1908), O. 23, R. 3) — (Contempt of Courts Act (1952), S. 1).**

Where in an appeal from an order of ejectment, pending before the High Court, a joint petition of compromise is filed by the parties whereby the tenant, while supporting the petition by an affidavit, gives to the Court an unconditional and unqualified undertaking that he will vacate the premises on a certain named date and the appeal is disposed of in terms of the petition of compromise under the provisions of O. 23, R. 3, Civil P. C., then if the tenant fails to give vacant possession on the named date he is guilty of a deliberate breach of the personal undertaking given by him to the High Court in his affidavit. It is settled law that breach of an undertaking given to a Court by a person in a pending proceeding on the faith of which the Court sanctions a particular course of action is misconduct amounting to contempt. AIR 1952 Cal 591, Dist. **95 Cal LJ 199: 1955 Cri LJ 654: AIR 1955 Cal 182 (183) (Pr 4) (DB).**

——**Art. 215 — Contempt of Court — What amounts to — Disobedience to order — Personal service of order when essential — Mandamus directing Government Officers to restore possession — Non-compliance — Personal service of order not effected — No contempt of Court — (Contempt of Courts Act (1926), S. 1)**

Contempt of Court is either (1) criminal contempt consisting of words or acts obstructing, or tending to obstruct, the administration of justice, or (2) contempt in procedure, consisting of disobidence to the judgments, orders or the process of the Court, and involving a private injury.

But disobedience, if it is to be punishable as a contempt, must be wilful. Disobedience cannot be held to be wilful until the order is served. Hence the judgment or order must be shown to have been served on the party personally, except in the following cases (1) prohibitive orders, the drawing up of which is not completed; (2) orders embodying an undertaking to do an act by a named day; (3) orders to answer interrogatories or discovery or inspection of documents; (4) where an order for substituted service has been made; (5) where the respondent has evaded service of the order.

Personal service of the judgment or order may be dispensed with (1) if it be made to appear to the Court or a Judge that prompt personal service of the judgment or order cannot be effected; in such a case substituted or other service of the order or merely giving notice of the order may be directed; (2) if it is shown that the person to be served has evaded service. But the fact that the person ordered to do an act was actually in Court when the order was made is not a ground for dispensing with personal service of it. In the case of a breach of a prohibitory order, however service on the party against whom committal is sought, is not necessary, (1) if the party concerned had notice of the order and knew that the order was intended to be enforced, (2) or if he consented to the order, (3) or if he was present in Court when the order was pronounced or the motion was made although he may have left the Court before the order was pronounced.

Hence where a mandamus issued by the High Court directs certain officers of the Government to restore possession of the land which had been acquired by the Government but the order is not personally served on the officers concerned, they cannot be committed for contempt for disobedience of the order. **56 Cal WN 589: AIR 1953 Cal 96 (96, 98) (Prs 3, 36, 39, 42 to 44) (DB).**

——**Art. 215 — Defendant giving undertaking to vacate premises on or before certain date — On default, decree to be executed — Undertaking is not unqualified — Default committed—Defendant held should not be committed for contempt.**

Where the defendant gives an undertaking to the Court to vacate, the premise on or before a certain date and in default agrees that the ejectment decree be executed or some other steps be taken according to law, and that he would raise no objection, and the High Court passes an order in the terms of the undertaking but without formally recording the undertaking in the order the undertaking is not an unqualified one, the consequences of the default being provided in the order itself. Failure on the part of the defendant to keep to the terms of the undertaking cannot be regarded as justifying the exercise of the dis-

cretionary powers of the High Court to order committal for contempt. Misc. Case No. 276 of 1951 dated 26-2-1952 (Cal), Followed. AIR 1945 PC 147, Ref.

Even otherwise, considering the fact that while giving the undertaking the defendant had reasonable doubt that he had not given an unqualified undertaking and also considering the practice that the proceedings for contempt should be taken with reluctance and that any benefit of doubt should be given to the party, the case was held not fit for starting contempt proceedings. Case law Ref. **1952 Cri LJ 1301: 56 Cal WN 580: AIR 1952 Cal 591 (593, 594) (Prs 13, 14, 19, 23) (DB).**

——Art. 215 — Application by detenu to High Court — State delaying transmission—Unreasonable delay — It amounts to contempt of High Court.

Where an application by detenu in respect of withdrawal of certain privileges from him, is received by State for transmission to the High Court, the State should despatch it to the High Court as expeditiously as possible. It would amount to contempt if any impediment is placed in its reaching the High Court within reasonable time. Whoever is found guilty of this is liable to be committed for contempt of High Court. Under the present Constitution the High Court possesses the necessary power. **56 Cal WN 246: 1952 Cri LJ 1255: 1952 All WR (Sup) 57: AIR 1952 Cal 562 (563) (Prs 3, 5) (DB).**

● **——Art. 215 — Contempt, what constitutes (Contempt of Courts Act (1926), S. 1).**

In the absence of any interim prohibitory order from the Court, or of an undertaking by a party, it is not contempt for party to do any act resulting in some proceedings pending before the Court being rendered infructuous. A party should not anticipate order of the Court even in his legitimate actions. 1941 Rang LR 747, Rel. on. Malojirao Shitole v. Matkar, C. G., **1953 Cri LJ 1675: AIR 1953 Madh Bha 245 (247) (Pt D) (Pr 6) (FB).**

——Art. 215—Contempt of Court what constitutes — Lawyer trying to defend accused, himself committing offence — Not immune from arrest by police — Latter not guilty of contempt of Court. **1961 (2) Cri LJ 875 (877) (Pr 11) (DB) (Madh Pra).**

——Art. 215 — Contempt of Court — Compromise decree, breach of — No undertaking given to Court — Breach of terms of compromise — No contempt. See Contempt of Courts Act (1952), S. 3. **AIR 1960 Madh Pra 280.**

——Art. 215 — Contempt of Court — Income-tax Act (1922), S. 46 (5-A) — Companies Act (1956) Ss. 446 and 456 — Official Liquidator appointed by Court is officer of Court — Initiation of legal proceeding against him without leave of Court amounts to contempt. See Contempt of Courts Act (1952), S. 1. **ILR (1959) Cut 401.**

——Art. 215 — Contempt of Court — What amounts to — [Contempt of Courts Act (1952), S. 3].

It is true that under ordinary circumstances mere intention or preparation to resist taking of possession by the Receiver may not be sufficient for contempt of Court. But in view of the facts and circumstances of the case formal demand by the Receiver to the persons to give up possession of the property was not necessary and they by their conduct made it absolutely clear that he would be resisted by force if he made any attempt to take possession. AIR 1933 All 759, Rel. on. **ILR (1954) Cut 467: 1954 Cri LJ 988: 20 Cut LT 446: AIR 1954 Orissa 167 (171, 172) (Pt C) (Pr 16) (DB).**

——Art. 215 — Contempt, what constitutes — (Contempt of Courts Act (1926), S. 1).

In order to constitute contempt of Court it is not necessary that the Court or an individual Judge should be attacked. The policy of the law is that the public should be protected from attack. **ILR (1953) Cut 283: 1953 Cri LJ 1491: AIR 1953 Orissa 249 (252) (Pt B) (Pr 13) (DB).**

——Art. 215 — Contempt of Courts Act (12 of 1926), S. 1 — Contempt of Court — (Patiala Contempt of Courts Act, S. 1). See Contempt of Courts Act (1926), S. 1. **AIR 1953 Pepsu 79.**

——Art. 215 — Contempt of Court what constitutes — Scope — Attempt to corrupt Judge — Contempt of Court. See Contempt of Courts Act (1926), S. 3. **1959 Cri LJ 1469: AIR 1959 Punj 632.**

3 (a). Nature of contempt proceedings.

——Art. 215 — Contempt of Court — Nature of proceedings. See Letters Patent (Cal.) Cl. 15. **1958 Cri LJ 1162 : AIR 1958 Cal 474 (DB).**

——Art. 215 — Letters Patent (Cal.) Cl. 15 — Civil contempt and criminal contempt — Distinction. See Letters Patent (Cal.), Cl. 15. **AIR 1953 Cal 627.**

——Art. 215 — Proceedings are quasi-criminal — Procedure for contempt must be strictly followed — Notice of motion must be personally served and must contain statement as to specific breach.

Proceedings for committal for contempt are in the nature of quasi criminal proceedings and in such proceedings established practice must be strictly followed, not only in substance but also in form. In an application for committal for contempt, the notice of motion must be served personally before it comes into the list, even for the first time. There is no known procedure for serving copy subsequently. The notice must contain a statement as to the specific breach complained of for which the respondents are sought to be committed. **('51) 88 Cal LJ 70.**

——Art. 215 — Contempt of Court — Proceedings for — Object of. See Contempt of Courts Act (1952), S. 3. **1961 (2) Cri LJ 766: AIR 1961 J & K 76 (DB).**

——Arts. 215 and 134 (1) (c) — Contempt of High Court — Nature of proceeding — Principles governing granting of certificate in criminal cases — Certificate refused. See Ibid, Art. 134 (1) (c). **AIR 1953 Madh B 206.**

——Art. 215 — Letters Patent (Mad) Cls. 15, 2 and 22 — Civil and Criminal contempt — Distinction. See Letters Patent (Mad) Cl. 15. **AIR 1955 Mad 121.**

——Arts. 215 and 134 (1) (c) — Contempt of Court — Nature of contempt proceedings — Whether criminal proceedings. See Contempt of Courts Act (1952), S. 3. **AIR 1952 Nag 130.**

——Art. 215 — Civil contempt and criminal contempt — (Contempt of Courts Act (1952), S. 3).

Words or acts which obstruct or tend to obstruct administration of justice would always amount to criminal contempt inasmuch as they offend the majesty of law whereas contempt of procedure consisting of unintentional disobedience of orders and processes of the Court and involving a private inquiry are classified as civil contempt. Refusal by a party to deliver possession to a Receiver would also amount to criminal contempt

provided that the party was aware of the appointment of the Receiver and after being called upon by him to deliver possession did not do so. AIR 1934 Bom 452, Rel. on. **ILR (1954) Cut 467 : 1954 Cri LJ 988 : 20 Cut LT 446 : AIR 1954 Orissa 167 (170) (Pt B) (Pr 8) (DB).**

——**Arts. 215 and 133** — (Contempt of Courts Act (1926), S. 2) — Criminal contempt — Leave to appeal under Art. 133 to Supreme Court cannot be granted against conviction for criminal contempt — Distinction between criminal and civil contempt pointed out. **ILR (1952) Cut 467 : 1953 Cri LJ 1578 : AIR 1953 Orissa 266 (273) (Pt H) (Prs 17, 19) (DB).**

——**Art. 215** — Contempt of Court — Criminal and civil contempt — Difference between — Rule relating to service in case of criminal contempt — Applicability to case of civil contempt. See Contempt of Courts Act (1952), S. 1. **AIR 1957 Pat 528.**

——**Art. 215** — Contempt of Court — Nature of proceedings — Criminal nature. See Contempt of Courts Act (1952), S. 3. **1959 Cri LJ 1469: AIR Punj 632.**

——**Art. 215** — Civil contempts. See Contempt of Courts Act (1952), S. 3. **AIR 1958 Punj 180.**

3 (b). Scandalising the Court.

● ——**Art. 215 — Contempt — What amounts to — (Contempt of Courts Act (1952), S. 1).**

If an act or utterance or writing has the effect of scandalising the Court or the Judge it would be within the mischief of the expression 'contempt'. Medhi v. Frank Morase, **1954 Cri LJ 1609: AIR 1954 Assam 201 (211) (Pt D) (Pr 32) (FB).**

——**Art. 215** — Contempt of Court — Bailiff using improper words about High Court — See Contempt of Courts Act (1952), S. 3. **AIR 1956 Cal 249.**

——**Art. 215 — Scandalising the Court — Fair and reasonable criticism — (Contempt of Courts Act (1952), S. 1).**

In assessing whether a particular passage amounts to contempt by scandalising the Court, the Court must bear in mind that the judiciary is not above criticism. Indeed, it is not by stifling criticism that confidence in Courts can be created and proceedings for this species of contempt should be used, sparingly. Once the right of fair and reasonable criticism is conceded, the dignity of expression cannot be strictly insisted in every case. AIR 1954 SC 10, Ref. to. **ILR (1955) Hyd 571: 1955 Cri LJ 1590: AIR 1955 Hyd 264 (268) (Pt C) (Pr 10) (DB).**

——**Art. 215** — Characterising Judge of Court as dishonest and deciding cases after taking bribes — Statement amounts to contempt of Court. See Contempt of Courts Act (1952), S. 3. **1961 (2) Cri LJ 766: AIR 1961 J and K 76 (DB).**

——**Art. 215** — Contempt of High Court — Scandalising a Judge of High Court — Remarks contained in petition to High Court for proceeding against Judge of High Court — Offence — Serious contempt — Intention of contemner not material. See Contempt of Courts Act (1952), Section 3. **1960 Cri LJ 1120: AIR 1960 Orissa 132.**

——**Art. 215 — Contempt of High Court — What amounts to — 'Apabyabahara' — Meaning of — (Contempt of Courts Act (1952), S. 1).**

Any act done or writing published calculated to bring a Court or the Judge of a Court into contempt or to lower his authority is contempt of Court. A statement by the Chief Minister of a State to the effect that 'in many instances the immaturity of the High Court is apparent', contains an aspersion regarding the competency of the Judges of the High Court. The use of the expression 'apabyabahara' conveys the idea that the High Court has abused its powers. (1900) 2 QBD 36, Rel. on. **ILR (1958) Cut 195: 1958 Cri LJ 1055: AIR 1958 Orissa 168 (171, 182, 183) (Pt B) (Prs 6, 43) (DB).**

——**Art. 215 — Contempt of Court — Test — (Contempt of Courts Act (1952), S. 1).**

In cases of contempt, it is not the intention of the alleged contemner but the effect of undermining or lowering the Court in the estimation of the public or its tendency or likelihood to so undermine or lower the Court is the real test. (1907) 2 Ir R 260 and (1956) 3 WLR 796, Foll. **ILR (1958) Cut 195: 1958 Cri LJ 1055: AIR 1958 Orissa 168 (181, 182) (Pt G) (Pr 39) (DB).**

——**Art. 215** — Contempt of Courts Act (1952), Ss. 3 (1) and 4 — Scandalising Court — Wild and reckless allegations of bribery against District Judge and casting aspersions on High Court Judge before whom contemner's appeal was pending — Amounts to gross contempt — Pleas raised frivolous and irrelevant — Unqualified apology not accepted — Contemner sentenced. See Contempt of Courts Act (1952), S. 3 (1). **AIR 1961 Pat 360.**

3 (c). Disobedience to orders of Court.

● ——**Art. 215** — Writ of Habeas Corpus when to be issued — Disobedience of order — Punishment — Powers of High Court. See Criminal P. C. (1898), S. 491. **1964 (2) Cri LJ 590: AIR 1964 SC 1625.**

● ——**Art. 215**—Contempt of Court—Disobedience of prohibitory order of Court — Service of order not essential for founding action in contempt — Notice of order aliunde sufficient. See Contempt of Courts Act (1952), S. 1. **1962 (2) Cri LJ 236: AIR 1962 SC 1089.**

——**Arts. 215 and 311** — Contempt — President of Municipal Board passing order of suspension — Order not complying with S. 69-A, U. P. Municipalities Act—Writ petition—Interim order staying suspension order — President passing another order of suspension — No contempt — (Municipalities — U. P. Municipalities Act (2 of 1916), S. 69-A). **1959 All LJ 849: AIR 1959 All 686 (688, 689, 690) (Pt D) (Prs 4, 9).**

——**Art. 215** — Contempt of Court — What amounts to — Disobedience to injunction order — Knowledge of order if sufficient — Mens rea — 'Wilful disobedience' what amounts to — Absence of personal interest, how far relevant. See Contempt of Courts Act (1952), S. 1. **AIR 1955 All 483.**

——**Art. 215 — Contempt of High Court — Disobedience to injunction order.**

The applicants instituted a suit in the Court of the Civil Judge, Etawah, against "the Municipal Board of Etawah through the Chairman, Municipal Board, Etawah," for injunction to restrain the Board from constructing shops at the back of the applicants' shops. During the pendency of the suit the Civil Judge had granted a temporary injunction restraining the Board on account of which the work of constructing the shops had remained stayed. The temporary injunction came to an end on the suit being dismissed by the Civil Judge. The Board resumed the construction

and on the first appeal being admitted on 27th April, 1954, the applicants applied to the High Court for a temporary injunction to restrain the Board from making any further construction during the pendency of the appeal. A notice of the injunction was issued to the Board and during its pendency the High Court passed an ex parte injunction on 7th June, 1954, restraining the Board and its servants, etc., from making any constructions of any kind on the land till further orders. The applicant No. 1 obtained from the High Court a certified copy of the injunction order and the applicant No. 2 approached the opposite party, the President of the Board, with an application to which the certified copy was attached, on 9th June, 1954 and requested him to stop further constructions in obedience to the injunction. The President read the application and the copy of the Order but refused to act on them on the ground that he was not bound to do so until the injunction Order was served upon him through Court. On 16th June, 1954, the notice of injunction and the injunction order were sent through a process-server to the President outside office but after reading them he refused to accept them contending that they were not addressed to him in his personal capacity and, therefore, could be served on him only in office of the Board. On the next day, i.e., 17-6-1954, the process-server accompanied by the applicant No. 1 again went to the Board's office in the morning but found the opposite party and the Executive Officer absent and the clerk refused to accept the order. Consequently, the process-server and the applicant met the opposite party who again refused to accept the order and angrily asked them to clear out saying that the order could be served only in the office of the Board and not elsewhere. The order was ultimately served on the President on 19th June, 1954, with effect from which the construction work was immediately stopped. The question was whether the President was guilty of contempt for disobeying the injunction order from 9-6-1954, to 19th June, 1954 during which period the construction work continued.

Held, (i) that on the facts of the case the President of the Board was guilty of contempt of Court. The President, in spite of knowing on June 9, 16 and 17, 1954, that the Board had been restrained from continuing further construction, disobeyed the injunction even though he was bound to comply with the injunction by getting the construction work stopped. Moreover without just cause, he refused to accept service of the injunction order and also interfered with the process-server's duty of serving it upon him.

(ii) that as there was no actual intention to disobey the injunction, it was not necessary to pass a sentence of imprisonment but that a sentence of fine of Rs. 100 would meet the ends of justice.

(iii) The contention that it was the Municipal Board that committed contempt, or that it was the Municipal Board that could be punished for contempt, and not the President could not be accepted. It was true that the injunction was against, and was to be obeyed by, the Board. It was also true that there was no necessity of adding 'through the Chairman, Municipal Board, Etawah' in the title of the suit. But the fact remains that the word 'Board' includes the President and that the necessary action was to be taken by the President. Whoever might have been the defendant, the notice and the order had to be served upon a human being because no process can be served upon anyone who has no physical existence. The injunction had to be obeyed also by a human being because all physical acts and omissions must be done by human beings. Therefore, the injunction order in its very nature had to be served upon a human being and that was the opposite party. Whether the Municipal Board also became guilty of contempt or not, there was no doubt that the opposite party became guilty of contempt when he did not obey the injunction order. It is immaterial in which capacity he was required to obey it. It is also immaterial whether he can recover the penalty, which he is ordered to pay on the contempt being established, from the Municipal Board; the Court has no concern with those matters. Whether the penalty, which the Court may impose on the contempt being established should ultimately be paid by the opposite party or the Board is a matter between the opposite party and the Board. The opposite party would be bound to pay the penalty in the first instance even if he is entitled to recover it from the Board later. **ILR (1955) 2 All 46: 1955 Cri LJ 1223: AIR 1955 All 483 (489, 490) (Pt A) (Prs 12, 13, 14) (DB).**

●——**Arts. 215 & 226** — Income-tax proceedings — Documents and books of assessee seized — Application by assessee against seizure order made to High Court under Art. 226 — Prohibitory order passed by High Court not to give effect to seizure order and directing release of documents and books — No personal service of such prohibitory order on I.-T. Commissioner held was necessary — Refusal of I.-T. Commissioner to release books, etc., held amounted to contempt of Court. In re K. F. Johnson, Commissioner of I.-T. Assam. **1964 (2) Cri LJ 139: AIR 1964 Assam 92 (95, 96, 97, 98) (Prs 6, 9, 11, 12, 18) (FB).**

——**Art. 215** — Stay order by High Court by telegram — Magistrate not acting on telegram — Wilful disobedience — Contempt of Court.

Though there is no intention to commit a contempt of the Court, a wilful disobedience of the order by the Magistrate with the full knowledge of the stay order of High Court would amount to contempt. **25 Cut LT 53: 1950 Cri LJ 261 (2): AIR 1960 Orissa 18 (20, 21, 22) (Pt B) (Prs 10, 11).**

——**Art. 215 — Interference with civil process — (Contempt of Courts Act (1926), S. 1).**

No executive officer high-handedly interfering with civil process, can escape the penalty for such contempt. The fact that he may have done so without being influenced by anybody is of no consequence. **ILR (1952) Cut LT 467: 1953 Cri LJ 1578: AIR 1953 Orissa 266 (270) (Pt E) (Pr 10) (DB).**

——**Art. 215 — Consideration of validity of detention order pending — Revocation of order — It is contempt of Court — Passing of fresh order on advice of Central Government, when would amount to contempt.**

Any act which is calculated to undermine the authority of the Court and to disturb the confidence of the citizen in the unquestioned effectiveness of its orders as against any executive authority however high, would be contempt. Of course this is not to say that every such act will necessarily be treated as contempt by Courts in whom this drastic and summary jurisdiction is vested, not for the personal glorification of a Judge in his office, but for the effective maintenance of the strong arm of judicial administration. None is more conscious than a Judge how sparingly such drastic and summary power is to be used.

It would clearly be contempt of Court for any official to pass an illegal order of detention and on the basis thereof to decline to give effect to an order of release passed by the Court however bona fide the action of the said official may be.

That being so, there is no reason to think that, such contempt is committed, only when the concerned authority has actually flouted the authority of the Court by such an illegal order and not when he has passed an order intended to be so used. The basis of jurisdiction for contempt arises not merely from the actual flouting of the Court's authority, but from the clear tendency that the particular act may have tendency to undermine the authority of the Court. AIR 1952 SC 106, Ref.

When the validity of an order of detention is pending consideration by the High Court a fresh but illegal order of detention on revocation of the prior order, would amount to contempt of Court and that this would be equally so, if that fresh order was passed, not during the actual pendency of an application questioning the prior detention, but in anticipation of such an application being made by the detenu.

Where the fresh order of detention was passed in accordance with the advice conveyed in the letter of the Ministry of Law, New Delhi, in anticipation of any fresh application being made by the detenu, mere anticipation is not enough to constitute contempt. What is required, is the knowledge of the imminence of the fresh proceedings.

It was held that the fresh order of detention could not be said to have been passed either during the pendency of the fresh application before the Court challenging the validity of the detention order or with knowledge of the imminence of any such application. **1953 Cri LJ 349: 19 Cut LT 58: AIR 1953 Orissa 33 (35, 36, 39) (Pt A) (Prs 2, 7, 16) (DB).**

——**Art. 215** — Contempt of Courts Act (1952), S. 5 — Proceedings for disobedience of order or writ of High Court — Service of Copy of order or writ — Necessity. See Contempt of Courts Act (1952), S. 5. **1956 Cri LJ 1156: AIR 1957 Pat 528.**

——**Art. 215** — Contempt of Courts Act (1952), S. 3 — Erroneous order granting injunction — Disobedience — Effect. See Contempt of Courts Act (1952), S. 3. **AIR 1958 Punj 180.**

3 (d). Interference with due administration of justice.

●——**Art. 215** — Contempt of Court—Interference with due administration of justice — Direction given by Under Secretary to Board of Revenue in a State, to Magistrates to ignore decision of State High Court even though that was binding on them — Direction held was flagrant interference with administration of justice by Courts and clear contempt of Court. ILR (1958) Cut 496, Affirmed. Dibakar Satpathy v. Hon. Chief Justice and his Companion Justices of Orissa High Court, **1961 All WR (HC) 402: 27 Cut LT 284: 1961 BLJR 651: 1961 All Cri R 227: (1961) 2 Ker LR 27: 1961 (2) Cri LJ 437: AIR 1961 SC 1315 (1316) (Pr 3).**

●——**Art. 215** — Contempt of Court — Interference with due course of justice in pending proceedings pending against officer of Calcutta Corporation — Enquiry by Special Committee, set up by Corporation to discover malpractices on part of Corporation's servants, into question whether officer concerned had given appointments to witnesses or their relations, in criminal case — Members of the Committee are not guilty of contempt of Court. Saibal Kumar Gupta v. B. K. Sen, **1961 SCD 359: (1961) 3 SCR 460: 1961 (1) Cri LJ 749: (1961) 1 SCA 692: AIR 1961 SC 633 (638, 639) (Prs 14, 15, 16).**

●——**Art. 215** — Contempt — Interference with course of administration — Punishment. See Ibid, Art. 129. **AIR 1954 SC 743.**

——**Art. 215** — Contempt of Court — Interference with administration of justice — Disturbance of Court proceedings by loud talk — Person talking loudly in corridor of High Court and defying authority of Police official who asks him, under Orders of Court, to observe silence is guilty of contempt of Court. See Contempt of Courts Act (1952), S. 3. **1963 (2) Cri LJ 62 (All).**

——**Art. 215** — Contempt of Courts Act (1952), S. 3 — Contempt of Court — Interference with course of justice is contempt of Court—Stiffling of prosecution by D. S. P., held amounted to contempt of Court. See Contempt of Courts Act (1952), S. 3. **AIR 1955 All 638.**

——**Art. 215** — Offence — Interference with administration of justice — Contempt of Cout — Knowledge of pendency of case — Whether material. See Ibid, Art. 134 (1) (c). **1959 Cri LJ 172: AIR 1959 Cal 106 (DB).**

——**Art. 215 — Ingredients of offence — Act tending to interfere with administration of justice — Offence — (Contempt of Courts Act (1952), S. 3).**

It cannot seriously be contended that if only one does a certain thing for the special purposes of a private or a public body and does it for an object quite different in character, one will be absolved of the charge of contempt of Court, even if his acts may tend to interfere with the administration of justice. **1959 Cri LJ 172: AIR 1959 Cal 106 (113) (Pt C) (Pr 25) (DB).**

——**Art. 215 — Mens rea — Act interfering with administration of justice — Question of intention — (Contempt of Courts Act (1952), S. 3).**

If what is done by a person tends to interfere with the administration of justice, then, whether or not he intends such effect and whether or not the effect is actually caused he will be guilty of contempt of Court. **1959 Cri LJ 172: AIR 1959 Cal 106 (113, 114) (Pt D) (Pr 26) (DB).**

●——**Art. 215 — Contempt of Court, what constitutes — (Contempt of Courts Act (1926), S. 1).**

High Court dismissing application for prohibitory order against Government on ground of want of jurisdiction — Government issuing required notification pending such application — Issue of notification held caused no real prejudice to applicant — No substantial interference with due course of justice — Theoretical consideration if High Court taking different view was not sufficient to constitute notification contempt of Court. AIR 1931 Cal 257, Rel. on. Malojirao Shitole v. Matkar, C. G., **1953 Cri LJ 1675: AIR 1953 Madh Bha 245 (247) (Pt F) (Pr 6) (FB).**

——**Art. 215 — Contempt of Court — Administrative authority — Interference with discretion of judicial officers — Correctness of reported decision of High Court involving questions of administrative importance doubtful — Matter referred by District Magistrate to Board of Revenue — Board of Revenue referring matter to Legal Remembrancer — Legal Remembrancer after consulting Advocate-General giving opinion that decision was not correct and suggesting that matter should be carried to High Court in some case to set at rest confusion — On receipt of opinion, Under Secretary to Board of Revenue thinking that decision of High Court need not be followed — Under Secretary issuing circular to District Magistrates saying that opinion of L. R. might be followed until matter was carried to High Court so that confusion created by reported decision of High Court might be set at rest — Contempt proceedings — Under Secretary and L. R. how far liable — (Contempt of Courts Act (1952) S. 3).**

A District Magistrate, entertaining some doubts about the correctness of a reported decision of the High Court, involving question of administrative importance, referred the matter to the Board of Revenue. The Under Secretary, Board of Revenue, forwarded the same to the Legal Remembrancer. The latter, after obtaining the advice of the Advocate-General on the matter, gave the opinion that the decision was not very clear and in fact erroneous and advised the Board to carry the matter to the High Court in some case so that the confusion might be set at rest. On receipt of this opinion the Under Secretary to the Board of Revenue, thought that the Legal Remembrancer's opinion was to the effect that the decision of the High Court in question being incorrect need not be followed. He accordingly issued a circular letter to all District Magistrates of the Division, enclosing copies of the opinions of the Legal Remembrancer and of the Advocate-General and opining that the view of the Legal Remembrancer might be followed, until the matter was carried to the High Court in some case, so that the confusion created by the reported High Court decision might be set at rest. The District Magistrate forwarded the same to the subdivisional Magistrates and through them to all the trying Magistrates.

Held (i) that there could be no doubt that the Under Secretary had committed contempt of the High Court. He must also have known that it was highly improper either for the Board of Revenue or for the District Magistrate to give advice to a trying Magistrate, either in respect of a pending case or in respect of a case that might come to his file in the future. Apart from thus interfering with the discretion of judicial officers, the language used in the circular letter was objectionable inasmuch as it characterised the judgment of the High Court as having created confusion. There was in fact no confusion in the judgment. A judgment though wrong need not necessarily create confusion unless there were two reported decisions of two Benches of equal jurisdiction laying down conflicting propositions of law. The Under Secretary should have used more respectful language in his letter addressed to the District Magistrates.

(ii) The language used by the Legal Remembrancer was somewhat ambiguous and was liable to different interpretations. It was possible to take the view that one of the alternative interpretations that could be put on his note was that he emphasised the binding character of the reported decision though it was wrong and that he did not give advice about what was to be done during the interim period because he was not specifically asked about it. The other interpretation was that put by the Board of Revenue and circularised to all the District Magistrates in the letter circulated. The Legal Remembrancer's note was thus capable of two interpretations. Contempt proceedings were quasi-criminal in nature and the doctrine of benefit of doubt might also apply in appropriate cases. The Legal Remembrancer's interpretation of his note was also plausible and it could not be held conclusively that his advice to the Revenue Department was to the effect that his view should be preferred to that of the reported decision of the High Court. The Legal Remembrancer must therefore, be given the benefit of doubt.

The primary function of the Legal Remembrancer was to advise the various Departments of Government in respect of either pending cases and suits or those that were likely to be instituted in the near future. He was also required to clarify any question of law that might be referred to him by other Departments of the Secretariat after consulting the Advocate-General if he considered it necessary. He was also ex officio Additional Secretary to Government in the Law Department. He was usually a very senior member of the Superior Judicial Service and the High Court had a right to expect that the notes given by him while criticising a judgment of the High Court would be couched in respectful language and that his opinion on any point of law would also be given with sufficient clarity so as not to cause any ambiguity in the minds of non-judicial officers who might read the same and take further action on the basis of his opinion. It was clearly his duty whenever a judgment of the High Court was brought to his notice, to freely criticise the same if he thought it to be wrong, and to give advice about the taking of necessary steps to get it reversed, either by a larger Bench of the same High Court or by taking up the matter on appeal to the Supreme Court, or, in extreme cases, by amending legislation. The High Court could never take exception to his giving advice on the aforesaid lines. **ILR (1958) Cut 496.**

(**Affirmed** in AIR 1961 SC 1315.)

——**Art. 215** — Contempt of Court — Criminal contempt — Interference with course of justice — Intention how far material — See Contempt of Courts Act (1952), S. 1. **AIR 1956 Pat 321.**

3 (e). Comments and reports.

●——**Art. 215 — Report in newspaper — Misrepresentation of Court proceedings — Scandalising the Court — (Contempt of Courts Act (1952), S. 1).**

Speeches or writings misrepresenting the proceedings of the Court so as to scandalise the Court, or any publication which tends to bring into disrepute the decision of the Court and impair the faith of the public in the administration of justice, are undoubtedly cases of contempt. Nothing is more incumbent upon Courts of justice than to preserve their proceedings from being misrepresented, nor is there anything more pernicious in its consequence than to prejudice the minds of the public against Judges of the Court responsible for dispensing justice. Medhi v. Frank Moraes, **1954 Cri LJ 1609: AIR 1954 Assam 201 (205) (Pt A) (Pr 7) (FB).**

●——**Art. 215 — Contempt of Court — Criticism of judgment — Limits — (Contempt of Courts Act (1952), S. 1).**

Once a judgment has been delivered the Judge and the jury are alike open to public criticism, and so long as that criticism does not attribute any bias or unfair motive to them, and so long as it does not tend to impair or diminish the authority of the Court or create a general impression in the public mind destroying its faith in the administration of justice, or lower the authority of the Courts, Judges should not be supersensitive and hasten to exercise this extraordinary right to suppress legitimate criticism, howsoever pungent the criticism may be. (1900) 2 QBD 36; AIR 1936 PC 141, Rel. on. Medhi v. Frank Moraes. **1954 Cri LJ 1609: AIR 1954 Assam 201 (205) (Pt C) (Pr 8) (FB).**

●——**Art. 215 — Report published in newspaper about order made by High Court in writ proceeding — Mischievous effect on public mind — Proceedings for contempt of High Court.**

Where the publication in a newspaper of a report, purporting to convey to its readers an information of an order made granting a writ of mandamus against the University in a petition filed by a student who offered himself as a candidate for the examination of B. Sc. (Agri.), creates a mischievous effect on the public mind leading to

the impression that the Chief Justice was or the Judges of the High Court were acting like arbitrary despots in order to enforce their authority, and that, although under the rules of the University the action of the University was justified, yet the High Court interfered in its extraordinary powers in issuing the writ in order to assist the candidate in getting him declared as successful in the examination to which he was not entitled, the High Court cannot with equanimity, ignore the publication as something innocuous and innocent, when on a reasonable construction of the report it comes to the conclusion that the obvious effect of the publication was to bring into disrepute or scandalise the decision of the High Court and to show to the reader that there was no legal or rational basis for the grant of the writ which the Court purported to issue against the University. In the circumstances, the Registrar of the High Court will be justified in starting proceedings against the editor, printer, publisher and reporter of the newspaper for its contempt with a view to uphold the dignity of the High Court and to keep clear and pure the springs of justice against any thoughtless and misguided attack upon it. Medhi v. Frank Moraes. **1954 Cri LJ 1609: AIR 1954 Assam 201 (205, 208, 211) (Pt E) (Prs 8, 18, 33) (FB).**

——**Art. 215** — Comment on administrative side of judiciary does not amount to contempt — Question of transfer of Magistrate being administrative in character any comment thereon does not amount to contempt of High Court. See Contempt of Courts Act (1952), S. 3. **1961 (2) Cri LJ 771: AIR 1961 Ker 321 (DB).**

——**Art. 215** — Contempt — Prejudicing mankind against parties to the proceedings. See Contempt of Courts Act (1952), S. 3. **1959 Cri LJ 199: AIR 1959 Madh Pra 50 (DB).**

——**Art. 215** — Contempt of Court — Newspaper article — Liability of printer and publisher. See Contempt of Courts Act (1952), S. 3. **1959 Cri LJ 199: AIR 1959 Madh Pra 50 (DB).**

——**Art. 215** — Contempt of Court — What amounts to — Essence of offence — Test — Transfer petition — Allegations imputing partiality against trial Court and High Court — Permissible limits. See Contempt of Courts Act (1952), S. 3. **1959 Cri LJ 626: AIR 1959 Orissa 89 (DB).**

——Art. 215 — Contempt what constitutes — (Contempt of Courts Act (1926), S. 1).

To constitute a contempt adverse comment on a party need not refer to the subject-matter of pending proceedings. It is sufficient if it is clear that the comment tends to prejudice the trial of the action. (1912) 28 TLR 202, Rel. on. **ILR (1953) Cut 283: 1953 Cri LJ 1491: AIR 1953 Orissa 249 (252) (Pt C) (Pr 13) (DB).**

——Art. 215 — Contempt, what constitutes — (Contempt of Courts Act (1926), S. 1).

No extraordinary privilege can be claimed for the Press. If a journalist does not take reasonable care to ascertain the accuracy of facts which he broadcasts, or if he tortures facts and vilifies an individual, he exceeds the limit of fair comment and becomes accountable to the law. AIR 1914 PC 116, Foll. **ILR (1953) Cut 283: 1953 Cri LJ 1491: AIR 1953 Orissa 249 (252) (Pt D) (Pr 14) (DB).**

● ——**Art. 215** — Matters of public interest — Limits of fair criticism — Sneering remarks regarding appointment of judges — **Held,** amounted to contempt of Court — General remark without mention of any High Court — Jurisdiction of High Court to issue notice. See Contempt of Courts Act (1952), S. 1. **1961 (2) Cri LJ 674: AIR 1961 Pat 437 (FB).**

● ——**Art. 215 — Contempt of High Court — Newspaper article, by advocate criticising judicial administration of High Court with occasional reference to recommendations of Law Commission — Tone of article far from respectful — Comments on standard of Judges and influence of executive on judiciary — Offence.**

Held, on facts that the main criterion to be kept in view was that the limits of fair comments must not be exceeded. There should be no attempt at ridiculing the administration of justice by that Court by using language which was likely to shake the confidence of the public in the capacity, impartiality and the fairness of the procedure adopted by that Court to the disposal of matters which came up for consideration. Applying the test, the article in question clearly amounted to contempt of Court and the author was guilty of the same.

The privilege available to the Law Commission not being available to any one else, the person concerned brought himself within the ambit of the law of contempt. AIR 1935 Cal 419 and AIR 1951 Vin Pra 14, Rel. on. The unwarranted language of the criticism had the tendency to show that the High Court was not dealing out proper justice in the matter of first appeals disposed of by single Judges. AIR 1936 PC 141, Rel. on; AIR 1931 Cal 275, Disting. Basanta Chandra Ghosh, In the matter of, **ILR 39 Pat 415: 1960 Cri LJ 1254: 1960 BLJR 622: AIR 1960 Pat 430 (446, 447, 448, 449, 450, 451) (Pt J) (Prs 26, 27, 30, 31, 32 33) (FB).**

——**Art. 215** — Contempt of Court — Publication in newspaper — Test. See Contempt of Courts Act (1952), S. 3. **1955 Cri LJ 520: AIR 1955 Pat 135 (DB).**

——**Art. 215** — Contempt of Court — Respondent in his booklet and affidavit filed in contempt proceedings imputing partiality to Judges of Courts in cases in which he was personally interested — Respondent held guilty of contempt of Court. See Contempt of Courts Act (1952), S. 1. **1961 (1) Cri LJ 426: AIR 1961 Punj 113.**

——**Art. 215** — Libellous or defamatory statement against retired Judge of High Court — Contempt of Court. See Contempt of Courts Act (1952), Section 3. **1959 Cri LJ 896: AIR 1959 Punj 319 (DB).**

——**Art. 215** — Contempt of Court — Freedom of press — Scope of — Duty to maintain dignity of Courts. See Contempt of Courts Act (1952), S. 3. **1959 Cri LJ 81: AIR 1959 Punj 41.**

——**Art. 215** — Contempt of Courts Act (1952), Ss. 3, 4 — Pending case — Publication in respect of — When amounts to contempt — Case about to come to trial — Publication in newspaper in respect of such case — Rights of newspaper — Freedom of Press — Extent — Interference with administration of justice — Publication of statement of witness under S. 164 Cri. P. C. if contempt — Publication of criticism after trial is over — Motive of newspaper, relevancy — Punishment for contempt — Newspaper not regularly published and having limited circulation. See Contempt of Courts Act (1952), S. 3. **1958 Cri LJ 952: AIR 1958 Punj 273.**

3 (f). Attempts to influence decision in pending cases.

——Art. 215—Communication with Presiding Officer of Court and the administrative head, regarding the pending case — Course to be adopted by presiding officer suggested — Communication

amounts to contempt of Court — Actual danger or prejudice to party is not essential — Mens rea is not necessary—(Contempt of Courts Act (1926), S. 1).

Any private communication by a party to a case or even a stranger to a cause addressed or made to the presiding officer of a Court, which is calculated to influence his decision in pending case, constitutes a most serious form of contempt.

A person is presumed in law to have the intention conveyed by his words and to intend the consequences which are bound to follow from his own acts. The test of the offence of the contempt of Courts does not lie in mens rea. Whatever the intention of the contemner might have been, he is brought within the clutches of law as soon as the Court finds that by his word or by his conduct he has set into motion a chain of events which is by its very nature likely to interfere with the course of justice. The crucial test of the offence lies not in the object within the mind of the contemner but in the tendency which his manifest and outward acts inherently possess, to interfere with the uninterrupted flow of justice in an impartial manner.

The gravamen of the offence consists in robbing the Court of that confidence which it is the duty of the Court to inspire and the corresponding obligation of the public to repose in the same. The essence of the offence, lies not in the prejudice that it might cause to the parties but in the damaging nature of the act itself qua the administration of justice in the State. In other words, the essence of the offence lies not so much in the capacity of the impugned act to cause damage to the cause of a party as in its tendency to cause damage to the cause of justice itself.

Ignorance of law cannot be an excuse specially when the perpetrator of the offence is a literate man holding a responsible position of a manager of a big estate.

The manager of an estate which was under the Courts of Wards, wrote to the Deputy Commissioner that a certain tenant in the estate was about to file an application under S. 145, Cr. P. C. before the S. D. O. and that the S. D. O. should be asked to look into the matter carefully and do the needful. Subsequent to the filing of the application, the manager again wrote to the Deputy Commissioner to look into the matter and consider his previous letter. Upon this the Deputy Commissioner wrote that he would speak to the S. D. O. and the manager was asked to bring this fact to the notice of the S. D. O. The manager therefore, wrote to the S. D. O. and suggested that the attachment of crop in the case was absolutely necessary. On the same date the S. D. O. passed a preliminary order in the case ordering attachment of the crop. The opposite party moved the High Court for taking contempt proceedings against the manager and for transfer of the case to another Court outside the jurisdiction of Deputy Commissioner.

Held, that the manager was guilty of contempt of Court. (Conduct of the Deputy Commissioner and the S. D. O. criticised). (The case was transferred to another district). **1953 Cri LJ 402: AIR 1953 All 153 (155, 156, 157, 158) (Pt A) (Prs 7, 9, 12, 13, 14, 20) (DB).**

——**Art. 215** — Communication to Court by third person of his opinion on facts of case which is sub judice constitutes contempt. See Contempt of Courts Act (1952), S. 3. **1955 Cri LJ 1028: AIR 1955 Andhra 156 (DB).**

——Art. 215 — Contempt of Court — Communication to judge about pending cases. See Contempt of Courts Act (1952), Ss. 3 and 4. **62 Cal WN 862: AIR 1959 Cal 174.**

——**Art. 215** — Contempt of Court — Private communication by Panchayat Board to presiding officer of Court that matter should be decided in particular way. See Contempt of Courts Act (1952), S. 3. **1954 Cri LJ 769: AIR 1954 Madh Bha 66 (DB).**

——**Art. 215** — Party moving Supreme Court against orders of High Court refusing adjournment — Party expressing before Supreme Court apprehension about not getting impartial justice from High Court — Chief Justice and Judges alleged to be on friendly terms with Ministers (Government being opposite Party) — High Court called 'limb' of State Government — Allegations held to constitute serious contempt of High Court. See Contempt of Courts Act (1952), S. 4. **1965 (2) Cri LJ 390: AIR 1965 Pat 360 (DB).**

4. Power of High Court to punish contempts — General
(a) Practice and procedure.
(b) Necessary parties.

4. Power of High Court to punish contempts — General.

——Art. 215 — Power to punish contempt of Subordinate Court — (Contempt of Courts Act (1952), S. 3).

Article 215 vests in the High Court all the powers of a Court of record and all the powers of such a Court including the power to punish for contempt of itself. The pharse "the power to punish for contempt of itself" does not limit such powers of the High Court as it possesses as a Court of record or other powers with which it may be invested by law. The power to commit for contempt of Subordinate Courts has been expressly conferred upon it by the Contempt of Courts Act, 1952. **1953 All WR (HC) 170: 1953 Cri LJ 733: 1953 All LJ 376: ILR (1953) 1 All 796: AIR 1953 All 342 (345) (Pt C) (Pr 17) (DB).**

——**Art. 215** — Contempt of subordinate Court—Power of High Court to punish under Article. See Contempt of Courts Act (1926), S. 2. **1952 Cri LJ 1062: AIR 1950 All 556.**

——**Art. 215** — Contempt of Courts Act (1952), S. 3—Contempt of subordinate Courts — Powers of High Court to commit for such contempt. See Contempt of Courts Act (1952), S. 3. **AIR 1955 Andh Pra 156.**

——**Art. 215** — Power of a Single Judge or a Division Bench to deal with case of contempt. See Contempt of Courts Act (1952), S. 2. **1959 Cr LJ 567: AIR 1959 Bom 182 (DB).**

——**Art. 215** — Contempt of subordinate Courts — Power of High Court to punish. See Contempt of Courts Act (1952), S. 3. **1964 (2) Cri LJ 660: AIR 1964 Cal 572 (DB).**

——**Art. 215** — Contempt of subordinate Courts—High Court's power to punish. See Contempt of Courts Act (1952), S. 3. **1955 Cri LJ 547: AIR 1955 Orissa 36 (DB).**

——**Art. 215** — Power to deal with contempt of Court — If curtailed by Art. 19. See Ibid, Art. 19 (1) (a). **AIR 1953 Orissa 249.**

● ——**Art. 215 — Jurisdiction — High Courts other than Chartered High Courts — Power to punish for contempt of themselves.**

All the High Courts in India as Courts of Record had the power to punish for contempt a

person charged with that offence and the power was not confined only to the three Presidency High Courts. AIR 1954 SC 186, Foll.; Observations in 17 Cal WN 1253 that the High Courts other than Chartered High Courts had no such authority held obiter. ILR 10 Cal 109 (PC), Disting. It is also to be noted that Art. 225 of the Constitution preserves all the powers and jurisdiction of the High Courts as they were vested in them prior to the Constitution. The High Court has the power to punish for contempt the contemner for any libel published in a newspaper on a Judge or Judges of the Court calculated to lower prestige and authority of the Court. AIR 1935 Cal 419 (FB), AIR 1950 Sind 1 (FB), AIR 1936 PC 141, AIR 1943 PC 202 and AIR 1942 Lah 105 (FB), Rel. on. Basanta Chandra Ghosh, In the matter of. **ILR 39 Pat 415: 1960 Cri LJ 1254: 1960 BLJR 622: AIR 1960 Pat 430 (439, 440, 441) (Pt D) (Prs 8, 11) (FB).**

4 (a). Practice and procedure.

——Art. 215 — Contempt of Courts Act (1952), S. 3 — Practice and Procedure — Notice for contempt.

A notice or Rule for contempt must set out precisely and in detail the deeds or words which are said to constitute contempt and if such details in the charge are not given, there is no case to answer. **AIR 1958 Cal 474 (480) (Pt B) (Pr 15) (DB).**

——Art. 215 — Contempt of Court — Procedure to be followed — Notice by High Court issued to respondent without any affidavit by some person —**Held** there is no rule of law which prevents the High Court from proceeding against a person without first obtaining an affidavit from some person — Proceedings instituted by High Court suo motu—Respondent not raising objection regarding affidavit by some person when he appeared in pursuance of notice but raising such objection for first time only when final arguments were being addressed — Respondent supplied with entire copy of his speech long before evidence started — **Held** respondent was not prejudiced by absence of affidavit. See Contempt of Courts Act (1952), S. 3. **1961 (2) Cri LJ 766: AIR 1961 J and K 76 (DB).**

——Art. 215 — Contempt of High Court — Right to bring contempt to notice of High Court.

Per Narasimham, C. J.:— If a Member of Parliament feels that a member of the State Legislature has misused the right of freedom of speech conferred on him by the Constitution and that his speech has a tendency to impair the dignity and prestige of the High Court, then it cannot be said that he is not entitled to bring to the notice of the High Court the objectionable passage for such action as the High Court may desire to take. Thus, an objectionable speech made on the floor of a Legislature can be brought to the notice of the High Court by a private party.

Per Barman, J.:— The High Court can take cognizance of the contempt even suo motu. **ILR (1958) Cut 195: 1958 Cri LJ 1055: AIR 1958 Orissa 168 (171) (Pt A) (Pr 5) (DB).**

——Art. 215 — Contempt proceedings — Practice —(Contempt of Courts Act (1926), S. 2).

In Cuttack High Court there is no prescribed or settled practice for marking of the documents as exhibits for the hearing of contempt applications. (**Held,** however, that the documents used were marked as exhibits and the contemner had enough notice of them, to enable them to produce evidence in rebuttal). **ILR (1952) Cut 467: 1953 Cri LJ 1578: AIR 1953 Orissa 266 (268) (Pt A) (Pr 3) (DB).**

●——**Art. 215** — Procedure — Practice and procedure followed by High Courts prior to Constitution — Force of. See Contempt of Courts Act (1952), S. 3. **1960 Cri LJ 1254: AIR 1960 Pat 430 (FB).**

——**Art. 215** — Contempt of Courts Act (1952), S. 3—Practice and procedure—Notice to opposite party — Rule relating to. See Contempt of Courts Act (1952), S. 3. **AIR 1957 Pat 528 (DB).**

——**Art. 215** — Contempt of Courts Act (1952), S. 3 — Procedural law in England — Acceptance of, in India. See Contempt of Courts Act (1952), S. 3. **AIR 1957 Pat 528 (DB).**

——Arts. 215 and 226 — Prohibitory order, what is — Writ of mandamus — Nature of — Action in contempt — Service of order, if necessary — (Contempt of Courts Act (1952), S. 3).

A prohibitory order operates in restraining a party from doing an act which if done will result in irreparable injury to the other side. Where the grievance of the Petitioner in the writ petition for the issue of Mandamus was that the Accountant-General was not doing what under Superior Services Rules he was enjoined to do.

Held, that the order directing him to do the same was but an affirmative order. Therefore, though in a case of prohibitory order service of the order is not essential for founding an action in contempt, that rule was not applicable as here the order passed by the Court was not one which was prohibitory. **1957 Cri LJ 1156: 1957 BLJR 390: ILR 36 Pat 955: AIR 1957 Pat 528 (532) (Pt C) (Pr 10) (DB).**

4 (b). Necessary parties.

●——**Art. 215** — Contempt of Court — Parties— High Court convicting person for contempt — Appeal to Supreme Court — High Court Judges not to be made parties to appeal. See Contempt of Courts Act (1952), S. 3. **AIR 1961 SC 1367.**

——**Art. 215** — Parties — Proceedings against officer of Government — State Government if necessary party — Practice of impleading State Government is ridiculous. See Contempt of Courts Act (1952), S. 3. **1956 Cri LJ 1411: AIR 1956 Manipur 44.**

5. Evidence and mode of proof.

(a) Defence in contempt proceedings.

5. Evidence and mode of proof.

——Arts. 215 and 21 — Evidence Act (1872), S. 1 — Affidavits — Contempt proceedings — Use as mode of proof — Codes of Civil and Criminal Procedure do not govern proceedings — Evidence Act does not apply — All that is required is that proceedings are fair — Person can be found guilty on affidavit — Nature of proceedings indicated — High Court Rules and Orders — Rules of Court (U. P.), 1952, Chap. 9, Rule 12 — (Contempt of Courts Act (1952), S. 3). See Evidence Act (1872), S. 1. **AIR 1955 All 638.**

——**Art. 215** — Contempt of Court — Evidence — Proof. See Contempt of Courts Act (1952), S. 1. **1965 (2) Cri LJ 471: AIR 1965 Cal 484.**

——**Art. 215** — Evidence — Contempt of Court — Statement resting on information and belief — If legal evidence — (Contempt of Courts Act (1952), S. 3) — (1871) 6 QB 352, Foll. **1959 Cri LJ 172: AIR 1959 Cal 106 (113) (Pt B) (Pr 26) (DB).**

——**Art. 215** — Contempt of Court — Sub-Inspector of Police preparing ad verbatim record of

speech delivered by respondent containing objectionable matter — Before preparing record Sub-Inspector taking down short notes of the speech delivered by the respondent at the spot — **Held,** it would have been much better if the Sub-Inspector had produced the original notes in Court in order to test the veracity of the ad verbatim record prepared by the Sub-Inspector. See Contempt of Courts Act (1952), S. 3. **1961 (2) Cri LJ 766: AIR 1961 J and K 76 (DB).**

——**Art. 215** — Contempt proceedings — Nature of — Belated petition for action for alleged contempt — Affidavit — Conviction for contempt on. See Contempt of Courts Act (1952), S. 3. **ILR (1955) Mys 524.**

●——**Art. 215** — Procedure — Evidence — Rules of evidence contained in Evidence Act — Applicability of. See Contempt of Courts Act (1952), S. 3. **1960 Cri LJ 1254: AIR 1960 Pat 430 (FB).**

——**Art. 215** — Contempt proceedings — Onus — Clear and convincing evidence — Necessity. See Contempt of Courts Act (1952), S. 3. **1959 Cri LJ 1469: AIR 1959 Punj 632.**

——**Art. 215** — Contempt of Court — Contempt not committed in presence and hearing of Court — Affidavit of person having direct knowledge of facts — Value of. See Contempt of Courts Act (1952), S. 3. **1958 Cri LJ 673: AIR 1958 Punj 141 (DB).**

5 (a). Defence in contempt proceedings.

——**Art. 215** — Contempt of Court — Justification — Statements being true no justification. See Contempt of Courts Act (1952), S. 3. **1961 (2) Cri LJ 766: AIR 1961 J and K 76 (DB).**

——**Art. 215** — Scope — Contempt by disobedience of stay order — Contention that it was not officially communicated — Tenability. See Contempt of Courts Act (1952), S. 3. **1959 Cri LJ 643: AIR 1959 Punj 205.**

6. Exercise of power is discretionary.

●——**Art. 215 — Contempt proceedings — Jurisdiction — Restraint in exercise of.**

A lavish use of the jurisdiction in contempt is not conducive to the achievement of the purpose for which it exists. Its effectiveness depends to a very great extent on the caution, wisdom and restraint with which it is utilised.

Unless the case is clear and beyond reasonable doubt and the failure to take steps would lead to obstruction in the due administration of justice, the High Court should not exercise the summary power vested in it for trying cases of contempt. Medhi v. Frank Moraes, **1954 Cri LJ 1609: AIR 1954 Assam 201 (208, 212) (Pt F) (Prs 15, 38) (FB).**

7. Jurisdiction.

●——**Art. 215 — Origin of jurisdiction to punish for contempt — (Criminal P. C. (1898), S. 1 (2)) — (Contempt of Courts Act (1952), S. 3).**

The power of a High Court to institute proceeding for contempt and punish where necessary is a special jurisdiction which is inherent in all Courts of Record. S. 1 (2), Cr. P. Code, expressly excludes special jurisdictions from its scope. Hence the Code of Criminal Procedure does not apply in matters of contempt triable by the High Court. The High Court can deal with it summarily and adopt its own procedure. All that is necessary is that the procedure is fair and that the contemner is made aware of the charge against him and given a fair and reasonable opportunity to defend himself. 27 Bom 394 (399); AIR 1926 Rang 188, Ref. Sukhdev Singh Sodhi v. Hon'ble, C. J., S. Teja Singh, **1954 SCJ 67: 1954 Mad WN 131: (1954) 1 Mad LJ 137: 1954 Cri LJ 460: 1954 All WR (HC) 186: 1954 SCA 363: 1954 SCR 454: AIR 1954 SC 186 (187, 190) (Pt A) (Prs 3, 24).**

●——**Art. 215 — Contempt proceedings pending before High Court — Power of Supreme Court to transfer proceedings under Criminal P. C. (1898), S. 527 — (Criminal P. C. (1898), Ss. 527 and 5).**

The power of High Court to institute proceedings for contempt of Court and punish where necessary is a special jurisdiction. Such proceedings are not governed by the Criminal Procedure Code, (1898). Hence, the Supreme Court has no power under S. 527, Criminal P. C. (1898), to transfer such proceedings from one High Court to another.

There is no other power which the Supreme Court can exercise in this respect. Art. 215 of the Constitution gives every High Court the right and the power to punish a contempt of itself. Neither the Supreme Court nor the Legislature can deprive a High Court of the right which is so vested in it. Further the proceedings cannot be transferred from one Judge to another, there being no original jurisdiction which the Supreme Court can exercise. It is not a fundamental right and so Art. 32 has no application.

Dicta. — It is desirable on general principles of justice that the Judge who has been personally attacked should not as far as possible hear a contempt matter which, to that extent, concerns him personally. The Judges should bear in mind the oft quoted maxim that justice must not only be done but must be seen to be done by all concerned and most particularly by an accused person who should always be given, as far as that is humanly possible, a feeling of confidence that he will receive a fair, just and impartial trial by Judges who have no personal interest or concern in his case. Sukhdev Singh Sodhi v. Hon'ble C. J., S. Teja Singh, **1954 Mad WN 131: 1954 SCJ 67: (1954) 1 Mad LJ 137: 1954 Cri LJ 460: 1954 All WR (HC) 186: 1954 SCA 363: 1954 SCR 454: AIR 1954 SC 186 (187, 190) (Pt C) (Prs 2, 24, 25, 26).**

●——**Art. 215 — Nature of jurisdiction to punish for contempt — (Contempt of Courts Act (1952), S. 3).**

Every High Court in India, has jurisdiction to punish for contempt. This jurisdiction is inherent in a Court of Record from the very nature of the Court itself.

S. 3 of the Contempt of Courts Act, 1952, is similar to S. 2 of the Contempt of Courts Act, 1926 and far from conferring a new jurisdiction, assumes, as did the old Act, the existence of a right to punish for contempt in every High Court and further assumes the existence of a special practice and procedure. This procedure is not governed by the Criminal P. Code. In any case, so far as contempt of a High Court itself is concerned, as distinct from one of a Subordinate Court, Art. 215 of the Constitution vests these rights in every High Court, so no Act of a Legislature could take ayay that jurisdiction and confer it afresh by virtue of its own authority. Sukhdev Singh Sodhi v. Hon'ble C. J., S. Teja Singh, **1954 Mad WN 131: 1954 SCJ 67: (1954) 1 Mad LJ 137: 1954 Cri LJ 460: 1954 All WR (HC) 186: 1954 SCA 363: 1954 SCR 454: AIR 1954 SC 186 (189, 190) (Pt D) (Prs 20, 23).**

——**Art. 215** — Jurisdictions of High Court and Legislature — Nature and extent of — Validating enactment — Scope and its effect — Legislature cannot validate unconstitutional Act — U. P. Act of 1953 declared unconstitutional — Actions taken or orders passed thereunder cannot be validated

by S. 17 of U. P. Ordinance of 1953. See Ibid, Art. 245. **AIR 1962 All 350.**

——**Art. 215** — Contempt of Courts Act (1926), S. 2 (1) — Contempt of revenue Court — High Court's jurisdiction under S. 2 (1). See Contempt of Courts Act (1926), S. 2 (1). **AIR 1953 All 419.**

●——**Art. 215 — Contempt of Court — Jurisdiction of High Court — (Contempt of Courts Act (1952), S. 5).**

The High Court has jurisdiction to enquire into and try a contempt of itself or of any Court subordinate to it, whether the contempt is alleged to have been committed within or outside the local limits of its jurisdiction, and whether the person alleged to be guilty of the contempt is within or outside such limits. Medhi v. Frank Moraes, **1954 Cri LJ 1609: AIR 1954 Assam 201 (205) (Pt B) (Pr 8) (FB).**

——**Art. 215 — Contempt of Court — Jurisdiction — Nature of — Non-compliance with technical rules — Effect of — High Court Rules and Orders (Calcutta) — Original Side Rules, Ch. XXXVIII, Part 14.**

The power of a High Court to institute proceedings for contempt and punish where necessary is a 'special jurisdiction' which is inherent in all Courts of record. The High Court can deal with it summarily and adopt its own procedure. All that is necessary is that the procedure is fair and the contemner is made aware of the charge against him and given a fair and reasonable opportunity to defend himself. The jurisdiction of the Court is derived from Art. 215 of the Constitution and cannot in any way be affected by Part 14 of Chapter XXXVIII of the Original Side Rules. Part 14 of Chapter XXXVIII only lays down how the cause title should be instituted. The provisions should be followed for the sake of convenience but their non-compliance does not affect the jurisdiction of the High Court. AIR 1954 SC 186, Rel. on; (1907) 1 QBD 1; AIR 1953 Cal 627; AIR 1949 Cal 214; 11 Ch D 168, Ref. **(1962) 66 Cal WN 983.**

——**Art. 215** — Power of High Court to punish for contempt — Jurisdiction. See Ibid, Art. 134 (1) (c). **1959 Cri LJ 172: AIR 1959 Cal 106 (DB).**

——**Art. 215** — Contempt of Court — Jurisdiction in contempt — Nature of. See Contempt of Courts Act (1952), S. 1. **1958 Cri LJ 1162: AIR 1958 Cal 474.**

●——**Art. 215 — Exercise of jurisdiction — (Contempt of Courts Act (1926), S. 1).**

The jurisdiction in respect of contempt proceedings should be exercised only when the case is clear and beyond reasonable doubt. The petitioner is not entitled to invoke this special jurisdiction for a decision on the important and complicated collateral question as to when a certain notification became operative. Case-law discussed. Malojirao Shitole v. Matkar, C. G., **1953 Cri LJ 1675: AIR 1953 Madh Bha 245 (246) (Pt A) (Prs 4, 5) (FB).**

●——**Art. 215 — Contempt — Jurisdiction — Considerations of propriety — (Contempt of Courts Act (1926), S. 1).**

On considerations of propriety the jurisdiction of the High Court to commit for contempt cannot be exercised. Malojirao Shitole v. Matkar, C. G., **1953 Cri LJ 1675: AIR 1953 Madh Bha 245 (247) (Pt E) (Pr 6) (FB).**

——**Art. 215** — Territorial jurisdiction of High Court. See Contempt of Courts Act (1926), S. 1. **1954 Cri LJ 988: AIR 1954 Orissa 167 (DB).**

8. Punishment — Principles.

●——**Art. 215** — Contempt of Court and Legislature — Power to punish for contempt to be exercised cautiously — What is true of the judicature is equally true of the Legislatures. See Ibid, Art. 129. **AIR 1965 SC 745.**

——**Art. 215** — Contempt of Courts Act (1952), S. 4 — Punishment — Tender age of contemner is a circumstance which the Court has to take into consideration. **AIR 1959 Cal 174 (175) (Pt C) (Pr 8).**

——**Art. 215 — Punishment for contempt — (Contempt of Courts Act (1952), S. 3).**

The punishment for contempt is inflicted for protecting the public and specially those who are subject to the jurisdiction of the Court from the mischief they will incur if the authority of the Tribunal is undermined or impaired. (1899) AC 549 and (1900) 2 QBD 36 and AIR 1935 Cal 419 (FB), Rel. on. The dignity of the Court is not so frail as to be easily affected by casual remarks or comments. AIR 1936 PC 141, Rel. on. **ILR (1958) Cut 195: 1958 Cri LJ 1055: AIR 1958 Orissa 168 (182) (Pt H) (Prs 40, 42) (DB).**

——**Art. 215 — Punishment — (Contempt of Courts Act (1926), S. 3).**

Held, that though the opposite parties were guilty of contempt the mischief in the instant case so far as it affected the proceedings in the High Court had been trifling. High Court would only warn them that a repetition of such conduct in the future would be dealt with severely. (1877) 46 LJ Ch 375, Rel. on. **ILR (1953) Cut 283: 1953 Cri LJ 1491: AIR 1953 Orissa 249 (253, 254) (Pt E) (Pr 16) (DB).**

——**Art. 215** — Contempt of Courts Act (1952), Ss. 1 and 4 — Contempt of Court— Interference with course of justice—Offence committed by raw and illiterate villagers—Punishment. See Contempt of Courts Act (1952), Ss. 1 and 4. **AIR 1956 Pat 321.**

9. Apology.

●——**Art. 215** — Contempt of Court — Punishment — Apology — In a matter relating to contempt of Court, there cannot be both justification and apology. AIR 1955 SC 19, Foll. **1962 (2) Cri LJ 236: AIR 1962 SC 1089 (1095) (Pt B) (Pr 9).**

●——**Art. 215 — Disobedience of order of High Court — Apology — Contempt of Courts Act (1926), S. 1.**

One R was detained under the Bihar Maintenance of Public Order Act, 1947, in pursuance of an order issued by the Provincial Government. On the 30th July 1948, the High Court directed him to be "released forthwith". The very same day, a copy of the High Court's order was forwarded to the District Magistrate, Bhagalpur, for information and necessary action, and it reached the District Magistrate's office on the 31st July, 1948. R was not however, released until the 8th August 1948. The District Magistrate was away from Bhagalpur on tour from the 31st July, 1948, when the order of the High Court releasing the detenu was received in his office. When the case for contempt of High Court came up before the High Court the Advocate-General of Bihar tendered an apology on behalf of the District Magistrate.

Held that the District Magistrate was not personally guilty of contempt. The fact that he was away on tour and was not aware of the order of the High Court, must be regarded as a good defence in the contempt proceeding. Again, as there was no intention to flout or disobey the

order of the High Court, that must also be regarded as an important circumstance in favour of the District Magistrate. The apology must not be taken to be a confession of guilt, especially as it was made in connection with the delay which had occurred in his office. Singh H. P. v. Tewari T. P., **ILR 31 Pat 182: AIR 1953 SC 436 (437) (Pr 7).**

——Art. 215 — Contempt of Court — Apology tendered, when can be accepted — Contempt of Courts Act (1926), S. 3.

In cases of contempt the Court is not bound to accept an apology or even an unqualified apology. The question whether it should do so or not would depend on circumstances of each particular case. A Court can refuse to accept an apology which it does not believe to be genuine; it can even when it accepts the apology, commit an offender to prison or otherwise punish him. Furthermore, there cannot be both justification and apology. The two things are incompatible. Where the apology does not seem to be so much the outpouring of a penitent heart moved by feeling of remorse and overcome by a sense of one's own guilt, as a convenient device clutched up by a person driven and compelled by the logic of events to resort to a measure which seems to him to provide the only mode of escape from the impending doom or as a last desperate throw in a game of chance hazarded by him at a time when all else has failed and everything seems to be lost, it should be considered to be merely an apology for an apology. It deserves to be given short shrift at the hands of the Court. AIR 1940 Nag 407, AIR 1940 Sind 239, AIR 1952 All 86, Rel. on. **1953 Cri LJ 402: AIR 1953 All 153 (157, 158) (Pt B) (Prs 15, 16, 18) (DB).**

●——**Art. 215** — Contempt—Tender of apology—Effect. See Contempt of Courts Act (1952), Sections 3, 4. **AIR 1959 Cal 174 (FB).**

——**Art. 215** — Apology — Effect of. See Contempt of Courts Act (1952), S. 4. **1959 Cri LJ 199: AIR 1959 Madh Pra 50 (DB).**

——**Art. 215** — Contempt of Court — Apology — Effect. See Contempt of Courts Act (1952), Section 4. **ILR (1959) Cut 401.**

——**Art. 215** — Apology — (Contempt of Courts Act (1952), S. 4) — Unconditional apology — Substantive sentence of imprisonment held, not called for — Only fine imposed. **ILR (1954) Cut 467: 1954 Cri LJ 988: 20 Cut LT 446: AIR 1954 Orissa 167 (172) (Pt D) (Pr 17) (DB).**

——**Art. 215** — Inspection report about criminal Courts by High Court Judge — Observations by District Magistrate — Contempt of High Court — Tender of unqualified apology — **Held** no useful purpose would be served by pursuing the matter further. See Contempt of Courts Act (1952), S. 3. **1959 Cri LJ 1013: AIR 1959 Pat 373 (DB).**

——**Art. 215** — Contempt of Courts Act (1952), S. 4 — Apology — It should be tendered at the earliest stage. **AIR 1956 Pat 321 (324) (Pt C) (Pr 10) (DB).**

——**Art. 215** — Contempt of Courts Act (1926), S. 3 — Apology — Effect of — (Patiala Contempt of Courts Act, S. 3). See Contempt of Courts Act (1926), S. 3. **AIR 1953 Pepsu 79.**

——**Art. 215** — Contempt of Court — Apology — Effect — An unreserved apology, in less serious cases has the effect of taking the sting out of contempt. See Contempt of Courts Act (1952), Section 3. **1961 (1) Cri LJ 426: AIR 1961 Punj 113.**

——**Art. 215** — Contempt — Apology — Effect. See Contempt of Courts Act (1952), S. 4. **1958 Cri LJ 685: AIR 1958 Punj 180.**

——**Art. 215** — Contempt of Court — Apology. See Contempt of Courts Act (1952), S. 3. **1957 Cri LJ 657: AIR 1957 Punj 105.**

10. Appeal.

——**Arts. 215 and 134 (1) (c)** — Order imposing punishment for contempt of Court — Leave to appeal to Supreme Court. See Ibid, Art. 134 (1) (c). **1956 Cri LJ 1411: AIR 1956 Manipur 44.**

——**Art. 215** — Contempt — Criminal contempt—Appeal. See Ibid, Art. 134 (1) (c). **1953 Cri LJ 1578: AIR 1953 Orissa 266 (DB).**

——**Arts 215, 134** — Leave to appeal to Supreme Court from conviction for contempt — Prejudice — Inadmissible evidence admitted — (Contempt of Courts Act (1926), S. 2). See Ibid, Art. 134. **AIR 1953 Orissa 266.**

——**Art. 215** — Contempt proceedings — Leave to appeal — Exclusive jurisdiction in matters relating to contempt of Court. See Ibid, Art. 134. **AIR 1953 Orissa 266.**

——**Art. 215** — Contempt proceedings — Substantial question of law — Leave to appeal to Supreme Court. See Ibid, Art. 134. **AIR 1953 Orissa 266.**

ARTICLE 216

——**Art. 216** — Judicial Commissioner's Courts (Declaration as High Courts) Act (1950) S. 6 (a) — Validity — Applicability of Art. 216 to judicial Commissioner's Courts — Article inapplicable — Section not ultra vires. See Judicial Commissioner's Courts (Declaration as High Courts) Act (1950), S. 6 (a). **1952 Cri LJ 114: AIR 1952 Him Pra 5.**

ARTICLE 217

■——**Art. 217 (3) (as amended by the Fifteenth Amendment) — Scope of — Retrospective operation — Question of determination of age of High Court Judge — Jurisdiction vests exclusively in President.**

The retrospective operation of Art. 217 (3) postulates that this provision must be read in the Constitution as from January 26, 1950; and so, it will apply even in regard to the determination of the ages of Judges of High Courts who had been appointed to their office before the actual provision was inserted in the Constitution by the Amendment Act of 1963. This provision vests the jurisdiction to determine the question about the Judge's age exclusively in the President, and so, it follows that in the presence of this provision, no Court can claim jurisdiction to deal with the said question. Now the question about the age of a Judge of a High Court has to be determined only in one way, and that is the way prescribed by Art. 217 (3). Jyoti Prokash Mitter v. Hon'ble Mr. Justice H. K. Bose, Chief Justice of the High Court, Calcutta, **(1964) 2 SCA 747: (1965) 1 SCWR 524: AIR 1965 SC 961 (966) (Pt A) (Pr 20).**

●——**Art. 217 (3) (as amended by Fifteenth Amendment)—Determination of age of High Court Judge — Procedure to be followed — Consultation with Chief Justice of India is mandatory — Decision of President is final — Question when to be decided.**

In determining the age of a High Court Judge under Art. 217 (3), the question as to what procedure should be followed in deciding the age, what opportunity should be given to the Judge whose age is being decided, and other allied questions pertaining to the decision, are entirely within the discretion of the President. The provision requires that before the President reaches his decision, he has to consult the Chief Justice

of India; it is clearly a mandatory requirement of Cl. (3). It is also implicit in this provision that before the President reaches his decision on the question, he ought to give the Judge concerned a reasonable opportunity to give his version in support of the age stated by him at the time of his appointment and produce his evidence in that behalf. How this should be done, is, of course, for the President to decide; but the requirement of natural justice that the Judge must have a reasonable opportunity to put before the President his contention, his version and his evidence, is obviously implicit in the provision itself. It is also clear that the decision of the President under Art. 217 (3) is final, and its propriety, correctness, or validity is beyond the reach of the jurisdiction of Courts.

If a dispute is raised about the age of stiting Judge and in support of it, evidence is adduced which prima facie throws doubt on the correctness of the date of birth given by a Judge at the time of his appointment, it is desirable that the said dispute should be dealt with by the President, because it is of utmost importance that in matters of this kind, the confidence of the public in the veracity of a statement made by a Judge in respect of his age must be scrupulously maintained, and where a challenge is made to such a statement, it is in the interests of the dignity and status of the Judge himself as much as in the interests of the purity and reputation of the administration of justice that the dispute should be resolved and the matter cleared up by the decision of the President. Jyoti Prokash Mitter v. Hon'ble Mr. Justice H. K. Bose, Chief Justice of the High Court, Calcutta, **(1964) 2 SCA 747: (1965) 1 SCWR 524 : AIR 1965 SC 961 (966, 967) (Pt B) (Prs 21, 23).**

● ——**Art. 217 (3) (as amended by Fifteenth Amendment) — Question as to age of High Court Judge — Judge whether should step down from office pending decision—On fact, held that decision of President on 15-5-1961 could not be treated as one under Art. 217 (3).**

As a matter of law, a Judge cannot cease to be a Judge merely because a dispute has been raised about his age and the same is being considered by the President, and should not be required to step down from his office. But in dealing with this legal position, considerations of prudence and expediency cannot be ignored. If a dispute arises about the age of a Judge, any prudent and wise Chief Justice would naturally think of avoiding unnecessary complications by refusing to assign any work to the sitting Judge if, at the time when the dispute had been raised, it appears that the allegation is that at the relevant time the Judge in question has reached the age of superannuation.

Where the question was whether the decision of the President of India as to the age of a Judge of the Calcutta High Court given on 15th May, 1961 before the introduction of Art. 217 (3) in the Constitution should be regarded as a decision under Art. 217 (3) because of its retrospective operation.

Held, that having regard to the circumstances in which the enquiry was made, and bearing in mind the fact that the Judge was justified in contending that his age could not be determined by the Executive in proceedings initiated by it, the impugned order passed by the President must be held to suffer from the serious infirmity that the evidence of the Judge was not available to the President when he reached his decision. The question concerning the age of the Judge on which a decision was reached by the President on May, 15, 1961, affected him in a very serious manner; and so considerations of natural justice and fair play required that before the question was determined by the President, the Judge should be given a chance to adduce his evidence. That is why on the whole, it would not be possible to accept the contention that the order passed by the President on May, 15 should be treated as a decision within the meaning of Art. 217 (3). Jyoti Prokash Mitter v. Hon'ble Mr. Justice H. K. Bose, Chief Justice of the High Court, Calcutta. **(1964) 2 SCA 747: (1965) 1 SCWR 524: AIR 1965 SC 961 (967, 969) (Pt C) (Prs 24, 29).**

●——**Art. 217** — Application under — Issue of rule nisi — Practice — Question of competency of Home Minister to determine question of age of High Court Judge — Question being very important rule nisi should issue. See Ibid, Art. 226. **AIR 1964 SC 1636.**

●——**Art. 217 — Question as to age of Judge — Can be judicially decided — Mere declaration of age by judge — Not sufficient.**

Dicta: A Judge of the High Court whilst he is in office must satisfy the constitutional requirement that he has not attained the age of 60 years and it would be unreasonable for any Judge to suggest that the question about his age cannot be raised just because he made a declaration before his appointment, and without any examination of the question, the said declaration was accepted by the Government of India when his appointment was made. Apart from the Government of India, it would prima facie be theoretically open to any litigant to raise the question about the competence of a Judge to hold his office as such on the ground that he has attained the age of 60 years and if a serious allegation is made in that behalf, it may have to be judicially determined in a proper proceeding. Himansu Kumar Bose v. Jyoti Prokash Mitter, **(1964) 1 SCA 347: AIR 1964 SC 1636 (1640) (Pt A) (Prs 12, 14).**

●——**Art. 217** — Industrial Disputes Act (1947), S. 7 (3) (c) — One member Tribunal — Qualifications as to age for membership — Advocate over sixty not disqualified. See Industrial Disputes Act (1947), S. 7 (3) (c). **AIR 1962 SC 1100.**

——**Art. 217** — Municipal Superannuation Rules — Rule 1 (a) — Municipal servant attaining age of 55 cannot again be appointed for first time in service—Provisions under Art. 217 compared. See Municipalities — Bombay Municipal Boroughs Act (XVIII of 1925), S. 58. **ILR (1958) Bom 113.**

●——**Art. 217 (1)** — Mandamus — Writ of — Claim by Judge of High Court that he has not reached age of superannuation — Demand made by him to Chief Justice to supply him with work as Judge of High Court — Decision by Union Government, that Judge has reached superannuation age and should therefore, demit office — Decision of Government communicated to Judge and work not supplied to him by Chief Justice — Petition for issue of writ of mandamus filed in High Court by the Judge against the Chief Justice — Difference of opinion between Judges hearing appeal from order of dismissal of application as to whether Rule nisi should issue — Question referred to Special Bench under Cl. 36, Letters Patent (Cal.) **Held** by the Special Bench that on materials in the petition and annexures thereto, a Rule nisi should issue. See Ibid, Art. 226. **AIR 1963 Cal 483 (SB).**

●——**Art. 217** — "Attains the age of sixty" — Who is authority to determine a Judge's age in case of dispute? (Quaere) Jyoti Prokash Mitter v. H. K. Bose, Chief Justice Calcutta High Court,

67 Cal WN 662: AIR 1963 Cal 483 (488, 496) (Pt E) (Prs 23, 75) (SB).

——**Arts. 217 (1) and 226** — Judge, age of — Age given by Judge (J. P. Mitter, J. of Calcutta High Court) at time of appointment disputed and Judge retired on ground of superannuation — Writ proceedings against order of Union of India dismissed by Punjab High Court — Special leave to appeal also refused by Supreme Court — Request by retired Judge, nevertheless, to Chief Justice of High Court concerned to arrange for his sitting in Court as a Judge — Request not complied with — Writ petition in same Court for issue of Rule against Chief Justice — Petition dismissed summarily by single Judge — Appeal to Division Bench — Difference of views between Judges constituting Bench as regards disposal of appeal. **AIR 1963 Cal 183 (187, 190, 191) (Prs 22, 23, 44, 45) (DB).**

●——**Art. 217** — High Court Judges cannot do any other work. See Ibid, Art. 14. **AIR 1953 Hyd 105 (FB).**

——**Arts. 217, 218, 219 and 124 (a) and Sch. 2, Part D, Rr. 10 (1) and 11 — Judicial Commissioner whether can act as arbitrator without President's permission — Judicial Commissioner's Courts (Declaration as High Courts) Act (1950), S. 6 (a).**

There is no bar anywhere in the Constitution which lays down a restriction on Judicial Commissioner to act as an arbitrator. Further, the provisions of Article 217, 218 or 221 and therefore, also of the second Schedule to the Constitution do not apply to the Court or office of the Judicial Commissioner. **AIR 1958 Manipur 38 (40) (Pt B) (Prs 11, 12).**

——**Art. 217, Sch. II, Part D, paras. 10 and 11 (b) (i) — Undertaking a function other than that a Judge.**

A Judge of a High Court is competent to act on a commission at the request of a State Government, even though the permission of the President has not been obtained. Absence of such permission may, if the work is done to the exclusion of his own duty as a Judge, only affects the period of his actual service but not his appointment as a member of the Commission. **ILR (1953) Nag 901: AIR 1953 Nag 331 (333) (Pt A) (Pr 26) (DB).**

——**Art. 217** — Appointment of Advocate General after age of 60 years — Appointment not bad so long as he has qualifications prescribed in second clause of Art. 217. See Ibid, Art. 165. **AIR 1952 Nag 330 (DB).**

——**Art. 217** — Member of I. C. S. employed under Punjab State Government—It is competent to direct inquiry under the Act against him — Appointment of a Judge of Punjab High Court as Commission of Inquiry by Governor with approval of Government of India is valid. See Public Servants (Inquiries) Act (1850), S. 2. **(1961) 63 Pun LR 780.**

——**Art. 217** — Industrial Disputes Act (1947), S. 7 (3) — Qualification for appointment. See Industrial Disputes Act (1947), S. 7 (3). **AIR 1959 Punj 460.**

——**Art. 217 — Proceedings to test right to office — De facto Judges.**

Per Koshi J.:— The right of a de facto Judge to hold his office is not open to question nor is his jurisdiction subject to attack in a collateral proceeding.

To raise the competency of the Chief Justice to hear and decide certain appeals when they were taken up for hearing or in the proceeding for leave to appeal to the Supreme Court against that judgment, or in the appeal before the Supreme Court would amount to collateral attack. **1950 TCLR 306: 1950 Ker LT 439: AIR 1951 Trav-Co. 45 (49, 50) (Pt A) (Prs 10, 14) (DB).**

——**Art. 217 (1) — Person over 60 years is not disqualified from holding office as Judge—(T. C. High Court Act (5 of 1125), S. 9 (1)).**

Per Sankaran, J.: The Expression "every permanent Judge shall hold office until he attains the age of 60 years" in Cl. 1 of S. 9, T. C. High Courts Act cannot be construed to mean that it operates as an absolute bar against a Judge being retained in service beyond the age of 60 years or that a Judge on completing 60 years of age becomes disqualified to hold office. **1950 Trav-Co LR 306: 1950 Ker LT 439: AIR 1951 Trav-Co. 45 (52) (Pt D) (Pr 24) (DB).**

ARTICLE 218

——**Art. 218** — The provisions of Arts. 217, 218 or 221 and therefore also of the Second Schedule to the Constitution do not apply to the Court or office of the Judicial Commissioner — (Judicial Commissioner's Courts (Declaration as High Courts Act (1950), S. 6 (a)). See Ibid, Art. 217. **AIR 1958 Manipur 38.**

ARTICLE 219

——**Art. 219** — Sixteenth Amendment — Effect— Subscribing oath according to prescribed form is mandatory — Subscribing oath by Judge on 7-10-1963, in old form though irregular was held to be not fatal. **1963 All WR (HC) 818: 1964 All Cri R 27: 1964 All LJ 315: ILR (1964) 1 All 620: 1965 (1) Cri LJ 258: AIR 1965 All 97 (99; 102; 104) (Pt A) (Prs 4, 10, 21, 22) (DB).**

——**Art. 219 — Word 'subscribed' — Meaning of.**

The use of the word 'subscribed' would show that the oath repeated orally should be reduced to writing and be signed by the person taking it in token of his adhesion to what is written. The word "subscribed" is not correlated with the particular form but with what is said in the oath and what is reproduced in writing. Even if a wrong oath is taken and its reproduction is signed by the person making it, it would still be an act of subscribing though not a correct oath. **1963 All WR (HC) 818: 1964 All Cri R 27: 1964 All LJ 315: ILR (1964) 1 All 620: 1965 (1) Cri LJ 258: AIR 1965 All 97 (105) (Pt B) (Pr 24) (DB).**

——**Art. 219** — Oath to be taken by Judge in presence of Governor — Governor can appoint someone else for that purpose for good reason — General authorisation made by Governor appointing Chief Justice is not proper. AIR 1963 SC 1198 Disting. **1963 All WR (HC) 818: 1964 All Cri R 27: 1964 All LJ 315: ILR (1964) 1 All 620: 1965 (1) Cri LJ 258: AIR 1965 All 97 (105; 106) (Pt C) (Prs 26, 28) (DB).**

——**Art. 219** — Precedents — Judgment of High Court — Not binding on Judges of same High Court or of other High Courts. See Precedents. **1964 (2) Cri LJ 541: AIR 1964 Guj 223.**

——**Art. 219 — Decision based on weight of authority and not on individual judgment of Judge— Conduct contrary to oath of office taken by Judge.**

(Obiter) If a Judge or Judges of a Bench come to a certain conclusion because the weight of authority is in favour of that conclusion, that would be to base the decision on the weight of authority and not on the individual judgment of

the Judges constituting the Bench and that would be contrary to the provisions of S. 165 of the Evidence Act and Art. 219 of the Constitution, and to the oath taken by the Judges under the Government of India Act, the terms of which are substantially the same as those under the Constitution of India. **(1963) 4 Guj LJ 1022 : AIR 1963 Guj 291 (295) (Pt B) (Pr 15).**

——**Art. 219** — Binding effect — Decision of one Division Bench not binding on another Bench. See Precedents. **1962 (2) Cri LJ 360 : AIR 1962 Guj 250 (DB).**

ARTICLE 220

——**Art. 220 — 'Plead' — Meaning of — Permanent High Court Judge not debarred after retirement from pleading his own cause.**

Article 220 puts restriction on practice by a person after being a permanent Judge of a High Court. The expression 'Plead' means, amongst other meanings, to address the Court as an Advocate on behalf of either party. A permanent High Court Judge is, therefore, not debarred from pleading his own cause by Art. 220. **66 Cal WN 211 : (1962) 1 Lab LJ 708 : (1962) 4 Fac LR 121 : AIR 1963 Cal 178 (182) (Pt A) (Pr 13).**

——**Arts. 220 and 165**—Person, a retired Judge of a High Court before commencement of Constitution — He can be appointed as Advocate-General. Bar in Art. 220 does not come in his way. See Ibid, Art. 165. **AIR 1952 Nag 330 (DB).**

ARTICLE 224

——**Art. 224** — Judge of a High Court — An additional Judge appointed under Art. 224 of the Constitution is as much a Judge of High Court as a permanent Judge appointed by the President. See Industrial Disputes Act (1947), S. 7-A (3) (a). **AIR 1962 Mys 117 (DB).**

——**Arts. 224, 214 (2) — Re-appointment of Judge resigning on 24-1-1950.**

A Judge of the Provincial High Court who resigned on 24-1-1950 can be appointed as a Judge of the corresponding State High Court under Art. 224 as, though such a person is not a Judge of the Provincial High Court on 25-1-1950, the identity of the Provincial High Court is not changed between 24-1-1950 and 25-1-1950. **ILR 29 Pat 904 : 1952 Cri LJ 540 : AIR 1951 Pat 305 (306) (Pt B) (Pr 6) (DB).**

ARTICLE 225

SYNOPSIS

(Constitution of India (1950), Art. 225.)

1. Scope.
2. "Subject to the provisions of this Constitution".
3. "Any law of the appropriate Legislature".
4. Jurisdiction.
5. "Respective powers of Judges".
6. Power to regulate procedure of Court.
7. Proviso.

1. Scope.

——**Art. 225 — Law administered at the commencement of Constitution — Law laid down by P. C. decision.**

The law laid down by the Privy Council which does not conflict with any decisions of the Supreme Court would be binding on Indian High Court: AIR 1955 Nag 293, AIR 1954 SC 379, AIR 1958 Cal 530, AIR 1955 Bom 1 (FB), Rel. on. **1961 All WR (HC) 481 : 1961 All Cr R 281 : 1961 All LJ 617 (DB).**

——**Art. 225 — Privy Council decisions are binding on High Court — Precedents.**

In view of the provisions in Art. 225 of the Constitution the law laid down by the Privy Council has a binding effect on the High Court and has to be followed. AIR 1955 Cal 524; AIR 1958 Cal 530; AIR 1955 Nag 293; AIR 1955 Bom 1 (FB); AIR 1954 SC 379, Rel. on. **(1961) 2 Lab LJ 197 : (1961) 2 Fac LR 563 (All).**

——**Arts. 225, 226, 227 and 311—Applicability — Petitioner serving in Sarf-e-Khas army in former Hyderabad State — Order of dismissal passed by H. E. H. Nizam in his private capacity after accession of State to Indian Union — Writ petition—Maintainability — Art. 311 not applicable.**

The petitioner was appointed in 1940 in the Sarf-e-Khas army of the former Hyderabad State before its accession to Indian Union. On 15-2-56 the petitioner was orally informed that he was dismissed from service with effect from 8-2-1956 in pursuance of an order passed by H. E. H. the Nizam as recommended by the intazami Committee and the fouzi committee Sarf--e-Khas army. The petitioner filed a petition under Arts. 225, 226 and 227 of the Constitution to quash the order of his dismissal making Hyderabad State (subsequently substituted by way of amendment by the Andhra Pradesh State) the first respondent, Nawab Deen Yar Jung as Chairman and Secretary to the private estate of H. E. H. the Nizam as the second respondent.

Held, (i) that Arts. 225 and 227 have no application at all. Under Art. 226, a writ of Certiorari being corrective in nature would issue only if it is shown that the person or authority or Tribunal which made the impugned order was acting judicially or as a quasi-judicial body. On 8-2-1956, when the alleged order was passed by H. E. H. the Nizam, he was not acting in his private capacity. So there is no question of quashing the said order. That apart, H. E. H., the Nizam is not a party to this petition. No writ of Certiorari can issue against the 1st respondent (now the State of Andhra Pradesh) either. Further, in view of the fact that admittedly the Intezami Committee, Sarf-e-khas army and the Committee Fouji, Sarf-e-khas army are not in existence, there is no question of issuing any writ as against Nawab Deen Yar Jung who only represents the private estate of H. E. H. the Nizam as Chairman. Hence there is no occasion for invoking the powers under Art. 226 of the Constitution. There is also no question of issuing any writ of Mandamus as the petitioner has failed to show that he has a legal right for himself and that a legal obligation is cast on the respondents whom he had impleaded to do an act which they failed to do.

(ii) that Art. 311 would be applicable to the petitioner if he was in the service of the Union or the State. Since the Sarf-e-khas itself merged in the Diwani as a result of Sarf-e-khas Merger Regulation of 1358-F which came into force on 5-2-1949, there was no longer any question of the Sarf-e-khas or the Sarf-e-khas army. The petitioner continued thereafter, only in the private service of H. E. H. He not being in any State service the question of the application of Art. 311 does not arise. **ILR (1962) Andh Pra 278.**

——**Art. 225** — Scope — Law settled by Federal Court — Continuity of. See Ibid, Art. 374. **AIR 1959 Andh Pra 359 (DB).**

——**Art. 225** — Scope — Andhra Court-fees and Suits Valuation Act, S. 2 (2), does not save the rule made for payment of court-fees on writ peti-

tions by High Court under Art. 225. Though the power to make rules prescribing the court-fees for writ applications is derived by the High Court from Art. 225 of the Constitution, the court-fee is not payable under the Constitution. See Andhra Court-Fees and Suits Valuation Act (7 of 1956), S. 2 (2). **AIR 1957 Andh Pra 123 (DB).**

——**Art. 225** — Applicability and scope —Ss. 2 (h), 119 to 121, States Reorganisation Act — Court on reorganization bound by Bombay decisions and not Nagpur decisions — Sections 119 to 121, States Reorganization Act and Art. 225, Constitution of India do not apply. See C. P. Code. S. 144. **(1959) Nag LJ (Notes) 42.**

● ——**Arts. 225 and 226 — Scope.**

Article 225 defines the whole jurisdiction of the existing High Courts and its effect is to provide that such High Courts shall have all their existing jurisdictions, so far as they are not inconsistent with the provisions of the Constitution and such further jurisdictions as are being conferred by the Constitution itself or may be conferred in future either by Parliament under the provisions of the Constitution or by laws of the appropriate Legislature provided that by such laws the jurisdiction may also be curtailed. It is not correct to read the Article as solely concerned with the preservation of the existing powers and the provision introduced by the words "subject to" as merely providing that the High Courts shall have their existing jurisdiction only so far as it is not being curtailed by the Constitution, or may not be curtailed in future by laws of the appropriate Legislature. Hence the jurisdiction conferred by Art. 226 is a jurisdiction within Art. 225 and therefore in so far as jurisdiction is concerned, a judgment given in exercise of the jurisdiction conferred by Art. 226 is a judgment pursuant to Art. 225.

The nature and limits of the power given by Art. 225 to make rules for the regulation and distribution of the business of the Court must be sought in S. 108 of the Government of India Act, 1915.

Since the power conferred by S. 108 is power to frame rules for the exercise of all jurisdictions, whether existing at the date of the Act of 1915 or subsequently vested, and that power has been preserved by Art. 225 of the Constitution, a judgment of a Single Judge, in exercise of the jurisdiction conferred by Art. 226, is, even in respect of the rule assigning such jurisdiction to him, a judgment pursuant to S. 108 or Art. 225.

Section 108 (2) is the only provision which empowers the Chief Justice to determine what Judge shall sit singly and what Judges shall constitute the Division Courts. That part of the section also is now incorporated in Art. 225. Outside section 108 (2), (now Art. 225), there never was and there is not now any other provision which gives power to the Chief Justice to nominate from time to time particular Judges for particular Courts or Benches. When therefore, a particular Judge sits in a particular Court, he does so under a determination by the Chief Justice, whatever jurisdiction he may exercise and since such determination can only be made under S. 108 (2), now Art. 225, he sits and exercises jurisdiction pursuant to S. 108. **57 Cal WN 25 : AIR 1953 Cal 433 (438, 439, 440) (Pt E) (Prs 19; 20; 24; 25) (SB).**

——**Arts. 225, 214** — High Court of Saurashtra becoming High Court of Part B States and Part VI of Constitution with certain modifications mentioned in Art. 238 became applicable to High Court — Effect of Art. 225 on appellate jurisdiction. See States Reorganisation Act (1956), S. 49. **AIR 1965 Gul 87 (DB).**

——**Arts. 225 and 230** — India and Hyderabad Exchanges of Enclaves Order (1950), Ss. 2 and 7 — Applicability — Exchange of territory became effective from before Constitution — Pending actions at time of exchange — Jurisdiction already vested is not affected — Arts. 225 and 230 of the Constitution refer to transfer after the Constitution came into force and are inapplicable to a case where the transfer became effective before the Constitution came into force. See India and Hyderabad Exchanges of Enclaves Order (1950), Ss. 2 and 7. **52 Cri LJ 1398: AIR 1950 Hyd 71.**

——**Art. 225** — Application for copy dismissed for default—Inherent powers of High Court to restore — Procedure — Effect on limitation — (High Court Rules and Orders — (Madras) Civil Rules of Practice, R. 129) — (Limitation Act (1908), Ss. 5, 12) — Inherent jurisdiction of High Court is saved among others by Art. 225 of the Constitution. **71 Mad LW 822 : (1958) 2 Mad LJ 552 : ILR (1959) Mad 176 : AIR 1959 Mad 406 (407) (Prs 6, 7).**

——**Arts. 225, 200, Sch. 7, List 1. Entry 78, List 2, Entry 3, List 3 Entries 1, 2, 46**—(Code of) Criminal Procedure (Madras Amendment) Act (Madras Act) (34 of 1955) — Validity — Act derogating from powers of High Court — Constitution, if has provision to make such laws. See Code of Criminal Procedure (Madras Amendment) Act (Madras Act) (34 of 1955) — Validity. **AIR 1959 Mad 261.**

——**Art. 225** — Privy Council decisions — Binding nature on Courts in India. See Ibid, Art. 141. **AIR 1955 Nag 293 (DB).**

——**Arts. 225, 226 — Patiala and East Punjab States Union Judicature Ordinance (X (10) of 2005) — S. 60 whether abrogated.**

Art. 225 saves all laws etc., in force in the Union, unless they are inconsistent or come in conflict with any of the provisions of the Constitution. Section 60, Patiala and East Punjab States Union Judicature Ordinance (10 of 2005), is not inconsistent with the provisions of Art. 226 of the Constitution and cannot be held to be abrogated by the coming into force of the Constitution. **(1950) 2 Pepsu LR 443.**

2. "Subject to the provisions of this Constitution".

——**Arts. 225, 145 (1) (b) — Applications for certificate for leave to appeal to Supreme Court — Power of High Court to make rules governing procedure — (High Court Rules and Orders — (Allahabad) Rules of Court (1952), Ch. 23).**

A High Court has no statutory power to make any rules governing the procedure in an application for a certificate. The rules contained in Ch. 23 of the Rules of Court, 1952, made by Allahabad High Court are, therefore, not made in exercise of the powers conferred by Art. 225. Only the Supreme Court has the powers to make rules governing the procedure in applications for certificates under Art. 132, etc. They are matters pertaining to appeals within the meaning of Art. 145 (1) (b). The use of the words "subject to the provisions of this Constitution" in Art. 225 restricts and not enlarges the High Courts' powers. **1957 All WR (HC) 268: AIR 1957 All 505 (519) (Pt O) (Pr 22) (DB).**

——**Arts. 225 and 226 — Construction and relative scope—If to be read together —"Jurisdiction" — "Powers" — Meaning and effect of.**

Art. 226 of the Constitution must be read with Art. 225 and laying special emphasis on the words "subject to the provisions of this Constitution" occurring in Art. 225. When so read, it will be found that the jurisdiction of the existing High Courts as exercised immediately before the com-

mencement of the Constitution has lost its rigidity. The words "subject to the provisions of this Constitution" in Art. 225 imply not only the abridgment but also the expansion of the jurisdiction of any existing High Court. Art. 226 is clearly an instance of the latter and Art. 230 of both.

The words "jurisdiction" and "powers" used in Art. 225 ought not to be read as having quite distinct meaning or as being independent of each other. "Jurisdiction" has two recognised meanings, namely, (1) legal authority or the extent of power and (2) area over which such authority or power extends.

These two meanings of the same word have a totally different concept and should not be confused. The sense in which it is used is governed by the context. There is nothing in the meaning of the word "jurisdiction" as used in Arts. 225 and 226 to suggest any difference between the High Court's authority and power except that the word "jurisdiction" in Art. 225 can have both the meanings ascribed to the term, and it is merely in order to avoid confusion that the word "powers" has been deliberately used in respect of the Judges. AIR 1950 Madh Bha 60 (FB), Diss. **1952 Cri LJ 660: AIR 1952 Bhopal 1 (3, 4) (Pt B) (Prs 9, 10, 12, 17).**

——**Art. 225** — Proceedings disputing validity of election — Jurisdiction of High Court — Representation of the People Act (1951), Ss. 80, 81, and 100. See Ibid, Art. 329 (b). **AIR 1953 Cal 98.**

——**Arts. 225 and 245 (1)** — Legislation imposing limitation on powers of High Court, under the Constitution cannot be passed — Existing laws which contain such limitation become void after Constitution came into force. See Ibid, Art. 245 (1). **AIR 1953 Nag 148 (DB).**

3. "Any law of the appropriate Legislature".

——**Arts. 225, 226, 246 (3), Sch. VII; List II; Item 3 — High Court prescribing court-fee for proceedings before it in original jurisdiction — Powers of State legislature — Court-fee on writ petitions.**

Art. 225 of the Constitution of India preserved the pre-existing power of the High Court to make rules of Court and prescribe court-fees in respect of proceedings taken before the High Court; but the rules would not have any legal authority if the appropriate legislature made law on the same subject. The Andhra Legislature has power to make laws in respect of item 3 of the State List which includes fees taken in all Courts including the High Court except the Supreme Court. Thus item 3 of the State List confers specific power on the Legislature to make laws prescribing the fees in the High Court. AIR 1954 Mad 543, Rel. on. **(1957) 1 An WR 360: 1957 An LT 403: ILR (1957) Andh Pra 229: AIR 1957 Andh Pra 123 (126) (Pt B) (Pr 7) (DB).**

——**Art. 225** — Art. 225 of Constitution is subject to the provisions of any law made by appropriate legislature and does not affect scope of Cl. 15 — Jurisdiction exercised by Assam High Court in revenue matters is a special jurisdiction — Decision of Single Judge in appeal under S. 147 Assam Land and Revenue Regulation — Not a judgment within Cl. 15 — No appeal lies to a Bench. See Letters Patent (Cal), Cl. 15. **AIR 1962 Assam 71 (DB).**

——**Art. 225** — (Code of) Criminal Procedure (Madras Amendment) Act (Madras Act), (34 of 1955)—Validity — If ultra vires the State Legislature — Power to transfer cases pending before Presidency Magistrate given to Sessions Judge, Madras — Validity. See (Code of) Criminal Procedure (Madras Amendment) Act (Madras Act 34 of 1955) — Validity. **AIR 1959 Mad 261.**

4. Jurisdiction.

●——**Art. 225** — Powers of High Court — Division Bench — No jurisdiction to sit in judgment on decision of another Division Bench. **1958 SCJ 349: 1958 Cr LJ 273: 1958 Mad LJ (Cr) 311: AIR 1958 SC 143 (145) (Pt A) (Pr 2) (DB).**

●——**Arts. 225, 226** — Powers and jurisdiction—Scope of Arts. 225 and 226 — Punjab High Court has jurisdiction to issue writ to the investigation Commission in Delhi investigating under S. 5, Taxation of Income (Investigation Commission) Act (30 of 1947), AIR 1951 Punj 74, **Reversed.** See Ibid, Art. 226. **AIR 1954 SC 207.**

——**Art. 225** — Powers under Art. 226 — Scope of — Powers not to be exercised in derogation of Art. 225 — Final order passed by High Court in exercise of revisional or appellate jurisdiction — Finality cannot be upset in exercise of powers under Art. 226. See Ibid, Art. 226. **AIR 1963 All 532.**

——**Art. 225** — Representation of the People Act (1951) S. 116-A — Right of appeal under S. 116-A — Validity — Jurisdiction — Whether contravention of Arts. 225 to 227. See Representation of the People Act (1951), S. 116-A. **AIR 1958 All 137 (DB).**

——**Art. 225** — Indian and Colonial Divorce Jurisdiction Act (1926) (16 and 17 Geo, V. C. 40), S. 1—Jurisdiction of Indian Courts to grant decrees for dissolution of marriages of couples domiciled outside India — (Indian Independence Act (1947), Section 17 (1) — (Interpretation of Statutes—Repeal) — (General Clauses Act j1897), S. 6-A). See Indian and Colonial Divorce Jurisdiction Act (1926), S. 1. **AIR 1954 All 624.**

——**Art. 225** — Power of High Court to punish for contempts — Inherent jurisdiction — Jurisdiction preserved under Art. 225. See Contempt of Courts Act (1952), S. 2. **1959 Cr LJ 567: AIR 1959 Bom 182 (DB).**

——**Art. 225** — Admiralty jurisdiction in respect of supply of necessaries — Extent of. See Letters Patent (Calcutta), (1865), Cl. 32. **AIR 1954 Cal 415.**

——**Art. 225** — Letters Patent (Bombay) Cl. 16 — States Reorganisation Act (1956), Ss. 52 and 69 — High Court Act (1861), Ss. 1 and 9 — Jurisdiction conferred by clause 16 of Letters Patent — Jurisdiction under Art. 225 compared. See Ibid, Art. 372. **AIR 1965 Mys 76 (DB).**

——**Art. 225** — Scope — Jurisdiction — S. 65 (2), States Reorganisation Act — Validity — If contravenes Art. 225 — S. 65 (2) is supplemental, incidental and consequential provision within Art. 4 and not open to objection of contravening Art. 225. See Ibid, Art. 4. **AIR 1960 Mys 310.**

●——**Art. 225** — Power of Mysore High Court to grant probate and letters of administration. See Succession Act (1925), S. 300. **AIR 1959 Mys 83 (FB).**

——**Arts. 225 and 226 — Scope and effect — Territorial jurisdiction of High Court — Investigation by Income-tax Investigation Commission in U. P. — Power of Punjab High Court to issue writ — Taxation on Income (Investigation Commission) Act (30 of 1947), Ss. 8 and 9.**

Art. 225 of the Constitution defines the jurisdiction of the High Court and Art. 226 confers authority or powers to be exercised within the jurisdic-

tion given in Art. 225. Neither Art. 225 nor Art. 226 enlarges its territorial jurisdiction, nor confers jurisdiction on it in regard to matters over which it had no jurisdiction previously.

The Punjab High Court has no jurisdiction to entertain a petition for the issue of writs of prohibition and certiorari quashing the proceedings of the Income-tax Investigation Commission constituted under Act (30 of 1947) carrying out investigation in U. P. where the assessee resides, and the fact that the location of the Commission is in Delhi within the jurisdiction of that Court does not confer jurisdiction over it. ILR (1944) Mad 457 (PC), Applied. **ILR (1951) Punj 165: 53 PLR 57 : (1951) 20 ITR 77 : AIR 1951 Punj 74 (76, 77) (Pt A) (Prs 16; 19) (DB).**

[**Reversed** in AIR 1954 SC 207.]

5. "Respective powers of Judges."

■——**Art. 225 — Powers of Judges of High Court in relation to the administration of justice in the Court.**

Per P. N. Mookerjee, J.: "The Advocate-General did not argue that no writ lies in this Court against the Chief Justice (acting in his administrative capacity.) It is well that it is so. It is an emphatic vindication of the powers of this Court, in eloquent recognition that the judicial power of its Puisne Judges is above the Chief Justice no less important than the traditional saying of this Court that the judicial powers of the Chief Justice are in no way greater than its Puisne Judges." Jyoti Prakash Mitter v. Hon'ble Mr. Justice H. K. Bose, Chief Justice of High Court, Calcutta, **67 Cal WN 662 : AIR 1963 Cal 483 (489) (Pt G) (Pr 27) (SB).**

■——**Arts. 225, 254 (1) — Mysore Chief Court Act (1 of 1884), S. 15 (3) — Validity — (Civil P. C. (1908), Ss. 4, 98.)**

It cannot be held that after the Constitution and the extension of the Central Act of the Code of Civil Procedure to Mysore, the provision in Section 15 (3) of the Mysore Chief Court Act must be deemed to have been superseded as per Art. 254 (1) of the Constitution on the ground that this provision is repugnant to the provision in S. 98 (2), Civil P. C. (1908), which is a Central Act. In the first place while S. 98 (2) provides for reference being made to a Full Bench by two Judges, S. 15 (3) of the Mysore Chief Court Act provides for a reference being made by a single Judge. The provisions in the Mysore Act are supplementary to those in the Civil P. C. (1908) as the Mysore Act provides for a reference to a Full Bench in a case not provided for in the Civil P. C. It gives a power to the Judges of the High Court in addition to the power they have under the Civil P. C and not inconsistent with it. Further S. 4 (1), Civil P. C. (1908), directs that the provisions in it shall not be deemed to limit or affect any special or local law and thus it is clear that its provisions under S. 98 (2), do not limit or affect the provision in Section 15 (3), Mysore Chief Court Act, which is a special and local law of Mysore.

Per Vasudevamurthy, J.: — The provision contained in S. 15 (3) would also properly fall under item 3 List 2, State List "Administration of Justice" read with item 65 "Jurisdiction and Powers" of all Courts except the Supreme Court with respect to any of the matters in List 2. This would save it under Art. 225 read with Art. 254 (1) of the Constitution. H. R. Patel v. Mrs. C. G. Venkatalakshamma. **ILR (1955) Mys 43 : AIR 1955 Mys 65 (67, 73, 74) (Pt A) (Prs 6; 28; 29; 31) (FB).**

6. Power to regulate procedure of Court.

■——**Art. 225** — Regulating sittings of Court — Continuity of rule making power given by Government of India Act (1915), S. 108. See Letters Patent (Bom) Cl. 15. **AIR 1953 SC 357.**

——**Art. 225** — High Court Rules — Regulation of procedure under Allahabad High Court Rules Chap. IX, R. 8 — Rule prevails against O. 42, R. 1. See Civil P. C. (1908), O. 42, R. 1 (Allahabad). **1965 All WR (HC) 22.**

——**Art. 225** — High Courts Rules and Orders — Allahabad High Court Rules, Chap. V, R. 1 — Jurisdiction of High Court — It is for the Chief Justice to allot work to Judges and Judges can do only such work as is allotted to them. See Criminal P. C. (1898), S. 439. **1959 Cr LJ 803 : AIR 1959 All 421 (DB).**

——**Art. 225** — Rules under — Rule 29 of Allahabad High Court Rules is valid. The Rules have been made in exercise of the powers conferred by Art. 225, according to which they must be "subject to the provisions of this Constitution and to the provisions of any law of the appropriate legislature made by virtue of powers conferred on that legislature by this Constitution". See High Court Rules and Orders — Allahabad High Court Rules, Ch. 23, Rr. 28 and 29. **1958 Cr LJ 1107 : AIR 1958 All 667.**

■——**Arts. 225 and 226 — Rules framed by Allahabad High Court for regulation of proceeding under Art. 226 — Rule 9 — (High Court Rules (Allahabad.))**

Rule 9 of the rules framed by the Allahabad High Court for regulation of its proceedings under Art. 226 of the Constitution of India concerns itself only with the formal presentation of the writ application and does not contemplate the control of the further proceedings at the hearing of the application. It does not regulate the right of audience either at the initial stage when the application is moved or at the time of the final hearing. Singh G. P. v. Hon'ble Judges of the High Court of Judicature at Allahabad, **1952 RD (HC) 166 (1) : 1952 All LJ 182 : 1952 All WR (HC) 234 : AIR 1952 All 519 (520) (Pr 2) (SB).**

——**Art. 225** — Andhra Court-fees and Suits Valuation Act (VII of 1956), Sch. II Arts. 11 (S) and 11 (U) — Petition under Art. 226, Constitution of India for appropriate direction or order — Court-fees payable on petition would be under Art. 11 (S) and not under 11 (U), under Rules framed by the High Court under Art. 225 to regulate proceedings under Art. 226. See Andhra Court-fees and Suits Valuation Act (7 of 1956), Sch. 2 Art. 11 (S). **(1964) 2 An WR 290.**

■——**Art. 225** — High Court Rules and Orders — Madras Appellate Side Rules, R. 1—Nature of — Have force of law — The power to frame rules regulating its practice and procedure conferred on the High Court under Parliamentary enactments and the Letters Patent is preserved by Art. 225, corresponding to S. 223 of the Government of India Act 1935. **1956 Andh LT 152 : 1956 Andh WR 117: 69 Mad LW (Andh) 77: AIR 1957 Andh Pra 49 (50) (Pt A) (Pr 4) (FB).**

■——**Art. 225** — Competent authority in territory of India — Rules made under Letters Patent — Validity. See Ibid, Art. 372. **1956 Cri LJ 1049 : AIR 1956 Andh Pra 161 (FB).**

■——**Arts. 225 and 372 — Powers of High Court — Rules made by High Court before Constitution — Continuity of.**

Art. 225 affirms the pre-existing powers of the High Court, among others, to make rules and to regulate the sitting of the Court and the members thereof sitting alone or in Division Courts. Putta Ranganayakulu, In re, **1956 An WR 456: ILR (1956) Andh 13 : 1955 An LT (Cr) 335 : 1956 Cr LJ 1049 : AIR 1956 Andh 161 (164) (Pt A) (Pr 9) (FB).**

●——**Art. 225 —Adaptation of Laws Order (1950) — If impliedly repeals the Appellate Side Rules of High Court of Madras.**

Art. 225 in terms preserves the powers of the High Court which it derived under the Letters Patent and other statutes made by Parliament of the United Kingdom. The rules already made by the High Court and the powers, whereunder they were made are preserved under Art. 225. Even assuming that, the Adaptation of Laws Order 1950, by necessary implication, revoked the powers conferred on the High Court by the Letters Patent or other statutes to make rules they are saved under the express provisions of para. 17 of the Order. Putta Ranganayakulu, In re, **1956 Andh WR 456 : ILR (1956) Andh 13 : 1955 An LT (Cr) 335 : 1956 Cr LJ 1049 : AIR 1956 Andh 161 (165) (Pt D) (Prs 13; 15) (FB).**

——**Art. 225** — Scope — Power of regulating procedure —If affected by special enactments — Trade Marks Act, Ss. 76 (1) and 77 — R. 617, High Court Original Side Rules — Scope and operation of. See Letters Patent (Bom), Cl. 15. **AIR 1951 Bom 147.**

●——**Art. 225 — Duty or obligation of Chief Justice — Exercise of jurisdiction by existing Judge of High Court — Chief Justice is under statutory obligation to aid and implement such exercise.**

Where in a petition filed under Art. 226, the petitioner claims that he has not reached the age of superannuation, that, therefore, he still continues to be a Judge of the High Court and has the legal right to act as such, and to demand and enjoy the rights and privileges attached to that High Office and, if it can be found in favour of the petitioner, then the Chief Justice of the High Court is under a legal duty or obligation to aid or implement the petitioner's exercise and enjoyment of the said right or rights and privileges. This is apparent from, in any event, prima facie implicit in S. 108 of the Government of India Act 1915, which corresponds to the older S. 14 of the Charter Act (Indian High Court Act), 1861, and which has been preserved by the Constitution (vide Art. 225), following the earlier constitutional enactment the Government of India Act, 1935 (S. 223) and which appears to impose, at least prima facie a duty upon the Chief Justice to allocate work to the existing Judges of the same High Court. Jyoti Prakash Mitter v. Hon'ble Mr. Justice H. K. Bose, Chief Justice of High Court, Calcutta, **67 Cal WN 662 : AIR 1963 Cal 483 (487; 495; 498; 499) (Pt C) (Prs 19, 67, 88) (SB).**

——**Art. 225 — Duty of Chief Justice in constituting Bench — Doubt as to retiring age of High Court Judge — Chief Justice, if bound to allocate judicial work to such Judge — Chief Justice if can be compelled to disregard decision of Government of India as to superannuation.**

The duty of the Chief Justice in the matter of Constitution of Bench is a duty which he discharges in respect of existing Judges. If doubt arises as to whether a Judge is still holding office or has retired according to the provisions of the Constitution, it is not for the Chief Justice to make his own decision in the matter on facts unknown to him. There is nothing to compel the Chief Justice to accept the age of a Judge (the petitioner) according to his own version in preference to the decision by the Ministry of Home Affairs, Government of India, as to his superannuation.

To ask the Chief Justice to disregard the decision of the Government of India and to treat the petitioner as still holding the office is to ask him to arrive at a decision which he cannot make and has no duty to make. It is the business of the Ministry of Home Affairs, Government of India, to arrive at an administrative decision (in the sense of keeping an administrative record) about the date of the petitioner's superannuation. If the decision or the opinion of the Ministry of Home Affairs, Government of India, ultimately turns out to be correct and the petitioner's own impression about his own age turns out to be incorrect, then by asking the Chief Justice to treat the petitioner as a sitting Judge and not as a retired Judge and by asking him further to allocate judicial work to him, the Chief Justice may be asked to face the peril of having judicial work done by a retired Judge. That must be avoided lest it may result in disastrous consequence to judicial administration. **(1962) 4 Fac LR 121 : 66 Cal WN 211 : (1962) 1 Lab LJ 708 : AIR 1963 Cal 178 (182; 183) (Pt B) (Prs 15, 17, 18).**

●——**Art. 225** — High Court Judges (Conditions of Service) Act (28 of 1954), S. 23-A — Order under, by President — Calcutta High Court (Vacation) Order, 1960 — Validity — Subject-matter of S. 23-A falls within Sch. 7, List II, entry 3 and not under Sch. 7, List I Entry 78—S. 23-A and Order thereunder are ultra vires — 'Administration of justice' and 'Constitution and Organisation of Courts' — Interpretation of — Power of regulating sittings of the Court is included in power in relation to "Administration of Justice" in view of Art. 225. See High Court Judges (Conditions of Service) Act (1954), S. 23-A. **AIR 1961 Cal 545 (SB).**

——**Arts. 225, 214** — High Court of Saurashtra becoming High Court of Part B States and Part VI of Constitution with certain modifications mentioned in Art. 238, became applicable to High Court — Effect of Art. 225 on appellate jurisdiction. See States Reorganisation Act (1956), S. 49. **AIR 1965 Guj 87 (DB).**

●——**Arts. 225, 246 (3) and Sch. VII, List 2, Entry 3 — Power of State Legislature to enact law conferring power on Division Benches to hear appeals against orders of single Judge passed under Art. 226 — Kerala High Court Act (5 of 1959), S. 5 — Constitutionality.**

The State Legislature was fully competent to pass the Kerala High Court Act by virtue of its powers under Arts. 225, 246 (3) read with Sch. 7, List 2, Entry 3 of the Constitution and the Act is valid. ILR (1960) Ker 734 (FB), Foll.

The State Legislature is competent to pass a law providing for the hearing by a Single Judge of the High Court of all applications under Art. 226 of the Constitution and also to provide for the hearing by a Division Bench of two Judges of appeals against the orders of a Single Judge in such original petitions. Indo-Mercantile Bank, Ltd. v. Commissioner, Quilon Municipality, **1960 Ker LJ 1135 : 1960 Ker LT 1091 : (1960) 2 Ker LR 464 : ILR (1960) Ker 1435 : AIR 1961 Ker 96 (97) (Pt B) (Pr 2) (FB).**

——**Art. 225** — Scope — Powers to regulate sittings of Court — Trivandrum Bench — Filing powers. See States Re-organisation Act (1956), S. 51 (3). **AIR 1958 Ker 188 (DB).**

——Art. 225 — High Court Rules — Madras High Court Fees Rules, 1933, O. 2, R. 1, as amended by R. O. C. 2219/49/B-1, coming into force on 27th June, 1950 — Constitutionality of the rule —High Court's power to prescribe court-fees payable on original side before and after Constitution — (Government of India Act (1915), Ss. 106 and 107) —(Government of India Act (1935), Ss. 223, 224) — (Letters Patent (Madras) Cl. 37) —(Court-fees Act (1870), S. 3).

Any rule made by the High Court will not have any legal authority if the appropriate Legislature (Madras) made law on the same subject. The appropriate Legislature has not made any law in respect of the court-fee payable on the Original Side of the High Court. If so the High Court certainly can prescribe court-fee in respect of such proceedings if the provisions of Art. 225 conferred such power on it. It would have such power if before the Constitution its right to make rules of Court sustained such a power.

Though there is much to be said for the view that though the High Court's power to prescribe court-fees was derived only from S. 107 of the Government of India Act, 1915 the source of that power could be traced to the general power of the High Court (Cl. 37 of Mad. Letters Patent) to issue rules for regulating the practice and procedure of Courts. Such a power was exercised for so long a time and acquiesced in by all parties concerned including the Government and Legislature. Hence Art. 225 of the Constitution saved that power subject to the restrictions contained therein.

Even apart from Art. 225 there are provisions in the Constitution enabling the High Court to exercise such a power prescribing court-fee.

Consequently R. 1 of O. 2 of the Madras High Court Fees Rules, 1933, as amended by R. O. C. 2219/49-B-1 providing that two documents including a memo. of appeal, the Registrar shall apply the law for the time being in force relating to court-fee, etc. (i. e., the Court-fees Act) in the manner and to the extent that it is applicable to similar documents filed in original proceedings in a District Court and in appeals from decrees and orders of a District Court, which rule came into force on 27th June, 1950, and prescribed a higher fee in appeals against the original side decrees is constitutionally valid. **(1954) 1 MLJ 206: 67 Mad LW 43: ILR (1954) Mad 643: AIR 1954 Mad 543 (544, 545, 546, 548) (Pt A) (Prs 1; 4; 6; 7; 8) (DB).**

——Art. 225 — Rules framed by High Court — Application under Art. 226 made beyond time — Discretion of High Court to entertain it —(High Court Rules and Orders).

Ordinarily the High Court will not entertain an application under Art. 226 after an inordinate delay that is beyond 45 days after the order impugned has been passed. But the High Court may condone the delay and exercise its discretion to entertain the application where it is impressed with the exceptional character of the order impugned. **1954 Nag LJ 166: ILR (1954) Nag 152: AIR 1954 Nag 107 (108) (Pt B) (Pr 7) (DB).**

——Art. 225 — Powers of Chief Justice of High Court — Transfer of case from Divisional Court — Government of India Act, 1915, S. 108.

There is no power in the Chief Justice of a High Court either under the Constitution or the Letters Patent or the rules of the Court or under any other statute to withdraw or transfer a case of which a Divisional Court is in seisin. The Rules made by the High Court only provide for the convenient exercise of jurisdiction of the Court, but do not give any special judicial power to the Chief Justice over the other Judges of the Court. Under the rules the jurisdiction of the High Court is exercised by one or more Judges according to the nature of the cases. The power to regulate the sittings of the Court which the Chief Justice undoubtedly possesses, is an administrative power and cannot afford any basis for regulating the mode of hearing of a case by a Court properly seized of it. The power to withdraw and transfer a case from such a Court without its concurrence is a power to prevent the exercise of jurisdiction by that Court which can only be done by virtue of a superior power of control or correction for which authority must be found either in an express provision or by necessary implication. ILR 8 Cal 63, AIR 1924 Cal 186, and ILR 61 Cal 155, Rel. on. **ILR (1951) Nag 251: AIR 1951 Nag 11 (14; 15; 16) (Pt A) (Prs 22, 23, 26, 29, 36) (DB).**

——Art. 225 — Litigant has a right to invoke jurisdiction of the High Court and not to have his case decided by any particular Judge or Judges. The particular Judge or Judges who may happen to be dealing with any class of cases at any given moment is entirely a matter of internal management in the High Court with which the litigant has no concern. **ILR (1951) Nag 251: AIR 1951 Nag 11 (14) (Pt B) (Pr 21) (DB).**

——Arts. 225 and 133 — Powers of Patna High Court—Constitution of High Court—Rules Regulating Administration of Justice and Sittings of Court — (High Court Rules and Orders — Patna High Court Rules, Chap. 2 R. 1 (ii)).

Article 225 of the Constitution lays down inter alia, that the jurisdiction of any existing High Court and the respective powers of the Judges thereof in relation to the administration of justice in the Court, including any power to make rules of Court and to regulate the sittings of the Court and of members thereof sitting alone or in Division Courts, shall be the same as it was immediately before the commencement of the Constitution. The power to make rules which the Patna High Court had before the commencement of the Constitution is preserved by Art. 225 of the Constitution, the only limitation being that the power is subject to other provisions of the Constitution and to the provisions of any law of the appropriate Legislature made by virtue of powers conferred on that Legislature by the Constitution. Mahendra Raut v. Darsan Raut, **31 Pat 446: AIR 1952 Pat 341 (345, 347) (Pt D) (Prs 17; 22) (SB).**

——Arts. 225, 226 — High Court Rules and Orders (Punjab) Vol. 5, Chap. 3-B, Rr. 1, Proviso and 4 — Application under Art. 226 of the Constitution — Chief Justice has power to direct Division Bench to hear petition in exceptional cases. See High Court Rules and Orders (Punj) Vol. 5, Chap. 3-B, R. 1, Proviso. **(1963) 65 Punj LR 125.**

——Art. 225 — Rajasthan High Court Rules are not in violation of Art. 329 — Rules are mandatory — Election appeal filed without complying with rules — Appeal should be dismissed. See Representation of the People Act (1951), S. 116-A (2). **AIR 1965 Raj 58 (DB).**

7. Proviso.

——Art. 225, Proviso — Bar of jurisdiction under S. 226 (1) Government of India Act, 1935 —Effect of Art. 225, Proviso. See Government of India Act (1935), S. 226 (1). **AIR 1954 Bom 527.**

——Art. 225, Proviso — Retrospective effect — (General Clauses Act (1897), S. 6 (c)) — (Government of India Act (1935), S. 226 (1)).

Where rights and procedure are dealt with together by any provision of law it may well be the intention of the Legislature that the old rights should be determined by the old procedure. But it is clear that the proviso to Art. 225 only deals with jurisdiction and not with any rights. That is a matter of procedure and as no party has a vested right to a particular proceeding or to a particular forum, Art. 225 applies to a suit even though the Constitution had not come into force when the suit was instituted.

Further, S. 6 (e) of the General Clauses Act, 1897, does not in any way affect the applicability of Art. 225 of the Constitution to a suit which is previously instituted and which comes up for disposal after the coming into operation of the Constitution. **56 Bom LR 923: AIR 1954 Bom 527 (530, 531) (Pt C) (Prs 6, 7, 8).**

ARTICLES 226 &

SYNOPSIS

(Constitution of India (1950), Arts. 226 & 32.)

PART A

GENERAL

(Notes 1 to 125)

1. Act of State, writ in respect of.
2. Administrative authority.
   See Note 5.
3. Administrative order.
   See also Notes 50 and 126.
4. Affidavit in support of application.
   See Note 11.
5. Against whom writ can issue.
   (a) Private persons.
   (b) Eminent persons.
   See also Note 5 (a).
   (c) Government departments and tribunals.
   See also Note 54.
   (d) Authority not duly constituted.
   (e) Legislative body.
   (f) Official body.
   (g) University and other educational authorities.
   (h) Courts.
   See also Note 67.
   (i) Statutory bodies.
   (j) Public authority.
   (k) High Court and its departments.
   (l) Election Tribunal.
   (m) Industrial Tribunal.
   (n) Corporations and companies.
   (o) Income-tax Authorities.
   (p) Administrative authority.
   (q) Board of Revenue.
   (r) Union of India.
   (s) Military authority.
   (t) Railway Administration.
6. Aggrieved person.
   (a) Existence of right is basis of petition.
   (b) Exception to.
   (c) Firm, application on behalf of.
   (d) Company, corporation and representative body.
   (e) Person adversely affected.
   (f) Person directly affected.
   (g) Joint Hindu family.
   (h) Taxing statute.
   (i) Tax payer and elector.
   (j) Constitutionality of law, right to question.
7. Alternative remedy.
   (a) Adequate and prompt.
   (b) Appeal or revision.
   (c) Appeal or revision or suit, when no adequate remedy.
   (d) Burden as to.
   (e) Contractual rights.
   (f) Costly or ineffective.
   (g) Fundamental rights, infringement of.
   (h) General rule applies to other directions, orders and writs.
   (i) Special responsibility of Supreme Court.
   (j) Inconvenience or delay in getting redress.
   (k) Matter pending before ordinary Court or tribunal.
   (l) Matters to be taken into consideration.
   (m) Patent assumption of jurisdiction or want of jurisdiction or flagrant disregard to principles of law.
   (n) Disregard of principles of natural justice.
   (o) Question of great constitutional or public importance.
   (p) Sales tax, illegal taxation.
   (q) Specific remedy provided.
   (r) Statute providing self-contained machinery.
   (s) Suit, remedy of.
   (t) Other remedy barred, or exhausted or not taken or not available.
8. "Any other purpose".
   See also Notes 71 and 81.
   (a) Ejusdem generis, rule of.
   (b) Non-fundamental sights, enforcement of.
   See Notes 71 and 81.
9. "Any person," meaning of.
10. Appeal from order in.
11. Application for.
   See also Note 98.
   (a) Affidavit in support of.
   (i) Who can make.
   (b) Affidavit in opposition.
   (c) Contents of.
   (d) Amendment.
   (e) Delay in applying, explanation for.
   See Note 35.
   (f) Suppression of or falsity of facts.
   (g) Joint application,
12. Article 32, scope of.
   (a) Question of fact.
   See also Note 79.
   (b) Jammu and Kashmir.
   (c) No infringement of fundamental rights.
   (d) Article 32 (3).
   (e) Article 32 (4).
13. Articles 32 and 226 compared.
14. Articles 226 and 227.
15. Assessment, illegal, writ against.
   See Note 59.
16. Authority not duly constituted, writ against.
   See under Note 5.

17. Bar to.
(a) Jurisdiction subject to other provisions of Constitution.
(b) Legislative provisions.
(c) Other provisions of Constitution.
(d) Statutory bar.
(e) Other remedy available.
See Note 7.
18. Board of Revenue.
See Note 5.
19. Burden of proof.
20. Certiorari.
See under Part B (Notes 126 to 185).
21. Circumvention of orders under Art. 226.
22. Civil Procedure Code, applicability of.
23. Civil servant, dismissal of.
See also Notes under Ibid, Arts. 310 and 311.
(a) Civil servant.
(b) Authority to dismiss or terminate.
(c) Retirement.
(d) Contract basis, person employed on.
(e) Disciplinary proceedings.
(f) Finding of enquiry.
(g) Contravention of principles of natural justice.
See also Note 78.
(h) High Court, powers of.
(i) Service Rules, enforceability of.
(j) Non-compliance with procedure.
(k) Suspension.
(l) Justiciability of punishment.
See Note 23 (h).
24. Clarification, order for.
25. Company, application by.
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26. Complicated question of fact.
See Note 79.
27. Concurrent jurisdiction of High Court and Supreme Court.
28. Conduct of petitioner.
See Notes 35, 39 and 48.
29. Contractual rights, enforcement of.
(a) Alternative remedy.
See Note 7.
30. Corporation, application by.
See Note 6.
31. Costs in writ proceedings.
(a) By advocate.
(b) Inferior tribunal, cost in favour of or against.
(c) Special costs.
32. Court-fees.
See also Note 10.
33. Courts, writs to.
See Note 5.
34. Declaratory relief.
35. Delay in applying.
(a) Habeas Corpus.
(b) Mandamus.
(c) Factor in exercising discretion.
(d) Limitation.
(e) Absence of diligence.
(f) Excusable delay.
36. Demand and refusal of relief.
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37. Directions, orders and writs.
See also Note 85.
(a) Power to pass orders that ought to have been passed.
(b) Writ, in nature of.
38. Discriminatory and mala fide orders.
See Notes 42 and 50.
39. Discretionary remedy.
(a) Dismissal of civil servant.
(b) Habeas Corpus.
See Note 195.
(c) Prohibition, writ of.
See also Note 279.
(d) Mandamus.
See Note 236.
(e) Certiorari.
See also Note 185.
40. Discretionary orders.
See Note 79.
41. Dismissal, removal, discharge or reduction in rank.
See also Note 23 and Ibid, Arts. 310 and 311.
42. Domestic tribunals.
(a) Absence of legal evidence.
(b) Mala fides.
(c) Bias.
(d) Enquiry by.
(e) Principles applicable to.
(f) Validity of proceeding.
43. Effect of issue of writ.
44. Election dispute.
See also Note 77.
(a) Election to legislature.
(b) Jurisdiction of High Court.
(c) Rejection or acceptance of nomination.
(d) Municipal election.
(e) Panchayat election.
(f) Right of electors.
(g) Rejection of ballot paper.
(h) Interlocutory orders.
(i) Order without jurisdiction or illegal orders.
(j) Miscellaneous.
45. Election tribunal, writ against.
See Note 5.
46. Eminent persons, writ against.
See Note 5.
47. English law, applicability.
48. Estoppel against applying.
49. Executive and quasi-judicial decisions—Distinction.
See also Notes 140 and 168.
50. Executive, writs and orders against.
See also Note 140.
(a) Discriminatory, arbitrary and mala fide orders.
(b) Duty to act within law.
(c) Duty of High Court to exercise power with restraint.
(d) Limits on interference by Courts.
(e) Order without jurisdiction and against mandatory provisions.
(f) Discretionary orders.

S. N. Dar
Advocate High Court
Jammu & Kashmir
Srinagar.

(g) Orders not justiciable.
(h) Finality of executive and administrative orders.
51. Fundamental rights, contracting out of.
52. Fundamental rights, suspension of.
See Notes 119 and 217 and Ibid, Arts. 358, 359.
53. Futile or unnecessary writ.
(a) Certiorari.
(b) Mandamus.
54. Government, writ against.
(a) Appropriate cases.
(b) Government of another State.
See also Note 120.
(c) Rajpramukh and Governor.
54A. Habeas Corpus.
See under Part C (Notes 186 to 223).
55. High Court, writ against.
See Note 5.
56. High Court, power to issue appropriate writ.
See also Note 37.
57. History of writs.
See Note 94.
58. Hypothetical opinion.
59. Illegal assessment.
(a) Payment of tax, whether operates as estoppel.
(b) Writ against.
See also Note 8.
60. Illegal taxation.
(a) Recovery of.
(b) Writ against.
(c) High Court's power.
(d) Refund.
(e) Constitutionality.
61. Industrial tribunal.
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62. Informal committee, writ against.
See Note 5.
63. Interim relief.
64. Interlocutory orders.
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65. Joint application.
See Note 11.
66. Judicial and quasi-judicial authorities.
See Notes 147, 168.
67. Judicial proceedings, writ in respect of.
(a) Jurisdiction of High Court.
See Notes 68 and 69.
(b) Criminal Court proceedings,
(c) Court or tribunal not duly constituted.
68. Jurisdiction and power conferred by Art. 226.
See also Notes 69 and 79.
69. Jurisdiction of High Court.
(a) Appellate or revisional.
(b) Nature of.
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(c) Under Art. 226.
See also Note 68.
(d) Visitorial and supervisory.
70. Laches.
See Note 35.
71. Legal right.
See also Notes 8 and 237.
(a) Right to vote.
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72. Legislature, writ against.
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73. Letters Patent Appeal.
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74. Limitation.
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75. Mandamus.
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76. Military authorities.
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77. Municipal election.
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78. Natural justice.
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(a) Right to be heard.
(i) Disciplinary proceedings against students.
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(ii) Disciplinary proceedings against servants.
(iii) Labour disputes.
(iv) Hearing and decision by different bodies.
(v) Defence.
(vi) No infringement.
(vii) Miscellaneous.
(b) Right to cross-examine.
(c) Enquiry by person having interest.
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(d) Right to know charge.
(e) Bias.
See Note 129.
(f) Notice.
(g) Evidence and procedure, rules of.
79. Nature and scope of proceedings under.
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(a) Question of fact.
(b) Judicial.
(c) Matter not justiciable.
(d) Original proceedings.
(e) Presidency High Courts, powers of, before Constitution.
(f) Special jurisdiction.
(g) Summary.
(h) Decision on merits.
(i) Appreciation of evidence.
(j) Discretionary orders.
(k) Proceeding, whether suit.
(l) Conversion of proceedings.
(m) Whether civil proceedings.
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(n) Error of law.
(o) Constitutional issue.
(p) Question of title.
80. New point at hearing.
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81. Non-fundamental rights.
See also Notes 8 and 71.
82. Notice of proceedings.
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83. Notice under S. 80, Civil P. C.
See Note 98 and Civil P. C. (1908), S. 80.
84. Official body.
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85. Orders that can be passed.
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86. Other remedy.
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87. Parties to proceedings.
(a) Inferior tribunal or authority.
(b) Joint application.
(c) Necessary and proper parties.
(d) Misdescription.
(e) State and Government of India.
(f) Non-joinder and mis-joinder.
(g) Amendment.
88. Pending cases.
89. Personally aggrieved.
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90. Powers of High Court.
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91. Powers of Supreme Court and High Court.
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92. Power of Supreme Court under Art. 32.
See Note 12.
93. Premature writs.
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94. Prerogative writs.
95. Presentation of petition.
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96. President, writ against.
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97. Private person, writ against.
98. Procedure.
(a) Affidavit.
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(b) Civil P. C., applicability of.
See Note 22.
(c) Delay in applying.
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(d) Form of prayer.
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(e) Intervener.
(f) Joint application.
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(g) New point, new plea, new case and new grounds.
(i) Point not taken in grounds.
(ii) Point raised during argument.
(iii) Point depending on facts.
(iv) Prejudice to opposite party.
(v) Point abandoned or not pressed.
(vi) Point of law.
(vii) Point of jurisdiction.
(viii) New case.
(ix) Plea not available earlier.
(x) Point not raised at preliminary hearing.
(h) Notice and hearing.
(i) Notice under S. 80, Civil P. C.
See also Civil P. C. (1908), S. 80.
(j) Parties.
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(k) Presentation of petition.
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(l) Proceedings, whether suit.
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(m) Preliminary issues.
(n) Res judicata.
See Notes 105, 114, 213 and 216.
(o) Review.
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(p) Rules of High Court.
(q) Return by respondent.
(r) Abatement.
99. Proceedings under Art. 226.
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100. Prohibition.
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101. Quasi-judicial authority.
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102. Quo Warranto.
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103. Rajpramukh.
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104. Relief, consequential.
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105 Res judicata.
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106. Retrospective effect.
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107. Revenue matters.
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108. Review.
109. Rights conferred by Part III of Constitution.
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(a) Suspension of.
See Note 119 and Ibid, Arts. 358, 359.
109A. Scire facias, writ of.
See Note 37 (b).
110. Statutory body, writ against.
See Notes 5 and 177.
111. Stay of proceedings.
112. Sub judice question.
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113. Subsequent events.
114. Successive applications.
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(a) Mandamus.
115. Suo motu interference.
116. Suppression of material facts.
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117. Supreme Court, appeal to.
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118. Supreme Court, power to issue.
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119. Suspension of writ jurisdiction.
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120. Territorial jurisdiction of High Court.
(a) Habeas Corpus.
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(b) Authority becoming extinct or functus officio.
(c) Original and appellate authorities, duty in different States.
(d) Personal authority must be within.
(e) Merger of order in appellate order.
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(f) Residence of applicant.
(g) Subject-matter.
(h) Union of India, writ against.
(i) Authority within jurisdiction acting on order of authority outside jurisdiction.
(j) Effect of amendment by Constitution (15th Amendment) Act.
121. Tribunal, writ against.
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122. Union of India, writ against.
See Note 5.
123. University, writ against.
See Note 5.
124. Who may apply.
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125. Writ of right and writ of discretion.
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PART B

CERTIORARI

(Notes 126 to 185)

126. Administrative orders.
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127. Against whom lies.
(a) Inferior tribunal must have authority to decide.
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(b) New tribunal.
(c) Company.
(d) Authority becoming functus officio.
(e) Merger of order in appellate order.
128. Bar to.
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129. Bias.
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(a) What amounts to.
(b) Personal interest or ill-will.
(c) Interest of some of members of tribunal.
(d) To be Judge in his own cause.
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(e) Waiver of objection.
(f) Justice must not only be done but must appear to have been done.
(g) Evidence of.
130. Board of film censors.
131. Co-operative Societies Act, order under.
132. Costs.
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133. Court of Wards Act, order under.
134. Courts.
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135. Custodian of evacuee property.
136. Domestic Tribunal.
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137. Effect of order under.
138. Election authorities, against.
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139. Error on face of record.
(a Mere error, no ground for interference.
(b) Error must be apparent from judgment or order.
(c) Must be an obvious point not requiring elaborate argument.
(d) Proof.
(e) Speaking orders.
(f) Non-speaking orders.
(g) Error should not be mere clerical, accidental or formal.
(h) Error apparent on face of record—Illustrative cases.
(i) No error apparent on face of record—Illustrative cases.
140. Executive and ministerial orders.
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141. Futile or unnecessary writ.
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142. Government, against.
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143. Government servant, order of dismissal or reduction in rank.
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144. Grounds.
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(a) Authority acting without jurisdiction.
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(b) Fundamental error.
(c) Orders contrary to law.
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(e) Absence of reasons for decision.
(f) Bias and mala fides.
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145. Income-tax Act, orders under.
146. Industrial disputes, orders in respect of.
147. Judicial decision.
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(a) Elements of.
(b) Judicial power, meaning of.
148. Jurisdiction.
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(a) Power of superior Court to disturb decision of inferior Court or tribunal on question of jurisdiction.
149. Labour Relation Board.
150. Land acquisition proceedings.
151. Legislature, against.
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152. Licensing authority, against.
153. Mandamus and certiorari.
154. Mines and minerals, orders in respect of.
155. Municipal laws, orders under.
156. New point.
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157. Order for clarification.
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158. Orders that can be passed.
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159. Origin and nature of.
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160, Other remedy.
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161. Parties to proceeding.
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162. Persona designata.
163. Police Act, orders under.
164. Pre-Constitution power of High Courts.
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165. Private body, against.
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166. Production of records.
167. Prohibition and certiorari.
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(a) Duty to act judicially.
(b) Duty to observe rules of natural justice.
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(c) Essentials.
(d) Subjective opinion of authority.
(e) Enquiry before decision.
(f) Duty to decide objectively.
(g) Duty to act according to law.
(h) Deciding authority party to dispute.
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(i) Duty to pass speaking orders.
(j) Discretionary orders.
(k) Illustrative cases of quasi-judicial orders.
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169. Rent Control Acts, orders under.
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170. Requisitioning order.
171. Revenue and tenancy authorities.
172. Revision, power wider than.
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173. Sales-tax law, orders under.
174. Sea Customs Act, orders under.
175. Stage at which can issue.
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176. Stamp Act, orders under.
177. Statutory bodies, powers and duties of.
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(a) Power to be exercised according to statute creating it.
(b) Exercise of discretion.
(c) Mala fides.
(d) Duty to act on evidence.
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178. Stranger, application by.
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179. Submission to or acquiescence in jurisdiction.
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180. Tenancy laws, orders under.
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182. University, college and education authorities.
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(a) Origin, nature and object.
(b) Pre-Constitution powers of High Court.
(c) Prohibition and certiorari.
(d) Mandamus and certiorari.
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(e) Certiorari and revision.
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185. Writ of right.
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PART C

HABEAS CORPUS

(Notes 186 to 223)

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187. Appeal.
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188. Application for.
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(b) Stranger, by.
(c) Minor, by.
(d) Person on bail, by.
189. Bail and habeas corpus.
190. Contempt, detention for.
191. Conviction by criminal Court, power to question.
192. Costs in proceedings for.
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193. Criminal P. C., S. 491, powers under.
194. Delay in applying.
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195. Discretion of High Court.
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196-197. Disobedience of order.
198. Enquiry, scope of.
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199. Foundation of Court's jurisdiction.
200. Illegal detention.
(a) Material date.
(b) Power to enquire into legality.
(c) Valid order passed, pending writ petition.
201. Internment, order for.
202. Lunatic asylum, detention in.
203. Minor, application by.
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204. Object of the writ.
205. Power of Court to go behind order of executive.
206. Pre-Constitution order of detention.
207. Prerogative process for securing liberty.
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208. Preventive detention.
209. Private custody, detention in.
210. Production of prisoner in Court.
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PART A

GENERAL

(Notes 1 to 125)

1. Act of State, writ in respect of.

● —Art. 226—Act of State—Subjects of newly acquired territory—Rights of — Effect of act of State on such rights.

The rule that cession of territory by one State to another is an act of State and the subjects of the former State may enforce only those rights which the new Sovereign recognises has been accepted by the Supreme Court in a number of decisions. The ratio of this rule has been explained in the Privy Council decision in AIR 1924 P C 216.

In the United States of America the view that prevails is stated by Marshall, C. J., in (1831-34) 7 Pet. 51 to the effect that so far as title to immovable property is concerned the doctrine of international law has become crystallised and thereunder the change of sovereignty does not affect the title of the erstwhile citizens of the ceding State to their property.

Per Sinha, C. J., Rajagopala Ayyangar, Raghubar Dayal and Mudholkar, JJ. — There is no justification or reason to discard the British view as distinguished from the American view as regards the jurisdiction of municipal Courts to enforce rights, against succeeding sovereigns on a change of sovereignty.

Per Shah, J.—The rights and their enforceability in the Municipal Courts of a State must depend upon the will of the sovereign. Only those rights which are recognised by the sovereign are enforceable in his Courts. The Municipal Courts which derive their authority from their sovereign and administer his laws cannot enforce the rights which the former sovereign whose territory has merged with or been seized by the new sovereign recognised but the new sovereign has not, for the right to property of the citizen is only that right which the sovereign recognises.

Per Sinha, C. J., Rajagopala Ayyangar, Shah, Raghubar Dayal and Mudholkar, JJ. (Subba Rao, J., Dissenting) — The conclusion reached in A I R 1954 S C 447 in respect of the effect and continuity of an act of State is not correct. AIR 1954 S C 447, Overruled.

Per Mudholkar, J. — A rule of international law on which the several Privy Council decisions as to the effect of conquest or cession on the private rights of the inhabitants of the conquered or ceded territory is founded has become a part of the common law of this country. This is 'law in force' and is saved by Art. 372 of the Constitution. The Courts in India are, therefore, bound to enforce that rule.

Per Hidayatullah, J. — "I do not accept the contention that a change of opinion (as expressed in A I R 1954 S C 447) is necessary. Bose, J. did not decide in AIR 1954 S C 447 on the basis of international law or the opinion of the Supreme Court of the United States".

Per Subba Rao, J. (Contra)—"Is there any justification for this Court, to refuse to follow the decision in AIR 1954 S C 447? The said decision is not only correct, but is also in accord with the progressive trend of modern international law. After all, an act of State is an arbitrary act not based on law, but on the modern version of "might is right". It is an act outside the law. The further progress of civilization brought about by custom and agreement, factual recognition of pre-existing rights of the people of the conquered State. There were two different lines of approach—one adopted by imperialistic nations and the other by others who were not. That divergence was reflected in English and American Courts. All the jurists of international law recognise the continuity of title to immovable property of the erstwhile citizens of ceding State after the sovereignty changed over to the absorbing State. State of Gujarat v. Vora Fiddali Badruddin Mithibarwala, (1964) 6 S C R 461 : (1964) 2 S C A 563 : A I R 1964 S C 1043 (1051, 1056, 1058, 1059, 1068, 1069, 1070, 1071, 1082, 1083, 1090, 1091, 1092, 1093, 1094) (Pt B) (Prs 13, 26, 37, 39, 70, 71, 72, 78, 111, 119, 141, 145, 147, 152, 155).

● —Art. 226—Act of State —Integration of former Indian State — Rights in property created prior to integration — Necessity of their recognition by new Sovereign. A I R 1961 Guj 151, Reversed. See Ibid, Art. 31. A I R 1964 S C 1043.

● —Art. 226 — Act of State — Merger of former State into Indian Union — Claim against former State —Enquiry—Scope and nature of—Rejection of claim by the Union—If act of State — Right to be heard. See Administration of Mayurbhanj State Order (1949), Cl. 9 (g). **AIR 1961 S C 1361.**

● —Art. 32 (2) — Rulers of acceding State making absolute muafi grants before accession—Government of India cannot after Constitution revoke the grants, as act of State. See Ibid, Art. 363. **AIR 1954 S C 447.**

[Overruled in AIR 1964 S C 1043.]

—Art. 226 — Nature of proceedings — No act of State against citizen.

There can be no act of State against a citizen. Consequently, it is not open to the Union or State Government to contend that the suits brought by a citizen of a merged State for damages and rendition of accounts are barred by an act of State. AIR 1954 S C 447 and A I R 1931 P C 248, Rel. on. **AIR 1956 H P 9 (12) (Pt A) (Pr 15).**

—Art. 226—Law—Personal grant by ruler of Nabha as a sovereign—It is law — Grant repudiated by new Pepsu State — Repudiation is not act of State and is justiciable in municipal courts — Act of State. **A I R 1960 Punjab 644 (645, 646) (Prs 4, 5).**

—Art. 226 — Succession to Jagir in former Jaipur State—Effect of integration into State of Rajasthan—Repeal of Jaipur Matmi Rules by covenant and of covenant by the Constitution — Procedure under Matmi Rules not revived — Suit to establish claim lies in civil Court. See Civil P. C. (1908), S. 9. **ILR (1961) 11 Raj 93.**

—Art. 226 — Rajasthan Administration Ordinance (1949), S. 3—Power to recognise succession to jagirs in former State of Alwar — Petition for recognition pending at the time of merger of Matsya Union into Rajasthan—Order by Rajpramukh in his executive capacity recognising succession under Art. 7 (3) of Covenant—If within jurisdiction— (Alwar State Jagir Rules, Rr. 4, 5 and 29 (d)) — (Covenant of State of Rajasthan, Art. 7 (3)). See Rajasthan Jagir Decisions and Proceedings (Validation) Act (18 of 1955), S. 3. **AIR 1957 Raj 372.**

—Art. 226—Act of State — Resumption of grant by Nawab of Junagad State—Jurisdiction of Civil Court to question. See Civil P. C. (1908), S. 9. **AIR 1953 Sau 180 (DB).**

2. Administrative authority.

See Note 5.

3. Administrative order.

See also Notes 50 and 126.

● —Art. 226—Scope of—Administrative order — Fundamental right affected—Jurisdiction of High Court to issue writ of certiorari or other writs against executive officer.

Under Art. 226, the jurisdiction of the High Court is not merely confined to the writs which it issued in the past, but power has been conferred upon it to issue directions, orders or writs for the enforcement of any of the rights conferred by Part III which deals with fundamental rights. It is not possible to read "directions, orders or writs" as being ejusdem generis with what follows, because these "directions, orders or writs" refer to a larger category in which category is included writs in the nature of habeas corpus, mandamus, quo warranto and certiorari. The article further confers upon the High Court the power to issue not only writs in the nature of various categories specified in that article, but those writs themselves, and further the article goes on to state that these writs or orders can be issued not only for the enforcement of fundamental rights but for any other purpose. "Any other purpose" was embodied in this article in order to remove any doubt that the High Court's jurisdiction to issue these writs was confined merely to the enforcement of fundamental rights because the High Court could issue a writ otherwise than for the enforcement of fundamental rights and that power of the High Court is saved and safeguarded by providing in Art. 226 that the writs can be issued not only for the purposes of enforcement of fundamental rights but also for any other purpose.

Hence, the High Court has under Art. 226 the jurisdiction to isue an order against even an executive officer who has issued an administrative order, in order to safeguard the fundamental rights of the citizen although a writ of certiorari cannot be obtained to correct such an administrative order, as a writ of certiorari cannot be obtained except for the purpose of calling for the record of a proceeding which was either judicial or quasi-judicial in character and for correcting an error of jurisdiction in that proceeding.

The Court will not exercise its power under Art. 226 in a matter which it cannot deal with judicially, nor would it take notice of anything which it cannot take notice of judicially, nor would it interfere with the action of an executive officer unless it is satisfied that that executive officer is under an obligation to do something or to forbear from doing something. Jeshinghbhai Ishwarlal v. Emperor, **52 Bom L R 544 : I L R (1950) Bom 539 : 52 Cri L J 120: A I R 1950 Bom 363 (365, 366, 370, 371) (Pt A) (Prs 2, 3, 4, 17) (FB).**

—Art. 226—Order of Board of Revenue revising order of Collector—Order not referable to any statutory power or to administrative instruction—At the highest it can only be construed as departmental proceeding between Board of Revenue and Collector —No jurisdiction appears to exist for interference under Art. 226. **(1966) 1 Mad L J 44 : I L R (1965) 2 Mad 56.**

● —Art. 226—Scope of.

The powers of the Indian Courts under the Constitution are much wider and are not confined to issuing prerogative writs only. Article 226 empowers the High Court to issue to any person or authority any directions, orders or writs. The High Court therefore has power to interfere even in the case of administrative orders which are made in defiance of the articles of the Constitution or the mandatory provisions of law and without any jurisdiction; the words "any person or authority" include Courts and tribunals whether under the appellate jurisdiction of the High Court or not. Case-law referred. Sampu Gowda v. State of Mysore, **ILR (1953) Mys 440 : 32 Mys L J 12 : AIR 1953 Mys 156 (165) (Pt I) (Pr 41) (FB).**

—Art. 226—Criminal P. C. (1898), S. 561A—Police investigation—High Court has no power to quash proceedings in investigation under section—Art. 226 also does not confer such power. See Criminal P. C. (1898), S. 561-A. **AIR 1955 N U C (Pepsu) 3999.**

4. Affidavit in support of application.

See Note 11.

5. Against whom writ can issue.

(a) Private persons.

(b) Eminent persons.

See also Note 5 (a).

(c) Government departments and tribunals.

See also Note 54.

(d) Authority not duly constituted.

(e) Legislative body.
(f) Official body.
(g) University and other educational authorities.
(h) Courts.
See also Note 67.
(i) Statutory bodies.
(j) Public authority.
(k) High Court and its departments.
(l) Election Tribunal.
(m) Industrial Tribunal.
(n) Corporations and companies.
(o) Income-tax Authorities.
(p) Administrative authority.
(q) Board of Revenue.
(r) Union of India.
(s) Military authority.
(t) Railway Administration.

5. Against whom writ can issue.

——Art. 226—Executive authority—Writ against—Income-tax Officer acting under S. 34, Income-tax Act—Writ can issue.

Per S. K. Das, Das Gupta and N. Rajagopala Ayyangar, JJ. :

Though the writ of prohibition or certiorari will not issue against an executive authority, the High Courts have power to issue in a fit case an order prohibiting an executive authority from acting without jurisdiction. Where such action of an executive authority acting without jurisdiction is likely to subject a person to an unnecessary harassment, the High Courts will issue appropriate orders or directions to prevent such consequences. Writ of certiorari and prohibition can issue against Income Tax Officer acting without jurisdiction under S. 34, Income Tax Act. Calcutta Discoun: Co., Ltd. v. Income Tax Officer, Calcutta, (1961) 2 S C R 241 : (1963) 1 S C J 741 : (1961) 1 S C A 661 : (1961) 41 ITR 191 : A I R 1961 S C 372 (380) (Pt C) (Pr 27).

——Art. 226 — Writ can be issued only against statutory bodies invested with statutory powers. : 1957 All W R (H C) 268 : A I R 1957 All 505 (516, 517) (Pt I) (Pr 19) (DB).

——Art. 226 – It is only against bodies having legal authority to determine questions affecting the right of subjects that the jurisdiction of High Court under Art. 226 can be invoked. A I R 1962 Mad 169 (170) (Prs 4, 6) (DB).

——Art. 226—Against whom writ can issue.

The principle that the order passed by the subordinate Court merges into the order of the appellate Court applies to decrees and orders of Courts. If once it is urged that the order passed by the Rent Control and Eviction Officer under S. 3 of the U. P. Act 3 of 1947 is an administrative order, then the question of merger of the Rent Control and Eviction Officer's order into the order of the Commissioner does not arise and it cannot be urged that the applicant should have asked for a relief of quashing the orders passed by the Commissioner and the State Government and in the absence of any such prayer, the High Court cannot under Art. 226 of the Constitution quash the order of the Rent Control and Eviction Officer as the order of the Rent Control and Eviction Officer has merged into the orders of the Commissioner and the State Government. It is open to the High Court even to grant the relief quashing the orders of the Commissioner and the State Government and it cannot be argued that these parties are beyond the jurisdiction of the High Court. AIR 1954 All 433; AIR 1955 All 435, Disting. AIR 1955 N U C (All) 6046.

5 (a). Private persons.

——Art. 226—Against whom writs and orders can issue — Acts of individual cannot be controlled through writ.

It is generally established that the issue of writs is governed by the principles existing before the Constitution. AIR 1950 Madh-B 46 and AIR 1955 All 131, Rel. on. A writ can be issued only against statutory bodies invested with statutory powers ; acts of an individual cannot be controlled through a writ. 1957 All W R (H C) 268 : AIR 1957 All 505 (516, 517) (Pt I) (Pr 19) (DB).

——Art. 226— Ecclesiastical Law — Canon Law — Wearing a nun's religious habit by expelled nun while teaching in convent school is not a fundamental right—Mission authority being a private body, petition under Art. 226 complaining of infringement of fundamental right did not lie against that body. AIR 1964 Andh Pra 277 (278, 279) (Prs 9, 10, 11, 13) (DB).

——Art. 226—Writ cannot issue against private body. AIR 1961 Andh Pra 400.

——Art. 226—Writ does not lie against unincorporated bodies and private individuals.

Where an institution such as Murshidabad Institute of Technology, is not a Government institution, then no writ lies against such bodies, its Governing body or its Secretary or the principal for the simple reason that they are unincorporated bodies and private individuals. (1962) 5 Fac L R 272 : (1963) 1 Lab L J 149 : AIR 1963 Cal 161 (163) (Pt B) (Pr 9).

——Art. 226—Writ against private persons—Principal of private college affiliated to university—Writ cannot be issued. 66 Cal W N 220 : AIR 1962 Cal 520 (524) (Pt C) (Pr 22).

——Art. 226—West Bengal Bargadars Act (1950), S. 2 (b)—Persons filling dual capacity of owner and bargadar appointed to act as a representative member of bargadars —Constitution of Board is invalid—Writ against such Board. See West Bengal Bargadars Act (2 of 1950), S. 2 (b). AIR 1952 Cal 868.

——Art. 226—Writs against private persons —Certiorari and prohibition — Cannot be directed against private individuals. A I R 1960 Kerala 31, Rel. on. 1960 Ker L J 999 : (1960) 2 Lab L J 523 : 1961 Ker L T 223 : AIR 1961 Ker 265 (266) (Pt A) (Pr 4) (DB).

——Arts. 32 and 226—Applicability — Writs to private persons.

A person whose fundamental right is infringed by a private individual must seek his remedy under the ordinary law and not under Art. 32 or Art. 226 of the Constitution. AIR 1952 S C 59 : 1952 S C J 29 : (1952) 1 Mad L J 423, Rel. on. ILR (1957) Madh Pra 658 : 1957 M P C 725 : 1957 Jab L J 1088 : AIR 1958 Madh Pra 115 (122, 123) (Pt B) (Pr 11) (DB).

——Art. 226—Prime Minister of India — Speech as leader of a party—Writ if can be issued. See Ibid, Art. 74. AIR 1952 Nag 301 (DB).

——Art. 226—Municipalities— Punjab Municipal Act (III of 1911), S. 16 (1) and (2)—Encroachment in existence long before a person became a member — Its continuance and not demolishing the same—If directly connected with his position as member—Whether the act of a member amounted to flagrant abuse of his position — Powers of High Court under Art. 226 of Constitution to go into the question. See Municipali-

ties — Punjab Municipal Act (III of 1911), S. 16 (1). ('64) 66 Pun L R 381.

——Art. 226—Powers of High Court — Writs to private persons —Power to issue.

It may now be taken to be settled that even though Art. 226 is wide in its terms, the High Court will not issue the writs mentioned therein by name to a private individual except in the case of the writ of habeas corpus. The expression "any person" in Art. 226 has been interpreted to mean only a person to whom according to well established principles a writ would lie.

Thus a writ of certiorari will issue only against tribunals set up by law to determine questions affecting rights of parties. Similarly a writ of mandamus will issue only to a person holding a public office or an inferior tribunal or corporation but not to a merely private person.

The Fatima Mata National College, Quilon, is a private educational institution and the factum of its affiliation to the University of Travancore will not bring the Bishop of Quilon who is the proprietor of institution and the College Managing Board represented by its Secretary and Principal within the jurisdiction of the High Court under Art. 226. **1956 Ker L T 563 : AIR 1957 Trav-Co 46 (47, 48) (Prs 4, 7).**

——Art. 226 — 'Quasi public authority' — Private college— Management entirely managed by private funds—Mere fact of affiliation to University does not make it quasi-public authority amenable to the jurisdiction of High Court under Art. 226. **AIR 1954 Trav-Co 199 (200) (PtA) (Prs 8, 9) (DB).**

5 (b). Eminent persons.

See also Note 5 (a).

——Art. 226— Bill passed by Legislative Assembly— Presentation to Governor is essential — Prayer for injunction against Council of Ministers for preventing such presentation—Courts will not allow it. See Ibid, Art. 200. **AIR 1965 Andh Pra 306.**

——Art. 226 –Prime Minister of India –Speech as the leader of a party — Writ, if can issue. See Ibid, Art. 74. **AIR 1952 Nag 301 (DB).**

5 (c). Government departments and tribunals.

See also Note 54.

——Art. 226—Writ petition against Punjab University —Fact that Governor of Punjab is ex-officio Chancellor of the University, does not make University a department of Government — Writ petition against State of Punjab through Registrar, Punjab University is bad. **AIR 1955 Him Pra 9 (10) (Pt A) (Pr 7).**

——Arts. 226, 234, 316, 317—Position of Public Service Commission vis-a-vis the State.

The contention that as the Public Service Commission was working under the Government in the matter of holding competitive examination for recruitment to services, a writ could be issued to the State altogether overlooks the position of the Public Service Commission vis-a-vis the State, under the Constitution. **Madh B L J 1954 H C R 1660 : I L R (1954) Madh B 256 : Madh B L R 1954 (Civ) 517 : A I R 1955 Madh B 56 (60) (Pt C) (Pr 10) (DB).**

——Art. 226—Administrative orders —Under existing law (qawayad Jagirdaran of Gwalior) Rajpramukh exercising powers in the matter of succession to Jagir. under S. 4, M. B. Regulation of Government Act read with Art. 7 (3) of the Covenant of Gwalior, Indore and Malwa States by which United States of Madhya Bharat was constituted in 1948 — Exercise of powers held departmental and not quasi-judicial—Guiding principles are expediency keeping in view the purpose of the power—Order can be modified by Government— No interference under Art. 226. **1960 M P L J 1063 : 1960 Jab L J 1160 : 1960 M P C 492.**

——Art. 226 — Jurisdiction—Board of Directors of Co-operative Soeiety considering objections to nomination for election — If Tribunal subject to writ jurisdiction—Madras Co-operative Societies Act (4 of 1932), S. 51—Scope of.

It is only against bodies having legal authority to determine questions affecting the right of subjects that the jurisdiction of the High Court under Art. 226 of the Constitution could be invoked. The Board of Directors of a Co-operative Society, in considering the objections to the nominations for the election of members of the Board, is not a statutory Tribunal with authority to determine the rights of parties.

A candidate whose nomination has been rejected is not without remedies. S. 51 of the Madras Co-operative Societies Act is wide enough to include a dispute relating to election of directors of a Co-operative Society and a dispute relating to the validity of a nomination will also be covered by it. The candidate can challenge the rejection of his nomination by the Board of Directors before the Registrar of Co-operative Societies. (1960) 2 M L J 392, Approved. As the Board of Directors of a Co-operative Society are not occupying a judicial or quasi-judicial office there could be no application of the principle of bias to their actions. (1961) 2 M L J 279 : AIR 1962 Mad 169 (170) (Prs 4, 6) (DB).

——Art. 226—Interference—Grounds—(Orissa Development of Industries, Irrigation, Agriculture, Capital Construction and Re-settlement of Displaced Persons (Land Acquisition) Act (18 of 1948)—(Orissa Development of Industries, Irrigation, Agriculture, Capital Construction and Re-settlement of Displaced Persons (Land Acquisition) Rules (1950), Rr. 6 and 9).

Once a dispute about the rights of the parties to receive compensation money under Orissa Act 18 of 1948 is raised before the Land Acquisition Officer, he has no alternative but to refer the same to Government for adjudication by an arbitrator unless it was manifest that the person raising the dispute had absolutely no claim and his objections were frivolous.

Held, (in the instant case), that a writ would issue directing the Land Acquisition Officer to proceed with the matter in accordance with the latter part of R. 6 and refer the dispute, about the claim to receive compensation to Government, as provided in R. 9, for adjudication by an Arbitrator. **ILR (1959) Cut 564 : 25 Cut L J 561.**

——Art. 226 — Orissa Estates Abolition Act (1952), Ss. 5 (i), 39—Special tribunal—Jurisdiction—Date of lease disputed—Jurisdiction of Collector to act under S. 5 (i) not barred — (Civil P. C. (1908), Ss. 9, 11)— AIR 1956 Pat 425, Dissent from. See Tenancy Laws —Orissa Estates Abolition Act (1 of 1952), S. 5 (i). **AIR 1958 Orissa 197.**

——Art. 226—Against whom writ can issue.

A writ under Art. 226 cannot be granted against an inferior or ministerial officer bound to obey the orders of a higher authority to compel him to do something which is part of his duties in that capacity. AIR 1952 Pat 309, Foll. 33 Pat 501 : AIR 1955 Pat 76 (78) (Pt B) (Pr 6) (DB).

——Art. 226—Lease of tolls of public ferries—Withdrawal of ferry from public auction on direction of State Government—Legality. See Bengal Ferries Act (1 of 1885), S. 9. **AIR 1953 Pat 370 (DB).**

——Art. 226—"To any person or authority."

A Court to which a writ of prohibition may be issued need not be a Court directly subordinate to the High Court. In fact it is not necessary that it

should be a Court in the strict sense of the word and all that is necessary is that it should deal with the matter pending before it as it were a judicial proceeding or even quasi-judicial proceeding. The powers that the Deputy Commissioner exercises while hearing appeals from the orders of the Debt Conciliation Board, are quasi-judicial and his decision is bound to affect the rights and properties of the parties. In any case, he is an authority functioning within the territories of the Union and accordingly he is amenable to the jurisdiction of the High Court so far as the issue of directions, orders or writs mentioned in Art. 226 is concerned. ('50) 2 Pepsu L R 443.

——Art. 226 - No error apparent on face of record—Departmental officers acting within their competence—Their conclusions of fact will not be scrutinised.

Where there is no such error apparent on the face of the record as can be rectified by the High Court in writ proceedings and further where the officers of the Rehabilitation Department appear to have acted within their competence and power, their proceedings are not open to scrutiny in a writ petition for ascertaining whether their conclusions on fact are right or wrong. AIR 1958 S C 398, Rel. on. AIR 1960 Punj 58 (61) (Pt B) (Pr 3).

——Art. 226 — Advocate General acting under S. 92, Civil P. C.—He is only an officer under Government—Since writ lies against Government writ will also lie against Advocate General. See Ibid, Art. 165. AIR 1954 Trav-Co 331.

[Overruled in AIR 1962 Ker 90 (FB).]

5 (d). Authority not duly constituted.

——Arts. 226 and 227—Applicability—Tribunals not duly constituted.

Art. 226 of the Constitution contemplates a duly constituted person or authority, including in appropriate cases a Government and not any person, authority or Government not duly constituted. If a petitioner comes to Court with a case under Art. 226 alleging that a person or authority, including, in appropriate cases a Government, is not duly constituted, he puts himself out of the purview of that article. Similarly, Courts and tribunals contemplated by Art. 227 must be Courts and tribunals duly constituted, and not usurpers of office. 3 F J R 195 : ILR (1951) 3 Assam 147 : AIR 1951 Assam 96 (97) (Pt A) (Prs 6, 7) (DB).

——Art. 226—Power of High Court—Jurisdiction of Endowment Commissioner—Powers of High Court to interfere with. See Orissa Hindu Religious Endowments Act, 1951 (2 of 1952), S. 36 (1). AIR 1957 Orissa 180 (DB).

——Arts. 226, 227 — Assessment to sales tax under Bihar Sales Tax Act — Assessment not challenged under Act — Proceedings for recovery of unpaid tax under B. & O. Public Demands Recovery Act—Certificate authorities rightly holding that they have no jurisdiction to question the legality or correctness of assessment—Petition under Art. 226 against orders of certificate authorities — Orders of Sales Tax Authorities cannot be challenged in petition under Arts. 226, 227 against the orders of the certificate authorities—(Bihar and Orissa Public Demands Recovery Act (4 of 1914), S. 10) — (Orissa Sales Tax Act (14 of 1947), S. 22). 3 S T C 248 : AIR 1952 Orissa 231 (233) (Pt C) (Pr 7) (DB).

5 (e). Legislative body.

● ——Arts. 226 and 32—(Per Majority)—Power conferred on High Court under Art. 226 (1)—It can be exercised even against Legislature — (Per Sarkar, J.) —Person committed for contempt by general warrant—High Court cannot review such committal.

Per Majority — The language used by Art. 226 in conferring power on the High Courts is very wide. Article 12 defines the "State" as including the Legislature of such State, and so, prima facie, the power conferred on the High Court under Art. 226 (1) can, in a proper case, be exercised even against the Legislature. If an application is made to the High Court for the issue of a writ of habeas corpus, it would not be competent to the House of Legislature to raise a preliminary objection that the High Court has no jurisdiction to entertain the application because the detention is by an order of the House. Article 226 (1) read by itself, does not seem to permit such a plea to be raised. Article 32 which deals with the power of the Supreme Court, puts the matter on a still higher pedestal; the right to move this Court by appropriate proceedings for the enforcement of the fundamental rights is itself a guaranteed fundamental right, and so, what is said about Art. 226 (1) is still more true about Art. 32 (1)

Per Sarkar, J : When a House of Legislature, commits a person for contempt by a general warrant that person would have no right to approach the Courts nor can the Courts sit in judgment over such order of committal. In the Matter of under Article 143 of the Constitution of India, (1965) 1 S C J 847 : (1965) 1 S C A 447 : A I R 1965 S C 745 (767, 784, 808, 807) (Pt K) (Prs 59, 118, 196).

● ——Arts. 32, 212, 194 — Irregularity of procedure in Legislature — Immunity from legal proceedings. See Ibid, Art. 212. A I R 1960 S C 1186.

——Art. 226 — Proceedings in Legislative Council of State—Mere irregularity of procedure or non-compliance with rules of procedure for conduct of its business will not affect its validity and will not be a ground for issuing a writ under Art. 226—But if there is a violation of the constitutional requirement or chairman has acted in excess of his powers under Constitution, Court may interfere by issuing a writ. See Ibid, Art. 212 (1). A I R 1963 All 75 (DB).

——Art. 226 — Application for writ against Legislature—Maintainability.

It is well known that no writ, direction or order restraining the Speaker from allowing a particular question to be discussed or interfering with the legislative processes of either House of the Legislature or interfering with the freedom of discussion or expression of opinion in either House can be entertained. ILR (1955) 1 All 25 : 1954 Cri L J 691 : A I R 1954 All 319 (327) (Pt C) (Pr 13) (DB).

——Arts. 226 and 208—Rules of Procedure and Conduct of Business (framed by Assam Legislative Assembly), R. 314—Interpretation of Rules.

The question of interpretation of Rules lies with the Speaker so that even if the procedure adopted by the Speaker is irregular, it would not be open to the High Court to go into the matter, because the decision of the Speaker has finality on the point. See Ibid, Art. 208. A I R 1958 Assam 160.

——Art. 226—Jurisdiction—Objection as to validity of proceedings of Legislature - Plea that members not entitled to vote had voted on a Bill—Competency of High Court to entertain. See Ibid, Art. 212. 59 Bom L R 355 : A I R 1957 Bom 165 (DB).

——Arts. 226, 212, 194 and 208 — Powers of High Court — Writ against legislative body to prevent it from passing certain law.

The Constitution lays down the respective jurisdictions of the legislatures and the Courts. It is the business of the Legislature to make laws and of the

Courts to administer them. Within the legislature, members have absolute freedom of speech and discussion (Art. 194). Subject to the provisions of the Constitution, they can regulate their own procedure (Arts. 208 and 212). In such matters and within their allotted spheres, they are supreme and cannot be called into account by the Courts of the land. Even where a law has been promulgated, it is not the duty of the Courts to set in a supervisory character and rectify the defects suo motu. A I R 1951 All 228, Rel. on.

In this view, where a member wants to move certain resolution in the Legislature, seeking its approval of a proposal to form Union of that State with a neighbouring State, the High Court cannot at that stage be called upon under Art. 226 to interfere. **ILR (1957) 3 Cal 390 : 60 Cal W N 555 : A I R 1956 Cal 378 (384) (Pt G) (Pr 23).**

——Art. 226 — Jurisdiction of High Court to issue writs against Parliament or Legislatures.

There is no jurisdiction in the High Court to issue any writs against a Legislature or Parliament or the Speaker or any officer of these Assemblies. And further, neither a writ of prohibition nor a writ of certiorari nor writ of mandamus will lie to restrain the State Legislature or Parliament from enacting any legislation even if it is ultra vires their powers.

A Court has no general or roving superintendence over an undefined field nor is it its function to declare void or directly annul a law immediately it is promulgated unless its interpretative function is sought by any person or party who challenges that law as having infringed his rights on the ground of its being ultra vires of the powers of the legislative body. (1928) 1 K B 411, Rel. on. **ILR (1956) Hyd 658 : A I R 1956 Hyd 186 (189) (Pt B) (Prs 12, 13) (DB).**

——Art. 226 — Kerala State Legislature — Legislative proceedings — Immunity from judicial process — Complaint that intended legislation contravenes Constitutional provisions — No interference by High Court under Art. 226. See Ibid, Art. 194 (3). AIR 1961 Ker 324 (DB).

——Art. 226 — Privileges of members of Legislature — Determination — Jurisdiction of High Court. See Ibid, Art. 194. A I R 1952 Mad 117 (DB).

——Arts. 226 and 212 (2) — Jurisdiction of Court — (Special Tribunal) — (Civil P. C. (1908), S. 9) — (Words and Phrases — 'In respect of' and 'in').

In a petition for a writ under Art. 226 against the Speaker of the Legislative Assembly in respect of his action in disallowing certain questions, notice of which was given by a member of the Assembly, the function of the High Court is not to re-examine the questions with reference to the rules and to decide whether the Speaker's construction of the rules or his application of the rules the questions that were placed before him were correct. The rules have conferred on him the power to decide these matters.

The phrase "in respect of" in Art. 212 has wider connotation than the word 'in" and so long as the Speaker's action is relatable to any of the provisions dealing with his powers for regulating the procedure and conduct of business in the Legislature the Court's jurisdiction would be ousted.

An authority who is conferred jurisdiction to decide a question, has jurisdiction to decide it either rightly or wrongly and so long as he is acting within his jurisdiction, he is immune from interference by a Court of Justice. The position might have been different if there was a mere colourable pretence of exercise of the powers by the Speaker. A I R 1946 Cal 121 (FB), Distinguished. **19 Cut L T 183 : ILR (1953) Cut 404 : A I R 1953 Orissa 111 (116) (Pt H) (Pr 11) (DB).**

——Arts. 226, 176, 208, 212 — "At the commencement of session" — Point of order — Conduct of Business — Jurisdiction of High Court. See Ibid, Art. 176. A I R 1952 Orissa 234 (DB).

5 (f). Official body.

——Art. 226 — Although the State Medical Faculty is an unincorporated body of individuals, a writ can be properly issued against such body in its official title and designation — The word "person" in Art. 226 should be interpreted in the sense in which it has been used in S. 3 (39), General Clauses Act, 1897. A I R 1953 Cal 289 (291) (Pt A) (Prs 6, 7, 8, 10, 11).

——Art. 226 — Writ against non-statutory bodies — Writ against Board of Directors of Co-operative Society — Writ will not issue. A I R 1962 Mad 169 (170) (Prs 4, 6) (DB).

5 (g). University and other educational authorities.

——Art. 226 — Election under S. 11 (4) (i) (a) of Allahabad University Act (3 of 1921) — Election not held according to system of proportional representation by means of single transferable vote is void and cannot be protected by doctrine of internal management. See Allahabad University Act (3 of 1921), S. 11 (4) (i) (a). AIR 1966 All 45.

——Art. 226 — Allahabad University — LL. B. Examination, 1962 — Minimum passing marks — Resolution No. 120, dated 11th April, 1959 of the Executive Council relating to LL. B. Examination raising minimum marks from 30 to 36 came into force long before 1962 — Same was reiterated by the resolution of the Executive Council dated 25th August, 1961 — Hence candidate who failed to obtain 36 marks in all the papers of the LL. B Examination in 1962, must be deemed to have failed in the examination — Respondents were right in taking the view that petitioner failed in LL. B. examination — Writ petition held not maintainable. A I R 1963 All 596 (599) (Pt D) (Prs 22, 25).

——Art. 226 — Allahabad University — Prospectus of the University for Faculty of Laws for 1962, p. 15, Cl. (h) (ii) — LL. B. supplementary examination — Candidate who has failed in final LL. B. examination can appear in supplementary examination only if he has passed in all papers but has failed in aggregate by not more than six marks — Candidate who has failed in one of the papers cannot appear — He cannot claim benefit of Cl. (h) (ii) — Writ petition held not maintainable. AIR 1963 All 596.

——Art. 226 — College — Internal affairs — Promotion of students — Jurisdiction of Courts to interfere with discretion of Principal.

The Courts have no jurisdiction to interfere with the discretion of the Principal in a matter which relates to the internal affairs of the school (for example, promotion of students to higher class). Within their own realm of education, the teachers must have a very wide scope for discretion which cannot be measured by any legal standards and with which the Courts cannot interfere without upsetting the discipline on which the system of education must be founded. **A I R 1962 All 207 (208) (Prs 6, 9).**

——Art. 226 — Natural justice — Opportunity to be heard — University — Disciplinary jurisdiction — Interference by High Court in writ jurisdiction — Extent of.

Universities are educational and autonomus bodies and provision has been made for their working so that there may be the least interference from outside and the High Court will be reluctant to interfere

with the administrative and disciplinary matters unless it thinks that there has been a blatant deviation from any provision of law. Unless the order affects any fundamental right of a person, it is not necessary in every case to give an opportunity to the person affected by the order of the authority to explain his conduct, particularly in cases where an order has been passed by an authority for the purpose of maintaining the discipline of an institution.

Executive Council of University when it finds students guilty of misconduct, it does not act judicially or quasi-judicially but as an administrative or disciplinary body. In some cases even an administrative or disciplinary body may observe the principles of natural justice, and one of such principles is that a reasonable opportunity should be given of being heard. But in such cases the provisions of the C. P. C. or even Evidence Act would not be applicable. A I R 1961 All 301 (305, 306) (Pt B) (Prs 21, 22, 23, 24).

—Art. 226 — University executive council taking disciplinary action against student — Finding of misconduct based on evidence — Whether evidence would be sufficient in a Court of law, will not be enquired into in writ petition — Matter stands on different footing if there is no evidence at all—High Court will in exceptional cases interfere with questions of fact. A I R 1953 All 641 and (1952) 1 All E R 122, Rel. on. A I R 1961 All 301 (306) (Pt C) (Prs 26, 27).

——Art. 226 — Disciplinary jurisdiction of Board of Secondary Education—Interference.

The Universities and similarly the Board of High School and Intermediate Education are educational and autonomous bodies and there should be the least interference from outside and the High Court will be reluctant to interfere with the administrative and disciplinary matters unless it thinks that there has been a blatant deviation of any law. The High Court will not interfere unless there is some fundamental right of the student, which has been infringed or there has been such a patent error in the procedure on account of which the High Court should interfere in its extraordinary jurisdiction. (1953) 2 All E R 717, Applied. AIR 1961 All 290 (291) (Pt A) (Prs 5, 6).

——Arts. 226 and 227—Natural justice — Use of unfair means in University Examination — Summary enquiry by Academic Council and debarring of examinee—Interference by writ.

Where an examinee was found to be using unfair means at the time of University examination and, on the report of the invigilator and the Examination Superintendent, was given an opportunity to explain his conduct, but had no explanation to offer and the Council decided not to permit him to appear at any of its examinations for one year :

Held, (1) that there was no violation of the principles of natural justice, nor was there disregard of the rules of fair play when the Academic Council took the decision. (2) Where it appears that the view-point of the examinee is not or cannot be without substance, it may become necessary for the Academic Council to adopt the ordinary rules of natural justice, that is to permit the examinee to cross-examine the officers who had submitted reports against him. (3) High Courts do not, while exercising jurisdiction under Art. 226 or 227 of the Constitution, function as a Court of appeal and consequently, they cannot look into the propriety of the order passed and the punishment awarded. A I R 1956 All 539, Expl. and Distinguished. A I R 1960 All 642 (646, 647) (Prs 17, 19).

——Art. 226 — Natural justice — Opportunity and right to be heard before being condemned.

An opportunity of explanation cannot always be the same thing as the right assured by the principle of natural justice not to be condemned unheard. An opportunity of explanation necessarily carries with it the right to explain the material against the person charged but the opportunity of being heard before being condemned is narrower. When its requirements will be deemed to have been fulfilled will always be dependent on the facts of each particular case. This right must in the very nature of things be very limited in scope in the matter of discipline, particularly in educational institutions. A distinction has to be drawn where the authority taking action is doing so in the exercise of some statutory power conferred upon it and in cases where the general behaviour of students as such in an institution is in issue.

In the very interest of maintaining discipline and safeguarding the advancement of the whole object for which the institution exists, it may quite often be very undesirable to disclose to the young students the reports which in due course are presented by various authorities on their conduct and general behaviour. The preservation of discipline amongst students is both a delicate and domestic matter with which the University authorities alone are charged. For that reason the High Court will always be extremely reluctant to interfere with any exercise of the power by the University unless there has been some very wild departure from the principles of natural justice. AIR 1960 All 579 (583, 584) (Pt B) (Pr 15).

—— Art. 226 — Applicability — Writs against autonomous body like University.

Universities are autonomous bodies, and the Court should be reluctant, as far as possible, to interfere with the internal administration of the University. There should be no occasion for any interference unless there is a palpable violation of law, which has occasioned injustice in a broad and general sense.

Held, that in the circumstances of the case the petitioners were not entitled to any relief against termination of their membership of the University body especially when the granting of any relief would be virtually ineffective and merely of academic interest. AIR 1956 Cal 393, Rel. on. ILR (1959) 2 All 267 : AIR 1960 All 205 (209) (Pt E) (Prs 18, 20) (DB).

——Art. 226—Jurisdiction of High Court—University Union — Election of President — Petition impugning legality of — Interim order restraining elected President from functioning—Propriety.

The High Court will not lend its assistance under Art. 226 of the Constitution to a person who violates the Code of corporate brotherhood nor interfere in the affairs of a University if such interference will have the tendency to disrupt or weaken the spirit of corporate life in the University. Similarly an interim order restraining the winning candidate from functioning as President of the University Union during the pendency of a writ petition impugning the legality of his election will be an intrusion into the affairs of an autonomous body which is capable of dealing with dispute. A I R 1959 All 392 (393) (Prs 3, 6, 8).

——Art. 226 — Administrative orders — University authority — Interference with decision on merits — (Lucknow University Act (5 of 1920), S. 11 (7).

Under S. 11 (7), Lucknow University Act, the Vice-Chancellor is empowered to take such action as he deems necessary in any emergency. Where from the record it appears that he has done so in arriving at

the opinion that an emergency existed, the High Court in its writ jurisdiction cannot exercise the function of an appellate Court and examine whether such an opinion is correct or incorrect. AIR 1954 S C 217, Rel. on. **ILR (1957) 2 All 214.**

——Art. 226—Jurisdiction of High Court — Allahabad University Act (3 of 1921), S. 42 — Decision given by the Chancellor of Allahabad University under S. 42—If by a tribunal—(Domestic Tribunal).

The decision given by the Chancellor under S. 42 of the Allahabad University Act, 1921 is that of a tribunal and his decision is subject to the superintendence of the High Court under Art. 226 of the Constitution. When under some statute creating a tribunal, the tribunal is called upon to act judicially, any decision by such a tribunal can be interfered with by the High Court in appropriate cases and no general rule can be laid down that all decisions of such tribunals, which can be called domestic tribunals, cannot be interfered with by the High Court. **AIR 1956 All 603 (606, 610) (Pt B) (Prs 12, 28) (DB).**

——Art. 226 — Writ against statutory authority like Vice-Chancellor of University—Vice-Chancellor expelling student from University for gross misconduct in exercise of disciplinary action—Opportunity to be heard not given — Principles of natural justice if violated—(Allahabad University Act (3 of 1921), Ss. 9, 12 and Ch. XXII of Statute).

Ss. 9 and 12, Allahabad University Act and Ch. XXII of the Statute make it clear that the Vice-Chancellor is the executive head and he is possessed of all the necessary powers and he can, therefore, expel students from the University for the purpose of maintaining discipline.

There is nothing in the Statute which casts any duty upon the Vice-Chancellor to act judicially. There is nothing express in the Statute which enjoins upon the Vice-Chancellor to give a hearing to a student before taking any action against him in the exercise of his disciplinary jurisdiction.

The Vice-Chancellor passed the order expelling the petitioner from the University and acted upon the report of the proctors. According to the counter-affidavit filed on behalf of the University, the junior proctors, who were present in the meeting addressed by the petitioner reported to the Vice-Chancellor the actual words used by the petitioner which certainly amounted to gross misconduct on the part of the petitioner. The petitioner in the rejoinder affidavit denied the allegations made on behalf of the University about the use of certain expressions by him in his speech.

Held, that it is not for the High Court to investigate into the truth or otherwise of the allegations made by the parties with regard to the actual words used by the petitioner in his speech but in the circumstances in which the Vice-Chancellor passed the order on receipt of the report by the proctors, it could not be said that he acted beyond his jurisdiction. It was not necessary in the circumstances of the case for the Vice-Chancellor to give an opportunity to the petitioner to explain his conduct and there was no violation of any principle of natural justice. **ILR (1956) 1 All 712 : AIR 1956 All 503 (505, 506, 507) (Pt B) (Prs 8, 9) (DB).**

[Overruled in AIR 1968 All 477 (FB).]

——Art. 226—Applicability—Educational institution—Disciplinary proceedings—Head of institution does not act as judicial or quasi-judicial tribunal—Opportunity to cross-examine witnesses.

In a case where a head of an educational institution takes disciplinary proceedings, it is not necessary that he must give an opportunity to the student to cross-examine the witnesses. In matters of discipline, the head of an educational institution does not act as a judicial or quasi-judicial tribunal. The disciplinary authority vested in any officer or the head of an institution is a power which is absolutely necessary for and ancillary to the exercise of administrative functions in that capacity. A student could not claim any right that he must be dealt with by the procedure applicable to judicial or quasi-judicial proceedings. (1954) 2 All E R 118, Ref. **AIR 1956 All 46 (50, 51) (Pt B) (Pr 6) (DB).**

(Held impliedly overruled by AIR 1962 S C 1110 in AIR 1965 Punj 507 (DB).)

——Art. 226 — Powers of High Court — Order in disciplinary proceedings against student of University — Propriety of — If can be gone into. See Allahabad University Act (1921), S. 12 (5). **AIR 1956 All 46.**

(Held impliedly overruled on another point by AIR 1962 S C 1110 in AIR 1965 Punj 507 (DB).)

——Art. 226—Writ against University authorities—Agra University Act (VIII of 1926), Ss. 4 (2) and 34 — Statute No. 2 passed under Act — Resolution of Executive Council cancelling B. A. degree conferred on a successful candidate—Validity.

The petitioner made an application in the prescribed form to the Agra University for permission to appear at the B. A. examination to be held in 1951 and attached the requisite certificate under statute No. 2 (a) (iv) showing that he had served as a teacher for one year. The permission was granted and the applicant took the examination and was declared as a successful candidate in the U. P. Gazette. As a result of subsequent enquiry, the University came to the conclusion that the petitioner was not 'a bona fide' teacher and that he had, therefore, "cheated" the University by making a kind of false declaration in his application form. By a resolution of the Executive Council—which is the highest executive body of the University — it was resolved that the petitioner's "result of B. A. examination of 1951 be cancelled and this fact be notified in the U. P. Gazette". Effect was given to this resolution. The petitioner thereupon applied under Art. 226 of the Constitution for a writ or a direction to the opposite party to recall the order cancelling the petitioner's B. A. degree and to restore the degree to the petitioner forthwith. The application form had a note appended to it in these words: "Teachers mean persons who are bona fide wholetime teachers and does not include persons who are serving elsewhere and devoting part of their time to teaching in a school or college."

Held, (i) that in order to judge the competence of the petitioner to take the examination, the Court has to look to the provisions of the statute itself and not to anything that is added by way of a note in an application form. On the statute any person who was a teacher, whether part-time or wholetime, whether honorary or stipendiary, was competent to appear at the examination provided he continued the occupation of a teacher for a period of one year.

(ii) that the action taken by the University was beyond its competence. The power of withdrawing a degree under certain circumstances was no doubt vested in the Senate but it had to be exercised within the ambit of the Act, strictly, and could not be exercised by any other body than the Senate. It is a matter of utmost importance that statutory bodies like a University should act strictly in accordance with the law made for them and to transgress it either in the spirit or in the letter.

(iii) The appropriate prayer which should have been sought was a writ of certiorari. The Executive Council having exceeded its jurisdiction and its

powers in making its Resolution the Resolution must be quashed. A I R 1955 All 534 (535, 536) (Prs 10, 13, 14).

——Art. 226 — Chancellor of University is subject to High Court's superintendence. See Allahabad University Act (3 of 1921), S. 42. AIR 1955 All 131.

——Art. 226—U. P. Education Code—Rules for guidance of English schools and Intermediate Colleges, R. 96 —Student entering institution is bound by the rules—Interference with disciplinary action taken by school authorities.

Any student seeking admission to an institution recognised by the Board, or an English School or Intermediate College recognised by the Board must be deemed to have agreed to comply with and be governed by rules framed by the Board for guidance of those schools. A student entering an institution under R. 96 of Education Code of Uttar Pradesh for guidance of English schools is certainly bound by the other clauses of the same rule which prescribe a procedure for disciplinary action against him it may be because the rule has a statutory authority or because a student when seeking admission agrees to be governed by these rules.

An order of rustication passed by the Inspector of Schools under R. 96 (r) after a report from the head of the institution and on an admission of charges against by the student cannot be interfered with by a writ.

Where there was an admission of the acts of indiscipline the High Court will not enter into any question whether the punishment meted out is or not in proportion to the act of indiscipline committed by the student. For that purpose it is clear that the student's remedy lies in an approach to the appropriate authorities of the institution itself which may be the warden, the principal or the Inspector of Schools. On such a ground no writ petition can be entertained. AIR 1954 All 636.

——Art. 226 — Interference with disciplinary action taken by school authorities. See Uttar Pradesh Education Code—Rules for Guidance of English Schools and Intermediate Colleges, R. 96. AIR 1954 All 636.

——Art. 226—Person entitled to apply.

Obiter: To hold that a student has a legal right to come to a Court of law and require the head of the institution to justify his action where he has meted out some punishment or taken any disciplinary action will be subversive of all discipline in the schools and colleges. The High Court will not interfere in such matters which are matters for the internal autonomy of educational institutions. I L R (1954) 2 All 36: AIR 1953 All 623 (624) (Pt A) (Pr 5) (DB).

[Overruled in AIR 1966 All 477 (FB).]

——Art. 226—Academic bodies.

It is not right and proper for the University to allow a candidate to appear in a subject in which it is not prepared to offer facilities for instruction. It is however undesirable to issue notice to the University to show cause why an order should not issue directing the University to provide practical training for the applicant under Art. 226. 1953 All W R (HC) 223 : 1953 All L J 59 : A I R 1953 All 244 (244, 245) (Prs 2, 3, 4) (DB).

——Arts. 226 and 29 (2)—Student refused admisssion in college in the interest of discipline — High Court will not interfere.

The principal of a college can without communicating the reasons, inform a student studying in the college that he cannot be admitted to the college during the next session where the principal comes to the conclusion that such an action is necessary in the interests of discipline among the students. Such an action of the principal is not hit by Art. 29 (2). 1952 All W R (HC) 587 : 1952 R D (HC) 331 : 1952 All L J 731 : AIR 1953 All 90 (91) (Prs 3, 4) (DB).

[Overruled in AIR 1966 All 477 (FB).]

——Art. 226 — Judicial and quasi-judicial body — Andhra Pradesh secondary school examination Board — Issue of writ against.

Under Cl. (3) of Para. 7 of the Andhra Pradesh Secondary Education Scheme embodied in Andhra Pradesh G. O. No. 2028, Education and Endowments dated 6-10-1955, the functions exercised by the Secondary School Examination Board when it investigates into the cases of misconduct of the examinees are quasi-judicial in nature. 1955 Andh W R 439 and W. P. Nos. 878, 938, 939, 985, 1070, 1134, 1197 and 1248 of 1958 (Andhra Pra.), Foll.

If there are rules governing the procedure the authority is bound to adopt the rules. But in cases where there are no rules the requirements of natural justice are practically nothing more than the observance of the principle of audi alteram partem. In other words no person should be condemned without his having notice of the charge against him and without an opportunity to meet the charges. AIR 1961 Andh Pra 46 (48, 49, 50) (Pt A) (Prs 10, 11, 12, 14, 17).

——Art. 226 — Writ against public authority—State Board under Assam Primary Education Act is a public authority and writ can be issued against it. AIR 1964 Mad 335, Rel. on. AIR 1965 Assam 101 (105) (Pt C) (Pr 15) (DB).

——Art. 226—Interference with university decisions. See C. P. Code (1908), S. 9. AIR 1955 Assam 9 (DB).

——Art. 226—Principal of private college affiliated to University — Writ cannot be issued. 66 Cal W N 220 : AIR 1962 Cal 520 (524) (Pt C) (Pr 22).

——Art. 226—Specfic Relief Act (1877), Ss. 42, 54—Results of University examinations — Powers of civil Courts to interfere — Suit for declaration or injunctions against University—Maintainability. See Specific Relief Act (1877), S. 42. A I R 1961 Cal 31.

——Art. 226—Educational institution run on Christian principles and receiving State aid — Powers to impose restrictions on practice of other religions within college precincts — Refusal of Principal to permit Hindu Students to celebrate Saraswati Puja in College compound—Interference — Powers of High Court. See Ibid, Art. 25. A I R 1957 Cal 524.

——Art. 226 — Decision of University authorities—Interference.

The Judicial Commissioner's Court cannot interfere with the decision arrived at by the University in the exercise of its powers under Regulation empowering it to disqualify a candidate for a certain period in case he was found guilty of having adopted an unfair means at the examination. It would, of course, be open to the petitioner to challenge the decision of the University by regular suit, if so advised. A I R 1955 Him Pra 9 and 54 Punj L R 369, Rel. on. A I R 1958 Him Pra 8 (9) (Pt B) (Pr 5).

——Art. 226—Applicability — Discriminatory orders —Interference—Art. 14.

At the LL.B. Pass Examination of the Punjab University a pandemonium ensued. Since orderly conduct of the examination became impossible, all the answer books were collected and the hall was cleared. Eventually out of 174 candidates the four petitioners who were ringleaders were disqualified for one year. Out of the rest, 9 candidates were given the option to appear in the paper on the Law of Evidence. As regards the rest of the candidates, they were to be

deemed to have obtained zero marks and their results declared accordingly.

Held, that it was within the province of the Syndicate to deal with the cases of the various categories of the candidates on their merits. This could not be said to be a case of unfair discrimination. A I R 1957 Him Pra 31 (33) (Pt D) (Pr 11).

——Art. 226 — Writ application against Punjab University.

The Punjab University is an autonomous body set up under the East Punjab University Act, 1947. It is true that the Governor of the Punjab is ex-officio the Chancellor of the University, but that would not make the University a department of the Government. So a writ application against the State of Punjab through the Registrar, Punjab University, Solan, is bad. A I R 1955 Him Pra 9 (10) (Pt A) (Pr 7).

——Arts. 226 and 227—Interference with decision of election Tribunal under University Regulations—Unless wrong exercise or a refusal to exercise a jurisdiction is shown, decision cannot be interfered with under Arts. 226 and 227 — (East Punjab University Regulations, Regn. 24). A I R 1955 N U C (Him Pra) 4517.

——Art. 226 — Power of Chancellor of University to give direction — High Court, if can go behind it and question vesting of such power. See East Punjab University Act (7 of 1947), S. 15 (2). A I R 1955 N U C (Him Pra) 4517.

——Art. 226 — Discretion of College Principal with regard to disciplinary matters—Interference.

The High Court will not interfere with the discretion of the Principal of a College with regard to disciplinary matters unless it is satisfied that the action of the principal was arbitrary, due to a mala fide exercise of discretion actuated by extraneous considerations. A I R 1952 Mad 151 Rel. on. Madh B L J 1955 (Civ) 5 : I L R (1955) Madh Bha 154 : Madh B L R 1955 H C R 284 : A I R 1955 Madh B 33 (34) (Pt B) (Pr 4) (DB).

——Art. 226 — Administrative orders—Instructions regulating admissions to schools—Breach—Remedy—Certiorari or mandamus out of place.

As the instructions regulating admissions into the Basic Training School, are merely administrative or executive, their breach even if patent, would not justify the issue of a writ of certiorari for quashing the cancellation of the admissions of students or for the issue of a writ of mandamus for their re-admission into the School. I L R (1963) Madh Pra 22 ; 1962 M P C 142 : 1961 Jab L J 1464 : 1962 M P L J 50 : A I R 1962 Madh Pra 126 (127) (Pt A) (Pr 6) (DB).

——Art. 226—Admission of students to Basic Training School, Betul — The competent authority for such admission is the District Inspector of Schools. 1962 M P C 142 : 1961 Jab L J 1464 : 1962 M P L J 50 : A I R 1962 Madh Pra 126 (127) (Pt C) (Pr 5) (DB).

——Art. 226 — Admission to professional Colleges—Selection of candidates on merit — Number of marks obtained is not the only criterion to judge merit—Court will not interfere in selection. See Ibid, Art. 29 (2). A I R 1962 Madh Pra 48 (DB).

——Arts. 226 and 29 (2) — Rules for admission to Government professional colleges are not statutory—They serve as Code of guidance to selecting authorities—Candidate satisfying qualification rules rejected—No violation of Art. 29 (2) — Law Courts cannot interfere. 1962 M P L J (Notes) 327.

——Art. 226—Writ against University — Grounds—Change of text books for examination—Writ to prevent will not issue.

A University is amenable to a direction or writ issued by the High Court in appropriate cases. As however, it has been constituted to exercise some highly specialised functions acting through officers and subordinate authorities appointed or constituted by itself in exercise of powers given by statute, there should be very good reason for the High Court interfering in this manner. The basic requirements for this are that (1) there should be a patent and undoubted violation of a provision in the Statute or regulation or ordinance, governing the particular subject : (2) this non-compliance or violation should have directly resulted in a substantial restriction of the service or benefit which a citizen is entitled to get from the University ; and (3) the direction or relief sought should be such that it should not add to the inconvenience suffered by the public at large, disproportionate to the injustice or inconvenience that is sought to be remedied.

Changing of text books is left to the discretion of the University and there is no law that there should be no change of the text books for a certain period for examinations and the High Court should not enforce by a writ or direction such a prayer. 1961 M P C 141 : 1961 Jab L J 430 : 1961 M P L J 973 : A I R 1961 Madh Pra 299 (300, 301) (Pt B) (Prs 2, 3) (DB).

——Art. 226 — Powers of High Court — Nature and scope of — Mere technical breach of rule invites no interference.

The powers exercised under Art. 226 are discretionary and essentially equitable so that the High Court is not bound to exercise it whenever it finds some breach of some provision. If the breach or irregularity has really made no difference to the results, then the High Court would be committing a serious misuse of its extraordinary powers if it still interferes.

Where the meeting of a Board of Studies was held without the chairman nominated by Vice-Chancellor as required by S. 23 of the Vikram University Act but with the Chairman elected ad hoc by the members from themselves and the meeting took unanimous decision as to the change of text books for examinations :

Held, that the absence of a nominated Chairman was a breach in a strictly technical sense ; but it led to no material difference in the decision. 1961 M P C 141 : 1961 Jab L J 430 : 1961 M P L J 973 : A I R 1961 Madh Pra 299 (301) (Pt C) (Prs 5, 7) (DB).

——Art. 226—University of Saugor Act (16 of 1946), S. 14 (4) — Termination of employee's services by Vice-Chancellor acting under S. 14 (4) without reference to Executive Council — Court cannot enquire into propriety of action. See University of Saugor Act (16 of 1946), S. 14 (4). A I R 1960 Madh Pra 208.

——Art. 226—Powers of High Court — Interference in the administration of autonomous bodies like a University.

The Madras University is an autonomous body and the discretion given to it to recognise degrees of certain other Universities as equivalent to their own and to refuse recognition of degrees of certain other Universities cannot be interfered with by Courts of law. Prima facie it is open to the Syndicate of the University to exempt individual cases from the operation of certain conditions or rules, if they are found to work unnecessary hardship. Though the Courts cannot interfere with the discretion of the University in such matters the Courts have the power, if not a a duty to recommend in suitable cases to the University to reconsider their decision within the scope of

their powers. 1958 Mad W N 183 : (1958) 1 M L 214 : AIR 1958 Mad 494 (495) (Pt B) (Pr 4).

——Art. 226—Recommendation to University.

There is power vested in the syndicate to exempt individuals from some of the conditions required for sitting for the B. T. examination. The syndicate has got such a power of exempting individuals inasmuch as such residuary power is reserved with almost all public bodies. Of course, the High Court has neither the power nor the intention to interfere with discretion of the University in such matters. But, it must be deemed to have the power, and indeed the duty, to recommend in suitable cases, to the University to reconsider its orders, if it deems fit to do so, if there is power to exempt individuals if the actual performance of the petitioner in the examination warrants it. **(1958) 1 M L J 214 : 1958 Mad W N 183 : AIR 1958 Mad 494 (Pt E) (Pr 7).**

——Art. 226—Madras Educational Rules, Chapter III, R. 12 (j) — Agreement, between teacher and school management—Disciplinary action against teacher—Appeal to Director of Public Instruction—Order of Director is amenable to writ jurisdiction.

The right of teachers in schools in Madras area was governed by the agreement between the teachers and the school management, the Madras Educational Rules and the Instructions issued under Rule 12 (j), Chap. III of the Rules. Under the agreement the services of the teacher could not be terminated without holding an enquiry. An enquiry was held by the Head Master against the conduct of the petitioner teacher and after hearing her, recommended her dismissal. His report was accepted by the Managing Committee. The petitioner appealed to the Director of Public Instruction under Instruction 7 under Rule 12 (j) of Madras Educational Rules read with para 10 of the agreement. The appeal was disposed of by the Additional Joint Director, who recommended that the petitioner should be taken back in service with a warning and that she should be given another chance. The Head Master preferred an appeal to the Chief Secretary of the State Government, who feeling doubt whether an appeal lay to him asked the Director of Public Instruction, whether the appeal was competent. The Director of Public Instruction, however, passed an order upholding the action of the management but directed the management to modify the order of punishment as "termination of service" instead of as "Dismissal":

Held, that the Director of Public Instruction disposed of the appeal only as a public authority and any order passed by him was amenable to the High Court's writ jurisdiction. AIR 1963 S C 874, AIR 1961 S C 372, Rel. on.

The Additional Joint Director was an authority with co-ordinate power and jurisdiction with the Director of Public Instruction and the order of the Additional Joint Director disposing of the appeal was within his jurisdiction. Once the appeal had been disposed of by him the subsequent order passed by the Director of Public Instruction on the same appeal was without jurisdiction. (Order quashed). Writ Petn. No. 583 of 1958 (Mys), Rel. on. **(1965) 1 Mys L J 469 (DB).**

——Art. 226— Writ against Syndicate of University —Plea of inconvenience.

It will not be fair to reject a writ application against the Syndicate of a University merely because some inconvenience is likely to be caused to the party against whom the writ is prayed to be issued. **I L R (1954) Cut 644 : AIR 1955 Orissa 151 (156) (Pt D) (Pr 17) (DB).**

——Art. 226 — Statute—Difference between—Provisions of an Act and Departmental Rules.

All the rules in the Bihar and Orissa Education Code are merely departmental regulations which do not create any statutory or legally binding rights and duties. They do not derive their validity by virtue of any legislative sanction. **18 Cut L T 334 : AIR 1952 Orissa 259 (259) (Pr 1) (DB).**

——Art. 226—Petitioner (student) complaining that a resolution debarring him from appearing for the examination was based on mere suspicion and that he was not given a hearing—University agreeing to hear the petitioner—Effect—Relief.

In this case the petitioner applied for a writ against Vice-Chancellor of a University complaining that he having passed an University Examination was by resolution of the University Syndicate not declared to have passed the examination and was debarred from appearing for examination. It was contended by the petitioner that the resolution and debarring were based on suspicion of unfair conduct on the part of the petitioner and the resolution and order were passed without giving the petitioner an opportunity of being heard. In the course of the hearing the University authorities agreed by a resolution to give the petitioner an opportunity to give his explanation and to hear him and ordered further enquiry into the matter. As this resolution gave the petitioner all the reliefs which the Court would have granted, held, under the circumstances the petition should be merely dismissed. **AIR 1952 Orissa 198 (199) (Pr 5) (DB).**

——Arts. 226 and 227—Natural justice — Order disqualifying petitioner from examination — Questionnaire served on petitioner by University and answered by him — Petitioner not demanding at the time of answering it, that he should be told what the evidence was—No motive adduced to witnesses who deposed against him—Held, the order was not illegal as violative of the principles of natural justice.

The rule of natural justice did require that a person should be informed not only of the accusation against him but also of any evidence which might have been taken in respect of the alleged offence in his absence because otherwise he would have no means of knowing what had been deposed against him or the existence of the pieces of evidence which needed explanation. (1958) 2 All E R 579; AIR 1955 S C 65; L. P. A. No. 217 of 1960 (Punj); (1960) 1 All E R 631; 1915 A C 120, Rel. on.

The petitioner should have asked at the time when he answered the questionnaire that he should be told what the evidence was on which action was proposed to be taken against him. But he did not do that. The entire evidence on which the Disciplinary Sub-committee took action consisted of the reports of the officers who were in charge of the examination and the statement of A, the first M. B. B. S. Class Student. There was also no suggestion by the petitioner at that stage that the Supervisor or the Deputy Superintendent had any motive in implicating the petitioner falsely or imputing to him something of which he was not guilty.

Held, in the circumstances that the opportunity which was afforded to the petitioner, a student, in the Second M. B. B. S. Class was ample and sufficient according to the principles of natural justice and that the order disqualifying the petitioner from examination was not illegal as violative of the principles of natural justice. AIR 1963 Punj 480; AIR 1963 Mad 31; AIR 1963 All 41 ; AIR 1962 S C 1110, distinguished. **1963 Cur L J 537 (Punj).**

——Art. 226—Natural justice, principle of—Educational authority — Disciplinary jurisdiction — Malpractice by candidate in university examination — Enquiry — Punishment — Interference by Court — Punjab University Act (7 of 1947), S. 31—Regulations under—Regulations 11 and 19.

The petitioner, a candidate for Engineering examination of the Punjab University in April 1961, was caught red-handed by the Supervisor with a handwritten chit which was found under his table. The handwriting in the chit had a striking resemblance with that of the petitioner in his answer book. The matter was immediately brought to the notice of the Superintendent. The explanation of the petitioner in his own handwriting was immediately taken and the petitioner was told that the matter would be reported to the University. The whole material consisting of the answer-book, the chit, the explanation of the petitioner and the reports of the Supervisor and the Superintendent were placed before the Examinations Standing Committee which considered the same and disqualified the petitioner for April and September 1961, Examinations.

Held that the action of the University was in accordance with Regulations 11 and 19 framed by the University and was perfectly legal and within its jurisdiction and the same was not open to question under Art. 226 of the Constitution on the ground of violation of principles of natural justice. Civil Appeal No. 132 of 1959 D/- 6-2-1962 (SC) Dist. ('62) 64 Pun L R 944.

——Art. 226—Jurisdiction of High Court—Decision of University—Interference.

If the Regulations under which the University acted are intra vires and the University did act in accordance with those Regulations, the High Court has no jurisdiction to interfere with the decision which was arrived at by the University. ('52) 54 PLR 369.

——Art. 226—Writs against educational authorities—Interference with disciplinary powers—Enquiry in disciplinary matters—Scope of.

Where the authority is exercising its disciplinary power it is only in exceptional cases that the courts should interfere in those powers. Matters of college discipline are entirely internal affairs of the college concerned. (1953) 2 All E R 717 and (1954) 2 All E R 118, Rel. on.

This by no means implies that in no case can the Courts interfere with the orders passed by the authorities in the exercise of their disciplinary powers. In proper cases where the Courts find that orders involving civil consequences to the person concerned have been passed in violation of the principles of fair play and justice they should not hesitate to step in and strike down such orders.

Held, that in the instant case the order of expulsion against the petitioner, a college student, by the Principal of the College for misconduct was neither mala fide nor in disregard of the principles of natural justice. 1961 Raj L W 406 : ILR (1961) 11 Raj 665 : AIR 1962 Raj 103 (105) (Pr 6) (DB).

——Art. 226 — Quasi public authority — Private College.

Management of private college entirely managed by private funds—Mere fact of affiliation to University does not make it quasi public authority amenable to the jurisdiction of High Court under Art. 226. 1953 Ker L T 773 : ILR (1953) Trav.Co 1224 : AIR 1954 Trav-Co 199 (200) (Pt A) (Prs 8, 9) (DB).

5 (h). Courts.

See also Note 67.

——Art. 226—Writ petition—Practice—Interference by High Court—No interference with directions of Revenue Courts for correction of records—U. P. Consolidation of Holdings Act (5 of 1954), S. 12.

Section 12 of the Consolidation of Holdings Act (5 of 1954) does not expressly provide for correction of papers. But the High Court does not ordinarily interfere with directions of revenue Court for correction of papers. 1961 All W R (HC) 683.

——Art. 226 — U. P. Panchayat Raj Act (1947), S. 83—Panchayati Adalat—No power to convert civil case into criminal one—Relief against petitioner of civil nature — Conviction under S. 420, I. P. C. is without jurisdiction. See Panchayats—U. P. Panchayat Raj Act (28 of 1947), S. 83. AIR 1955 NUC (All) 4165.

5 (i). Statutory bodies.

■ ——Art. 226 — Procedure—Duty of statutory tribunal.

A statutory tribunal is expected to discharge its functions fairly and without bias even in a case where the interests of the Government are involved. Samarth Transport Co. (P.), Ltd. v. Regional Transport Authority, (1961) 1 S C J 368 : (1961) 1 S C R 631 : AIR 1961 SC 93 (98) (Pt D) (Pr 10).

■ ——Art. 226—Writ petition under, against statutory body which is extinct—Petition not maintainable. Babu Ram v. Antarim Zila Parishad, I L R (1964) 2 All 76: 1964 All W R (HC) 167 : 1964 All L J 353 : AIR 1964 All 534 (537) (Pt D) (Pr 30) (FB).

——Art. 226—Nature of direction or order that can be passed under the Article.

In an application under Art. 226, challenging the order of the State Government directing the institution of an enquiry under S. 40, U. P. Municipalities Act, the High Court has no power to give a direction to the State Government to hold an enquiry into the allegations against the petitioner through a judicial officer. The State Government has to hold an enquiry in accordance with the provisions of the U. P. Municipalities Act, 1916; and as long as it does so, the High Court cannot, in exercise of its writ jurisdiction' give any order or direction as to the manner in which the enquiry should be held. AIR 1955 All 106 (109) (Pt D) (Pr 7).

——Art. 226 — Action of statutory body — Reasons for taking action if communicated to petitioner — Matter cannot be looked into under Article 226. AIR 1955 NUC (All) 4163.

——Art. 226—Market owned by Municipality—Business carried within such market—Levy of fee on use and occupation of market is authorised by S. 293, U. P. Municipalities Act — Hence levy is not an unreasonable restriction on carrying on business—U. P. Municipalities Act (2 of 1916), S. 293. AIR 1955 NUC (All) 4431.

——Art. 226—Application against statutory body — Individual members, if to be made respondents.

An application under Art. 226 of the Constitution against a Board of Censors constituted under S. 7 of the Cinematograph Act, is maintainable, although the individual members of the Board are not made respondents. Where persons holding the office are a statutory body fluctuating from time to time and who bear an official designation given to them by a statute the proper course is to take proceeding against the body in its official description and not against each of such persons individually. 40 Mad 125, Ref. to. AIR 1952 Cal 653 (654) (Pt A) (Prs 18, 19, 23).

——Art. 226 — Proceedings against statutory body must be taken against the body in its official description and not against individual members of the Board. 40 Mad 125 and 28 Cal 479, Rel. on. AIR 1952 Cal 653 (655) (Pt D) (Pr 37).

——Arts. 226 and 227—Scope—High Court can interfere with orders of Authority under Minimum Wages Act.

The High Court has jurisdiction under Art. 227 to interfere with the orders of inferior courts in appropriate cases. Therefore a writ petition under Arts. 226 and 227 against the orders passed by the authority under the Minimum Wages Act is not incompetent. **1962 Ker L T 618 : (1963) 7 Lab L J 196 : ILR (1961) 2 Ker 637.**

——Art. 226—Order passed by Aopellate authority appointed by Madhya Bharat State Government under R. 80, Madhya Bharat Motor Vehicles Rules, 1949 — High Court can interfere with the order, Civil Misc. Case No. 22 of 1951 (MB), Foll—Motor Vehicles Act (1939), S. 68—Rules under—Motor Vehicles Rules (MB), R. 80. **AIR 1952 M B 128 (129) (Pt B) (Pr 6) (DB).**

——Art. 226 — Right to apply for writs — Against whom available—Statutory corporations.

In addition to the departments of the Governments and local authorities, there are a number of corporations created by statute, statutory corporations properly so called, and almost invariably subject to the considerable control of a State Government or the Union Government. Broadly speaking they partake of the nature of State as defined in Art. 12; they have been treated as amenable to the writs and similar directions. There are, on the other hand, a number of Banks or banking or commercial corporations not created by statute, but incorporated or registered under it, subject to the controlling authorities empowered to enforce the special law on the corporations. These controlling authorities are State as defined in Art. 12 and if they abuse their powers or violate any provision of the law, the aggrieved corporation can seek a remedy by way of a writ, but the employee or a third party contracting with the corporation cannot seek the remedy of a writ against it, because the offending corporation is not State as defined in Art. 12 of the Constitution and exercises no public functions. **1959 M P C 195 : (1959) 1 Lab L J 618 : 1959 Jab L J 459 : 1960 M P L J 715 : AIR 1959 Madh Pra 218 (219, 220) (Pt A) (Prs 5 6, 7, 9) (DB).**

——Art. 226—Powers of High Court.

In considering whether statutory authority has acted unreasonably, the Court is only entitled to investigate the action of the authority with a view to seeing if it has taken into account any matters that ought not to be taken into account or disregarded matters that ought to be taken into account Where the authority had not considered the question whether a certain tax was leviable under certain provisions of law, the High Court cannot in a proceeding under Art. 226 state the interpretation of the relevant provisions of the law because the High Court does not act as a Court of appeal. (1948) 1 K B 233, Rel. on. **1961 M P L J 1011 : 1961 M P C 734 : 1961 Jab L J 1327.**

——Art. 226 — Proceedings without jurisdiction — Interference. See Sales Tax — C. P. and Berar Sales Tax Act (21 of 1947), S. 11-A. **1961 M P L J 52.**

——Art. 226—'Substantial evidence' rule - Statutory tribunal—Test of rationality of determination by.

"Substantial evidence" rule becomes a test of the rationality of determination by the statutory tribunal. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion—Question of weight of evidence in determining issues of fact lies with the statutory authority—No interference. **I L R (1955) Punj 639 : 56 Punj L R 449 : AIR 1955 Punj 5 (12) (Pt H) (Pr 29) (DB).**

5 (j). Public authority.

——Art. 226—Authority—What is, indicated—Relevant criteria—State Bank of India is a public authority with public duties and not a commercial corporation. (1900) 1 Ch 749, Disting.; 1952 A C 452 Rel. on. (1963) 2 Lab L J 304 : A I R 1964 Mad 335 (338, 343, 346) (Pt B) (Prs 4, 10, 11, 14).

——Art. 226—Jurisdiction — Trade Union—Application for registration — No action by Registrar—Petition for writ lies. See Trade Unions Act (1926), S. 8. **AIR 1958 Pat 470 (DB).**

5 (k). High Court and its departments.

——Art. 226—Writ of Mandamus—U. P. High Courts (Amalgamation) Order (1948), Cl. 8 (2) Second proviso, Cl. 18 — Direction issued by Chief Justice on 25-11-1948 under second proviso to Cl. 8 (2)—After application of Ss. 14 and 19 (2) of Bar Councils Act to new High Court Cl. 8 (2) second proviso to Order of 1948 stood repealed—Direction in nature of writ of mandamus issued restraining Chief Justice from enforcing order of 25-11-1948. See U. P. High Courts (Amalgamation) Order (1948), Cl. 8 (2) Second Proviso, Cl. 18. **AIR 1962 All 391 (DB).**

● **——Art. 226 and Art. 217 (1)**—Mandamus—Writ of —Claim by Judge of High Court that he has not reached age of superannuation — Demand made by him to Chief Justice to supply him with work as Judge of High Court — Decision by Union Government, that Judge has reached superannuation age and should therefore demit office—Decision of Government communicated to Judge and work not supplied to him by Chief Justice—Petition for issue of writ of mandamus filed in High Court by the Judge against the Chief Justice—Difference of opinion between Judges hearing appeal from order of dismissal of application as to whether Rule nisi should issue — Question referred to Special Bench under Cl. 36, Letters Patent (Cal.)—Held by the Special Bench that on materials in the petition and annexures thereto, a Rule nisi should issue. Jyoti Prokash Mitter v. Hon'ble Mr. Justice H. K. Bose, Chief Justice of High Court, Calcutta, 67 Cal W N 662 : AIR 1963 Cal 483 (490, 497, 500) (Pt A) (Prs 33, 77, 92) (SB).

● **——Art. 226—Writ against Chief Justice.**

Chief Justice withdrawing duties and functions from Judge of High Court acting on decision of Union as to completion of 60 years of his age by the said Judge—Writ may issue against Chief Justice, notwithstanding absence of Union of India. Jyoti Prokash Mitter v. Hon'ble Mr. Justice H. K. Bose C. J., Cal. High Court, 67 Cal W N 662 : AIR 1963 Cal 483 (489) (Pt F) (Pr 25) (SB).

——Arts. 226 and 217 (1) — Judge, age of—Age given by Judge (J. P. Mitter, J., of Calcutta High Court) at time of appointment disputed and Judge retired on ground of superannuation—Writ proceedings against order of Union of India dismissed by Punjab High Court — Special Leave to appeal also refused by Supreme Court—Request by retired Judge, nevertheless, to Chief Justice of High Court concerned to arrange for his sitting in Court as a Judge—Request not complied with — Writ petition in same Court for issue of Rule against Chief Justice—Petition dismissed summarily by single Judge—Appeal to Division Bench—Difference of views between Judges constituting Bench as regards disposal of appeal. See Ibid, Art. 217 (1). **AIR 1963 Cal 183 (DB).**

● **——Art 226—Jurisdiction — Calcutta High Court (Vacation) Order, 1960—Resolution by all Judges of High Court fixing vacations in accordance with Order — Application by representative members of legal profession challenging order as ultra vires and**

restraining Chief Justice from giving effect to resolution — Maintainability — Non-joinder of other Judges—Union of India represented by Home Secretary impleaded as respondent—Effect.

The Calcutta High Court (Vacation) Order, 1960, was issued by the President under S. 23-A of the Court Judges (Conditions of Service) Act, 1954 (as amended by Act XLVI of 1958) curtailing and reducing the vacation as fixed and determined by all the Judges of the Calcutta High Court. In accordance with this Order there was a resolution of the Full Court, dated 27-1-1961 by which the vacations were curtailed. Three representative members of all three branches of the legal profession, an advocate, a barrister and a solicitor, moved an application under Art. 226 of the Constitution challenging S. 23-A and the President's order as ultra vires and unconstitutional. The respondents to the Petition were the Chief Justice of the Calcutta High Court and the Union of India represented by the Home Secretary. A writ in the nature of mandamus was sought against the Chief Justice directing him not to give effect to the Full Court resolution, dated 27-1-1961.

Held : (Per Special Bench) that the petition should be dismissed as being incompetent on technical grounds.

Per P. B. Mukharji, J. : — The impugned presidential order having been made at New Delhi and the second respondent being also at New Delhi, the Calcutta High Court had no jurisdiction to entertain the petition in view of the majority decision of the Supreme Court in AIR 1961 S C 532.

Per Bose J. : As the Judges who were parties to the resolution of the Full Court had not been made parties to the petition, no adjudication could be made in their absence. Hence the application was not maintainable as being defectively constituted.

The application must fail on the ground of bias. The past conduct of the Judges of this Court including those constituting this Special Bench as evidenced by the resolutions passed from time to time show that the judges have all along been opposed to the curtailment of the vacation of this Court. The Judges constituting this Special Bench could not properly deal with this application. So far as respondent No. 2, the Union of India, was concerned the Calcutta High Court had no jurisdiction to grant any relief against the said respondent.

Special Bench constituted of only three Judges of the High Court had no jurisdiction to restrain the Chief Justice from giving effect to those resolutions so long as they stood unrescinded.

Per P. B. Mukharji, J. and Bose, J.—The legal profession has the locus standi to make such an application.

Per P. B. Mukharji, J. — Writ can be issued against the Chief Justice in an administrative matter such as the present one. Pramatha Nath Mitter v. The Chief Justice, Calcutta H. C., **65 Cal W N 920 : AIR 1961 Cal 545 (551, 554; 555, 560) (Pt B) (Prs 25, 26, 28, 46, 47, 50. 51, 60, 62) (SB).**

——Art. 226 (1)—Certiorari and prohibition against Tribunal which is branch of High Court.

A writ of certiorari or prohibition cannot be directed by High Court to any tribunal which is a branch of the High Court for the purpose of quashing its proceedings. **AIR 1955 M B 69 (69) (Pr 3) (DB).**

——Art. 226— High Court Judge acting as Industrial Tribunal—High Court can interfere with certiorari. AIR 1958 Mad 433 (441) (Pt C) (Pr 29).

——Art. 226—Jurisdiction—Writ against High Court itself—Maintainability.

The High Court which is not amenable to the writ jurisdiction under Art. 226 is the Court dealing judicially with matters. Where the function of the High Court was merely administrative and even there it merely gave effect to a decision of Government, there is no basis for the objection that the impugned Government Order had requested the High Court to refix the seniority in accordance with the Government decision and as it was the High Court which ultimately gave effect to the reduction, the present writ petition must be deemed to be one to quash an order of the High Court. **70 Mad L W 553: (1958) 1 M L J 38 : ILR (1958) Mad 158 : AIR 1958 Mad 53 (68) (Pt G) (Pr 54).**

——Art. 226—'Any person or authority' — High Court cannot issue writ or order directly to itself to quash order made by itself on administrative side—Application for enrolment as advocate rejected by High Court — No writ to quash order against High Court or Assistant Registrar.

Where an application of the petitioner for enrolment as an advocate has been rejected by the High Court on its administrative side, a Bench has no jurisdiction to issue any writ or direction or order to the High Court requiring it to enrol the petitioner as advocate or even to reconsider his application for enrolment. (1925) 2 K B 43, (1898) 2 Q B 680, Rel. on.

Nor can the writ or direction be issued to the Assistant Registrar of the High Court who in the discharge of his duties had only communicated to the petitioner the decision of the Full Court that his application has been rejected. On principle, it is difficult to hold that a writ of mandamus can be granted against one who is an inferior or ministerial officer bound to obey the orders of the higher authority to compel him to do something which is part of his duties in that capacity. 6 T R 169 and 3 Ad & E 414, Rel. on.

Per Ramaswami J.:—It cannot be right to say that High Court can issue a writ or order directly to itself to quash an order made by itself. It is immaterial whether in making the order the High Court acts in a judicial or administrative role. Under Art. 226 (1) the High Court shall have power to issue to any person or authority directions, orders or writs. It is apparent that a writ cannot be issued by the High Court to itself for the process involves rather the absurd position that it calls upon the Judges to show cause to themselves why they should not be directed to quash something they themselves have determined. It is also manifest on principle that a judge is without jurisdiction to issue a writ or order to another judge of co-ordinate jurisdiction and power to compel performance of duties. The very nomenclature of the writs — "Mandamus, certiorari, prohibition" implies superior power—the power of a superior authority to compel an official or an inferior tribunal to act in a certain manner. The same reason which prohibits an inferior court from controlling the conduct of a superior tribunal applies in equally cogent manner to the effort of one judge to compel the action of another judge of co-ordinate jurisdiction and power.

Per Sinha J.:—The High Court cannot issue any of these prerogative writs on the Judges of the High Court on its administrative side as they are not inferior to the High Court sitting on the judicial side. Babul Chandra Mitra In re, **ILR 31 Pat 405 : AIR 1952 Pat 309 (310, 311, 312) (Prs 6, 9, 14) (FB).**

5 (l). Election Tribunal.

——Arts. 226 and 324 (1)—Petition against Election Tribunal.

A High Court has jurisdiction to entertain a writ petition against an Election Tribunal. **1953 All W R (HC) 216 : 1953 All L J 323 : ILR (1954) 2 All 515 : AIR 1953 All 633 (634) (Pt A) (Pr 5) (DB).**

——Art. 226—Error of law in decision of Election Tribunal— Issue of writ — (Representation of the People Act (1951), S. 82). AIR 1953 All 633 (637) (Pt D) (Pr 23) (DB).

5 (m). Industrial Tribunal.

● ——Art. 226—Industrial Tribunal ceasing to exist—Writ against its award cannot be issued— (Industrial Disputes Act (1947), S. 7). Lloyds Bank Ltd. v. Lloyds Bank Indian Staff Association, AIR 1956 S C 746 (747) (Pt B) (Pr 3).

——Art. 226—Industrial Disputes Act (1947), S. 2 (k) —Industrial dispute—Dismissal—Misconduct — Deliberate disobedience of circular issued by management amounts to misconduct — Dismissal is within discretion of management — Order substituting its punishment by tribunal is liable to be quashed. (1959) 2 Lab L J 709 (AP).

——Art. 226—U. P. Industrial Disputes Act (1947).

Representation — Govt. Notification No. U 464 of 14-7-1954, Cls 17 and 21—Director of company who is a practising lawyer can represent the company as a director — Lawyer-director not allowed to represent Company — Writ under Art. 226 can be issued — (Industrial Disputes Act (1947), S. 36 (ii) — Companies Act (1913), S. 2 (11)). AIR 1955 NUC (All) 1711.

——Arts. 226 and 227—Order contrary to law—Industrial Disputes Act (1947), S. 25-G — Question whether there was single industrial establishment or different industrial establishments — Conclusion drawn from facts as found by Industrial Tribunal is not mere questions of fact—Order passed by Tribunal, if not justified in view of S. 25-G, can be challenged and set aside in application under Arts. 226 and 227, as being contrary to law. 62 Bom L R 972 : (1961) 1 Lab L J 42 : (1960-61) 19 F J R 396 : ILR (1960) Bom 1034 : AIR 1961 Bom 277 (279, 280) (Pt A) (Pr 11) (DB).

——Art. 226—Industrial Disputes Act (1947), S. 10-A —Arbitration agreement — Arbitrator appointed by consent of parties under S. 10-A — Award made by Arbitrator — Certiorari — Arbitrator is not statutory arbitrator amenable to writ jurisdiction of High Court. ('61) (1961) 1 Lab L J 81 (Ker).

[Held overruled by AIR 1963 S C 874 in AIR 1963 Ker 324.]

——Art. 226 —Writ against authority constituted by Central Government – Authority functioning within jurisdiction—(Quaere).

Quaere :—Whether the High Court is competent to issue any writ under Art. 226, on the Industrial Tribunal functioning within its jurisdiction though it owes its appointment to the Central Government. (1952) 1 Lab L J 493 : AIR 1952 Pat 56 (61) (Pt D) (Pr 22) (DB).

5 (n). Corporations and companies.

——Art. 226—Writ to private bodies—If can issue.

The writ which is available to an aggrieved party cannot be issued to private bodies or organizations like companies or co-operative marketing societies. It could be issued only to inferior Courts, tribunals and bodies entrusted with powers by the law of the land to affect the rights of parties. AIR 1951 Mad 249 : (1950) 2 M L J 278, Foll. (1959) 1 Lab L J 554 (Andh Pra).

——Art. 226—Writ against corporate body, for doubtful illegalities.

While no doubt, it is correct to say that the fact that the issue of the writ may upset the quiet and peace of a corporation, or may even bring about the dissolution thereof for the time being, is not by itself, a reason for refusing the writ, where the illegalities brought to the notice of the Court are grave and manifest. Where the alleged illegalities are of a doubtful nature, the Court will decline to issue the writ. 112 E R 311, Rel. on. AIR 1952 Orissa 359 (375) (Pt K) (Pr 36) (DB).

5 (o). Income-tax authorities.

● ——Art. 226 — Income-tax Officer acting under S. 34, Income-tax Act, without jurisdiction—Writ of certiorari or prohibition can issue against him. Calcutta Discount Co. Ltd. v. Income-tax Officer, Companies Dist 1, Calcutta, AIR 1961 S C 372 (380) (Pt C) (Pr 27).

5 (p). Administrative authority.

——Art. 226 — Jurisdiction—Issue of writs under—Conditions and limits to power.

Under Art. 226 of the Constitution the High Court can issue the writs mentioned in the Article not only for the enforcement of fundamental rights but also for any other purpose. The High Court can issue writs even against any authority or person only in appropriate cases. But the High Court should not be reluctant to issue its prerogative writ whenever it finds that the sovereign Legislature has not been duly obeyed and powers have been assumed which the Legislature never conferred upon the executive. 54 Bom L R 681 : AIR 1952 Bom 468.

——Art. 226 – Himachal Pradesh Administration is not juristic entity and it cannot sue or be sued—Hence no petition under Article is competent against H. P. Administration. AIR 1966 Him Pra 13 (16) (Pt C) (Pr 17).

——Arts. 226, 239 (1), Sch. I, Part II — Himachal Pradesh Administration not being juristic person—Petition under Art. 226 is not maintainable against it, without impleading the President or the Administrator who administers Himachal Pradesh as representative of President. AIR 1964 Him Pra 19 (22) (Pt A) (Pr 8).

5 (q). Board of Revenue.

——Art. 226 — C. P. Land Revenue Act (1917), S. 33 (3) (c)—Second appeal only on ground contemplated by second proviso to S. 40, C. P. Tenancy Act—Ground not pressed—Board of Revenue giving way to extraneous consideration and exercising jurisdiction not vested in it by law and thus misdirecting itself —Case comes within purview of powers of High Court under Art. 226. See C. P. Land Revenue Act (2 of 1917), S. 33 (3) (c). AIR 1953 Nag 1.

——Art. 226 (1) — Writ — Issue of, on Board of Revenue.

A writ can be issued by the High Court on any department of Government or any tribunal; the Board of Revenue is no exception, though in view of its being the final Court in its own sphere, writs and directions on it should be issued only in exceptional circumstances. AIR 1952 Vind Pra 10 (10) (Pt A) (Pr 4).

5 (r). Union of India.

——Arts. 226, 239 (1), Sch. I, Part II — Writ petition against "Himachal Pradesh Administration" as main respondent — Himachal Pradesh a Union territory—Neither President nor Administrator impleaded — Himachal Pradesh Administration, not being juristic person cannot sue or be sued — Order on writ petition would not bind President or Administrator—Frame of petition held defective. AIR 1964 Him Pra 19 (22) (Pt A) (Pr 8).

5 (s). Military authority.

——Art. 226 — Army Instructions (India), No. 212—Transgression of—Removal of petitioner from service

—High Court will not interfere under Art. 226 of Constitution. See Army Instruction (India), No. 212. AIR 1953 Punj 137.

5 (t). Railway Administration.

——Art. 226—Powers of High Court — Inquiry committee functioning under control of authority not amenable to High Court's jurisdiction—Perpetration of injustice—High Court has power to prohibit—(Railway Establishment Code Vol. 1. R. 1707 (c).) A I R 1956 S C 246: 1956 S C J 323, Foll. A I R 1957 All 671 (677) (Pt F) (P. 34) (DB).

——Art. 226 — Railway Establishment Code (1951), App. XIII, Part B, R. 1—'Due cause'—Administrative determination of, by Government—Court cannot revise it under Art. 226 of the Constitution. See Railway Establishment Code (1951), App. XIII, Part B, R. 1. AIR 1965 Cal 389.

6. Aggrieved person.

(a) Existence of right is basis of petition.
(b) Exception to.
(c) Firm, application on behalf of.
(d) Company, corporation and representative body.
(e) Person adversely affected.
(f) Person directly affected.
(g) Joint Hindu family.
(h) Taxing statute.
(i) Tax payer and elector.
(j) Constitutionality of law, right to question.

6. Aggrieved person.

——Art. 226—Right to apply —Person aggrieved — Who is — Kerala Cinemas (Regulation) Act (32 of 1958), S. 12 proviso — "Affected by the order" — Meaning.

Where the petitioner landlord, who had leased out his talkies to the respondent and had issued to him a notice to quit, objected to the grant of a fresh licence to the respondent lessee to exhibit cinematograph films under the provisions of the Kerala Cinemas (Regulation) Act 1958, and applied for a writ of certiorari to quash the order of the State Government granting licence to the respondent :

Held, that the petitioner was not a 'party aggrieved' and had no locus standi under Art. 226. The words 'person aggrieved' do not really mean a man who is disappointed of a benefit which he might have received if some other order had been made. A person aggrieved must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongly deprived him of something or wrongfully refused him something or wrongfully affected his title to something. (1880) 14 Ch D 458 (465) and (1959) 2 W L R 194 and A I R 1946 Nag 24 and A I R 1917 All 160, Rel. on ; (1887) 19 Q B D 174 and (1894) 2 Q B 805 ; A I R 1952 S C 319 and AIR 1952 Mad 825 and A I R 1957 Mad 551 and A I R 1959 Mad 528, Disting.

The words "affected by the order" in S. 12 proviso of Kerala Cinemas Regulation Act, in law, imply that the order must bring about or produce a change in the petitioner's legal rights. In short, the words 'affected' and 'aggrieved' though not synonymous are analogous. 1960 Ker L J 725 : 1960 Ker L T 636 : AIR 1960 Ker 378 (379, 380, 381) (Pt A) (Prs 2, 3, 4, 5).

——Art. 226—Certiorari—Issue of writ—Person applying for, must be person aggrieved Madh B L J 1954 H C R 1: AIR 1954 M B 161 (167) (Pt D) (Pr 27) (DB).

——Art. 226—Where there is no failure of justice, High Court will decline to interfere on account of a grievance of technical character in writ proceedings. A I R 1957 S C 227, Rel. on. 1965 M P L J (Notes) 166.

——Arts. 226 and 227—Certiorari — Adjudication by Industrial Tribunal—Error made at the instance and in favour of petitioner — Writ will not be granted. AIR 1962 Madh-Pra 172.

——Art. 226 — Interference— Grounds — Held that party had no locus standi to maintain a petition under Art. 226 — Notification under S. 3 (2), M. P. Official Languages Act —Validity. See M. P. Official Languages Act (1950), S. 3 (2). AIR 1959 Madh Pra 208 (DB).

■ ——Art. 226—Right to apply—Person aggrieved.

Held, on facts that even assuming that technically it was necessary for R one of the operators, the petitioner herein to have made a representation at each stage with reference to each notification, substantially he did make a representation opposing the variation. This was the most material circumstance in deciding whether he could invoke the jurisdiction of the High Court under Art. 226. He had not only filed a representation after the notification under S. 47, but he was even allowed to put forward his view before the State Transport Appellate Tribunal. The fact that he was heard by the Appellate Tribunal itself showed that he was treated as a person aggrieved. R was certainly a person aggrieved by the order of the Appellate Tribunal sought to be quashed. The true principle was to determine whether the applicant had an interest distinct from the general inconvenience which may be suffered by the law being wrongly administered. Obviously R had such an interest. (1921) 1 K B 248, Rel. on. Swami Motor Transport (Private), Ltd. v. Raman & Raman (P), Ltd., (1961) 2 Mad L J 127 : ILR (1961) Mad 110 : A I R 1961 Mad 180 (183, 184) (Pt A) (Prs 5, 6) (FB).

——Art. 226—Certiorari—Right to apply for writ—(Madras Rice Mills Licensing Order, 1955).

A statutory right to object to the grant of licence or permission may not be the exclusive test, to apply in deciding whether an applicant for a writ of certiorari is an "aggrieved" person entitled to challenge the validity of the order which he seeks to avoid. The real test is to see whether the applicant has an interest distinct from the general inconvenience which may be suffered by the law being wrongly administered, and if that were the real test a mill owner has an interest of his own in question whether another mill owner should be granted a licence to work a mill in close proximity to his own. Where actually both the licensing authority and the Government which assumed an appellate jurisdiction, permitted him to make his representations objecting to the grant of the licence and considered the objections before the final decision to reject them and grant the licence was reached he should be treated as a "person aggrieved", a special interest of his being affected by the order. This clothed him with a right to invoke the jurisdiction vested in the High Court by Art. 226 of the Constitution to issue a writ of certiorari. (1921) 1 K B 248, Rel. on. 1957 Mad W N 308 : (1957) M L J (Cr) 263 : (1957) 2 M L J 1 : 70 Mad L W 549 : ILR (1957) Mad 845 : AIR 1957 Mad 551 (553, 554) (Pt B) (Prs 10, 11),

——Art. 226—Certiorari—Writ of— Who can apply.

Where by an order a person is declared an evacuee and his property as evacuee property, there is no ground for quashing the order by issuing a writ of certiorari when such a person himself has not chosen to complain before the High Court against such order. 1951 Mad W N 477 : 1951-2 Mad L J 1 : AIR 1951 Mad 930 (934) (Pt E) (Pr 16) (DB).

——Art. 226—Orissa Sales Tax Act (XIV of 1947). S. 14 —Petition for refund of tax paid voluntarily

without any assessment order– Case not falling under provisions of S. 14 of Orissa Sales Tax Act — High Court would not exercise its jurisdiction under the Article as there was no right to be enforced against Sales Tax Officer.

Where the claim of the petitioner was for refund of certain amount of sales tax paid by him voluntarily without any assessment order, the High Court would not exercise its jurisdiction under Art. 226. Section 14 of the Orissa Sales Tax Act deals with the right of refund, of an assessee, where sales-tax was not payable by him in whole or in part and the proviso to the section prescribes a special period of limitation for such application of refund. According to S. 14 and the rules made thereunder prescribing the procedure for refund under S. 14, there must be an order of assessment passed by the Sales Tax authorities for claiming refund under the main portion of S. 14. Therefore, when there was no order of assessment, there was no right to be enforced against the Sales Tax Officer under the provisions of Orissa Sales Tax Act, the petitioner must be left to pursue his normal remedies for the purposes of enforcing his right of refund, if any, because the High Court's jurisdiction under Art. 226 in such cases would arise only for enforcing a statutory obligation on the Sales Tax Officer, which could not be exercised in the instant case. AIR 1962 S C 1320, Rel. on. **(1964) 15 S T C 855: I L R (1964) Cut 535 : 30 Cut L T 553 : AIR 1965 Orissa 75 (75, 76) (Prs 4, 5) (DB).**

——**Art. 226** — Petitioner seniormost stenographer in grade II in office of Commissioner of Commercial Taxes– Subsequent formation of separate cadres for Commissioner's office and range offices — Rules for recruitment, transfer and promotion not framed — Transfer of petitioner as stenographer grade II to range office—R, stenographer grade II in range office promoted to grade I in Commissioner's office — Petitioner challenging order of transfer and claiming right to be promoted — **Held** that Commissioner had plenary powers of promotion and transfer from one cadre to another in the absence of rules and that R's promotion based on seniority and suitability was proper and that petitioner had no right to claim promotion. **31 Cut L T 619 : (1965) 7 O J D 129.**

——**Art. 226** — Travancore Public Canals and Public Ferries Act — Fixation of timings under R. 74 by Government — Petition under Art. 226 for quashing the order—Competency—Person aggrieved — Who is. See Travancore Public Canals and Public Ferries Act (VI of 1096), Rules under, R. 74. **A I R 1955 N U C (Trav-Co) 6004 (DB).**

6 (a). Existence of right is basis of petition.

● ——**Art. 226—Who can file petition under—Person having subsisting right on date of petition — Right coming to end subsequently — Person not entitled to relief.**

If a scheme was validly promulgated and became final within the meaning of S. 68-D, Motor Vehicles Act it had the effect of extinguishing all rights of a person to ply his vehicles under his permit. After cancellation of his permit he could not maintain a petition for a writ under Art. 226 because a right to maintain such a petition postulates a subsisting personal right in the claim which the petitioner makes. Even if the petitioner at the date of the petition filed in the High Court, held a permit which was to enure till a certain date, if the permit was validly terminated from the date specified, he will not be entitled to any relief. Kalyan Singh v. State of U. P., **(1963) 1 S C J 50 : 1962 Supp (2) S C R 76 : ILR (1962) 1 All 906 : 1962 All L J 523 : A I R 1962 S C 1183 (1188) (Pt D) (Pr 14).**

● ——**Art. 226—Person who can apply—Person who has a legal right to enforce can apply.**

The existence of the right to enforce a legal right is the foundation of the exercise of jurisdiction of the High Court under Art. 226. The legal right that can be enforced under Art. 226, like Art. 32, must ordinarily be the personal or individual right of the petitioner himself who complains of infraction of such right and approaches the Court for relief. In the case of some of the writs like habeas corpus or quo warranto this rule may have to be relaxed or modified. A I R 1952 S C 12 and A I R 1951 S C 41, Foll.

Held, on facts (i) that there was a legal right accruing to the petitioner under the agreement entered into and that was abridged, if not destroyed, by the impugned Act; (ii) that the legal right of the petitioner was infringed by the provisions of the impugned Act; and (iii) that as the petitioner's personal right to manage the Company and to receive remuneration therefor had been infringed by the provisions of impugned Act, he had locus standi to file the petition under Art. 226 of the Constitution. A I R 1961 Cal 267, **Reversed.** Calcutta Gas Company (Property) Ltd. v. State of West-Bengal, **(1963) 1 S C J 106 : (1962) Supp 3 S C R 1 : (1962) 2 S C A 147 : A I R 1962 S C 1044 (1047, 1048) (Pt B) (Pr 5).**

● ——**Art. 32**—Right to apply. See Tenancy Laws — M. P. Abolition of Proprietary Rights (Estates, Mahals and Alienated Lands) Act (1 of 1951), S. 3. **A I R 1959 S C 735.**

——**Art. 226—Who can apply.**

A petitioner will be entitled to a writ under Art. 226 only if he establishes a legal right. **A I R 1955 Ajmer 33 (37) (Pt C) (Pr 14).**

——**Art. 226—Right to apply—Conditions—Infringement of substantial right—Necessity.**

Before a petitioner comes to the High Court to ask for the extraordinary jurisdiction of the Court under Art. 226, he must himself establish that he has a substantial right which has been infringed.

Where a Municipal Corporation passed a resolution for grant of fresh licences for cycle-rickshaws:

Held, that a petition under Art. 226 challenging the vires of the resolution by one of the several rickshaw owners was not maintainable as the right of the petitioner which would be affected by the grant of more licences was infinitesimal. A I R 1951 S C 41, Foll. **A I R 1961 All 72 (73) (Prs 3, 4).**

——**Art. 226**—Migration to Pakistan—Intention—Return to India without permit—Order for deportation to Pakistan — Validity. See Ibid, Art. 7. **A I R 1955 N U C (All) 2779.**

——**Art. 226** — Applicability of S. 5, Influx from Pakistan (Control) Act, 1949 — Applies to Indian Citizen returning under temporary permit — Proceeding cannot be quashed. See Influx From Pakistan (Control) Act (1949), S. 5. **A I R 1955 N U C (All) 2777.**

——**Art. 226** — A patwari tendered his resignation on 2nd February, 1953 and asked to be relieved by 3rd March, 1953. On 10th February, 1953 the Sub-Divisional Officer accepted the resignation. On 24th February, 1953, he sent his application for permission to withdraw his resignation. No orders were passed on this application as Government's orders were awaited and on 7th March, 1953, a G. O. No. 2627/IB was issued that those Patwaris who had withdrawn their resignations before they were ordered to hand over charge and those who had applied for withdrawal after the acceptance of their resignations may be re-employed as Lekhpals provided they had not attained the age of 57 years, 6 months by March 31, 1953 and had an excellent record of work and had not taken an active part in the agitation. The petitioner was fined, suspended and reduced on

a number of occasions and it can by no means be said that his service record was good. On petition under Art. 226 that he should have been allowed to continue in service,

Held, that no question of withdrawal could then arise, his resignation having been already accepted. Even if his withdrawal of resignation application had been received before the resignation was accepted, he could not claim an absolute right to withdraw his resignation. The resignation was unconditional, and whether he would be permitted to withdraw that resignation was a matter within the discretion of the appointing authority. After his resignation was accepted on 10th February, 1953, he could only be re-employed and the re-employment had to be in accordance with the directions issued by the Government in Government Order, dated the 7th of March. The petitioner could not claim that he had a legal right to be re-appointed. His character roll was not satisfactory. The Sub Divisional Officer being of that opinion, he decided not to re-appoint the applicant. This he was entitled to do and the applicant could not make a grievance of it in a writ petition under Art. 226. **1954 All L J 411 : A I R 1954 All 638 (638, 639) (Prs 2, 4, 5) (DB).**

——Art. 226—No invasion of legal right—No action under Art. 226—(Master and servant).

Under Article 226 an applicant can move a writ petition only if a legal right of his has been invaded for which he has no other adequate remedy. But, if the applicant was appointed as a temporary servant, the contract of service providing that the service was terminable on one month's notice and that contract of service has been terminated in accordance with its terms, the action of the authority being in accordance with the terms of the contract, it cannot be said that the authority had done anything illegal or that the rights of the applicant under the contract of service had, in any way, been affected. **1953 All L J 459 : A I R 1954 All 5 (5, 6) (Pr 4) (DB).**

——Art. 226—Who can apply—Only persons having present right can apply.

Government appointed ad hoc committee for selection of Text-Books. Director of Public Instruction informed petitioners that their books have been selected and informed them that they should enter into contract with Government. Government cancelled this order before petitioners entered into contract.

Held, that it is only a person who has an existing and specific legal right that can maintain a petition for a writ of certiorari or mandamus or ask for an order or direction under Art. 226. :In the instant case a concluded contract had not come into being. The communication of Government that the petitioners' books had been prescribed and that it was subject to their executing the necessary agreement and making the required deposit was only an offer under the law of contracts. It was only when this offer was accepted by the publishers and the conditions prescribed in that offer were complied with that a concluded and therefore an enforceable contract would have come into being. Therefore the petitioners could not have claimed to acquire any legal right against the Government in the matter of the prescription of certain text books, so as to maintain a writ petition. A I R 1965 S C 685 and A I R 1962 S C 1044 and AIR 1963 S C 507, Rel. on. **(1965) 2 Andh W R 95 : (1965) 2 Andh L T 252 : A I R 1965 Andh Pra 425 (429, 430) (Pt A) (Pr 7).**

——Art. 226 — Mandamus and certiorari, writs of—Who can apply — Government's order alleged to violate statutory provisions, affecting rights of prospective candidate to office of President of Panchayat Samithi—Appropriate writ against Government can issue, on application by prospective candidate — Certiorari and mandamus— Distinction — Existence of alterntive remedy, not bar to issue of Writ —Panchayats—Andhra Pradesh Panchayat Samithis and Zilla Parishads Act (35 of 1959), S. 4 (1) (iv), Proviso (as amended by Act 1 of 1963) — Rules under S. 69 — Rules for the decision of Election Disputes, Part I.

Where a prospective candidate to the office of the President of a Panchayat Samithi complains that the orders issued by the Government allowing certain persons to become members of the Samithi were contrary to the provisions of the Andhra Pradesh Panchayat Samithis and Zilla Parishads Act and that those persons have no right to participate in the elections, the prospective candidate as a person vitally interested in the result of the election, can invoke the jurisdiction of the High Court for the issue of an appropriate writ against the Government. He can rightly claim that a violation of the statutory provisions, if that be true, would affect his right as a member of the Samithi and also his prospective candidature to the office of the President.

A writ of mandamus can issue to direct the Government to discharge their duties in conformity with the provisions of the Act, and to quash their orders by issue of a writ of certiorari if they are found to be in violation of its provision. A writ of certiorari is available for the removal of any judicial act or quasi-judicial act of an inferior tribunal, whereas a writ of mandamus is issued to compel the performance of duties of a public nature. The condition that the act complained of should be a judicial act applies to the former relief and not to the latter.

It is not quite clear whether under the Rules for the Decision of Election Disputes, Part I, framed under the Act (A. P. Act 35 of 1959) it is open to an aggrieved party to impugn, in an election petition, the correctness of the orders of the Government permitting certain persons to become members of the Panchayat Samithi. Assuming however, that it is open to the Election Commissioner to decide the objections with regard to the validity of the impugned orders, the petition cannot be dismissed in limine on the ground of the existence of an equally efficacious alternative remedy.

In a matter which is thus pre-eminently one of discretion, it would not be desirable to lay down inflexible rules which should be applied with rigidity in every case which comes up before the Court. The application of the general principles on which the Court should act must depend on a variety of individual facts which must govern the proper exercise of the discretion of the Court. A I R 1961 S C 1506 ; AIR 1957 S C 882, Foll. **(1964) 1 Andh W R 118 : ILR (1965) Andh Pra 160.**

——Arts. 226, 19 (1) (g)—Right to apply under.

If in conformity with the licensing provisions contained in the Rice Milling Industry (Regulation) Act, the concerned authorities had given to A permit and the licence and also sanctioned the expansion of his business, it is not open to B to object merely on the ground that there is a likelihood of his profits in the trade being diminished. B is no doubt entitled to his fundamental right under Art. 19 (1) (g) to carry on his trade or business. But he cannot claim the exclusive monopoly to do business in the area. A I R 1957 Mad 551 and (1921) 1 K. B. 248, Disting. **(1962) 2 Andh W R 156 : ILR (1963) Andh Pra 595 : (1962) 2 Andh L T 268 : A I R 1962 Andh Pra 363 (368) (Pt C) (Pr 14).**

——Art. 226—Right to apply— Petition under — Person's right to acquire property by raising building upon his land—Interference with right under colour of statutory authority. See Ibid, Art. 19 (1) (f). (1960) 1 Andh W R 113 : AIR 1960 Andh Pra 603.

——Art. 226—'Law'—What is — Right to admission to college — Government Orders relating to admission—If laws—Right to relief.

It cannot be predicated that every order issued by the Government constitutes law, simply because it affects a number of people and its operation extends into the future. The essential characteristic of 'a law' is that it lays down a policy either affecting rights or creating rights or liabilities and making it a binding rule of conduct. It should also be enforceable in a Court of law. In judging the character of the act, regard must be had to the nature of the function called in question.

It is within the discretion of the college authorities to allot seats to candidates subject to such rules as govern the admissions. A right of admission into any institution should be derived either from a statute or rules having the force of law. The G. O. Ms. No. 1071 (Health), dated 26th May, 1956, and G. O. No. 1155, dated 4th June, 1958, issued by the Government of Andhra Pradesh cannot be said to be issued in exercise of any legislative authority. These G. Os. do not confer any right or create any liability on any individual or groups of individuals nor could an action be founded on them in a Court of law. (1959) 2 Andh W R 15 : I L R (1959) Andh Pra 137 : A I R 1959 Andh Pra 437 (439, 440) (Pt A) (Prs 6, 7, 13, 15) (DB).

——Art. 226—Right to apply.

A writ of certiorari should be issued as of right only for such an applicant as has suffered an infraction of a personal right.

The petitioner's bus was one out of the ten buses operating on a particular route. The Secretary R. T. A. changed the timings of other buses except that of the petitioner. The petitioner applied for issue of a writ of certiorari for quashing that order.

Held, that the changes in timings of other buses in the interest of public could not amount to a variation of the conditions of permit of the petitioner. Hence, the petitioner could not claim any relief under Art. 226 when he has not been able to show that the changes have affected his legal right. A I R 1951 S C 41 and AIR 1953 Mad 94 and AIR 1953 Punj 176 and A I R 1952 S C 12, Rel. on. AIR 1959 Andh Pra 429 (431, 432) (Pt A) (Pr 6) (DB).

——Arts. 226 and 227—Right to apply — Other remedy—Treating petition under Art. 226, suo motu as one under Art. 227.

The third respondent was provisionally assigned certain poramboke lands in a village but on subsequent representation by villagers the assignment was cancelled by the collector. However, on fresh application by the third respondent the Government modified its previous order, confirmed the assignment of poramboke land except for a portion of site occupied by poor Harijans.

Held, on a petition under Art. 226 (i) that unless the petitioners establish legal rights in the poramboke lands "under a grant, proved or presumed, or by custom or by prescription," the writ must fail. AIR 1930 Mad 621 and A I R 1957 Andh-Pra 997, Foll. A I R 1958 All 154, Not Foll. (ii) As the petitioners have also an alternative remedy by way of suit, it is not necessary to exercise the extraordinary and discretionary power under Art. 226 of the Constitution. (iii) In the particular circumstances of the case, the High Court would refuse to treat the application under Art. 226 as one under Art. 227 of the Constitution and to decide suo motu whether the order of the Andhra Pradesh Government in question was liable to be set aside. A I R 1954 S C 215 and A I R 1958 S C 398, Rel. on. A I R 1959 Andh Pra 318 (320, 321) (Pt A) (Prs 5, 6, 7, 8, 10).

——Art. 226—Right to apply—Conditions.

It is well settled that a party must have a legal right in order to invoke Art. 226. (1959) 2 Lab L J 562 : (1959) 2 Andh W R 482.

——Art. 226—Right to apply—Right to seek directions—Infringement of legal right.

For a petitioner to establish his right to seek the direction, it must be shown that some legal right of his is being infringed by the Government or by any other public body charged with statutory duties. AIR 1958 Andh Pra 632 (637, 638) (Pt D) (Pr 9) (DB).

—Art. 226—Court-fee—Question of vested right as to—If exists. See Court-fees Act (1870), S. 1. (1957) 2 Andh W R 349 : AIR 1958 Andh Pra 267.

——Art. 226—Right to apply—Cancelling gun licence of petitioner—Petition under Art. 226 for cancellation of such order—Subsequently period of licence expiring—Held, that as at the time when the licence was cancelled the petitioner had a subsisting right which he could enforce by means of a petition under Art. 226, the petitioner could enforce such right though term of the licence had expired after the making of the petition. 1961 (2) Cr L J 195 : I L R (1962) 14 Assam 40.

——Art. 226—Right to apply—Award of scholarship by State—(Assam Education Department Rules and Orders, Ch. IV, Prs. 51 and 52)—(Obiter).

Obiter :—It may reasonably be argued that the award of the scholarship is only a privilege granted by the State Government to certain students and refusal to grant such a privilege by itself gives no right to a candidate to come to the Court under Art. 226. AIR 1958 Assam 25 (28, 29) (Pt C) (Pr 13) (DB).

——Art. 226 — Existence of legal right resting upon facts to be proved.

(Per Thadani C. J.) — Where the existence of a legal right, as distinct from a fundamental right, rests upon facts which have to be proved, remedy by way of a writ under Art. 226 is highly inappropriate. Facts giving rise to such a right or duty must ordinarily be proved by the person alleging the right in the ordinary civil Courts of first instance having jurisdiction ILR (1951) 3 Assam 348 : AIR 1951 Assam 163 (167) (Pt G) (Pr 34) (DB).

——Arts. 226 and 14—Equality before law—Validity of rule 7, Regulations of the Board of Secondary Education, Madhya Pradesh — No legal right infringed — Maintainability of petition. See Ibid, Article 14. AIR 1958 Bom 433.

——Art. 226 — Who can apply — Legislation challenged on ground of contravention of Part III — Party challenging it must show that he is aggrieved by it.

The ordinary accepted principle is that a party must be aggrieved by some legislation before he can challenge it. If he challenges a legislation on the ground of contravention of Part III of the Constitution, then he must satisfy the Court that some fundamental right to which he can lay claim has been impaired or has been threatened by the legislation. If a petitioner comes to the Court contending that his fundamental right has been violated, he can challenge other parts of the statute which do not directly affect him if by that challenge he can bring about a position whereby the Court would hold that the whole legislation was void because in getting the whole Act set aside is saving a threat to himself.

But where a provision which does not affect him is severable and a successful challenge to that provision will not result in the whole Act being held,

void, it is not open to the petitioner to make a grievance of a violation of a fundamental right which does not affect him. **ILR (1955) Bom 870 : 57 Bom L R 892 : AIR 1956 Bom 21 (28, 29) (Pt G) (Pr 22) (DB).**

——Art. 226 — **Application under, when can be presented.**

An application under Art. 226, can be presented not only after the Petitioner's legal rights have been invaded already but also when they have been threatened with an immediate peril. AIR 1955 S C 661, Foll. **69 Cal W N 219 : AIR 1965 Cal 463 (469) (Pt D) (Pr 47).**

——Art. 226 — **Who can apply — Non-existence of legal right—Petition is not maintainable.**

Where an electric supply company did not obtain sanction under S. 27 of Electricity Act to supply electricity to a municipal water supply pumping station situated outside its "area of supply", on not receiving the contract from the Municipality for the same company could not maintain petition under Art. 226 because no legal right could possibly exist without such sanction having been first obtained, which it never had obtained. **AIR 1964 Cal 539 (542, 543) (Pt C) (Pr 5).**

■ ——Art. 226 — Rules under Art. 309 — Whether confer legal rights justiciable in Court of law — Bombay Allocated Government Servants (Absorption, Seniority, Pay and Allowance) Rules, 1957—Bombay Government resolution, D/ 25-10-1957 regarding equation of posts — Confer legal rights enforceable in Court of Law. See Ibid, Art. 309. **AIR 1965 Guj 23 (FB).**

——Art. 226 — Change in practice making goods available for delivery till 8 p. m.—Chief Commercial Superintendent has jurisdiction to issue notice introducing the change — Rules relating to free delivery of goods made by Government under section are not altered by the change — Hence petition for writ to quash notice must fail. See Railways Act (1890), S. 47. **AIR 1962 Guj 15 (DB).**

——Art. 226 — Right to apply — Auction of trees in Government forest — Default in payment of price — Deficit on re-sale — Recovery of balance as arrears of land revenue—Validity—Writ petition—Competency. See Sale of Goods Act (1930), S. 54 (4). **AIR 1957 Him Pra 1.**

—— Art. 226—**Mere volunteer cannot apply.**

The rights of which protection by way of writs is provided for in the Constitution, is a private and personal right. Hence, where the applicant is not amongst the persons who are injured by an order passed by an authority and his position is that of a volunteer he has no locus standi to apply to the High Court under Art. 226 of the Constitution. (1923) 262 U S 447; AIR 1951 All 1 (FB); AIR 1953 Mad 94; AIR 1952 Cal 799, Rel. on. **ILR (1953) Hyd 374 : AIR 1953 Hyd 228 (229) (Pt B) (Prs 5, 6) (DB).**

——Art. 226—**Right to apply—Person aggrieved.**

Under Cls. (8), (34) and (73) of S. 167 of Sea Customs Act where the Customs Collector confiscates the currency found concealed in a car belonging to the petitioner and in his defence he has all the time disowned the currency notes, even assuming that the confiscation of the car is illegal, he cannot be said to have any grievance against the confiscation of the currency notes and cannot be said to have suffered any injury and he cannot ask the Court to interfere under Art. 226 on his behalf on this score and the order of confiscation (even if illegal) cannot be set aside at his instance. **1959 Ker L T 1326 : 1960 Ker L J 90 : ILR (1960) Ker 295 : 1960 Cr L J 600 : 1960 M L J (Cr) 388 : AIR 1960 Ker 170 (172) (Pt A) (Prs 5, 6).**

——Art. 226 — (Motor Vehicles Act (1939), Ss. 68-C and 68-D)—Right to apply—Scheme published under Ss. 68 C and 68-D, Motor Vehicles Act — Deviation of route proposed by Director of State Transport — Petitioner not affected by deviation — Interest suggested illusory and too remote — Petitioner has no locus standi to object to deviation and consequently to file writ petition. **1959 Ker L J 1221 : 1959 Ker L R 1271 : 1959 Ker L T 1184.**

——Art. 226—Order or direction can be issued only for enforcement of fundamental right or legal right —Unilateral decision of Government to give land on lease to petitioner—No agreement of lease—Petitioner has no present right to the lease of the land — If no lease is granted, no legal right of the petitioner is violated. **ILR (1953) M B 175 : AIR 1953 M B 58 (59, 60) (Pt B) (Pr 5) (DB).**

—— Art. 226—Duty of applicant—Unauthorised dispossession — Petitioner coming to Court for relief against dispossession by authority on ground that it had no jurisdiction to evict him, must show his title to possession — Squatter or trespasser cannot apply under Art. 226 that the authority which evicted him was not the proper authority to do so — The application is not a title suit but a petition in equity and the petitioner should come with clean hands — He must file his documents of title in time to enable other party to examine them. **1961 Jab L J 212 : 1960 M P C 438 : 1960 M P L J 857 : A I R 1960 Madh Pra 265 (267) (Prs 8, 9).**

——Art. 226 — **Aggrieved person — Appointment of village headman under Madras Hereditary Village Offices Act — Person not applying for post cannot challenge appointment of another person to that post.**

A person who has never applied for the post of the village headman, under Madras Hereditary Village Offices Act cannot challenge the appointment of another person to that post, because he is not an aggrieved person and hence will not be competent to invoke writ jurisdiction of a High Court. **77 Mad L W 669 : ILR (1964) 2 Mad 693 : (1965) 1 Mad L J 140 : AIR 1965 Mad 178 (180) (Pt B) (Pr 14) (DB).**

——Art. 226 — **Right to apply — Order passed by Tribunal without jurisdiction — Party to proceedings applying for certiorari — Existence of right claimed by petitioner not decided — Writ should be issued.**

A writ of certiorari is issued at the discretion of the Superior Court. But for the exercise of the discretion of the Court, there are some well accepted principles. In issuing the writ, if the Court is moved by a member of the public having no personal or particular interest in regard to the subject-matter, the matter would be one, entirely for the discretion of the Court. But if on the other hand it is moved by a party aggrieved by the order of the inferior tribunal, the Court is bound to issue the writ at his instance, except in cases where he had disentitled himself to the discretionary relief by reason of his own conduct like submission to jurisdiction, laches, etc. Where an inferior tribunal has exceeded its jurisdiction, apart from the question of the subsistence of any right, a party to the proceeding before the inferior tribunal will be entitled to apply for the issue of a writ of certiorari. He would be a person aggrieved by reason of the fact that he contested the application before the Tribunal and that contest was overruled. In such a case there is no question of discretion of the Court except where he by his own conduct had disabled himself from applying for a writ. 6 R B C (1870), 466; 1901 K B

157; (1921) 1 K B 248; (1928) 1 K B 291, Rel. on. 1959 Mad W N 481 : (1959) 2 Mad L J 136 : 1959 Mad L J (Cr) 601 : 72 Mad L W 726 : A I R 1959 Mad 528 (529, 531) (Prs 11, 15).

——Art. 226—Certiorari—Right to apply for writ — (Madras Rice Mills Licensing Order, 1955).

A statutory right to object to the grant of licence or permission may not be the exclusive test, to apply in deciding whether an applicant for a writ of certiorari is an "aggrieved" person entitled to challenge the validity of the order which he seeks to avoid. The real test is to see whether the applicant has an interest distinct from the general inconvenience which may be suffered by the law being wrongly administered, and if that were the real test a mill owner has an interest of his own in question whether another mill owner should be granted a licence to work a mill in close proximity to his own. Where actually both the licensing authority and the Government which assumed an appellate jurisdiction, permitted him to make his representations objecting to the grant of the licence and considered the objections before the final decision to reject them and grant the licence was reached he should be treated as a "person aggrieved", a special interest of his being affected by the order. That clothed him with a right to invoke the jurisdiction vested in the High Court by Art. 226 of the Constitution to issue a writ of certiorari. (1921) 1 K B 248, Rel. on. (1957) M L J (Cr) 263 : 1957 Mad W N 308 : (1957) 2 M L J 1 : 70 Mad L W 549 : I L R (1957) Mad 845 : AIR 1957 Mad 551 (553, 554) (Pt B) (Prs 10, 11).

——Art. 226 — Right to apply — Call for tender by District Board — Acceptance of particular tender — Right of unsuccessful candidate to impugn action of Board — (Madras District Boards Act (14 of 1920), S. 199 (2) (n)).

Where a person, instead of depositing the earnest money with the District Board or producing a treasury challan for the amount, sends a cheque with the tender he does not comply with R. 9 of the Rules for the tenders of contracts framed by the Government under S. 199 (2) (n) of the Madras Local Boards Act.

Although there may be such a non-compliance with what is provided for under that rule it must be remembered that the rule does not prescribe an inflexible rule of law. Therefore if in the particular case the Board returns the cheque and accepts at a later date the cash deposited by that person it shows that the Board was prepared to condone the delay and hence there is no real violation of R. 9.

Even if the acceptance of the tender of that person is in violation of a statutory rule, namely R. 9, a writ of certiorari should not issue to the Board at the instance of another who also submitted a tender but which was not accepted. (1940) 84 Law Ed 1108, Rel. on; AIR 1954 S C 592 and A I R 1954 Pat 235, Distinguished. 69 Mad L W 993 : A I R 1957 Mad 149 (150, 151) (Prs 4, 8, 11).

——Art. 226—Persons entitled to apply — (Municipalities — Madras District Municipalities Act (V of 1920), Ss. 7 and 43).

Notification ordering redistribution of wards in Municipality — Application by an individual for writ of 'certiorari' when there is no allegation of petitioner's personal interest having suffered is not maintainable on the allegations that notification did not comply with S. 43 and that redistribution was not in public interests. AIR 1953 Mad 94; AIR 1951 S C 41; 48 Cal W N 767 and (1897) 1 Q B 498, Rel. on. (1953) 1 M L J 252 : A I R 1953 Mad 510 (512) (Pt C) (Prs 8, 9).

——Arts. 32 and 226—Can normally be invoked only by one whose personal rights and interests are adversely affected by the impugned order. A I R 1965 Manipur 39 (43, 45) (Pt E) (Prs 29, 51).

——Art. 226 — Who can invoke — Person having no legal right or fundamental right cannot invoke the article. A I R 1965 Manipur 35 (36) (Pt B) (Prs 9, 11).

——Art. 226—Scope:— Interference with mere finding — Order not affecting rights — If can be challenged — (Houses and Rents— C. P. and Berar Rent Control Order (1942), Cl. 13 (3) (vi)).

The order which can be challenged in a writ petition is an order which affects the rights of the parties; and even in a case where an interlocutory order is made, a writ petition would not be admissible, much less would it be so in a case where the appellate authority has merely recorded a finding on the question of admissibility of a document in evidence before it.

When there was no decision on the rights of the parties no writ petition lay against a finding. 1958 Nag L J (Notes) 42.

——Art. 226—Who may apply.

It is essential for the petitioner who applies under Art. 226 to show at the outset that he has some interest and that he has been injured or adversely affected by the order which is impugned. The person who looks after his mother's house, collects rent and so on, is not a landlord within the definition of that term as used in Cl. (2) (4) and Cl. (13) and therefore is not competent to apply under this Article. A I R 1951 Nag 58 (FB), Foll. ILR (1953) Nag 837 : 1953 Nag L J 189 : A I R 1953 Nag 251 (251, 252) (Pt A) (Pr 3) (DB).

[Overruled on another point in A I R 1954 Nag 151 (FB).]

——Art. 226—Motor Vehicles Act (1939), Ss. 62 (1), 57 and 58 (2)—Permit granted for four months only without previous enquiry under S. 57 — Permit not falling under Cls. (a), (b) or (c) of S. 62 (1)—Permit held not temporary nor permanent—Permit held irregular—Held, however, that it did not entitle the holder to claim renewal under S. 58 (2)—No legal right was infringed.—Writ under Art. 226 held could not issue. See Motor Vehicles Act (1939), S. 62. AIR 1952 Nag 353.

——Art. 226—No justiciable right accrues to ministerial officer to be retained in service after he attains 55th year—Matter is within discretion of Government—Order by Government granting leave to petitioner during period of extension without formal application by him held, on facts of case, not illegal. See Orissa Service Code, Vol. 1, R. 71 (b). I L R (1964) Cut 257.

——Art. 226—Basis of jurisdiction—Existence of right—Condition precedent—Right of possession — (Specific Relief Act (1877), S. 9) — (Criminal Procedure Code (1898), S. 145).

The existence of a right is the foundation of the exercise of the jurisdiction of the High Court under Art. 226. That right need not necessarily be the right of a full owner over his property. Even the possessory right of a person in long continued possession of immovable property may have to be protected.

The power of the High Court, under Art. 226, is not in any way controlled by the provisions of S. 9 of the Specific Relief Act. If the dispute is one between two private parties the Court would not ordinarily exercise its powers under Art. 226 because the parties may be left to fight out their dispute in a Magistrate's Court under S. 145, Criminal Procedure Code if there is an apprehension of breach of peace or by a suit

under S. 9 of the Specific Relief Act. But as against Government a private party cannot seek any relief under S. 9 of the Specific Relief Act. Similarly, action under S. 145, Criminal Procedure Code against Government is out of question. It is in such circumstances that Art. 226 should be applied. I L R (1956) Cut 556 : 23 Cut LT 324 : A I R 1957 Orissa 80 (83, 84, 85, 86) (Pt B) (Prs 10, 14, 17, 18) (DB).

[Reversed in AIR 1964 S C 685].

——Art. 226 — Bihar Panchayat Raj Act, 1947 (7 of 1948), S. 4 (as amended by Bihar Act 16 of 1963)—Writ petitioner must have some justiciable right—Petition to set aside Panchayat election, by a mere resident within jurisdiction of Panchayat and not an enrolled elector—**Held**. petitioner had no right to question validity of election : Decision of Mahapatra, J., dated 14th December, 1964 (Pat), **Reversed. AIR 1966 Pat 23 (25) (Pt A) (Pr 10) (DB).**

——Art. 226 — Who can apply under — Person aggrieved attaining majority — Other person has no legal interest entitling him to make application for writ on behalf of person aggrieved.

Though Art. 226 does not in terms describe the classes of persons entitled to apply thereunder, yet it is implicit in the exercise of extraordinary jurisdiction that the relief asked for must be one to enforce a legal right, and the existence of that right is the foundation of the exercise of jurisdiction of the High Court under Art. 226. The legal right that can be enforced under Art. 226 must ordinarily be the right of the petitioner himself who complains of infraction of such right and approaches the Court for relief, and the right that can be enforced under Art. 226 also shall ordinarily be the personal or individual right of the petitioner himself, though in the case of some of the writs like habeas corpus or quo warranto this rule may have to be relaxed or modified. Where the person aggrieved has attained majority there is no question of the petitioner having any legal guardianship over the aggrieved person and the petitioner has in such a case no legal interest which entitles him to make an application for a writ of mandamus on behalf of the aggrieved person. A I R 1962 S C 1044, Rel. on. **1962 B L J R 901 : AIR 1963 Pat 295 (296) (Pt A) (Pr 4) (DB).**

——Art. 226—Petitioner must establish infringement of legal right—Displaced Persons (Compensation and Rehabilitation) Rules (1955), R. 26 — Transfer of evacuee property in favour of non-claimant displaced person—Press-note fixing date for application for transfer—Does not confer any right on displaced person to claim transfer. **(1965) CIS (I J) 16 : 67 Pun L R 660**

——Art. 226—Who can apply—Person taking part in proceedings before a tribunal, though not formally impleaded cannot seek a writ to quash the order passed in it on the ground that he was not so impleaded—See Tenancy laws—East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (50 of 1948), S. 21 (2). **67 Pun L R 1122.**

——Arts. 226 and 227—Displaced Persons (Compensation and Rehabilitation) Act (1954), S. 36—Displaced person has no legal right to allotment of land at particular place and of particular type — Scheme prepared by department for their own guidance categorising lands into 3 blocks—Department's refusal to allot to petitioner land in block designated as special block under scheme on the ground that he had a house in the Basti, infringes no legal right and causes no injustice to him—Hence his application under Articles cannot succeed. **1964 Cur L J 99 (Punj).**

——Art. 226—Grant of life disability pension to petitioner serving as clerk in Army, on recommendation of medical board—Pension cancelled subsequently after many years as a result of further medical examination—Right of petitioner to relief against cancellation under Art. 226—Right to pension, if right of "property" within Art. 31. See Ibid, Art. 31 (1). **AIR 1962 Punj 503.**

——Art. 226—Who can apply.

Proceedings under Art. 226 of the Constitution can be invoked when there is a legal right which has been infringed or is about to be infringed or there is a legal wrong which has been inflicted or is about to be inflicted. If the petitioners were trespassers 'ab initio', had continued to be trespassers all along and were in unauthorised possession of the property it is not open to them to complain that they should not be evicted therefrom. The petitioners had no 'locus standi' to invoke the help of the High Court. A I R 1953 Punj 176, Foll. **56 Punj L R 480 : I L R (1955) Punj 94 : AIR 1955 Punj 34 (37) (Pt D) (Pr 14) (DB).**

——Art. 226—Articles in transit seized by police officer—Articles suspected to be stolen property — Arts. 19 and 301 do not apply — High Court will not interfere under Art. 226. See Ibid, Art. 19. **(1963) Raj L W 30.**

——Art. 226—Firm making default in filing return and producing account books and also in making appearance before Income-tax Officer — Application for renewal of registration refused for that reason under S. 23 (4) — Notice under Proviso to sub-s. (4) is not necessary—Refusal to register or renew registration cannot be regarded to involve deprivation of property—Hence no question of a notice being necessary under principles of natural justice also arises. See Income-tax Act (1922), S. 23 (4). **ILR (1961) 11 Raj 181.**

——Art. 226—Right to apply—Order under Administration of Evacuee Property Act releasing property—Petitioner in possession of property.

Held, that petitioner had a possessory title if not more and was therefore, interested in setting aside the order of the Custodian which threatened him of eviction by force. **(1958) Raj L W 236.**

——Art. 226 — Who can apply for writs—Right of third party — Injunction restraining assessment of income-tax on all residents of particular locality.

Generally speaking it is only the person whose fundamental right has been infringed who can approach the Court for relief. There is a well-known exception in the case of the writ of habeas corpus, and it may be that a similar exception might be made in the case of a writ of quo warranto. But so far as the writs of mandamus, prohibition, and certiorari are concerned only the person affected can approach the Court for relief. AIR 1951 All 1 (FB) and A I R 1951 S C 41, Rel. on. English case law considered.

Consequently, an application by a stranger for the issue of an interim injunction under Art. 226 restraining the Income-tax officer of the Jodhpur division from assessing income-tax on all the residents of that locality will not be granted. **1951 Raj L W 239 : ILR (1951) 1 Raj 257 : 1952-21 I T R 33 : AIR 1951 Raj 150 (2) (152) (Pt A) (Pr 13) (DB).**

——Art. 226—Writ of certiorari—Who can apply for.

Where the evacuee himself has not questioned the order of his being declared an evacuee, one of his creditors holding a money decree against him personally has, unless a fundamental right is alleged to have been infringed, no right to maintain the application for a writ of certiorari as he is not the aggrieved person. AIR 1951 S C 41 and AIR 1952 S C 12 and AIR 1951 Mad 930 and AIR 1953 Mad 94, Rel. on. **AIR 1956 Sau 100 (101) (Pt A) (Pr 5).**

——Art. 226—Right to apply under conditions.

The relief under Art. 226 posists the existence of a right in the persons claiming the relief for the infringement of their right. If a person has a personal or direct interest, a petition for a writ will lie at his instance and a person who holds a money decree against an evacuee has a personal interest in the property declared to be evacuee property as he can have it attached in execution of his decree. AIR 1956 Sau 47 (50) (Pt C) (Pr 6) (DB). [See A I R 1956 Sau 100.]

——Art. 226—Right to apply.

A private school teacher has no contractual or other relationship with the Government giving rise to a legal right capable of enforcement in a Court of law. 1956 Ker L T 391 : A I R 1957 Trav-Co 265 (267) (Pt B) (Pr 6).

——Art. 226—Applicability—Education Code.

(Obiter). — The Education Code is at best but a practical rule of caution intended for the guidance of members of the Department. It is not a legislative enactment nor has it the force of a statute and it does not confer any right on private school teachers. Orders of Government in alleged infringement of the provisions of the Code cannot, therefore, be amenable to the judicial review at the instance of private school teachers. 1956 Ker L T 238 : AIR 1957 Trav.Co 214 (215) (Pt B) (Pr 8).

——Art. 226—Who can apply — Person having custody of immovable property.

No person not having a right can present an application for a writ except an application for a writ of habeas corpus. Where a writ asked for in the petition is one affecting immovable property, it is only a person who has an interest in the property that can sustain it. AIR 1952 S C 12 ; A I R 1951 All 1 (FB) and AIR 1953 Mad 94, Rel. on.

Thus where a person has parted with possession and title of certain immovable property and the contact between him and the property is only custody which is loosely called possession, the person has no interest in the property and has no 'locus standi' to maintain an application under Art. 226 in respect of it. 1954 Ker L T 649 : I L R (1954) T C 1135 : AIR 1954 Trav-Co 543 (544) (Pr 3) (DB).

6 (b). Exception to.

●——Art. 226 — Article 226 confers a very wide power on the High Court to issue directions and writs of the nature mentioned therein for the enforcement of any of the rights conferred by Part III or for any other purpose. Persons other than those claiming fundamental rights can also approach the High Court seeking a relief thereunder. Calcutta Gas Co. (Proprietary) Ltd. v. State of West Bengal, (1962) 2 S C A 147 ; (1963) 1 S C J 106 ; (1962) Sup 3 S C R 1 : AIR 1962 S C 1044 (1047, 1048) (Pt A) (Pr 5).

——Art. 226—Delay as ground of invalidity — Petitioner himself responsible for delay — Plea not allowed—(Territorial Councils Act (1956), S. 22 (3)).

When it is the petitioner himself who caused the delay in personal service of notices under S. 22 (3), Territorial Councils Act, 1956, it is open to question whether the petitioner can allege it as a ground of grievance in his writ application. This is based on the principle of law that no man should be permitted to take advantage of his own wrong or to found any claim upon his own inequity. AIR 1960 Manipur 25 (30) (Pt D) (Pr 25).

6 (c). Firm, application on behalf of.

——Arts. 226, 227—Petition for writ—Who can maintain — Notices under S. 34 of Income-tax Act served on one partner of dissolved firm—Petition by such partner alone, though the firm was dissolved, is maintainable—Joinder of all the ex-partners in the petition not necessary — Non-joinder is not fatal to maintainability. (1963) 47 I T R 586 : AIR 1963 All 444 (444) (Pt A) (Pr 5).

——Art. 226—Want of strict compliance with provisions of Evidence Act by Tribunal in inquiry started against Government servant — No justification for interference under Art. 226.

Assuming that any of the provisions of the Evidence Act were not followed by the Tribunal in an inquiry started against a Government servant, that will not furnish justification for interfering with the order of the Tribunal under Art. 226 of the Constitution. The Evidence Act has no application to enquiries by Tribunals. The law only requires that principles of natural justice should be observed in the conduct of enquiries and if a Tribunal keeps in view the rules of natural justice, its decision cannot be assailed. 1960-2 Lab L J 470 (AP).

——Art. 226—Domestic tribunal—Dismissal of workman—Enquiry by management—Labour Court, when will interfere—Findings by Labour Court—Interference under Art. 226 of the Constitution. ILR (1963) 15 Assam 332 : A I R 1963 Assam 162 (163, 164) (Pt A) (Prs 3, 4) (DB).

——Art. 226 — Right to apply—Petition in name of firm—If lies.

Article 226 says nothing as to the person who can apply for an appropriate order or writ or direction. But there is no doubt that a person or a body whose interests are directly affected by a statute or an order can have redress under that article. An association of persons, which had applied for a permit for stage carriage on certain route in a district in the name of the firm under the Motor Vehicles Act is entitled to apply under Art. 226 in the name of the firm for a writ of certiorari to quash certain order of the Transport Authorities under the Act. 1961 Jab L J 104 : I L R (1960) Madh Pra 26 : 1961 M P C 131 ; 1961 M P L J 295 ; A I R 1961 Madh Pra 233 (235) (Pt A) (Pr 5) (DB).

——Art. 226 — Petition in name of dissolved firm—(Civil P. C. (1908), O. 30, R. 1).

It is not open to the partners of a firm to make petition under Art. 226 in the name of the firm after it has been dissolved on the analogy of O. 30, R. 1, Civil P. C., as the persons who wish to take advantage of it must be partners on the day the cause of action accrued. This means that the partnership must be in existence on the day of the accrual of the cause of action.

Even if it is assumed that because the Income-tax Officer gives a dissolved firm a notice to file the return, the firm can make a petition under Art. 226 in its name, it should be signed by all its partners and not by only one of them on behalf of all partners. I L R (1953) Patiala 451 : A I R 1953 Pepsu 88 (89) (Pt B) (Pr 2) (DB).

6 (d). Company, corporation and representative body.

●——Arts. 32, 19—Corporations and Companies not being citizens cannot petition under Art. 32—In such a case the doctrine of lifting the veil of corporation cannot be allowed—Company Law—Lifting the veil of corporation—Corporation.

The Corporation in law is equal to a natural person and has legal entity of its own. The entity of the Corporation is entirely separate from that of its shareholders ; it bears its own name and has a seal of its own; its assets are separate and distinct from those of

its members; it can sue and be sued exclusively for its own purpose; its creditors cannot obtain satisfaction from the assets of its members; the liability of the members or shareholders is limited to the capital invested by them; similarly, the creditors of the members have no right to the assets of the Corporation. 1897 A C 22, Rel. on.

Applying the principles governing the applicability of the doctrine of the veil of a corporation, it cannot be said that the Court can lift the veil of the Corporations who have applied under Art. 32 and say that it is the shareholders who are really moving the Court under Art 32 and so the existence of the legal and juristic separate entity of the petitioners as a corporation or a company should not make the petitions filed by them under Art. 32 incompetent. The effect of confining Art. 19 to citizens as distinguished from persons to whom other Articles like 14 apply, clearly must be that it is only citizens to whom the rights under Art. 19 are guaranteed.

In view of AIR 1963 S C 1811, the petitioners corporations and companies cannot be heard to say that their shareholders should be allowed to file the petitions under Art. 32 on the ground that, in substance, the corporations and companies are nothing more than associations of shareholders and members thereof. Tata Engineering and Locomotive Co., Ltd. v. State of Bihar, (1965) 1 S C W R 26 : (1965) 1 S C R 365 : (1964) 6 S C R 885 : (1964) 34 Com Cas 458 : (1964) 1 Com L J 280 : (1964) 1 S C J 666 : 1964 B L J R 834 : A I R 1965 S C 40 (46, 47, 48) (Prs 24, 25, 26, 27, 28).

■ —**Art. 32**—Citizenship Act (1955), Ss. 2 (1) (f), 3, 4, 5, 6, 7 and 11 — Citizen — Includes only natural persons and not juristic persons like corporations—Citizen in Art. 19 has same meaning as that in Part II —State Trading Corporation a company registered under Companies Act, 1956—Not a citizen — Cannot maintain petition under Art. 32 for enforcement of fundamental right under Art. 19—State Trading Corporation whether a department of Government. AIR 1953 Raj 188 and A I R 1961 Cal 258 and A I R 1959 Cal 45 and AIR 1953 Assam 177 Impliedly **Overruled**. See Ibid, Art. 5. **AIR 1963 S C 1811.**

——**Art. 226—Who can apply under—No confidence resolution passed against president of Municipal Board—Petition for writ by member — Not maintainable.**

Though Art. 226 makes no mention as to who shall apply for an appropriate order under the article, other writs, directions or orders cannot be placed on the same footing as the writ of habeas corpus and only those persons whose interests are directly affected by a statute or an order can apply for redress under Art. 226. AIR 1951 All 1 (FB) and AIR 1954 All 319, Rel. on.

Thus when a resolution of no-confidence is passed against the president of a municipal Board, it in no way affects the rights of the members of the Board. A member cannot therefore be said to be a person whose interests or rights have been directly affected by the resolution in question and a petition by him for writs under Art. 226 in respect of such resolution is not maintainable. **1961 All L J 606.**

——**Art. 226** — Procedure — Petition filed by society in its own name through manager — Maintainability —Controversy as to whether person was manager—Effect of — Societies Registration Act, S. 6. See Societies Registration Act (1860), S. 6. **(1957) All L J 790.**

——**Art. 226—Right to apply under—Statutory body like Municipal Board, if can apply.**

A power has been given to the High Court under Art. 226 to issue any direction or writ in favour of any person for the purpose of enforcing any fundamental right as well as for any other purpose. The Municipal Board is a person and if any of its rights which are other than the fundamental rights are infringed the Board has as much a right to approach the High Court for the enforcement of that right by means of a direction as any other person. **1956 All L J 889 : AIR 1957 All 241 (245) (Pt A) (Pr 5)**

——**Art. 226**—Who can apply—Association authorised by its rules to represent members in Court of law can move High Court under the Article. **AIR 1955 N U C (All) 4431.**

——**Art. 226**—Who can apply — Industrial dispute—Decision against employees' Unions — Employees' Unions can apply—(U. P. Industrial Disputes Act (28 of 1947), S. 3. **AIR 1955 N U C (All) 3298.**

——**Art. 226—Who can invoke jurisdiction.**

A person cannot invoke jurisdiction of Court under Art. 226 in a representative capacity on behalf of others as Secretary of Association, in the absence of such authority. **I L R (1955) 7 Assam 7 : A I R 1954 Assam 212 (214) (Pt A) (Pr 2) (DB).**

——**Art. 226**—Right to apply Petition moved at the instance of a limited liability non-profit-making company claiming to represent its associated members owning 230 manganese mines — Question raised as to applicability of Minimum Wages Act to manganese industry as a whole—No right special to the petitioner shown to be infringed—As question related to whole of manganese industry the petitioner was allowed to move the petition, especially when the respondents did not object. **1958 Nag L J 185 : 60 Bom L R 489 : (1958-59) 14 F J R 411 : (1958) 1 Lab L J 751 : ILR (1959) Bom 188 : A I R 1958 Bom 332 (332) (Pt A) (Pr 1) (DB).**

[Reversed on another point in AIR 1960 S C 1068.]

——**Art. 226 — Right to apply — Notification by Government appointing executive officer to perform duties and functions of Municipal Committee, President, etc. — Application under Art. 226 to quash notification by President on his own behalf as well as on behalf of Municipal Committee — Maintainability— (Municipalities — C. P. and Berar Municipalities Act (2 of 1922), S. 53-A).**

Where the Government appoints an executive officer under S. 53-A, C. P. and Berar Municipalities Act, directing him to exercise and perform the powers, duties and functions of a Municipal Committee, President, etc., to the exclusion of the Committee, President, etc., and the President applies under Art. 226 of the Constitution to quash the notification, making the petition on his own behalf as well as on behalf of the Committee, the petitioner will be allowed to prosecute the petition only on his own behalf and not on behalf of the municipal committee.

If, in fact, the petitioner has been prevented from performing his functions as a President in a manner which contravenes the law, then he has got a grievance and he could come up before the High Court under Art. 226 : A I R 1951 Nag 181, 1954 N L J 683 and 1955 N L J 41, Foll. **(1957) Nag L J 315 : 59 Bom L R 930 : ILR (1957) Bom 849.**

——**Art. 226 — Who can apply — Procedure—Company's right infringed - Petitioner, Managing Director himself—Petition declared defective.**

The company is a body corporate and has the right to sue and be sued. Neither the Directors nor the Managing Director can be authorised to sue on behalf of the company in their own names. The rules of procedure prevailing in Calcutta High Court, including rules 15 and 19 of the rules in the writ jurisdiction, make provisions for the institution of legal action on behalf of a company and there is no such

rule enabling the Managing Director to sue on behalf of a company incorporated under the Companies Act, in his own name.

Petitioner under Art. 226 was the Managing Director of an electric supply company himself and not the company. The provisions of the rules relating to rules made by the company had not been complied with. The right which had been claimed to have been infringed was that of the company.

Held, that the frame of the petition must be declared defective. AIR 1964 Cal 539 (542, 543) (Pt A) (Prs 4, 5).

——Art. 226—Right to apply—Person not aggrieved—Application by in representative capacity—Competency—Industrial Disputes Act (1947), S. 36.

An application under Art. 226 of the Constitution can only be made at the instance of an individual who is himself an aggrieved person. A person who has not been aggrieved cannot seek a relief under Art. 226 in a representative capacity for others : AIR 1951 S C 41 : 1951 S C J 29, Rel. on. (1961) 2 Fac L R 170 : (1961) 1 Lab L J 59 : 65 Cal W N 23 : (1962-63) 23 F J R 456 : A I R 1962 Cal 45 (47) (Pt A) (Prs 15, 16).

——Art. 226—Pleadings — Application on behalf of limited company—Proper authority to make.

An application for writ on behalf of a limited company should be made by persons of competent authority and not by any employee of the company who calls himself a principal officer but cannot produce any authority from the company. The exception to the general rule is made only in favour of a principal officer of the company. But then the fact that he is such a principal officer able to depose to the facts of the case must have to be satisfactorily shown to the Court. ILR (1959) 1 Cal 161 : 1958 Cr L J 628 : AIR 1958 Cal 232 (233) (Pt A) (Pr 4).

——Art. 226—Certiorari—Right to apply for—Party affected by impugned order—Appellate orders under Motor Vehicles Act—Association formed to manage, control and regulate omnibus service, if party affected—(Motor Vehicles Act (1939), Ss. 47 and 64).

The word "association" in Ss. 47 and 64, Motor Vehicles Act, does not necessarily mean an incorporated association and an application by an unincorporated association lies under Art. 226. In order to maintain an application for a writ of certiorari, the applicant must be a party affected by the impugned order.

An association registered under the Trade Unions Act, one of the objects of which is to manage, control and regulate omnibus service of a particular route can be said to be a party affected by the orders of the transport authorities, and therefore has a right to file an application under Art. 226. 61 Cal W N 217: AIR 1957 Cal 444 (446) (Pt C) (Prs 9, 10, 11).

——Arts. 226 and 300—Application for writ of certiorari by Union of India is maintainable — But it cannot ask for writ of Habeas corpus or possibly writ of quo warranto. See Ibid, Art. 300. **AIR 1955 Cal 581.**

——Arts. 226 and 227 — Who can apply — [Motor Vehicles Act (1939), S. 47].

R made an application on his own behalf as well as in his capacity as the secretary of an unregistered association of bus owners claiming relief against the reduction of fares in respect of stage carriages plied by them in the district. Some of the bus owners had already accepted the rates fixed by the R. T. A.

Held, that it was not possible for the Court to grant relief to the association as a whole because it was not a legal entity and all the members thereof did not seek the relief which had been asked for. AIR 1951 Cal 255 (SB), Ref to. ILR (1956) 2 Cal 879; 58 Cal W N 553 : AIR 1955 Cal 59 (62) (Pt B) (Pr 6).

——Art. 226—Relief under—Petition by Association—Only individual members aggrieved can claim relief.

The Association as a body corporate, as distinct from the members or shareholders is not a party aggrieved who can claim relief though, the individual members may be.

Where, therefore, the Changanacherry Merchant's Association filed a petition under Art. 226 for quashing the notification, it was held that the Association was not an aggrieved party and hence relief could not be granted to it under Art. 226 : 1951 S C J 29 : AIR 1951 S C 41, Rel. on. (1960) 2 Ker L R 564 : 1960 Ker L J 1481 : 1960 K L T 1137.

——Art. 226—Right to apply—Shebait of deity held entitled to maintain application under Art. 226 on behalf of deity. AIR 1960 Manipur 20 (24) (Pt C) (Pr 22).

——Arts. 226 and 132 — Right to apply—Right to property—Pasturage—Nature of right—Question of interpretation of Constitution held not involved—(Limitation Act (1908), Ss. 2 (5) and 26).

The word 'property' in S. 26, Limitation Act is indicative and descriptive of every possible interest which a party can have. Where, therefore, a certain number of villagers had been grazing the cattle in the land from the time of their ancestors, this customary right of theirs, must be treated a right to property and curtailment of that right would constitute an infringement of their fundamental rights guaranteed to them under Arts. 19 (1) (f) and 31 (1) of the Constitution. Such persons are entitled to a protection of their right under Art. 226 of the Constitution. **A I R 1957 Manipur 1 (3) (Pt B) (Pr 9).**

——Art. 226—Who can apply—Claim by indefinite body of persons.

A right of pasturage based on custom can be claimed by an indefinite body of persons. A relief under Art. 226 is therefore available to them. **A I R 1957 Manipur 1 (3) (Pt D) (Pr 10).**

——Art. 226—Individual grievances—Aggrieved persons members of registered association — Association has no locus standi to make an application—A I R 1951 Mys 14, Rel. on.—Resolution of Executive Committee authorising filing of petition not sufficient to make it an agent within O. 3, Civil P. C.—Application is not maintainable even as joint application of aggrieved persons by amendment of cause title. 39 Mys L J 565 : (LR (1961) Mys 450 : (1961-62) 21 F J R 105 : (1961) 2 Lab L J 583 : A I R 1962 Mys 25 (25, 26) (Prs 3, 5, 7, 8, 9) (DB).

——Art. 226 — Application by an association on behalf of its members—Specific Relief Act, 1877, S. 45.

Under the article an application for the issue of a writ must be made by the aggrieved party. Thus an association, although registered under the Societies

Registration Act, has no locus standi to make an application under the article for the personal and individual grievances of some of its members and not of the association itself. 31 Mys L J 171 : A I R 1951 Mys 14 (15, 16) (Prs 5, 9) (DB).

——Art. 226—Right to apply.

An order made by the Cane Commissioner under S. 15 (l), read with R. 24 (1) of the Bihar Sugar Factories Control Act, 1937, does not affect a Company owning a sugar factory, so as to make any grievance of it, and, as such, it has no locus standi to make an application under Art. 226, Constitution of India. AIR 1956 S C 676, Foll. AIR 1954 Pat 398 (402) (Pt B) (Prs 21) (DB).

——Art. 226—Right to apply—Right of Rate-payers Association to apply on behalf of members to restrain Municipal Corporation from realizing tax from them — (Civil Procedure Code (1908), O. 1, R. 8).

A Municipal Corporation cannot be restrained from realising the taxes from all the members of the Ratepayers' Association on the application under Art. 226 of the President alone. The Rate-payers' Association as a juridical person is not taxed and has, therefore, no right to apply to the Court for issue of an appropriate writ restraining Municipal Corporation from realising the arrears of taxes by issue of distress warrants against its members. 1956 BLJR 727; 1956 Pat L R 16 : AIR 1956 Pat 182 (184, 185) (Pt A) (Pr 6, 7) (DB).

——Art. 226—Who can apply — Person having legal right can apply—Construction of new building by Central Government to be used as market alleged to contravence Master Plan and provisions of Delhi Development Act (61 of 1957)—President of Market shopkeepers' Association in locality, who has been subjected to competition by new market, cannot challenge contravention. ('64) 66 Pun L R 1144.

——Art 226—Right to apply—Jurisdiction —(States Re-organization Act (1956), S. 64 (2))—(Payment of Wages Act (1936), S. 17).

Held, on facts (i) that the Divisional Personnel Officer Ajmer, must be held to be the Pay Master for the period under reference and would be the proper person to file the writ applications on behalf of the Railway. (ii) that the High Court of Rajasthan had jurisdiction over the territory in which the case had arisen. Though the order was passed by the Assistant Judge, Mehsana, it was in effect the order of the corresponding Authority, the Authority in Rajasthan, namely the District Judge of Pali. The High Court of Rajasthan therefore had jurisdiction to decide the writ applications. AIR 1953 S C 210, Disting. (iii) that the writ applications having been filed within 3 months of the dismissal of appeals, there were no laches. (iv) that the Bombay amendment to S. 17, Payment of Wages Act, did not apply to the instant case and the Assistant Judge, Mehsana committed an error of law apparent on the face of the record in holding that the appeals were not competent before him. Orders passed by him were, therefore, liable to be set aside. AIR 1957 Raj 336 and AIR 1953 S C 221, Foll. 1958 Raj L W 199 : ILR (1958) 8 Raj 286 : AIR 1958 Raj 124 (125 to 127) (Prs 5, 6, 7, 11) (DB).

——Art. 226— Industrial Disputes Act (1947), S. 36—Secretary of Union representing workmen — Compromise with employers — Individual workman cannot challenge award based on compromise on ground that secretary exceeded authority. See Industrial Disputes Act (1947), S. 36. AIR 1953 T C 380.

6 (e). Person adversely affected.

——Art. 32—Who can apply—Permanent lease of land by registered deed — Subsequent legislations affecting leasehold land—Lessee challenging constitutionality of such legislations — Can maintain petition irrespective of whether such legislations are valid or not so long as lease stands.

The petitioner had obtained certain rights in certain lands under a registered lease from the Zamindar. Subsequently when the State Legislature passed certain laws which affected his leasehold interest in the land and the State also interfered with the right to possession, he filed a petition under Art. 32 of the Constitution challenging the constitutionality of those laws for protection of his fundamental right on the basis of the registered lease.

Held, that the petitioner had a right to maintain the petition irrespective of whether such laws are held valid or not. So long as the lease stood and did create right of property in praesenti whatever be the nature of that right and though the nature of that right may be disputed, the petitioner would have a right to maintain the petition. Mahendra Lal Jaini v. State of U. P., (1963) Supp (1) S C R 912 : (1963) 2 S C A 163 : AIR 1963 S C 1019 (1024, 1025) (Pt B) (Prs 10, 11).

——Art. 226 — Petition under—Maintainability — Existence of right and its infringement are foundation of exercise of jurisdiction under Art 226—Allotment of land to evacuee on quasi permanent basis—Notification under S. 12 of Displaced Persons (Compensation and Rehabilitation) Act (1954) — Effect.

The existence of a right and the infringement thereof are the foundation of the exercise of the jurisdiction of the High Court under Art. 226 of the Constitution. The right that can be enforced under Art. 226 of the Constitution must ordinarily be the personal or individual right of the applicant.

The petitioners who were evacuees from Pakistan were allotted some lands in 1950 on quasi permanent tenure. In 1954 the State Government issued a notification under S. 14 of the E P. Holdings (Consolidation and Prevention of Fragmentation) Act (1948), declaring its intention to make a scheme for the consolidation of holdings and in 1955 the Consolidation Officer published a draft scheme proposing substitution of some other lands of lesser value for the lands allotted to the petitioners. On 24.3 1955 the Central Government issued a notification under S. 12 of the Displaced Persons (Compensation and Rehabilitation) Act (1954) acquiring all the evacuee properties. The petitioners filed the petition under Art. 226 of the Constitution for the issue of an appropriate writ to quash the scheme of consolidation.

Held, that notwithstanding a notification under S. 12 of the Act of 1954 an evacuee has a valuable right in the property allotted to him. After the notification issued by the Central Government under S. 12 of the Act, so long as the property remained vested in the Central Government, petitioners continued to be in possession of the property on the same conditions on which they held the property immediately before the date of acquisition, that is, under a quasi-permanent tenure. Therefore on the

date when they filed the petition in the High Court they had a very valuable right in the properties allotted to them which entitled them to ask the High Court to give them relief under Art. 226 of the Constitution. In the circumstances of the case, the petitioners had sufficient interest in the property to sustain their petition under Art. 226 of the Constitution. AIR 1957 S C 599, Rel. on. State of Punjab v. Suraj Parkash Kapur, (1962) 1 S C J 108 : (1962) 2 S C R 711 : AIR 1963 S C 507 (508, 509) (Pt A) (Prs 4, 5, 6).

●——Art. 226 — Reference by Government of industrial dispute to Tribunal—Aggrieved party's right to challenge jurisdiction of Tribunal on ground that dispute referred is not industrial dispute. See Industrial Disputes Act (1947), S. 10. AIR 1957 S C 532.

●——Arts. 32, 14 — Classification—Who can challenge.

The only persons who can impugn any given piece of legislation under Art. 32 are those who are aggrieved thereby. A person who is not a member of a certain class and as such is not aggrieved cannot attack a provision of an Act on the ground that the classification implied therein contravenes Art. 14 of the Constitution Hans Muller of Nuremburg v. Supdt. Presidency Jail, Calcutta, 1955 Mad W N 478 : 1955 S C A 487 : (1955) 1 M L J (S C) 188 : 1955 S C J 324 : AIR 1955 S C 367 (373) (Pt E) (Pr 26).

——Art. 226 — Right to apply under — Expression 'any person' in Notification, Dated 19th August 1955—Meaning of — ((Ajmer) Excise Regulation (1 of 1915), S. 16 (4) — Notification No. E (1)/3/54-P. W.E., Dated 19th August 1955).

Although there is force in the contention that the expression 'any person' in the first part of the Notification, dated 19th August 1955, is only a substitute for the 'Public' against whom the Chief Commissioner had no power to issue the notification, where a writ petition was not filed by the petitioner in assertion of his individual or personal rights but in vindication of his rights as a proprietor of the hotel and restaurant.

Held, that the relief could not be given under the first part of the notificationn. 1956 Cri L J 657 : A I R 1956 Ajmer 50 (50) (Pt A) (Pr 2).

——Art. 226 — Petition challenging land acquisition proceedings—Who can apply— Persons recognised by Revenue Court as tenants of land have sufficient subsisting interest to apply — Fact that litigation with respect to sirdari rights in that land is pending does not affect their right to apply. I L R (1962) 2 All 653 : A I R 1962 All 208 (209, 210) (Pt B) (Pr 4).

——Art. 226 — Who can apply — Order of R. T. A. granting extension of route of permit — Persons who applied for permit can challenge order by writ petition. 1961 All L J 594 : 1961 All W R (H C) 616 : A I R 1962 All 145 (147) (Pt B) (Pr 10).

——Art. 226—Possessory title—Right to apply.

In order to entitle the petitioner to claim relief under Art 226 or certiorari, mandamus or prohibition it is not necessary that he must show that he is the owner of the property in dispute. It is enough for his purpose to show that he is lawfully in possession and that he is not liable to be evicted therefrom under the orders passed against him which he seeks to be quashed. A possessory title is a good title for the purpose of enabling the Court to grant relief under Art 226 of the Constitution 1956 All W R (H C) 240 : A I R 1956 All 486 (489) (Pt A) (Pr 17) (DB).

——Art 226 — Certiorari — Only a person who has suffered an infraction of his personal legal right by an order can seek to remove it on certiorari — Order by R. T. A. granting permits for routes notified under S 68-D of Motor Vehicles Act—Interest of travelling public also advanced by the permits — Application under Art 226 by a private operator who is not entitled to apply and obtain permit for the notified routes and who also does not suffer directly, challenging the correctness or validity of such permits is not competent A I R 1962 S C 1044; A I R 1959 Andh Pra 429 and A I R 1953 Mad 279, Rel on; A I R 1961 S C 1558 and A I R 1962 S C 1135 and 1946 A C 338 Ref. to. (1964) 2 Andh W R 295 : (1965) 1 Andh L T 9 : A I R 1966 Andh Pra 112 (DB).

——Art 226 — Proceedings for compulsory acquisition of land on behalf of municipality for extending Muslim burial ground — Government again issuing order to drop all further proceedings—A member of Muslim Community invoking jurisdiction under Art 226 to direct Government not to stop proceedings—Maintainability.

When the Government issued an order directing the Land Acquisition Collector to drop all further proceedings for the compulsory acquisition of land, started on behalf of the Municipality, for extending the Muslim burial ground, the appellant, a member of the Muslim Community and a rate-payer approached the High Court under Art. 226 of the Constitution to direct the Government not to drop the proceedings.

Held, the person directly interested in the acquisition is the Municipality; any other person who might get the benefit of the use of the land for a particular purpose in the event of its acquisition cannot be said to be a person having a direct, personal and present interest in the acquisition proceedings or in land. His interest, if any, would be only indirect or remote. The appellant is not a person who has got any legal right which may be enforced against the Government. He cannot invoke the jurisdiction under Art. 226 of the Constitution. (1966) 1 Andh W R 140 : (1966) 1 Andh L T 112.

——Art. 226 — Right to apply — Division of constituency into wards and allotment of seats — Validity of election process on ground of unequal distribution —Who can challenge.

Held, on facts that it was the voters in the second and the third wards that could have a just cause for complaint The petitioner who belonged to the first ward was not a person aggrieved and therefore the petition must fail;

Held also, that the powers exercisable by the High Court under Art. 226 should not be drawn upon at the instance of a petitioner inspired by indirect motives. A I R 1958 Andh Pra 252 (253, 254) (Pt B) (Prs 4, 8) (DB).

——Art. 226—Who may apply — Person deprived of his right to be nominated for Siemship—Such person is "party concerned" and can apply.

The foundation for applying under Art. 226 is the existence of any legal right. A I R 1962 S C 1044, Relied on.

Upon the issue of a Parwana requiring the electors to nominate persons for Siemship within 20 days from the date of Parwana, one U. F. was nominated in the Durbar in which all the electors did not attend. The electors had also the right to nominate somebody else within the period fixed. On challenging the Parwana there was stay of election of Siem. The stay was sub.

sequently vacated but the appointment of U. F. was approved by the District Council. On the writ petition filed by a resident of the area:

Held, (i) that the electors having been misled by stay order, were deprived of their right to file nomination and the petitioner's right to be nominated had, therefore, been affected. He was seeking to enforce that right by means of a writ petition which could be maintained ; (ii) that the petitioner was a "party concerned" within the meaning of S. 5 of the Khasi-Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) Act, 1959. Persons who come under S. 5 of the Act have undoubtedly locus standi to apply under Art. 226. But it cannot be said that those who cannot be regarded as party concerned under S. 5, cannot say that their right has been affected and apply under Art. 226. There may be cases where persons who are not parties concerned within the meaning of the words in S. 5 of the Act may have a right to apply under Art. 226. A I R 1965 Assam 83 (85) (Pt A) (Prs 5, 6) (DB).

——Art. 226 — Industrial Employment (Standing Orders) Act (1946) — Draft standing order — Person affected by such order can file petition individually— He need not be represented by Union. (1965-66) 27 F J R 427 : (1965) 2 Lab L J 614 : A I R 1965 Assam 40 (40, 41) (Pt A) (Pr 3) (DB).

——Art 226—Right to apply — Alleged violation of Rules and Procedure for sale of pounds and markets in Assam.

Held, shop-keeper in market on whom restriction if any was placed by the enhancement of fees and not by the auction sale could not challenge the sale and the right of the purchaser to collect the fees from him.

Held further, that the sale was not illegal on the ground that the notice under the Rules did not mention the rate at which the purchaser was entitled to collect from the shop-keeper and that the rules required only term of the lease to be mentioned in the notice. A I R 1958 Assam 156 (159, 160) (Pt C) (Pr 7) (DB).

——Art. 226—Certiorari—Who can apply — Counsel feeling personally aggrieved by order against his client cannot himself apply for high prerogative writ. See Advocates Act (1961), S. 49 (c). (1965) 69 Cal W N 860 : A I R 1966 Cal 250.

——Art. 226—Who can apply — Dispute relating to dismissal of certain employees referred to Industrial Tribunal for adjudication—Right of person taken in to fill in vacancy caused by dismissal, to apply for quashing order directing re-instatement.

Where certain employees were dismissed from service by a Bank and the petitioner was taken in to fill the vacancy caused by the dismissal of those workmen and the dispute is subsequently referred to Industrial Tribunal for adjudication, the petitioner has no 'locus standi' to make an application under Art. 226 to quash or set aside the order passed by the Appellate Tribunal directing the re-instatement of the dismissed employees, as the petitioner is not a party to the trade dispute. (1955-56) 8 F J R 419 : A I R 1955 Cal 309 (310, 311) (Pt A) (Prs 3, 10).

——Art. 226—Who can apply.

If a statutory body acts in excess of its jurisdiction any one affected by it can certainly come up and ask that it should be compelled to restrict its activities within the four corners of the statute which has created it. 58 Cal W N 617 : AIR 1955 Cal 72 (75) (Pt G) (Pr 19).

——Art. 226—Scope—Persons entitled to apply.

Trust property acquired by Government — Beneficiaries not parties to proceedings and represented by receiver of estate — Compensation under award paid to receiver on his giving undertaking to refund if required — Land Acquisition Collector ordering refund, on application for amendment of award by person claiming interest in portion of property — Court on application of receiver directing refund after hearing objections from beneficiaries—No steps taken, to have Court's order modified or set aside:

Held, (i) that application under Art. 226 by beneficiaries to correct Court's order only on allegations against receiver's conduct in acquiescing in and carrying out Collector's order, was inappropriate;

(ii) that they were strangers to Land Acquisition proceedings, and so even if the order of Collector enforcing the undertaking amounted to amendment of award, it was not open to the beneficiaries to challenge the amendment in the proceedings under the Article;

(iii) that their application was not bona fide since its object was to get round Court's order by having the Collector's order set aside;

(iv) and that therefore there was no justification for interference. A I R 1953 Cal 257 (258, 259) (Pt B) (Prs 5, 8, 9, 10).

——Art. 226 — Certiorari — Himachal Pradesh Panchayat Raj Act (6 of 1953), S. 93 — Revision —Notice to Nyaya Panchayat—Omission to serve — Not sufficient to quash revisional order — Nyaya Panchayat entitled to challenge Magistrate's jurisdiction in a writ petition—See Panchayats — Himachal Pradesh Panchayat Raj Act (6 of 1953), S. 93. 1964 (1) Cri L J 34 : AIR 1964 Him Pra 2.

——Art. 226—Who may apply.

Where it was found that the State has been recording the petitioners and their co-owners as proprietors of the land thus recognised their right after the merger of the former State of Baghat, the right to property can be asserted by them in the Courts established by the present Government and the plea that they have no locus standi is not tenable. A I R 1947 P C 1, Disting. AIR 1953 Him Pra 95 (100, 101) (Pt G) (Pr 21).

——Art. 226—Kerala Education Rules 1959, Chap. 5, R. 9—Government sanctioning opening of new school disregarding R. 9 — Petition for certiorari by person already running a school—Petition is maintainable— Certiorari cannot be refused on ground that petitioner has not suffered economic loss—Authority sanctioning opening of new school does not act administratively but quasi-judicially. 1965 Ker L T 284 : 1965 Ker L J 326 : (1965) 1 Ker L R 145 : I L R (1965) 1 Ker 467 : AIR 1965 Ker 301 (302, 303) (Prs 2, 3, 4).

——Art. 226—Right to apply—Persons having special interest apart from interest as members of public — Municipalities—Madras District Municipalities Act (5 of 1920), Ss. 36 and 278.

Where certain persons residing in the immediate neighbourhood challenge, by an application under Art. 226, an order of the State Government cancelling previous resolution of Municipal Council by which latter had declined to register a certain land as burial ground and directing the Council to sanction registration of such land forthwith, on the ground that the

same has been passed in contravenion of Ss. 38 and 278 (1) of the Madras District Municipalities Act, such persons have a special interest of their own, apart from their interest as members of the public in challenging such order, and can apply under Art. 226. AIR 1952 S C 12; A I R 1955 Assam 163; A I R 1957 Mad 551, Rel. on. AIR 1953 Mad 94; AIR 1959 Andh Pra 318; AIR 1959 Andh Pra 429, Dist. **1960 Ker L J 192 : 1960 Ker L T 243.**

——Art. 226 — Right to apply — Establishment to which Shops and Establishments Act applied exempted from operation of certain provisions—Employee affected by exemption — Right to apply — (M. B. Shops and Establishments Act (7 of 1952), S. 4).

The employee of an establishment is a person affected by the exemption of the establishment in which he is serving from the operation of Ss. 10, 16 and 17 of the Act. He is, therefore, entitled to challenge the validity of the notification, by applying under Art. 226 of the Constitution. **1958 M P C 143 : (1958) 2 Lab L J 587 : 1961 M P L J 9.**

——Art. 226 – M. B. Secondary Education Act, S. 16— Regulations under—Chap. XI —Regn. 4 (a)— Recognition given by Board to new institution — Other institution suffering loss of students and income in fees on that account — No right of petitioner violated — Writ petition held not maintainable. 1959 M P C 52.

——Art. 226—Right to apply.

Where a person has been elected a member of a Panchayat from one ward and has a right to elect other members to fill in the vacancy in another ward but the Government passed an order to hold fresh elections, such a person has a sufficient and proximate interest in the matter to maintain a petition under Art. 226, because if the order of the Government were to stand and elections held in the manner directed by the Government, the petitioner would be deprived of his right. **(1960) 1 M L J 472 : AIR 1960 Mad 238 (240) (Pt D) (Pr 6).**

——Art. 226—Issue of writ 'ex debito justitiae' — (Municipalities—Madras District Municipalities Act (5 of 1920), Ss. 7 and 43).

It is not incumbent on Government either under the District Municipalities Act or under the rules framed for elections to divide wards so as to ensure their equality of voting strength or to make it easy for members of particular community to be elected. There is no violation of natural justice in not manipulating the wards to ensure their success and hence a writ 'ex debito justitiae' will not be issued on the application of a person who has no personal interest. **(1953) 1 M L J 522 : A I R 1953 Mad 510 (512, 513) (Pt D) (Prs 10, 11).**

——Art. 226—Janapada Election—Who can challenge.

A voter in a constituency in a Janapada Sabha has sufficient interest to challenge an election to the constituency.

A Janapada Sabha cannot file a petition challenging the election of its councillors. For, it is a statutory corporation and can discharge its statutory duties no matter who are its councillors. As to who are its councillors is no concern of a corporation. It follows therefore that the Sabha can have no interest whatsoever in the elections of its councillors.

A candidate for election can challenge election to his constituency. Kanglu Baula v. Chief Executive Officer, **ILR (1954) Nag 875 : A I R 1955 Nag 49 (65, 66) (Pt I) (Prs 57, 66) (FB).**

——Art. 226—Writ petition—Who can file—Matter regarding permission for additions or alterations to buildings violating Municipal Rules for constructions and alterations — Owner of adjoining property can file a writ — Orissa Municipal Act (1950) S. 398 — Writ against order under the section — Who can file.

It is now well settled law that a neighbouring owner of a proposed new building, in respect of which provisions of the Municipal rules are violated, has a right, although he does not happen to be the adjoining owner in respect of the portion affected thereby, to insist on a strict compliance of the rules, even where the person who is immediately affected does not object; he is entitled to apply for a mandamus to prevent plans being sanctioned contrary to the relevant Municipal Act and the rules thereunder. It is also well settled that in the matter of building plans, there is a specific legal right in favour of the adjacent owner to prevent plans being passed, contrary to the provisions of the relevant Municipal Act and the rules thereunder; accordingly if a plan is sanctioned by a Building Committee of a Municipality contrary to the relevant Municipal Act and the statutory rules and regulations, an adjacent owner who— by reason of the particular situation of his property, is likely to be injured as to light, air, health and other amenities, — suffers an infringement of his right, has undoubtedly a right to seek relief. The granting of permission to build in contravention of the building rules of the Municipality may amount to such an invasion of legal rights in respect of the adjoining owner as will warrant the exercise of the special jurisdiction. Although a provision may be primarily framed for the benefit of the general public yet, in appropriate cases if the breach is of such a nature as in the nature of things must injure a specific individual to quite a different degree, such a right will also be assumed in favour of such specific individual. Whether the rules infringed amount to an injury to a specific individual depends on the facts of each case.

It is an individual right of each member of the resident public, within the municipality to insist on compliance with Municipal rules, conducive to the general good of the community of which each such individual is a competent member. A I R 1941 Cal 386; A I R 1941 Cal 391, Foll. **(1963) 5 Orissa J D 97.**

——Art. 226—Right to apply.

Where the Government has settled paimali right to third persons over raiyati lands such an interference would, in effect, amount to confiscation of private property without a corresponding award of compensation and thus taking away rights of private individuals and vesting the same in the public. But where the raiyats whose rights are alleged to be interfered with by the settlement in question have not made any grievance and come to Court, it is not possible to issue any writ at the instance of the petitioner who has not claimed to have acquired any interest from the raiyats concerned. **1958 B L J R 343 : AIR 1959 Pat 72 (73) (Pt B) (Pr 3) (DB).**

——Art. 226—Who may apply.

The applicant claimed that the property, which had been declared evacuee property on the ground that it belonged to one N who was an evacuee, was really his property.

Held, that the applicant had interest in making the application. **1955 Raj L W 95 : ILR (1954) 4 Raj 528 : AIR 1954 Raj 214 (217) (Pt G) (Pr 14) (DB).**

——Art. 226 — Cess levied under Jaipur District Boards Act—State grantees ha interest to challenge validity of cess under Art. 226 — [Jaipur District Boards Act (947), 3. 32 (b)] 1954 Raj L W 1 ; I L R (1953) 3 Raj 606 : AIR 1954 Raj 104 (111) (Pt F) (Pr 27) (DB).

——Art. 226—Who can apply—Introduction of two more buses—Income of petitioners likely to decrease —Loss quite substantial — Petitioners could not be said to have been substantially affected—Being aggrieved they are entitled to challenge order on ground of total lack of jurisdiction. See Motor Vehicles Act (1939), S. 64 (a). AIR 1953 Raj 193 (DB).

6 (f). Person directly affected.

——Art. 226—Certiorari—Who can apply—Order by Chancellor in reference under S 39, Lucknow University Act — Decision of Executive Committee of University and appointment made thereunder declared null and void—Appointee is directly affected by the decision and therefore is an aggrieved person who is entitled to get the decision of the Chancellor quashed by a writ of certiorari : (1880) 14 Ch D 458; (1887) 19 Q B D 174, (1952) 2 W L R 194 and (1961) 2 All E R 504, Ref. to.

The fact that the appointee was only a probationer is not important because the appointment itself had been put in jeopardy by the order. I L R (1961) 2 All 634 : 1962 All L J 289.

——Art. 226—Who can apply—Petition for quashing order of Assistant Custodian declaring property as evacuee property, on ground that it is waqf property—Proper persons to apply are either the waqif or mutawalli or the Sunni Waqf Board—Members of Sunni Waqf Board cannot apply.

Petition under Art. 226 by some members of the Sunni Waqf Board, for quashing the orders of the Assistant Custodian declaring a certain property as evacuee property and the subsequent proceedings, on the ground that the said property is waqf property, being a graveyard and a takia attached to it, is not maintainable, if the petitioners nowhere in their petition have stated what their individual rights are and how they are affected. Their merely being members of the Sunni Waqf Board does not entitle them to any right. AIR 1952 S C 12, Rel. on. Proper persons to apply would be the waqif or the mutawalli or if the Sunni Waqf Act applies, the Sunni Waqf Board. **AIR 1961 All 299 (300) (Pt A) (Prs 3, 4).**

——Art. 226—Right to apply.

The services of an electric wireman were terminated by the Kanpur Tannery Ltd., and the matter was taken up by the Industrial Employees Union, which was registered as a 'miscellaneous' trade Union and referred to the Adjudicator. The Adjudicator held that the wireman was rightly discharged and was not entitled to any relief. The Union thereupon applied under Art. 226 challenging the order.

Held, that the petitioner Union had no right to present the petition on behalf of the discharged workman because :

(1) in a writ jurisdiction it is only the individual or the corporation whose rights are affected who can come to the High Court : AIR 1951 All 1 (FB) and AIR 1960 All 366 and AIR 1951 S C 41, Rel. on.

(2) Since the case of the discharged wireman had not been taken up by any of the Unions of leather industry the petitioner Union was not entitled to take up the case and represent the discharged wireman. (1960) 1 Fac L R 569 : AIR 1960 All 738 (739, 740, 741) (Prs 6, 7, 8).

——Art. 226 — Petitioner occupying premises in dispute—Notice under S. 7-A (2), U P. Control of Rent and Eviction Act served on his brother—Right of petitioner to file write petition. A I R 1960 All 218 (221) (Pt A) (Pr 11).

——Art. 226 — Right to apply — Interest of petitioner.

Where a person applies to certain Licensing Board for grant of license and his application is refused he has an interest justifying an application to the High Court under Art. 226 of the Constitution and it is open to him to point out that the constitution of the Licensing Board was itself not proper. **AIR 1957 All 773 (777) (Pt B) (Pr 12).**

——Art. 226—Who can apply under.

Though Art. 226 of the Constitution makes no mention as to who shall apply for an appropriate order an application for the issue of a writ of mandamus prohibition, or other orders cannot be filed by a person unless, his rights are directly affected. Indian Sugar Mills, Ltd. v. Secretary to Government, U. P., 1950 A L J 767 : ILR (1952) 1 All 186 : A I R 1951 All 1 (2, 3) (Pt B) (Prs 8, 9) (FB).

——Art. 226 — Prohibition — Writ—Stage Carriage permit—Change of timings whether variation of condition of permit — Person aggrieved is the holder of of permit — No other person has a right of appeal. See Motor Vehicles Act (1939), S. 64 (b). **AIR 1965 Andhra Pra 115.**

——Art. 226—Who can apply—Persons whose rights are affected by notification issued under Act can apply.

A notification was issued by the State Government in exercise of powers claimed to have been given by the provisions of the Andhra Pradesh Panchayat Samities and Zilla Parishads Act 1959. The petitioners claimed that there was no power vested in the Government under the Act to reconstitute or redelimit a block in such a way as to abolish any of the existing Blocks and Panchaya Samities; consequently, the impugned notification issued was ultra vires the powers of the Government and must be quashed. To this claim the State Government raised a technical objection that since personal rights of none of the petitioners were affected their petition could not be prosecuted.

Held, that the true test, for determining the petitioners' locus standi to maintain an application was whether the petitioners were directly affected by the statute that is whether they are persons whose legal rights are governed by the impugned Act and whether they are judicially affected by the differential treatment prescribed by the impugned statute. So considered the petitioners who were elected to the village Panchayat which formed part of the abolished Panchayat Samithi and were not only electors but also had right to say to which Samithi they should belong, had locus standi to challenge the validity of the notification. (1965) 1 Andh W R 317 : A I R 1965 Andh Pra 40 (50, 51) (Pt E) (Prs 31, 33) (DB).

——Art. 226—Applicability — Person aggrieved by notification under S 3, Madras Essential Articles Control and Requisitioning (Temporary Powers)

Act (I of 1949) as amended by Andhra Amendment Act (1955), Ss 3 and 21—Right to issue of writ.

Under S. 21 of Madras Act (I of 1949) (Andhra Amendment) right of suit in respect of any act done in pursuance of the Act is barred and, therefore, a person aggrieved by Government notification under S. 3 has no other effective alternative remedy provided under the Act, and his petition under Art. 226 is maintainable. 1957 Andh L T 422 : (1957) 2 Andh W R 29.

——Art. 226 — Right to apply under — "Interest" — Right to settlement of Government khas land.

The Government is the owner of the land and it has a discretion to grant settlement in respect thereof in favour of such party as it liked. As such no person can claim any absolute right to get settlement of Government khas lands from the Collector and he has no such right which he can enforce with the aid of Art. 226 of the Constitution.

But where the petitioner succeeds in obtaining from the Collector settlement of such land in his favour and it is confirmed by the Commissioner, he has a sufficient interest for the protection of which he can seek the interference of High Court under Art. 226 of the Constitution. ('57) 61 C W N 301.

——Art. 226 — Re-formation of wards in village for panchayat elections — Petitioner remaining voter in same ward after re-formation but instead of three members, two members to be elected as result of re-formation—Petition under Art. 226 against re-formation of wards cannot be dismissed on ground that petitioner remains voter in the same ward as he is directly affected by the reformation of the wards and besides, whole village is interested in the matter —Panchayats—Bombay Village Panchayats Act (3 of 1959), S. 10. (1962) 3 Guj L R 56.

——Art. 226 —Who can apply—Other remedy open —Laches.

It is only a person who is affected or whose rights are affected that can invoke the jurisdiction of the High Court under Art. 226 of the Constitution and seek to get the order of the tribunal set aside on the ground that it violated any of the fundamental rights conferred by the Constitution or that it was against any provision of the Constitution or for any other matter such as want or excess of jurisdiction. In order to justify the granting of this extraordinary relief, the absence of an adequate remedy at law must clearly appear.

If a party entitled to complain about want of jurisdiction neglects to do so he must be held bound by the judgment. Laches or delay also would justify the rejection of the application under Art. 226. (1914) 235 U S 151 and AIR 1951 S C 41, Foll. Waheed Munwar Khan v. State, I L R (1955) Hyd 768 : AIR 1956 Hyd 22 (23, 24) (Pt A) (Prs 4, 5) (FB).

——Art. 226 — Petitioners owning certain mills run on electric power supplied by respondents—No contract to supply electricity entered into between some of petitioners and respondents—Former cannot maintain writ petition. AIR 1960 J & K 12 (13) (Pt A) (Pr 3).

——Art. 226 — Who can apply — Bidder at auction-sale.

A bidder at an auction sale has a sufficient legal interest to move the High Court under Art. 226 to challenge the auction sale if the authorities conducting the same have failed to act within the bounds of their authority. AIR 1954 S C 220 and AIR 1954 S C 592, Rel. on. I L R (1955) Madh Bha 266 : M B L J 1955 H C R) 590 : M B L R 1953 Cri 121 : AIR 1955 Madh B 161 (164) (Pt B) (Prs 29, 30) (DB).

——Art. 226—Application under Art. 226 for review of order of Magistrate under S. 8-B, of Press and Registration of Books Act—Petitioner not aggrieved —Petition, if granted likely to affect right of appeal of opposite party under S. 8-C—Petition not granted.

Where a person, who was neither printer nor publisher nor owner of any newspaper bearing a title similar to a certain other newspaper, made a plea to a High Court that it should, under Art. 226 of the Constitution, review the decision of a Sub Divisional Magistrate that the declaration of the latter newspaper did not offend Cl. II of S. 8 B of the Press and Registration of Books Act:

Held, that the petitioner not being a person, affected by printing and publication of the said newspaper, could not seek remedy under Art. 226. The object of the proviso to S. 6, and clause II of S. 8-B of the Act, permitting the cancellation of a declaration is clearly to prevent unfair competition between two newspapers published by different persons under the same name and title. The question of circulation of any paper for the purpose of securing advertisement is not a matter which can be taken into account in proceedings for authentication of a declaration or its cancellation.

Section 8 C, provides that any person aggrieved by an order of a Magistrate cancelling a declaration under S. 8 B, may prefer an appeal to the Appellate Board. The Magistrate to whom a writ of mandamus is issued for cancelling a declaration is bound to comply with it, and when pursuant to that direction he cancels that declaration, then his order would be open to appeal under S. 8 C of the Act. It would, therefore, be altogether improper for the High Court to issue any direction to the Magistrate asking him to refuse to authenticate a declaration under S. 6 or cancel a declaration under S. 8-B of the Act. 1965 M P L J 227 : 1965 Lab L J 479 : AIR 1965 Madh Pra 128 (131) (Pt B) (Pr 8) (DB).

——Art 226—Applicability—Assuming that Sch. III, Para. 3 of Citizenship Rules (1956) is invalid, the individual directed by the notice under S. 3 of the Foreigners Act (1946) to remove himself from India can invoke the jurisdiction of the High Court under Art. 226 including a writ of prohibition. ILR (1960) Mad 697 : (1960) 2 Mad L J 290 : AIR 1961 Mad 129 (145) (Pt R) (Pr 56) (DB).

——Art. 226 — Life Insurance Corporation of India (Staff) Regulations 1956 — Dismissal of employee in violation of — Employee can apply under Art. 226 — (Obiter). AIR 1960 Mad 333 (335) (Pt B) (Pr 11).

——Art. 226—Petitioner registered as headman under S. 10, Madras Hereditary Village Offices Act—Respondent filing suit to set aside order and to get himself registered in his place—Respondent succeeding before first tribunal but failing before second tribunal—Revenue Board restoring order of first tribunal—Petitioner held had personal interest in applying under Art. 226—Judgment in W. P. No. 244 of 1952, Distinguished. (1953) 2 M L J 644 : 66 Mad L W 700 : AIR 1953 Mad 972 (973) (Pt C) (Pr 5).

——Arts. 226 and 32—Who can apply.

Powers under Arts. 32 and 226 can normally be invoked by one whose personal rights and interests are adversely affected by the impugned law or order —Road-side Government land settled by Chief Commissioner in excess of statutory powers and in violation of settlement rules upon respondent who constructing shops on it—Petitioner's right of free excess

from public road to his homestead infringed — It is petitioner who has right to file writ petition—Administrator is not aggrieved party. AIR 1965 Manipur 39 (43, 45) (Pt E) (Prs 29, 51).

——Art. 226—Writ petition — Locus standi to maintain —Ordinarily petitioner has to make out personal interest except in the case of a writ of quo warranto strictly so called.

In India, unlike in England, there is nothing like a writ of right because, the issue of any type of writ, order or direction under Art. 226 is clearly a matter of discretion with the Court. The question therefore whether the petitioner has or has no locus standi to make the petitioner to seek the issue of a writ appropriate to the facts of his case is necessarily related to the nature of the relief he seeks. The only general proposition which can be stated on the question of locus standi of petitioners in writ petitions or petitions under Art. 226 of the Constitution is that ordinarily a petitioner will have to make out some personal interest which the law recognises as sufficient, unless having regard to the nature of the relief and particular facts and circumstances of the case the petitioner is merely in the position of an informer or a relator and the situation is such that it becomes the duty of the Court to act in public interest or to uphold the Constitution.

If the writ asked for is strictly a writ of quo warranto in respect of a public office, the petitioner need have no personal interest. If, however, the position or the office held by the respondent cannot be described as a public office the case will not be one for quo warranto in the strict sense but will be one only for some other type of appropriate writ, order or direction under Art. 226 of the Constitution, before getting which the petitioner will have to establish that he has some personal interest in the matter which the law recognises as sufficient. (1963) 2 Mys L J 383 : AIR 1964 Mys 159 (164, 165) (Pt C) (Prs 10, 13) (DB).

——Art. 226—Writ petition challenging validity of appointments to certain posts of readers made by Board of appointments of a University — Person who was one of the applicants for the post but who was not selected. has locus standi to maintain petition. (1963) 2 Mys L J 383 : A I R 1964 Mys 159 (166) (Pt E) (Prs 16, 17) (DB).

——Art 226—Municipalities— City of Bangalore Improvement Act (5 of 1945), S. 29 — Disposal of sites acquired under, by Board of Trustees— Validity of — By whom can be challenged— General challenge not permitted—Constitution of India, Art. 226. ('62) 40 Mys L J 313 (DB).

——Art. 226—Who can apply.

Only a person aggrieved can move the Court by a writ. No one except those whose rights are directly affected by a law can raise the question of the constitutionality of that law. A I R 1951 S C 41 : AIR 1951 Mys 14; AIR 1953 Hyd 227 and AIR 1951 All 1 (F B), Rel. on. 34 Mys L J 178 : ILR (1954) Mys 255 : AIR 1954 Mys 161 (161) (Pt A) (Pr 1) (DB).

——Art. 226—Courts not to pronounce upon vires of legislation unless matter is properly before it in case of controversy—Threat to rights of petitioner—Petitioner successfully establishing that import is illegal —Writ can be issued. (1955) 6 S T C 93 (Nag).

[Overruled on another point in AIR 1958 S C 590].

——Art. 226—Who can apply — Member of Governing Body of College also holding office of Secretaryship —Term expiring on 1-5-1962—Writ petition filed by him before that date against order of Vice-Chancellor approving elections of respondents to the Governing body for next term — Stay order made by High Court restraining respondents from holding any meeting—Petitioner held continued to be member and Secretary even after expiry of his term, in view of stay order—He had locus standi to apply under Art. 226—Patna University Act (25 of 1951), Statute 13, Para 2 (2) (b) and (c). A I R 1963 Pat 394 (395, 396) (Prs 5, 8) (DB).

——Art. 226—Who can apply.

When any statute imposes a duty upon an authority in respect of any matter, any person, whose interest is affected adversely by a breach of such statutory duty, and if he is within the range of those persons to whom such authority owed statutory duty, is entitled to ask the court to issue a writ under article 226, so that the authority, who is clothed with such statutory powers, does not exceed those powers.

Where the petitioners, who were either intending bidders at the auction of tolls of a public ferry under the Bengal Ferries Act (1 of 1885) or those who actually offered bids at the subsequent auction, base their claim in a petition under Art. 226 on the breach of statutory obligation imposed upon the District Magistrate in the matter of settlement of the public ferry under the Act, there is sufficient legal interest vested in the petitioners which entitle them to maintain the application under Art. 226; AIR 1953 Pat 370 and AIR 1954 Pat 235, Rel. on. AIR 1955 Pat 483 and AIR 1954 S C 119 and AIR 1954 S C 493 and AIR 1954 SC 592, Ref. 1956 B L J R 592.

——Art. 226—Bengal Finance (Sales Tax) Act (6 of 1941) (as extended to Delhi), S. 5 — Consumer who was required to pay Sales Tax and had given undertaking for the same is an aggrieved party — Petition by such consumer is maintainable — Sales-tax — (Bengal Finance (Sales tax) Act 6 of 1941), S. 5).

Held, on facts that as the Sales-tax Authorities recognised the fact that the party who would be directly affected and consequently aggrieved would be the petitioner who would have to pay the tax from his own pocket and not the dealer who had been made responsible for payment of the tax under the Act. Therefore it was petitioner who aggrieved by being forced to make payment in respect of tax at rate at which that tax cannot be legally levied. As he could not resort to any other remedy, there was no reason or justification for declining to afford him relief in exercise of the extraordinary powers conferred by Art. 226 of the Constitution. AIR 1951 S C 41, AIR 1954 S C 119, AIR 1956 Pat 182, AIR 1961 Raj 150 and (1918) 1 K B 7, Foll. ('62) 64 Pun L R 827 : ILR (1962) 2 Punj 699 : (1963) 14 S T C 51.

——Art. 226— U. P. Entertainment and Betting Tax Act (8 of 1937) —Notice to petitioners by Entertainment Tax Officer appointed under the Act to pay entertainment tax on charges levied by them from persons using swimming pool owned by them—Notice is a serious threat to petitioners that their fundamental rights are about to be infringed — Preliminary objection to the petition under Art. 226 challenging validity of the notice on the ground that they should wait till proceedings under S. 5 of the Act were taken against them —Objection held not sustainable : A I R 1954 S C 403, Foll. ILR (1961) 1 Punj 66.

——Art. 226 —Motive —Relevancy — Land acquisition — Petitioners dissatisfied by amount of compensation and therefore applying for writ — Right to relief.

Even though petitioners are induced to challenge the acquisition or to assert their fundamental right to

hold the property because they are dissatisfied by the amount of compensation offered to them by the Land Acquisition Collector, this motive will not and should not debar them to enforce their fundamental right by applying under Art. 226 if it is in fact infringed. 61 Punj L R 609 : I L R (1959) Punj 1665 : AIR 1959 Punj 544 (547) (Pt B) (Pr 7) (DB).

——Art. 226—Writ Petition— Who can apply—Mere licensee when could apply.

Where the petitioners who were alleged to be mere licensees of the lands in dispute but had created structures and shops, both Kacha and Pakka, on the said lands and rent paid by them had been accepted from them, even after the alleged period of license was over, were served with notices to remove the structures and vacate the land occupied by them within a month with a threat that if they were not removed the structures would be forcibly removed by the Government and it was argued that the petitioners being mere licensees had no right to invoke the extra-ordinary jurisdiction for the issuance of a writ.

Held, that the threat to demolish the structures certainly affected valuable rights of the petitioners which entitled them to secure a mandate from the Court. 1962 Raj L W 29 : ILR (1962) 12 Raj 39.

——Art. 226 — Refusal to renew permit for motor vehicle interfered with—Operator's fundamental right to carry on — Aggrieved operator can apply for writ. See Ibid, Art. 19 (1) (g). ILR (1961) 11 Raj 333.

——Art. 226—Right to apply.

A person whose licence to possess arms has been cancelled under S. 18 has a right to apply to the High Court under Art. 226. A I R 1952 S C 12, Rel. on. 1954 Cri L J 1672 : ILR (1954) 4 Raj 170 : A I R 1954 Raj 264 (266) (Pt B) (Pr 5) (DB).

——Art. 226 — Motor Vehicles Act (1939), S. 64 (a) — Introduction of two more buses by illegal order —Income of petitioners likely to suffer substantially— Petitioners were aggrieved persons. See Motor Vehicles Act (1939), S. 64 (a). A I R 1953 Raj 193.

——Arts. 226 and 265 — Who can apply against illegal levy of tax.

Where an entertainment tax levied by the Municipal Board on the cinema-goers and collected by the proprietor of the cinema who is also responsible for paying it to the Board, is found to be illegal the proprietor can maintain an application under Art. 226, against the illegal levy, he being a person interested in the matter. AIR 1951 All 1 (FB), Dist. ILR (1953) 3 Raj 52 : 1953 Raj L W 335 : AIR 1953 Raj 180 (181) (Pt C) (Pr 7) (DB).

6 (g). Joint Hindu family.

——Art. 226 — Income tax recovery proceedings against Hindu undivided family — Disruption of family after assessment—Order recognizing disruption not passed—Family is deemed to continue as undivided family for purposes of Act—Continuance by legal fiction of existence of undivided family as an entity would enable aggrieved family to maintain writ petition for challenging orders passed in recovery proceedings. See Income-tax Act (1922), S. 25-A (3). A I R 1966 All 176.

6 (h). Taxing statute.

——Art. 226—Application, whether premature.

The notice under Bihar Sales Tax Act calling upon a company to forthwith get itself registered as a dealer and to submit a return and to deposit the tax in a treasury in Bihar, places upon it considerable hardship, harassment and liability which, if the Act is void under Art. 265 read with Art. 286 constitutes in praesenti an encroachment on and an infringement of its right which entitles it to immediately appeal to the appropriate Court for redress. A I R 1953 Pat 87, Reversed. Bengal Immunity Co., Ltd. v. State of Bihar, ILR 34 Pat 905 : (1955) 6 S T C 446 : (1955) 2 S C R 603 : (1955) S C J 672 : 1955 S C A 1140 : (1955) 2 M L J (SC) 168 : 1955 Andh W R (SC) 422 : A I R 1955 S C 661 (669) (Pt D) (Pr 7).

——Arts. 226, 265—Taxing Statutes—Point of hardship—Consideration of.

The point whether a particular tax is burdensome and whether it would cause hardship to the tax-payer cannot be decided by Courts, if the taxing statute is constitutional, and its legality cannot be questioned. A I R 1962 Andh Pra 415 (416) (Pt B) (Pr 15) (DB).

——Art. 226 — Jurisdiction — Petition challenging validity of taxing Act—Competency—Power of High Court to entertain—See Sales Tax — Andhra Pradesh General Sales-Tax Act, S. 19 (1) (f) (b). (1960) 1 Andh W R 374.

6 (i). Tax-payer and elector.

——Art. 226 — Who can apply — Right of voter— Though voter has no direct interest in election, he can move High Court for relief under Art. 226 against an order allowing an election petition under S. 12 (c) of the U. P. Panchayat Raj Act, as being interested in the result of the election and its propriety. AIR 1963 All 607 (607) (Pt B) (Pr 3).

——Art. 226—Madras District Municipalities Act (5 of 1920), R. 12 (1) (f) of the Rules made thereunder — Lease of buildings owned by Municipalities — Failure to hold public auction — Power of Government to direct Municipality to waive rule in individual cases — Petition at the instance of rate-payer to compel Municipality to hold public auction — Maintainability.

Held, there is no provision in the Madras Municipalities Act or in the Rules made thereunder which authorise the Government to give directions in individual cases abrogating the mandatory rule contained in R. 12 (1) (f) of the Rules made under the Madras District Municipalities Act. If the order of the Government is bad, what remains is the resolution of the Municipality resolving to lease out the Municipal Theatre by public auction. Section 22 of the Act imposes an obligation on the executive authority, namely, the Commissioner, to carry out the resolutions of the Municipal Council. Mandamus should, therefore, issue to nullify the order of the Government and to carry out the lawful resolution of the Municipal Council. The contention that the petitioner has no locus standi to maintain the application under Art. 226 of the Constitution and ask for a writ of mandamus cannot be accepted. He is not only a resident of the Municipality but is also a rate payer thereof and as such is interested in the conservation and proper application of the municipal funds. The petitioner's case is that if a public auction is held he wished to take part in it. The circumstances are sufficient to clothe the petitioner with an interest and a right to move the High Court to restrain a public body from acting in violation of statutory rules and misusing its powers, thereby causing detriment to public revenue. A I R 1949 Bom 229, Rel. on.; A I R 1953 Mad 94, Distinguished. (1963) 1 Andh L T 149 : (1963) 1 Andh W R 151 : A I R 1963 Andh Pra 212.

——Art. 226 — Exercise of jurisdiction under — Infraction of personal legal right must be proved.

It is the infraction of an individual and personal right which gives the petitioner a right to approach the High Court under Art. 226. The petitioner, thus, in the absence of any personal legal right which has

been infracted cannot come to the High Court under Art 226. A I R 1962 S C 1044 Rel. on. **I L R (1963) 15 Assam 29 : A I R 1963 Assam 168 (170) (Pt C) (Pr 11) (DB).**

——Art. 226—Writ of certiorari—Who can apply.

Where an order of the subordinate Court or Tribunal is without jurisdiction or apparently erroneous, the attention of the Court may be drawn to the matter by any individual interested therein in praying for a writ of certiorari and the High Court if satisfied may grant the writ in question and remove or demolish the erroneous record. Thus, even when the petitioner an elector is not even a party to the election having been called in question by one of the unsuccessful candidates at the election and the person directly affected by the order of the Tribunal who has made no complaint against the said order, yet an application for a writ of certiorari by him will lie. **ILR (1955) 7 Assam 159 : A I R 1955 Assam 163 (169, 170) (Pt F) (Prs 14, 15) (DB).**

——Art. 226—Who can apply — Municipal Corporation — Order of Mayor likely to cause financial loss to or not likely to be in interest of Corporation—Competency of rate payer to question legality of Mayor's orders under Art 226

A rate payer has sufficient interest to complain against any action of the Mayor or Corporation which according to him would cause financial loss to the Corporation or would not be in the interest of the Corporation. A rate-payer is not a mere stranger. He is directly interested in the moneys which can be realised or are realisable under the Act for being credited in the municipal fund and in the proper application of the fund The rate payer's interest may be small but it is none the less real and sufficient to entitle him to question the action of the Corporation or the Mayor. His right to do so does not depend on the question whether the action of the Mayor or the Corporation has or has not actually resulted in any loss to the Corporation. If he is a rate payer and if according to him the action taken is not in the interest of the Corporation, then he is entitled to complain against it by applying for a writ under Art 226. A I R 1925 Cal 48, Dissent from.; A I R 1949 Bom 229 and A I R 1960 Cal 102, Foll. **1961 M P L J 1410 : 1962 M P C 133 : I L R (1963) Madh Pra 13.**

——Art. 226 — Writ of certiorari — Powers of High Court - Who can apply—Nomination of members to Legislature by Governor — Right of a person either as legislator or as citizen to apply for writ — Infringement of mere potitical rights no ground for issue of writ.

It is not the province of the High Court to interfere either suo motu or at the instance of any person whenever there is any disregard or violation of any of the provisions of the Constitution. Its power under Art. 226 of the Constitution can only be invoked at the instance of a person who has a personal grievance against any act of the State in its executive capacity which inflicts a legal injury on him since the right which is the foundation of a petition under Art. 226 of the Constitution or a corresponding provision, is a personal and individual right. 63 Mad L W 89 (Journal) and AIR 1951 S C 41, Rel. on.

A person either as a member of the legislature or a citizen has no such personal and direct interest in the matter of the nomination of a member to legislature as to enable him to invoke the provisions of Art. 226 of the Constitution.

As a remote consequence of the nomination, it may be that he had been deprived of the opportunity, along with the other members of his party in the legislature, of forming the ministry and having the nomination to the legislature made on the advice of that ministry. But where that cannot be said to affect his personal rights even in an indirect manner, he cannot question the validity of nomination by an application under Art. 226:

His political rights if any cannot come into play in a Court of law unless such rights have the character of a legal right. Otherwise any discussion of such rights would be outside the scope of judicial decision. **(1952) 2 Mad L J 671 : AIR 1953 Mad 94 (95, 96) (Pt A) (Prs 3, 4, 5) (DB).**

——Art. 226 — Who ann apply — Public, right of — Municipal Board — Order passed by Collector suspending resolutions of Board concerning civic amenities — Tax payers have right to agitate under Art. 226 against unauthorised interference with functioning of Board—Municipal Board not necessary party — Rajasthan Municipalities Act (38 of 1959), S 285.

There are a number of duties cast by the Rajasthan Municipalities Act, 1959, on the Municipal Board. Whoever interferes in the performance of these duties can also be made answerable to the electors and rate-payers who have a right to see that the Board functions in accordance with the law. Hence, the electors and rate payers of a municipal board have every right to invoke the aid of the Court under Art. 226 of the Constitution against any unauthorised interference with the proper functioning of the Board in providing for their civic amenities.

To such a petition the Municipal Board is not a necessary party. AIR 1951 S C 41, Disting. **1961 Raj L W 266 : ILR (1961) 11 Raj 273.**

6 (j). Constitutionality of law, right to question.

● ——Art. 226—Validity of Act Who can dispute—Statute dealing with rights arising out of contract—Right to challenge—Validity.

It is no doubt true that a question as to the constitutionality of a statute can be raised only by a person who is aggrieved by it; but where the statute deals with rights arising out of contract, that presupposes the existence of at least two parties with mutual rights and obligations. The fact is that a statute which operates on a contract must affect the rights of all the parties to the contract and if it is bad as regards one of them, it should be held to be bad as regards the others as well. Either party can therefore, challenge its validity by an application for a writ. Bombay Dyeing & Manufacturing Co. Ltd. v. The State of Bombay, **1958 SCA 254 : (1958) 1 Lab L J 778 : 1958 S C J 620 : 60 Bom L R 731 : 1958 S C R 1122: AIR 1958 S C 328 (339) (Pt D) (Pr 28).**

——Art. 226—Who can apply.

No one except those whose rights are directly affected by a law can raise the question of the constitutionality of that law. **AIR 1956 Ajmer 25 (27) (Pt B) (Pr 5).**

——Art. 226 and Part III, Art. 13—Civil P. C (1908), S. 113 —Constitutional invalidity of Act —Who will not be permitted to raise plea in appeal — (Madras Hereditary Village Offices Act (3 of 1895), S 6 (1).) See Civil P. C. (1908), S. 113. AIR 1958 Andh Pra 322.

——Art. 226—Right to apply—Constitutionality of law—Who can challenge.

The issue of the constitutionality of a law cannot be allowed to be raised at the instance of a person whose rights are not directly affected by the law which he impugns. **AIR 1958 Andh Pra 252 (253) (Pt C) (Pr 4) (DB).**

——Art. 226 — Right to apply—Personal interest to maintain application.

As a rule of guidance applicable to ordinary cases, a person, in order to maintain an application under Art. 226, must be able to specify any right be it proprietary right or personal right, which has been infringed by the passing of an Act. But, in extraordinary cases, where, for instance an Act is passed by the Parliament or by a Legislature in excess of its constitutional power reshaping the map of India, it is difficult to say that a citizen of India, who lived his lifetime as a permanent resident of one of the States abolished, has no personal interest to maintain an application. (1957) 2 Andh W R 43 : ILR (1957) Andh Pra 345 : AIR 1957 Andh Pra 734 (739) (Pt C) (Pr 16) (DB).

——Art. 226 — Requisitioning and Acquisition of Immovable Property Act (30 of 1952), S. 8 (3) — Constitutional validity of provision of Act—Constitutional objection if cannot be sustained in limine because no assessment has been made by arbitrator. See Requisitioning and Acquisition of Immovable Property Act (30 of 1952), S 8 (3). 67 Bom L R 85 : 1965 Mah L J 271 : AIR 1966 Bom 36 (DB).

● ——Arts. 226, 29, 30—Statute contravening provisions of Arts. 29 and 30 — Person whose rights as distinct from infringements of fundamental rights are affected can maintain petition under Art. 226—Threat to right is sufficient — Actual infringement not necessary.

If an Act is inconsistent with the provisions of Arts. 29 (1) and 30 (1), it is bad because it is violative of them. It is not necessary for a petitioner to establish that his fundamental right is affected or infringed in order to be able to maintain a petition under Art. 226, challenging the constitutionality of an Act which contravenes the provisions of Part III of the Constitution. It would be sufficient that it causes or threatens injury to him.

As a result of the University Statutes 207, 208 and 209 and Ss. 4 (27), 5 and 38-A of the Gujarat University Act and for no other reason the petitioner who wants his son to be instructed in English language must be held to be a person whose interests are affected and to whose right and liberty, injury is caused and therefore is a person having sufficient interest to maintain the petition challenging the validity of the impugned provisions of the Act which violates the fundamental rights of minorities and is therefore void. It would be sufficient if he can show from an examination of the provisions of the impugned Act that the effect or the real object or purpose is such that it is violative of the provisions of Art. 29 (1) or 30 (1). (1924) 69 Law Ed. 1070 and (1922) 67 Law Ed. 1042 and AIR 1954 S C 561 and AIR 1951 S C 226 and (1952) 97 Law Ed. 1586 and AIR 1954 S C 119, Rel. on. Shri Krishna Ranganath Mudholkar v. Gujarat University, (1962) 3 Guj L R 204 : AIR 1962 Guj 83 (120, 121, 122) (Pt C) (Prs 61, 62) (FB).

[Reversed on another point in AIR 1963 S C 708].

——Art. 226—Validity of law — Right to question—Person asking for relief under particular provisions —He cannot challenge their validity. See Ibid, Article 13. AIR 1962 Madh Pra 128 (DB).

——Arts. 226 & 246 — Tax, meaning of — Tax not a levy for service—M. P. Motor Vehicles (Taxation of Passengers) Act, 1959, was not ultra vires the State legislature.

A petition under Art. 226 of the Constitution was filed for declaration that the Madhya Pradesh Motor Vehicles (Taxation of Passengers) Act, 1959 (Act No. 17 of 1959), was ultra vires.

Held that section 3 of the Act was its charging section. Under Entry 56 in List II of the Schedule VII of the Constitution read with Art. 246 thereof the State Legislature had been permitted to levy 'taxes on goods and passengers carried by road or on inland water ways.' The tax imposed by the Act would be valid provided it was 'a tax on passengers carried by road' within the meaning of the aforesaid entry. It was not the name of the tax but its real nature its pith and substance which must determine into what category it falls. (AIR 1945 P C 98 Rel. on.)

A tax was a compulsory exaction of money by public authority for public purposes enforceable by law and was not payment for services rendered. It would thus be apparent that a tax by a State by its very nature did connote that it was imposed in the common interest of all. It could not be said that the import in question was not commensurate with the purposes for which the tax was levied nor that it substantially impeded or was intended to impede the freedom of trade, commerce and intercourse. The impugned Act could not be declared unconstitutional on the ground that it contravened the provisions of Arts. 301 and 304 of the Constitution. The Act only imposed reasonable restrictions in the interest of the general public on its exercise of the right conferred on it by Article 19 (1) (g) of the Constitution. 1962 M P L J (Notes) 79.

——Art. 226—Cantonments Act (1924), S. 210 — Section does not impose unreasonable restriction to carry on trade and is not invalid— Refusal to grant licence to carry on trade in charcoal — Absence of provision to give reasons or for appeal or for opportunity to be heard does not make provisions invalid — Natural justice requires hearing of applicant — No such opportunity given—Order quashed. See Cantonments Act (1924), S. 210. AIR 1961 Madh Pra 361 (DB).

——Arts. 226 and 245—Scope of inquiry — Question relating to validity of statute.

In the normal course, High Court would refrain from investigating the alleged invalidity of a statutory provision when the questions of fact on which such a contention could be based have not been concluded. (1956) 2 M L J 83 : (1956) 29 I T R 246 : ILR (1956) Mad 1154 : A I R 1956 Mad 387 (387, 388) (Pt A) (Pr 4) (DB).

——Art. 226 — Who can apply— Right to question constitutionality of law.

Where the petitioner knew when he applied for a permit for a stage carriage and when he obtained it that the condition imposed by R. 160-B of the Rules framed under S. 68, Motor Vehicles Act, was one of the conditions of the permit and had the advantage of the permit since obtaining it and still retained the advantage it is not open to him to challenge the validity of that condition of the permit in the proceedings under Art. 226 of the Constitution. 1955 Mad W N 910 : (1956) 1 M L J 179 : 69 Mad L W 1051 : ILR (1956) Mad 1272 : A I R 1956 Mad 349 (349, 350) (Pt A) (Pr 2).

——Art. 226—Right to form association—Extent of—Disciplinary action for contravention of R 16 of Madras Government Servants Conduct Rules — Petition under Art. 226 — Validity of R. 16— See Ibid, Art. 19 (1) (c). AIR 1955 Mad 468.

——Arts. 226 and 19 (g) - Petition under, maintainability — Fundamental right threatened (Madras Commercial Crops Markets Act (20 of 1933))

Where the petitioners contend that the Madras Commercial Crops Market Act has become void under the Constitution and the notices issued by the Marketing Committee calling upon them to obtain licences were a threat to the exercise by them of their

fundamental right to trade, the petitions are maintainable under Art. 226. AIR 1952 S C 115 and AIR 1953 S C 252, Rel. on, (1954) 1 M L J 117 : A I R 1954 Mad 621 (625) (Pt A) (Pr 6) (DB).

[Reversed on another point in A I R 1959 S C 300].

——Art. 226 — Municipalities — City of Bangalore Improvement Act (5 of 1945), S. 29 — Disposal of sites acquired under, by Board of Trustees— Validity of—By whom can be challenged— General challenge not permitted — Municipalities — City of Bangalore Improvement Act (5 of 1945), S. 29. ('62) 40 Mys L J 313 (DB).

■ ——Art. 226 — 'Any other purpose' — Scope of authority—Constitutionality of legislation — Examination of, without any injury.

Per Hidayatullah J.—It is true that Art. 226 gives the power not only for the enforcement of fundamental rights but also for 'any other purpose'. The words 'any other purpose' are of very wide significance, but it cannot be postulated that the High Courts were given unlimited power to do anything by their writs, orders or directions. Some limitations must be placed by the High Court on its own powers. Thus, a petition for the examination of the constitutionality of an Act does not lie even under the wide powers conferred by Art. 226. In no country is the constitutionality of a statute examined on a mere petition to a superior Court. In other words advisory opinions or declaratory judgments on the constitutionality of legislation cannot be given apart from some concrete injury or controversy. (Procedure in England Australia, Canada and U.S.A. considered and limitations on the power of Court stated.) Sheoshankar v. State Government of Madhya Pradesh, 52 Cri L J 1140 : ILR (1951) Nag 646 : A I R 1951 Nag 58 (66, 69) (Pt C) (Prs 43, 44, 61) (FB).

——Art. 226—Bihar Sales Tax Act (9 of 1959), S. 20-A —Validity—Dealer has no right to challenge its validity on ground of violation of Art. 19 (1) (f) of the Constitution — S. 20 A is valid and intra vires the State Legislature. See Ibid, Art. 19 (1) (f). AIR 1966 Pat 54 (DB).

——Art. 226 — Municipalities — Bihar and Orissa Municipal Act (1922), S. 98 — Validity. See Municipalities — Bihar and Orissa Municipal Act (7 of 1922), S. 98. AIR 1953 Pat 117.

——Art. 226—Sales Tax—Bihar Sales Tax Act (1947) —S. 2 (c) — Validity —(Interpretation of statutes) — (Civil P. C. (1908), Pre.) See Sales-tax — Bihar Sales Tax Act (19 of 1947), S. 2 (c). AIR 1953 Pat 87.

[Reversed in AIR 1955 S C 661]

——Art. 226:— Who can apply — Right to question constitutionality of law — (Administration of Evacuee Property Act (1950), S. 16).

The validity of a statute can be impugned only by a person whose rights have been or are about to be prejudicially affected by the application or enforcement of the statute. One who invokes the power of the Court to declare an Act of the Legislature to be unconstitutional must be able to show not only that the statute is invalid but that he has sustained, or is in immediate danger of sustaining, some direct injury as the result of its enforcement. One who does not belong to the class that might be injured by a statute cannot raise the question of its invalidity. Where, therefore, the Central Government issues a certificate under S. 16, Administration of Evacuee Property Act, a displaced person from West Pakistan cannot be said to have been prejudicially affected thereby so as to entitle him to challenge the validity of that section by applying for the issuance of a writ. (1870) 5 Q B 466; (1901) 2 K B 157 and (1921) 1 K B 248, Disting. ILR (1955) Punj 963 : 57 Punj L R 475 : A I R 1956 Punj 19 (20, 21) (Prs 4, 6) (DB).

——Arts. 226 and 23 — Locus standi to challenge validity of Act — [Punjab Passengers and Goods Taxation Act (16 of 1952), Ss. 3 (3) and 4].

A statute may be assailed only by a person relying on an alleged invasion of his own constitutional rights. The invasion must affect his interests adversely and this interest must be a genuine proprietary interest and not merely a remote interest. Under the Punjab Act 16 of 1952 the tax is to be paid not by the petitioners who are applying their vehicles on hire but by the passengers who are carried or by the owners of the goods which are transported. The petition challenging the validity of the Act is, therefore incompetent. (1955) 6 S T C (Sup) 1 : ILR (1955) Punj 58 : A I R 1954 Punj 264 (265) (Pt A) (Pr 5) (DB).

7. Alternative remedy.

(a) Adequate and prompt.
(b) Appeal or revision.
(c) Appeal or revision or suit, when no adequate remedy.
(d) Burden as to.
(e) Contractual rights.
(f) Costly or ineffective.
(g) Fundamental rights, infringement of.
(h) General rule applies to othe rections, orders and writs.
(i) Special responsibility of Supreme Court.
(j) Inconvenience or delay in getting redress.
(k) Matter pending before ordinary Court or tribunal.
(l) Matters to be taken into consideration.
(m) Patent assumption of jurisdiction or want of jnrisdiction or flagrant disregard to principles of law.
(n) Disregard of principles of natural justice.
(o) Question of great constitutional or public importance.
(p) Sales tax, illegal taxation.
(q) Specific remedy provided.
(r) Statute providing self-contained machinery.
(s) Suit, remedy of.
(t) Other remedy barred, or exhausted or not taken or not available.

7. Alternative remedy.

■ ——Art. 226—Other remedy open — Discretion of High Court to grant relief under Art. 226 — Interference by Supreme Court. See Ibid, Art. 136. AIR 1965 S C 1321.

■ ——Art. 226 — Other remedy open — The High Court has a discretion to grant relief under Art. 226, even if there are other alternative statutory remedies. Collector of Monghyr v. Keshav Prasad Goenka, (1962) 2 S C A 708 : (1963) 1 S C R 98 : I L R 42 Pat 112 : 1962 B L J R 863 : A I R 1962 S C 1694 (1703) (Pt G) (Pr 20).

■ ——Art. 226—Other remedy open — Issue of writ. See Administration of Evacuee Property Act (1950), S. 7. AIR 1961 S C 1087.

■ ——Art. 226—Other remedy open—Issue of writ.

The jurisdiction of the High Court to issue writs against orders of the Tribunal is undoubted; but then, it is well settled that where there is another remedy provided, the Court may properly exercise its discretion in declining to interfere under Art. 226. Veluswami Thevar v. Raja Nainar, 1959 S C A 424 : (1959) 2 Mad L J (SC) 48 : (1959) 2 Andh W R (SC)

48 : 1959 S C J 751 : (1959) Supp 1 S C R 623 : AIR 1959 S C 422 (429) (Pt D) (Pr 18).

——Art. 226 — Mandamus — It will not ordinarily be issued where petitioner has adequate legal remedy.

Mandamus is a supplementary remedy of which use is made where a person has a legal right and no other appropriate redress to prevent a failure of justice. Mandamus, will not, therefore, ordinarily issue where the petitioner has an adequate legal remedy. The matter lies however within the discretion of the Court. A I R 1954 All 393, Foll. **A I R 1956 Ajmer 25** (27) (Pt C) (Pr 7).

——Art. 226 — Adequacy of alternate remedy — Meaning of remedy.

When the question is of adequacy of alternate remedy against the impugned order, it means the final remedy and not any interim remedy that may be given for the time being. Gyan Chand Bhatia v. Rent Control and Eviction Officer, Lucknow, **1965 All L J 924 : 1965 All W R (HC) 676 : AIR 1966 All 57 (62) (Pr 21) (FB).**

——Art. 226 — Petitioner's land attached for default to pay revenue dues — Auction sale on 22-11-1958 — Balance of 75 per cent. of purchase money not deposited by auction purchaser till 8-6-1959 — Sale confirmed on 10-7-1959 — **Held**, sale was a nullity due to non-payment of balance within 15 days of sale — Confirmation of invalid sale was also invalid — There being no alternative remedy to petitioner, writ jurisdiction of High Court would be appropriate forum for ventilating grievance particularly as the only relief would be a re-auction of property. **1965 All L J 277.**

——Art. 226 — Alternative remedy — Provision for revision by State Government under S. 7-F of U. P. (Temporary) Control of Rent and Eviction Act against Rent Controller's Order confers no right to have mistake corrected — Remedy, held, does not amount to alternative remedy — Writ jurisdiction can be exercised. **1965 All L J 211.**

[**Overruled** in AIR 1966 All 57 (FB).]

——Art. 226—Alternative remedy—Mala fides—Proceeding under S. 34, Income-tax Act—Writ petition by assessee—Interim order by High Court directing that no assessment in respect of escaped income be passed upon that proceeding — Another assessment proceeding under S. 34 for another year — Assessment in respect of escaped income — Writ petition against — Income-tax Officer held did not act mala fide — Defence of existence of alternative remedy can be raised at final hearing of writ petition — Relief held could not be granted only because time for appealing against assessment had expired — Income-tax Act (1922), S. 34.

In a proceeding initiated under S. 34, Income tax Act, the Income-tax Officer, despite the objection by the assessee that he had no jurisdiction to initiate proceedings under S. 34 in respect of the assessment year 1950-51, continued the proceeding under S. 34; and this led to the assessee filing a writ petition wherein an interim order was issued directing that no assessment order be passed in respect of escaped income upon that proceeding. Thereupon the Income-tax Officer turned his attention to the pending assessment proceeding, also under S. 34, for the assessment year 1949-50 and included a sum of Rs. two lacs, which was sought to be taxed as escaped income in 1950-51 assessment year. The assessee for the second time filed a writ petition wherein it was urged that the existence of an alternative remedy could be no bar when the principal allegation upon which the petition was founded was that the Income-tax Officer had acted mala fide in assessing the assessee in order to circumvent the interim order passed by the High Court.

Held that there was no sufficient material before the High Court to justify the finding that the Income-tax Officer acted mala fide. **The interim order issued** by the High Court in the earlier petition merely restrained the Income-tax Officer from making an assessment order in the proceedings for the assessment year 1950-51, and did not prohibit him from completing the assessment of the year 1949-50. There was no question here of circumventing or by-passing the interim order of the High Court, which related to the assessment year 1950-51. Even assuming that the effect of the interim order was to restrain the Income tax Officer from at all assessing the sum of Rs. two lacs, the Income-tax Officer could not be said to have acted mala fide. To substantiate the charge of mala fide it was necessary for the assessee to show that the sum of Rs. two laes could not have been assessed to tax at all by the Income-tax Officer for the assessment year 1949-50 and that it was not possible for him to have reasonably taken the view that the sum was assessable in that assessment year. The assessee would only succeed if he was able to establish that the act of the Income-tax Officer in assessing the sum of Rs. two lacs for the assessment year 1949-50 was so patently unreasonable, arbitrary and perverse that the Court could not but conclude that he was acting mala fide. AIR 1957 S.C 354, Disting. **Held** further that the assessee when he filed the petition, was aware that there was an alternative remedy available to him and that the objection as to the existence of that remedy could be raised both at the stage when the petition was heard in admission and also subsequently upon its final hearing. Merely because the petition had been admitted did not deprive the Income-tax authorities of raising the objection as to the existence of an alternative remedy at any time after the admission of the petition. It was a risk which the assessee took when he filed the petition and which risk he faced throughout the pendency of the petition. It was, therefore, not possible to grant relief in this case only, because the period of limitation for appealing against the assessment order had expired. **(1965) 1 I T J 68 : (1966) 59 I T R 141 (All).**

——Art. 226—Writ of prohibition—Another remedy open —Petitioner is not entitled to a writ. (1964) 1 Lab L J 724 : I L R (1964) 1 All 560 : 1964 All L J 42 : AIR 1964 All 328 (328, 329) (Pt B) (Pr 2) (DB).

——Art 226—Existence of alternate remedy — Exercise of jurisdiction under Arts. 227 and 226. See Ibid, Art. 227. AIR 1963 All 280.

——Art. 226—Certiorari — Existence of alternative remedy is no bar — Income-tax Act (1922), Ss. 33B (2), 26A.

Where a writ of certiorari is concerned, the existence of an alternative remedy can be no bar. In any case the existence of an alternative remedy is only one of the matters to be taken into consideration by the High Court in exercising its discretion under Art. 226. Alternative remedy of revision to the Commissioner under S. 33-B (2) of the Income-tax Act, against the order of I.-T. Officer cancelling the registration certificate of the assessee firm, held no bar to the grant of the writ of certiorari. **(1963) 47 I TR 493 (All).**

——Art. 226——Writ—Alternative remedy open—No bar to issuance of writ. AIR 1961 S C 1615, Foll. (1962) 13 S T C 302 (All).

——Art. 226—U. P. Large Land Holdings Tax Act (31 of 1957), S. 16—Rectification — Alternative remedy-See U. P. Large Land Holdings Tax Act (31 of 1957), S. 16. 1962 All W R (H C) 57.

——Art. 226—Alternative remedy—Not an absolute bar to grant of relief by way of writ.

The practice of not granting relief in writ proceedings when an alternative remedy exists, is based on the self discipline of the High Court and is not to be rigidly applied in every case. A I R 1958 S C 86 and AIR 1952 All 836, Rel. on. **(1962) 1 Lab L J 7 : (1961) 3 Fac L R 25 (All).**

——Art. 226—Other remedy—Issue of writ. See Ibid, Art 311. A I R 1961 All 502.

——Art 226 Other remedy open—Writ petition—Competency. See Ibid. Art. 19 (1) (F). **1960 Cri L J 867 : AIR 1960 All 402.**

——Art. 226—Other remedy open—Interference.

Ordinarily, the High Court will decline to lend it extraordinary powers under Art. 226 in any case where an alternative remedy existed but has not been pursued but this is a rule of self discipline and in appropriate cases the Court will, notwithstanding the existence of any alternative remedy, extend its assistance **ILR (1959) 1 All 787 : AIR 1960 All 353 (358) (Pt A) (Pr 28) (DB).**

—— Art. 226—Other remedy open—Issue of writ.

Normally the High Court is hesitant in interfering with proceedings before authorities specially entrusted with deciding those proceedings by issue of a writ of certiorari and the Court refrains from doing so if the Court is of the opinion that the alternative remedy is suitable and convenient. The considerations, however, are different where the principal writ sought is a writ of prohibition. **(1960) 39 ITR 265 : ILR (1959) 2 All 152 : AIR 1960 All 97 (103) (Pt B) (Pr 7) (DB).**

——Art. 226—Mandamus—Alternative remedy — If bar to issue.

It is a well established rule that a writ of mandamus will be refused if there is an alternative remedy AIR 1958 S C 86, Foll. But quite apart from the question whether or not the existence of an alternative remedy is an absolute bar to the issue of a writ of mandamus, it is well known that normally a Court would not be justified in issuing it when there is a clear alternative remedy and when there is no complaint of the breach of a fundamental right. **AIR 1960 All 72 (78, 79) (Pt D) (Prs 15, 17).**

——Art. 226—Petitioner having equally efficacious remedy open—Petition not maintainable. 1959 All L J 514 : 1959 All W R (HC) 380 : ILR (1959) All 529: AIR 1959 All 460 (462, 463) (Pt B) (Prs 13, 16).

—— Art. 226—Other remedy open.

It is well known that the relief contemplated by Art. 226 is discretionary and is refused if ordinary remedy of approaching the Courts is open to the petitioner. **1957 All W R (H C) 268 : AIR 1957 All 505 (516, 517) (Pt J) (Pr 19) (DB).**

——Art 226—Other remedy open—Exercise of discretion by High Court.

There may be considerations on which the High Court may exercise its discretion in favour of the petitioner even though there is an alternative remedy available to him. **AIR 1956 All 564 (568) (Pt C) (Pr 12) (DB).**

[Reversed on another point in AIR 1963 S C 799.]

——Art. 226—Other remedy open—High Court will not give any relief to the petitioner. AIR 1955 N U C (All) 6046.

——Art. 226—Other remedy open. See **U. P. Panchayat Raj Act (26 of 1947), S. 85. AIR 1955 N U C (All) 1175.**

——Art. 226—Another remedy available—Powers of High Court See **U. P District Boards Act (10 of 1922), S. 114. AIR 1955 N U C (All) 172 (DB).**

——Art. 226—Mandamus—Another remedy open.

Mandamus is a supplementary remedy, of which use is made where a person has a legal right and no other appropriate redresss to prevent a failure of justice. Mandamus will not, therefore, ordinarily issue where the petitioner has an adequate legal remedy. The writ will be granted provided the circumstances are such in other respects as to warrant the granting of the writ. **ILR (1954) 1 All 582 : AIR 1954 All 393 (399) (Pt H) (Pr 28) (DB).**

——Art 226—Issue of writ—Other remedy open.

The power to issue writ vested in the High Court under Art. 226 shall not be exercised in cases where a party has adequate or specific remedy available to it. **1953 All L J 125 : AIR 1953 All 399 (400) (Pr 6) (DB).**

——Art. 226—Other adequate and specific remedy open to applicant—Application will not be entertained. 1950 A L J 767 (FB) : 1951 A L J 576 (FB), Foll. 1952 All L J 733 : 1953 A I W R (HC) 113 : AIR 1953 All 109 (110) (Prs 2, 3) (DB).

——Art. 226—Powers under—When exercised.

Powers under Art. 226 to grant a writ of mandamus not to enforce a particular decree or order or to make a certain declaration should not be used when the applicant has another equally efficacious remedy available to him. **I L R (1953) 2 All 849 : 1952 R D (H C) 4 (2): 1952 All W R (HC) 139 : AIR 1952 All 697 (697) (Pt A) (Pr 3) (DB).**

——Art. 226—Scope of powers under.

Art. 226 is not intended to give an alternative easy remedy to enable a person to move the High Court instead of seeking his ordinary remedy under the law. The power under Art. 226 would be sparingly used by the High Court and only in those exceptional cases where there is no adequate remedy and an application under Art. 226 is the only convenient, beneficial and effectual means of getting redress. An application under Art. 226 for a writ in the nature of mandamus can be filed only if it is established that the opposite parties had refused to do their duty when called upon to do so.

The further power given to the Court under Art. 226 to issue directions and orders is clearly intended to enable the Court to secure inter alia the enforcement of any of the rights conferred by Part III of the Constitution in those cases in which the circumstances do not justify the grant of one or more of the five named writs or where such remedy would not be appropriate. The Court's power in such cases to issue directions or orders or writs should be exercised with caution and circumspection and ordinarily only in those cases where grave injustice may otherwise ensue and no other remedy equally convenient, beneficial and effectual is available. Motilal v. State of Uttar Pradesh, **ILR (1951) 1 All 269 : AIR 1951 All 257 (265, 284, 285) (Pt J) (Prs 35, 134) (FB).**

——Art. 226—Scope of powers under — When to be exercised.

Art. 226 of the Constitution was not intended to provide an alternative method of redress to the normal process of a decision in an action brought in the usual Courts established by law. The powers under this Article should be sparingly used and only in those clear cases where the rights of a person have been seriously infringed and he has no other adequate and specific remedy available to him. Indian Sugar Mills, Ltd. v. Secretary to Government, U. P., **ILR (1952) 1 All 188 : 1950 A L J 767 : AIR 1951 All 1 (3) (Pt A) (Pr 11) (FB).**

——Art 226—Other remedy open — If bar to issue of writ. See Estate Duty Act (1953), Ss. 3 (1) (a), 5 and 6. AIR 1962 Andh Pra 107.

——Art. 226 —Other remedy open. See Income Tax Act (1922), S. 46 (2), Proviso. A I R 1960 Andh Pra 525.

——Art. 226—Other remedy open.

It is true that the Courts are reluctant to interfere by certiorari, where an alternative remedy exists. But it is equally true that the existence of such a remedy does not oust the jurisdiction of the Court to issue the writ in appropriate cases. It is a matter of discretion whether any particular case is fit for granting the relief or relegating the party to his ordinary remedy of suit. (1957) 2 Andh W R 123 : (1957) M L J (Cr) 376 : ILR (1957) An Pra 35 : A I R 1958 Andh Pra 140 (141, 142) (Pt A) (Pr 4) (DB).

——Art. 226— Other remedy open — Mandamus — Issue of.

In the matter of the issue of mandamus, ordinarily, the High Court will not issue the writ unless the petitioner has one or other of the rights mentioned in S. 45 of the Specific Relief Act and the public body is doing or forbearing to do an act which is enjoined to do or not to do under. The High Court also will not ordinarily issue a writ if the petitioner has another effective remedy and particularly when that remedy has been availed of. There is no provision of the Madras Co-operative Societies Act or the rules made thereunder which compels the Bank not to hold election of the office bearers if there was a dispute in regard to he election of one or more of the Directors. I L R (1956) Andhra 294.

——Art. 226—Other remedy—Issue of writ.

Even when an alternative remedy is available, the jurisdiction under Art. 226 may be exercised in appropriate cases. AIR 1954 S C 403 Foll. (1957) 2 Lab L J 238 : AIR 1956 Andhra 203 (208) (Pt E) (Pr 22).

——Art. 226—Assam Co-operative Societies Act 1949 (1 of 1950), S 36 — Alternative remedy — Order not complying with S. 36, Assam Co-operative Societies Act —Order is not one under Act —Question of existance of adequate remedy does not arise.

It cannot be said that in every case where the petitioner has an alternative remedy to go up in appeal even though the order may be held to be without jurisdiction, the High Court will not exercise its discretion under article 226. AIR 1961 S C 609, Ref. to.

An appeal can lie against an order under the Act. If the order does not comply with the provisions of section 36 of the Act it is not an order under the Act and thus the question of the adequate remedy being available to the petitioner does not arise in such a case. AIR 1961 S C 372, Disting. ILR (1962) 14 Assam 231.

——Arts. 226 227—Other remedy.

It is not an absolute rule that in all cases where there is an alternative remedy available, the High Court will not exercise its powers under Art. 227 of the Constitution. It is not desirable for this court to exercise its powers in those cases but that is not an absolute bar. There may be cases where the alternative remedy may not be equally efficacious and the High Court may find it necessary to interfere under Art. 227 or under Art. 226. AIR 1958 Assam 77 (79) (Pt C) (Pr 2) (DB).

——Art. 226—Powers of High Court—When may be invoked.

The article is not intended to provide an additional or an alternative remedy where another effective remedy is available, particularly when an inquiry into facts is involved. The extraordinary jurisdiction of the High Court under the article may be invoked in cases where no adequate remedy is available to the aggrieved party and application of Art. 226 alone affords a convenient and effective mode of redress. 3 F J R 195 : I L R (1951) 3 Assam 147 : A I R 1951 Assam 96 (101) (Pt F) (Pr 25) (DB).

——Art. 226—Another remedy being available writ petition will not lie. See M. P. Land Revenue Code (II of 1955), S. 228. 1962 Nag L J 446 : AIR 1963 Bom 117 (DB).

——Art. 226—Other remedy open —Issue of writ in exercise of discretion — Interference in appeal. I L R (1961) Bom 299 : 62 Bom L R 1030 : AIR 1961 Bom 234 (235, 236) (Pt A) (Pr 9) (DB).

——Art. 226—Other remedy open — Issue of writ.

It cannot be contended that when the Income-tax Act provides a particular machinery the aggrieved party can challenge a threat to assessment only by means of that machinery. A I R 1951 S C 23 Foll. 58 Bom L R 184 : (1956) 29 I T R 856 : I L R (1956) Bom 374 : A I.R 1956 Bom 530 (534) (Pt C) (Pr 10) (DB).

[Reversed an another point in AIR 1963 S C 1356].

——Art. 226—Other remedy open—Exercise of jurisdiction under Art. 226 is discretionary.

If a citizen can obtain equally adequate, equally efficacious and equally prompt remedy in ordinary Courts of Law, ordinary High Court would not exercise its discretion in his favour under Art. 226—AIR 1951 All 1, 56 Cal W N 264 Referred—Held alternative remedy open to petitioner — Exercise of special jurisdiction under Art. 226 refused. 55 Bom L R 77 : ILR (1953) Bom 614 : A I R 1953 Bom 195 (195, 196) (Prs 4, 6) (DB).

——Arts 226, 227—Another remedy open—Remedy under Art. 227.

In order that a petition for a writ of certiorari would not lie, the petitioner must have a specific legal remedy, and specific legal remedy in this context can only mean that he must have a right to approach a Court and he must have a right to a remedy if his case was just. Article 227 only deals with the power of the High Court and not with the rights of a litigant. A litigant may approach the High Court, but he has no right to do so, nor has he a right to a remedy because the High Court may refuse a remedy under Art. 227. Therefore the mere power of superintendence conferred upon the High Court does not disentitle a petitioner seeking a writ of certiorari from coming to the High Court and asking for that writ. It cannot be said under the circumstances of the case that he had an alternative specific legal remedy open to him which he should have availed of before he asked for a prerogative writ. 53 Bom L R 674 : ILR (1952) Bom 864 : A I R 1951 Bom 423 (426) (Pt B) (Pr 7) (DB).

——Art. 226—Other remedy open—Issue of writ of certiorari

There is no rule with regard to certiorari as there is with mandamus, that it will lie only where there is no other equally effective remedy. Provided the requisite grounds exist, certiorari will lie although a right of appeal has been conferred by statute. This, of course, does not mean that if the aggrieved party has another and an adequate remedy, it should not be taken into consideration. A I R 1958 S C 86, Rel. on. ('58) 62 Cal W N 397.

——Art. 226—Another remedy open.

An alternative remedy is not an absolute bar to the making of the order under Art. 226 of the Constitu-

tion. In an appropriate case the High Court has power to exercise its jurisdiction. 60 Cal W N 933 : (1957) 1 Lab L J 494 : AIR 1956 Cal 662 (668) (Pt C) (Pr 9).

——Art. 226—Alternate remedy is not absolute bar—Each case depends upon its own special circumstances. A I R 1955 N U C (Cal) 401.

——Art. 226—Scope—Other remedy—Principle of.

The High Court will not interfere when there exists other adequate legal remedies, nor will it impose its will upon the exercise of executive discretion. But that course of conduct is dependent upon expediency and not want of jurisdiction. The existence of an alternative remedy is not absolute bar, and the abuse of a power even though discretionary can always be controlled. 57 Cal W N 397 : ILR (1955) 1 Cal 401 : A I R 1953 Cal 548 (559) (Pt O) (Pr 49).

● ——Art. 226 — Application under — Existence of alternative remedy—If a bar.

The existence of an alternative remedy is not an absolute bar against an application for a writ or order under Art. 226 of the Constitution. Chairman Budge Budge Municipality v. Mangru Mia, 57 Cal W N 25 : A I R 1953 Cal 433 (444) (Pt K) (Pr 46) (SB).

——Art. 226—Another remedy open—Jurisdiction to issue writs when barred.

(a) The writs of mandamus, certiorari and prohibition, and for the matter of that all high prerogative writs, are ordinarily not issued where there exists an alternative remedy equally efficient and adequate.

(b) But there is no inflexible rule that such writs cannot be issued where the Court thinks it just and convenient to do so. The fact that it ordinarily does not do so is a question not of want of jurisdiction but of expediency.

(c) Whether the alternative remedy is equally efficacious or adequate is a question of fact to be decided in each case.

(d) Where a complaint is made against any act done or purported to be done under any statutory provision, the fact that there exists in the Statute itself a possible remedy, is an important fact to be taken into consideration. Where such provisions exist, the Court will be extremely reluctant to interfere by way of high prerogative writs and especially so if the applicant has actually taken recourse to his remedy under the Statute.

(e) But the fact that there exists a remedy under the Statute does not take away the jurisdiction of the Courts to issue the writs in appropriate cases.

(f) In the following cases it has been held that a writ will be issued notwithstanding an alternative remedy, whether under a statutory provision or otherwise.

(i) Where an inferior tribunal assumes jurisdiction and the want of jurisdiction is patent on the face of it.

(ii) Where the proceedings complained of are against the principles of natural justice; and (iii) where the alternative remedy is too costly or ineffective or entails such delay that the applicant would be irreparably prejudiced or the remedy might prove valueless. Case law Ref. A I R 1952 Cal 171 (175) (Pt C) (Pr 20).

——Art. 226—Other remedy open — High Court may still entertain writ petition. A I R 1954 S C 403 and AIR 1958 S C 86, Rel. on. AIR 1965 Him Pra 41 (43) (Pt B) (Prs 12, 13).

——Art. 226 (1)—Another remedy open.

High prerogative writs are ordinarily not issued, where an alternative remedy equally efficient and adequate exists, unless there is any exceptional reason for ousting the jurisdiction of the ordinary Courts of the land and to deal with the matter under the writ jurisdiction. A I R 1954 Him Pra 87 (88) (Prs 5, 7).

——Art. 226—Other remedy open.

Where a person has an equally efficacious remedy, the High Court would not interfere in writ proceedings, for the jurisdiction exercised in writ proceedings is an extra-ordinary one and the powers are to be exercised in rare and exceptional cases. I L R (1956) Hyd 630 : AIR 1957 Hyd 19 (20) (Pt B) (Pr 5) (DB).

——Art. 226—Other remedy open.

Article 226 is not intended to provide an alternative method of redress to the normal process of a decision in action brought in the usual course established by law. ILR (1956) Hyd 630 : A I R 1957 Hyd 19 (21) (Pt D) (Pr 7) (DB).

——Art. 226—Other remedy open.

Where there is an equally adequate and efficacious remedy the High Court would not interfere by way of writ. ILR (1953) Hyd 665 : A I R 1954 Hyd 25 (27) (Pt A) (Pr 3) (DB).

——Art. 226—Jurisdiction under Art. 226.

The jurisdiction conferred by Art. 226 does not provide an alternative mode of redress to the normal process of litigation in ordinary Courts of law. The powers under it are exercised only for meeting extraordinary cases where personal and private rights of persons have been seriously infringed, and they are otherwise unable to obtain any adequate or prompt remedy for the redress of their grievance. ILR (1953) Hyd 374 : A I R 1953 Hyd 228 (229) (Pt D) (Pr 7) (DB).

● ——Art. 226—Other remedy – Existence of—Effect of. See Constitution of Jammu and Kashmir (1957), S. 103. A I R 1958 J & K 11 (FB).

——Art 226—Other remedy open—Issue of writ. See Co-operative Societies—Madras Co-operative Societies Act (6 of 1932), S. 2 (a). A I R 1961 Ker 123.

——Art. 226—Other remedy open—Issue of writ.

The existence of another remedy has never been treated as an absolute bar to the exercise of the powers under Art. 226. If the Court has otherwise jurisdiction to deal with the matter, the fact that it is open for the parties to institute a suit is no bar to interference by the Court. 1959 Ker L R 1195 : 1959 Ker L J 1267 : 1959 Ker L T 1208 : (1960) 1 Lab L J 319 : A I R 1960 Ker 220 (221) (Pt E) (Pr 13).

——Art. 226—Other remedy open—Issue of writ. See Ibid, Art. 19 (1) (g). 1960 Ker L T 1087.

——Art. 226 – Writ petition under—Existence of alternative remedy—Effect.

Though the existence of an alternative remedy is not per se a bar to the exercise of the jurisdiction under Art. 226, the High Court will not, ordinarily, interfere under the article when the alternative remedy has not been pursued. AIR 1958 S C 86 and 1959 K L J 1416, Rel. on. 1960 Ker L T 260.

——Art. 226—Other remedy open.

The existence of an alternative remedy has never been held to debar the exercise of its jurisdiction by the High Court under Art. 226. 1959 Ker L J 410 : 1959 Ker L T 521 : 1959 Ker L R 1107 : ILR (1959) Ker 1124 : AIR 1959 Ker 347 (350) (Pt F) (Pr 8).

[Impliedly Overruled on another point in AIR 1963 S C 274.]

——Art. 226—Other remedy open.

The existence of a suitable and adequate remedy before a Court of law which will be in a position to know all the facts and allegations is a consideration

which makes the High Court disinclined to exercise its powers under Art. 226, which are discretionary. Madh B L J 1955 H C R 1560 : AIR 1955 M B 200 (202) (Pt E) (Pr 31) (DB).

——Art. 226—Writ of mandamus—Issue of, when alternative remedy is open — Specific Relief Act (1877), S. 45.

A Court would be loath to make an order of mandamus or certiorari where there is an alternative remedy which is equally appropriate and convenient, unless there has been a denial of natural justice. ILR (1952) Madh Bha 231 : AIR 1950 Madh B 46 (53) (Pt I) (Pr 15) (DB).

——Art. 226—Other remedy. See Motor Vehicles Act (1939), S. 62. AIR 1963 Madh Pra 274 (DB).

——Arts. 226 and 227 — Question not raised before Panchayat — It cannot be raised for the first time in High Court—Alternative remedy no bar to petition under Art. 226.

Held, that the question which was not raised before the Nyaya Panchayat could not be allowed to be raised in the High Court. 1961 M P L J 761, Foll. Held also that petition under Article 226 of the Constitution could be entertained by the High Court even though there was an alternative remedy. The existence of an alternative remedy was no bar to a petition under Articles 226 and 227 of the Constitution. AIR 1953 Nag 213 and 1955 N L J 323, Foll. 1962 M P L J (Notes) 126.

●——Art. 226—Other remedy open — No absolute bar to issue of direction or writ.

Where a petitioner has an alternative remedy the fact of the existence of the remedy may be taken into consideration in the exercise of the jurisdiction under Art. 226. The existence of an alternative remedy is however, not an absolute bar to the issue of a direction or writ under Art. 226. Colonel Lal Rampal Singh v. State of Madhya Pradesh, 1961 M P L J 1 : ILR (1960) Madh Pra 934 : 1961 M P C 94 : 1961 Jab L J 32 : AIR 1961 Madh Pra 154 (158) (Pt B) (Pr 13) (FB).

[Reversed on another point in AIR 1966 S C 820.]

——Art. 226 - Other remedy—Issue of writ.

Before one can be permitted to avail of the discretionary and extraordinary remedies under Art. 226 of the Constitution, he must have exhausted the special remedies provided by the special law. 1958 M P L J (Notes) 116.

——Art. 226—Whether establishment is within or outside Act, is mixed question of fact and law — Disputed questions of fact—Jurisdiction of High Court under Art. 226 to investigate—Recourse to S. 19-A of Employees' Provident Funds Act (1952) proper course —Application under S. 19 A by owner of establishment is competent—Commissioner cannot enforce Act until decision of dispute by Central Government on application by owner. See Employees' Provident Funds Act (1952), Sch. I. AIR 1963 Mad 238.

——Art. 226—Subsisting alternative remedy does not preclude Court from issuing writ, when matter had fully been gone into.

However convenient or expedient it may be to dismiss a writ petition before issuing rule nisi on the ground of subsisting alternative remedy, it may not always be just to do so at the final stage, when the parties have incurred all the expenses and the Court has gone into the matter fully. The availability of other remedies to the aggrieved party may weigh with the Court in refusing a writ under Art. 226 of the Constitution but cannot disentitle him to get the relief or preclude the Court from issuing the writ. 1940-2 M L J 860, Rel. on. 73 Mad L W 437: 1960-2 Mad L J 392 : ILR (1961) Mad 305.

——Art. 226 — Other remedy open—Issue of writ.

The existence of an alternative remedy is only a circumstance which would influence the discretion of the High Court. It is not a matter which would affect its jurisdiction. (1960) 1 M L J 472 : AIR 1960 Mad 238 (240) (Pt C) (Pr 5).

——Art. 226 — Objection on ground of availability raised at late stage—Issue of writ.

Where, in an application to issue appropriate writs or directions to restrain the Inspector of Factories and the Government from enforcing the provision of the Factories Act and certain other Acts against the petitioner, it was contended that the question raised by the petitioner could be raised in the criminal proceedings which were pending against him under those Acts.

Held, that although that objection would have been good as a preliminary point on which the petition might have been dismissed at the stage of admission, it would not be right to dismiss the petition on that ground after the entire matter had been argued. (1958-59) 14 F J R 445 : 71 Mad L W 552 : 1958 Mad W N 429 : ILR (1958) Mad 999 : (1958) M L J (Cr) 699 : (1958) 2 M L J 346 : AIR 1958 Mad 602 (607) (Pt B) (Pr 21).

——Art. 226—Alternative remedy—Other remedy by suit—Mere balance of convenience not sufficient. AIR 1958 Mad 501.

——Art. 226 — Other remedy — Issue of writ. See Industrial Disputes Act (1947). (1958) 2 M L J 74 : 1958 M L J (Cri) 584 : AIR 1958 Mad 398 (DB).

——Art. 226—Other remedy—If bar to writ—Admission of petition.

The existence of an alternative remedy does not bar the jurisdiction of the High Court under Art. 226 but is merely a matter to be taken into account in exercising its discretion to issue the writ or not. At that stage the Court would consider not the mere existence of the remedy but its reality, adequacy and effectiveness. The numbering of the writ petition however need not be refused on this ground. 70 Mad L W 60 : (1957) 1 Mad L J 26 : AIR 1957 Mad 338 (338, 339) (Pt A) (Pr 1).

——Art. 226—Other remedy open — Mandamus — Existence of other remedies — Remedy need not be same or identical—Considerations.

A right may carry with it more than one remedy, so that a person whose right is invaded may sue for remedies such as (1) specific performance, (2) injunction and (3) damage. He may not succeed in getting the reliefs of specific performance and injunction. That does not mean that he has no remedy for his right. He has still the remedy of damages—such damages as would afford complete satisfaction. It is not necessary that the remedy should be more or less of the same character, if not identical, with the one asked for under the writ. (1956) 26 Com Cas 431 : ILR (1957) Mad 383 : 70 Mad L W 28: (1957) 1 Mad L J 254 : AIR 1957 Mad 309 (318) (Pt G) (Pr 22) (DB).

——Art. 226 — Alternative remedy — Discretion of Court.

The existence of an alternative remedy is not a statutotry bar to the exercise of jurisdiction under Art. 226 of the Constitution, though the Court would be slow to exercise its discretion in favour of the issue of a writ if there is an alternative remedy open to the petitioners. 68 Mad L W 777: ILR (1957) Mad 631 : 1955 Mad W N 865 : (1955) 2 M L J 612 : AIR 1956 Mad 146 (150) (Pt C) (Pr 21).

——Art. 226—Alternative remedy — Discretion of Court.

No doubt the existence of an alternative remedy will very often dissuade the High Court from granting an application for a writ. But this is a matter of discretion and the Court is not bound to refuse a writ merely because an alternative remedy exists. (1955) 1 M L J 243 : 68 Mad L W 26 : AIR 1955 Mad 120 (121) (Pt B) (Pr 4).

——Art. 226—Other remedy open—Discretion—Prohibition and certiorari.

The existence of an adequate alternative remedy would be a strong dissuading factor ; nevertheless if after taking into account all the relevant circumstances the High Court reaches the conclusion that the case is an appropriate one in which the writ should go it has got authority to issue the writ.

The existence of an alternative remedy would not, where the prayer is for the issue of a writ of prohibition be as strongly dissuasive as where the prayer is for the issue of writ of certiorari since it avoids expense and waste of time. Case law discussed. (1955) 6 S T C 1 : 68 Mad L W 132 : 1954 Mad W N 960 : (1955) 1 Mad L J 189 : I L R (1955) Mad 1042: A I R 1954 Mad 1144 (1147, 1148, 1149) (Pt A) (Prs 13, 17, 21, 23) (DB).

——Art. 226—Another remedy. See Madras Commercial Crops Market Act (20 of 1933), S. 4. (1954) 1 Mad L J 117 : A I R 1954 Mad 621 (DB).

——Art. 226—Other remedies available.

If the assessee seeks to obtain from the High Court any relief which he would have been entitled to obtain under any of the provisions of the Income-tax Act, then certainly the High Court would not exercise its power to issue prerogative writs to give such relief to an assessee. But where the application is only to direct the Commissioner to entertain an application under S. 33-A (2) provided by the Act itself on the ground that the assessee has been improperly denied that right, the assessee cannot obtain this relief under any of the provisions of the Income-tax and the application for mandamus is maintainable. ('51) 64 Mad L W 270 : (1951) 19 I T R 402 : (1951) 1 Mad L J 417 : 1951 Mad W N 257 : I L R (1951) Mad 815 : A I R 1951 Mad 204 (206) (Pt B) (Pr 5) (DB).

——Art. 226—Alternative remedy—When no bar to issue writ.

The existence of an alternative remedy is not per se a bar to the issue of a writ by the High Court which is a matter depending on its discretion to be judicially exercised on the facts and circumstances of each case. A I R 1962 S C 1694, Rel. on. A I R 1965 Manipur 39 (42) (Pt D) (Pr 27).

——Art. 226—Other remedy open.

Where an alternative efficient and adequate remedy is available, writ of mandamus should not be issued. A I R 1956 Manipur 1 (4) (Pt D) (Pr 15).

——Art. 226—Exercise of jurisdiction under — Existence of alternative remedy, not an absolute bar. I L R (1960) Mys 73.

——Art. 226—Existence of other remedy—Effect.

Ordinarily, the Court will not allow parties to invoke the aid of Art. 226 when they have other means of obtaining redress and their rights or interests are not substantially affected by the acts or orders of the authorities. I L R (1955) Mys 203 : A I R 1955 Mys 81 (85) (Pt C) (Pr 9) (DB).

● ——Art 226 — Writ of certiorari — Existence of other remedy.

The existence of an adequate specific legal remedy would affect a writ of mandamus but not certiorari. A I R 1952 All 99, Rel. on.

An alternative remedy is not considered to be always an absolute bar to the issue of a writ though it may be a ground for reluctance to issue it. A I R 1952 All 753 (FB), Rel. on. Sampu Gowda v. State of Mysore, I L R (1953) Mys 440 : 32 Mys L J 12 : A I R 1953 Mys 156 (161) (Pt G) (Pr 19) (FB).

——Art. 226—Power under—Exercise of, when other remedy is open.

The power conferred by Art. 226 ought not, ordinarily, to be exercised where other means of redres are available to a party. This provision is not to be so construed as, virtually, to take away the jurisdiction of the ordinary Courts of the land. I L R (1952) Nag 331 : 1954 Nag L J 327 : A I R 1952 Nag 301 (302) (Pt C) (Pr 8) (DB).

——Art. 226 — Where another remedy is available, a writ of certiorari is not usually granted. A I R 1942 Mad 384 and A I R 1948 Mad 304, Foll. ('51) 1951 Nag L J (Notes) 107 (DB).

——Art. 226—Other remedy open.

Unlike Art. 32 (2), Art. 226 confers only powers on the High Court which it is left to its discretion when to exercise and when not to exercise. When the petitioner has already filed a civil suit in which the same issues as those raised in the petition under Art. 226 arise for decision, the High Court will not entertain the petition ; Case law referred. ('51) Nag L J 79 (80, 81) (DB).

——Art. 226 — Levy of Cess on lands under Orissa Cess Act — Petitioner must first avail himself of remedies provided in that Act before asking for a writ — Petition must be dismissed. I L R (1964) Cut 665.

——Art. 226 — Alternative relief through another tribunal—Interference under Art. 226.

Where the statute provides an alternative relief through another tribunal the Court would not ordinarily interfere in exercise of its prerogative powers until the other remedy has been exhausted. (1917) 1 K B 176, Rel. on. I L R (1951) Cut 441 : 1952 Cri L J 1039 : A I R 1952 Orissa 52 (59) (Pt B) (Pr 22) (DB).

——Arts. 226, 227—Writ—Maintainability of petition—Other remedy open — Matter to be decided controversial—Writ application is not appropriate. I L R 44 Pat 294 : 1964 (2) Cri L J 492.

——Art. 226—Quo Warranto — Petition challenging election—Principles governing issue of writ—Candidate not qualified to be a commissioner on date of election elected as chairman of municipality—Election petition challenging election dismissed on technical ground — Candidate not only qualified at time of writ petition but also commanding requisite majority of votes—Quo warranto information will not be issued against him.

Where there are statutory provisions dealing with the conduct of an election the writ of quo warranto is displaced. An election can then be challenged in the manner laid down by the statute. A I R 1954 Bom 116, Rel. on.

Further the High Court would refuse to entertain an application under Art. 226 for grant of information in the nature of quo warranto to invalidate an election on the ground that the candidate was not qualified to be elected on the date of his election when at the date of the hearing of the petition he has become qualified and there is nothing to bar his re-election. A I R 1954 All 227 (FB), Rel on.

Held, on facts that the relief sought by the petition under Art. 226 could as well be sought by an election petition under the rules and that alternative remedy was equally appropriate and effective. The relief in fact had been so sought but was not granted, what-

ever might be the reason. Therefore to grant quo warranto information against him would be 'vexatious to do so' or 'futile in its results'. A I R 1961 Pat 475 (479, 480) (Prs 10, 11) (DB).

——Art. 226—Another remedy open — Effect. A I R 1953 Pat 103 (104) (Pt B) (Pr 4) (DB).

——Art. 226 -Other remedy open — Issue of writ—Propriety—Practice.

It is a well established and undoubted rule of practice that a mandamus ought not to be granted where there is another appropriate remedy. It is not necessary that the other remedy must be as convenient; if no reasonable objection can be taken to the alternative remedy, a mandamus ought not to be granted. 31 Pat 145 : A I R 1953 Pat 47.

——Art. 226—Issue of writ—Essentials for—Applicant claiming right or title depending on disputed questions of fact - Issue of writ—It justified.

The remedy given by Art. 226 of the Constitution is an extraordinary remedy and can be invoked only in exceptional circumstances by those who have no alternative remedy by way of suit or otherwise. The essential requirements are that (i) that the applicant has some fundamental or legal rights; (ii) that the said right has been violated or there is an imminent threat to that right; and (iii) that the petitioner has either no other remedy available to him, or even if there is such a remedy available that remedy would not be equally prompt, adequate and efficacious and that in case he is left to that remedy, is likely to suffer incalculable loss and harassment. Where the petitioner has not established a clear title or legal right necessitating interference by the High Court, and his right or title, if any, depends upon disputed questions of fact which cannot be satisfactorily determined in such summary proceedings, the High Court ought not to grant any writ. 29 Pat 491 (FB); 30 Pat 735, Ref. AIR 1952 Pat 194 (200) (Ft F) (Pr 29) (D B).

[Overruled on another point in AIR 1953 S C 215].

——Art. 226—Other remedy open—Not a bar.

Where a person, being reverted, challenges the order of reversion by presenting a petition under Art. 226, even if a suit does lie, for the relief claimed, that would not stand as a legal bar to the petition. ILR (1955) Patiala 202 : AIR 1955 Pepsu 106 (108) (Pt B) (Pr 6).

——Arts. 226 and 227—Other remedy open—Power of High Court to interfere — Extent — Existence of alternative remedy not per se constitutional bar to exercise of writ jurisdiction.

The jurisdiction conferred on High Court by Art. 226 is not appellate and it is accordingly not empowered to act as a Court of appeal. What is conferred by this Article is supervisory jurisdiction which reserves to the writ Court power to remedy failure of justice caused inter alia by violation of Rule of law Justice as enshrined in the Preamble of our Constitution occupies the first place on the list of cherised human values which have been sought to be secured to all citizens of this Republic. Article 226 seems to have its roots in this purpose and is apparently designed to assume to the citizen, justice denied to him by the subordinate Tribunals. Consistently with this superior status the writ Court does not ordinarily compete or come into conflict with the subordinate Tribunals in their normal functioning nor is it intended to serve as a substitute for them. It is for this, among other reasons, that if a citizen can have justice elsewhere, the extraordinary jurisdiction of the writ Court is ordinarily not allowed to be invoked and the citizen is expected first to seek redress of his grievances from the subordinate Tribunals. But this is not a constitutional bar : it is merely a self-imposed restriction dictated by considerations of practical working, with the result that if the alternative remedy is not equally adequate, efficacious and speedy, this self-imposed restriction must give way in favour of interference to facilitate the cause of substantial justice and further its ends. 67 Pun L R 413 : ILR (1965) 1 Punj 466 : AIR 1965 Punj 170 (172, 173, 174) (Pt B) (Prs 3, 5, 6) (DB).

——Art. 226 — Alternative remedy — Question of alternative remedy being availavle is merely a matter to be considered while exercising jurisdiction under Art. 226 but is not an absolute bar for its exercise. ILR (1962) 1 Punj 176.

——Art. 226 — Alternate remedy — Not an absolute bar to writ petition.

An alternative remedy has never been held to be absolute bar to a writ petition and it is a matter for consideration in each case whether in the circumstances disclosed this Court should or should not interfere on the writ side. 64 Pun L R 586 : ILR (1962) 2 Punj 27 : 1962 Cur L J 108.

——Art. 226—Other remedy open—Disputed question of facts.

Where another remedy equally adequate and efficacious is available, where it has not been alleged, far less proved, that the respondent has exceeded his jurisdiction, where the High Courts' attention has not been invited to any error which is apparent on the face of the record, and where facts are in dispute which ought primarily to be decided by the administrative authorities concerned, the High Court will not entertain a writ petition under Art. 226. (1959) 10 S T C 150 (Punj).

——Art. 226 — Other remedy open—Failure to avail of it — Effect. See Municipalities—Punjab Municipal Act (3 of 1911), S. 121. AIR 1950 Punj 143.

——Art. 226 — Writ of certiorari — Existence of alternative remedy — No bar for entertaining writ petition.

It is well settled law that the fact that the aggrieved party has another and adequate remedy is only one factor to be taken into consideration in deciding whether to issue or decline to issue writ but it cannot be allowed to operate as absolute bar and it cannot be accepted that a writ of certiorari will lie only where there is no other equally effective remedy. The rule requiring the exhaustion of statutory remedies before the grant of writ is a rule of policy, convenience and discretion rather than a rule of law. 1963 Raj L W 339 : ILR (1963) 13 Raj 489.

——Art. 226 — Other remedy. See Marwar Land Revenue Act (1949), S. 86. ILR (1959) 9 Raj 413.

——Art. 226 — Other remedy. See Rajasthan Court of Wards Act (1 of 1951), S. 12. AIR 1955 N U C (Raj) 2193 (DB).

——Art. 226—Alternative remedy—Issue of writ of prohibition—Marwar Village Panchayats Act (1945), S. 60.

It cannot be said that the Court cannot issue an order if there is another remedy available. The power of the Court is there, though it may not be exercised in case where an adequate, specific and convenient remedy is otherwise available. There is no inflexible rule that such writs could not be issued where the Court thought it just and convenient to do so. The fact that it ordinarily did not do so is a question not of want of jurisdiction but of expediency. Even if another remedy is available, it is open to the High Court, where the order is in the nature of prohibition, to issue such order in a proper case.

Section 60 of the Marwar Village Panchayats Act, 1945 does not confer any right on any party. It only gives power to the Minister-in.Charge. Of course it is possible for an aggrieved person to go to the Minister-in Charge and ask him to suspend or abolish the panchayat for reasons mentioned in that section. But the exercise of powers under S. 60, however, presupposes the existence of a valid Panchayat and necessity for abolition arises by improper conduct of the said Panchayat. Where the very constitution of the Panchayat is illegal and where the lack of jurisdiction is patent, a writ of prohibition is the proper remedy. Case law discussed. 1952 Raj L W 184 : ILR (1952) 2 Raj 301 : AIR 1952 Raj 144 (146) (Pt C) (Prs 7, 8, 9, 10, 11) (DB).

——Art. 226—Other remedy open—Effect.

It is well-settled that the extraordinary powers conferred on the High Court under Art. 226 of the Constitution are not to be ordinarily exercised unless there is no other remedy open to an applicant, or, if any remedy is open at all, it is not as convenient, beneficial and effective as the remedy under Art. 226. ILR (1951) 1 Raj 361 : 1951 R L W 389 : AIR 1951 Raj 161 (162) (Pt A) (Pr 4) (DB).

——Art. 226—Other remedy open. See Constitution of India, Art. 31. AIR 1955 NUC (Trav.Co) 1384.

——Art. 226—Availability of other remedies—Interference

It is for the High Court to consider in each case the necessity or desirability of interference notwithstanding the availability or the existence of other remedies or proceedings. 1952 Ker L T 555 : ILR (1952) Trav-Co 463 : AIR 1954 Trav.Co 193 (195) (Pt D) (Pr 12) (DB).

——Art. 226 — Other remedy open — Rule—Object of writ — Application with the object of harbouring delinquent party—Maintainability.

When a distinct and appropriate remedy is open to a party aggrieved by an order of an inferior Court, resort should be had to that remedy. It is an abuse of the process of the Court to approach the High Court for the issue of a writ of certiorari in such a case, especially when the subordinate Court acted within its jurisdiction. This is not, however, an absolute or inflexible rule; if it be shown that before resort is made to such other remedy the mischief sought to be prevented or avoided would be committed, the High Court will interfere by the issue of a writ. But no writ can issue where the object of the application for the writ is harbouring of delinquent persons; its object is to protect the fundamental rights of the citizens AIR 1932 Mad 171; 1932 Mad 321; 1942 Mad 348, Foll. 1950 K L T 217 : 1950 T C L R 604 : 1952 Cri L J 598 : AIR 1952 Trav-Co 101 (101, 102) (Pr 2).

——Art. 226 — Other remedies open—Application whether can be entertained.

Availability of other remedies creates no legal bar to the Court exercising the jurisdiction under Art. 226. Hence the fact that the jural relationship between the petitioner on the one hand and the State on the other is merely contractual. On that the petitioner if aggrieved has other remedies cannot be a ground for rejecting an application made under Art. 226. 1951 K L T 159 : I L R (1951) T C 496 : A I R 1951 Trav-Co 197 (200) (Pt B) (Pr 7).

——Art. 226—Applicability — Other remedies available.

Article 226 is so widely worded that theoretically it can be invoked in any dispute. That is, however, not the intention of the framers of the Constitution. The remedy provided by this article is at all events an extraordinary one. There should be either no other alternative remedy or the alternative remedy should be so inexpedient or round about that it would be unconscionable to drive the party to have recourse to it. But, when it is a common grievance of every day happening, usually redressed by a routine machinery it is altogether unnecessary to invoke Art. 226. A I R 1951 Vindh Pra 41 (42) (Pr 7).

7 (a). Adequate and prompt.

——Art. 226—Prohibition — Other remedy open—If a bar.

An alternative remedy even though equally adequate and efficacious is not a bar to a writ of prohibition. AIR 1956 Ajmer 63 (67) (Pt G) (Pr 15).

[Reversed on another point in AIR 1961 S C 1743].

——Art. 226—View taken by the Additional Commissioner not so manifestly wrong that it should be set aside by certiorari—Appellant having remedy by way of appeal to the Supreme Court with special leave—High Court held was powerless to interfere even though it might consider decision as erroneous. 1965 All L J 290.

——Art. 226—Other remedy open.

Even if another remedy is open to the petitioner, yet if it cannot be regarded as an equally adequate remedy as the remedy by means of a writ petition under Art. 226 of the Constitution, the High Court will entertain the petition under Art. 226. 1957 All L J 126 : 1957 All W R (HC) 193 : AIR 1957 All 155 (159) (Pr 10).

——Art. 226 — Other remedy—Notice under S. 186, U. P. Municipalities Act (2 of 1916)—Maintainability of petition under Art. 226—(Municipalities—U. P. Municipalities Act (2 of 1916), S. 186.)

The petitioner started construction after the expiry of the statutory period given in the notice under section 180 (3), U. P. Municipalities Act. Thereafter a notice was issued against the petitioner under S. 186, U. P. Municipalities Act, asking her to demolish the construction within certain period. Thereupon the petitioner made an application under Art. 226 of the Constitution of India.

Held, that there was no appeal provided for against the order. Even if it be assumed that it was open to the petitioner to challenge the notice if and when an order demolishing the construction was passed or a prosecution was launched against the petitioner, it could not be said that such a remedy would be equally adequate and efficacious in the circumstances of the case. Hence the petitioner could approach the High Court by an application under Art. 226 of the Constitution of India. 1957 All W R (H C) 377 : 1957 All L J 269.

——Art 226 — Other remedy open — Government refusing to pay pension — Maintainability of suit—(Pensions Act (1871), Ss. 4, 5 and 7).

Where the Government refuses to pay pension to the claimant it cannot be said that the claimant has an alternative remedy by means of a suit available to him. Further when there is a dispute with regard to the right of the claimant to claim the pension against the Government, he cannot apply to the Collector under S. 5 for such a relief. Such an application would not provide an adequate remedy when the Government itself is contending that the claimant has lost his right to the pension under the U. P. Zamindari Abolition and Land Reforms Act. AIR 1956 All 564 (567) (Pt A) (Pr 10) (DB).

——Art. 226—Another remedy open (Per Sapru J.)

The fact that the procedure of a civil suit is a somewhat dilatory one, on account of congestion of

work in the civil suit, is no ground to invoke the jurisdiction of the High Court under Article 226. AIR 1951 All 1 (FB), Rel. on. ILR (1952) 1 All 880 : AIR 1953 All 739 (744) (Pt C) (Pr 19) (DB).

——Art. 226—Other remedy open.

A writ of mandamus will not issue when there is an adequate alternative remedy available to a party, (1959) 2 Andh W R 426 : 1959 Mad L J (Cr) 788.

——Art. 226—Another remedy open.

The powers of the Court under this Article cannot be utilised as a substitute for ordinary remedies. The remedy provided by Art. 226 may be availed of only where ordinary legal process cannot give adequate and prompt relief. A I R 1954 Assam 74 (75, 76) (Pt C) (Pr 6) (DB).

——Art. 226 — Discretion of Court — Existence of alternative remedy.

It is not merely the existence of an alternative remedy that should justify declining action under Art. 226 of the Constitution. It is only when adequate and prompt relief is available otherwise, that Art. 226 would not be permitted to be utilised as an easy and inexpensive substitute for it. To persuade the Court to grant discretionary relief immediately by an extraordinary process it should be for the petitioner to show if he has alternative remedy that the recourse to it would not bring him adequate and prompt relief. ILR (1951) 3 Assam 348 : AIR 1951 Assam 163 (167) (Pt F) (Pr 30) (DB).

——Art. 226—Other remedy open—Issue of writ.

A power in the State Government which it can exercise in its discretion is certainly not an adequate legal remedy. 59 Bom L R 1088 : I L R (1958) Bom 113.

——Art. 226—Other adequate legal remedy—Effect. See Ibid, Art. 227. AIR 1956 Bom 545 (DB).

——Art. 226—Alternative remedy—Estate Duty Act (1953), S. 57—Imminent threof of illegal assessment of sthanam property—Absence of alternative remedy —Jurisdiction of High Court can be invoked.

The imminent threat to the receiver in respect of the sthanam properties of the deceased sthanamdar of an illegal assessment and the absence of adequate alternative remedy seems to be sufficient to invoke the jurisdiction of the High Court under Art. 226 of the Constitution. 1965 Ker L T 1149 : 1965 Ker L J 991 : (1965) 2 Ker L R 415 : AIR 1966 Ker 99 (100) (Pt B) (Pr 7).

——Art. 226—Other remedy—Petitioner in permanent service of integrating State declared surplus to requirement by new Government — Subsequent absorption of petitioner in permanent service on condition that period of discontinuance could be treated as of leave — Petitioner accepting offer—Petitioner if had legal right to be absorbed in new State—Right to salary for period of discontinuance—Another remedy open. See Ibid, Art. 310. A I R 1957 Madh B 100 (DB).

——Art. 226 — Writ petition under—Existence of alternate remedy — Effect—Order plainly absurd—Other remedy by way of election petition not so expeditious — Petition held maintainable — Mysore Village Panchayats and Local Boards Act (10 of 1959), S. 13.

The argument that the case was not one in which the High Court should exercise its jurisdiction under Art. 226 since the petitioner had neglected to avail himself of the remedy provided by section 13 of the Act by way of an election petition would not be available where the order brought up for being quashed before the High Court is so plainly absurd that it would amount to an abdication of jurisdiction if it is not quashed at the earliest stage, particularly when the application to the Court was presented with the utmost expedition. 1961 Mys L J 319, Rel. on. 1963 Mys L J (Supp) 236 (DB).

——Art. 226—Other remedy open — Writ of certiorari—Art. 329 (b).

A petition for issue of a writ of certiorari is maintainable to quash an order of the Returning Officer rejecting the nomination paper of the petitioner for the election to the office of the President of the Town Municipal Council in spite of the provision of an appeal provided by R. 10, Mysore Town Municipalities Election Rules, 1951. The said R. 10 does not give an adequate remedy in such a case. Further, unlike the provision in S. 80 of the Representation of the People Act, 1951 and Art. 329 (b) of the Constitution, there is no provision in the Mysore Town Municipalities Act against any intermediate application. W. P. No. 254 of 1958 (Mys), Foll.; A I R 1952 S C 64 and A I R 1954 All 234 and A I R 1954 Cal 32, Disting. 37 Mys L J 637 : I L R (1959) Mys 608 : A I R 1960 Mys 189 (189, 190) (Prs 2, 3, 4) (DB).

——Art. 226 — Existence of remedies under an impugned Act does not prevent the issue of a writ to the Sales Tax Authorities when certain provisions of the impugned Act are found ultra vires. (1955) 6 S T C 93 (Nag).

[Overruled on another point in AIR 1958 S C 560.]

——Art. 226 — Alternative remedy—Existence of—Not a bar to exercise of writ jurisdiction — High Court may refuse to interfere when alternative remedies are more efficacious and complete.

It is no doubt well settled that no provision in any Act passed by any Legislature, Union or State, can cut down the extensive jurisdiction conferred on the High Court by Art. 226 of the Constitution and in special circumstances there may be jurisdiction for the High Court to exercise its extraordinary jurisdiction even if there is an alternative remedy. The question is not whether the jurisdiction of the High Court is barred but whether in the peculiar facts and circumstances of a case the High Court should decline to exercise its jurisdiction. A I R 1961 S C 1506, Rel. on.

Held, on the facts and circumstances of the case that the remedy of arbitration provided by the parties themselves in the agreement of mining lease and the remedy by way of revision under S. 30 of the Mines and Minerals (Regulation and Development) Act, 1957, were more efficacious and complete to solve the controversy between the parties and as the petitioner had not availed of these remedies it was not a fit case for exercising the extraordinary jurisdiction of the High Court under Art. 226. I L R (1962) Cut 331 : A I R 1962 Orissa 183 (186, 187, 188, 189) (Pt A) (Prs 9, 12, 14, 18) (DB).

——Art. 226—Other remedy open.

A writ of mandamus is a most extensive remedial measure. Its purpose is to supply defects of justice and it will issue to the end that justice may be done in all cases where there is a specific legal right and no specific legal remedy for enforcing such right and it may issue in cases where, although there is an alternative legal remedy, yet such mode of redress is less convenient, beneficial and effectual.

The Government of Orissa issued orders withdrawing and cancelling their permissions granted to the petitioners temporarily to work certain mines and the petitioners had been called upon to deliver vacant possession of the mining premises to the

State and were directed to remove their assets appertaining to respective mines within a fortnight.

Held that before petitioners could initiate a civil action against the Government they were bound under the law to give them notice of 60 days. As they were served with notice to quit and were given a very brief span of time to enable them to remove their assets, they could hardly be said to have been left an opportunity to do necessary preliminaries that they had to before they could sue the Government in a competent Civil Court. In case they were thrown back upon the only alternative of vacating the premises, they had to undergo irreparable and irremediable loss of possession of the mining leases involving a huge waste of labour, machinery and other resources of equipments of immense value hardly capable of being remedied by payments of money as compensation even if they succeeded in the long run in establishing their right to remain in occupation of the lease-hold interest. In the circumstances, till three months from the date of the order, or one week after the institution of their contemplated suit, whichever was earlier, the Government of the State of Orissa was directed to refrain from disturbing the petitioners' possession over the mining areas in question, and thereafter the order would cease to have effect. (Opinion as to the respective merits of the rival contentions not expressed) **ILR (1951) Cut 398 (DB).**

——**Arts. 226, 227 — Powers under—When exercised stated — Effective and adequate remedy available — Power under Arts. 227 and 226 may be exercised — Power is discretionary.** See Ibid, Art. 227. **A I R 1955 N U C (Pepsu) 2514.**

——**Art. 226—Other remedy—Effect—Facts of each case.**

The question whether the other remedy open to the applicant in a particular case is specific and adequate should be decided upon the facts of each case. **ILR (1953) Patiala 451 : A I R 1953 Pepsu 88 (96) (Pt C) (Pr 28) (DB).**

——**Art. 226** — Another remedy available but not availed of — Facts and circumstances showing that such remedy would not have been efficacious and adequate — High Court can entertain writ petition. Displaced Persons (Compensation and Rehabilitation) Act (1954), S. 33. AIR 1966 Punj 274, Rel. on. **1965 Cur L J 817 (Punj) (DB).**

——**Art. 226 — Other remedy — Writ application claiming stay with respect to payment of estate duty.**

The High Court has always the discretion to refuse to grant a writ if it is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere.

Under Art. 226 of the Constitution the petitioners are not as of right entitled to claim a stay order from the High Court with respect to the payment of estate duty. The High Court would, while exercising its extraordinary powers under Art. 226 of the Constitution, grant relief by way of stay in its discretion and only in special cases in which the normal statutory relief is not likely to meet the ends of justice. (1960) **40 I T R (E D) 26 : A I R 1960 Punj 288 (290, 291) (Pt A) (Pr 3).**

——**Arts. 226 and 19 — Other remedy open—Citizen deported — Compliance required within 3 days — Writ application — (Foreigners Act (1946), S. 14)—(Citizenship Act (1955), Ss. 9, 10, Sch. 3, Cl. 1).**

The Foreigners Act does not lay down any machinery for determining whether a particular person is a foreigner or not. The deportation orders issued under the Act generally give only a few days within which the person concerned must leave the country. Where only three days were allowed for this purpose it is not possible for the person concerned to apply to the Central Government under the Citizenship Act and obtain a decision from it within the limited time available to him that he is a citizen of India. Article 19 of the Constitution guarantees freedom of movement to every citizen of India and this guarantee will be negatived if a citizen can be deported under the Foreigners Act, without any previous enquiry.

Where a person who claimes to be a citizen of India, is served with a deportation order under Foreigners Act, and is asked to leave the country within three days, the writ application filed by him against the order is a proper remedy, the remedy under the Foreigners Act or the Citizenship Act being inadequate. **60 Punj L R 696 : A I R 1959 Punj 261 (264) (Pt D) (Pr 12).**

——**Art. 226—Other remedy open—Issue of writ of mandamus.**

If a petitioner has a clear legal right to the performance of a particular duty, if he has no other specific legal remedy which is adequate to afford complete relief and if there would be failure of justice if the aid of the High Court is not extended, remedy by way of mandamus may be invoked. In a case where a writ of mandamus is sought by employers to recall a reference of an industrial dispute to an Industrial Tribunal under S. 10 (1) (c) of the Industrial Disputes Act, 1947 it cannot be said that the petitioners have no other legal remedy adequate to afford the desired reliefs. (1780) 2 Doug. 524 (526) and (1884) 12 Q B D 461 and (1861) 30 L J Q B 271 and (1881) 21 Q B D 131, Rel. on. **60 Punj L R 425 : (1958-59) 15 F J R 49 : (1959) 1 Lab L J 274 : I L R (1958) Punj 2061 : A I R 1959 Punj 75 (79, 80) (Pt E) (Prs 13, 14) (DB).**

——**Art. 226—Other remedies**— Petitioners informed in last week of February 1961 regarding cancellation of their admissions in LL.B (Pre.) classes which would have entailed their being debarred from appearing for examination commencing from 21-4-1961—If instead of approaching President of India, under S. 8A of Rajasthan University Act, petitioners files writ petition, relief should not be refused on this ground — Further, writ petition having admitted and interim directions being issued it would not be proper to refuse hearing of petition on merits : I L R (1958) 8 Raj 893, Disting., **ILR (1961) 11 Raj 768.**

——**Art. 226—Other remedy open—Panchayat Election dispute—Rajasthan Panchayat Samitis and Zila Parishads Act (37 of 1959), S. 13.**

An election petition under S. 13 of the Rajasthan Panchayat Samitis and Zila Parishads Act (37 of 1959) is not an effective remedy for remedying the defects in the very constitution of the Panchayat Samiti. There is no procedure prescribed in the rules for setting aside an invalid co-option of members. An illegal co-option can only be set aside by the High Court on a petition under Art. 226 of the Constitution. **1960 Raj L W 440 : ILR (1960) 10 Raj 770.**

——**Art. 226** — Other remedy — Prayer for countersigning permit under Motor Vehicles Act not accepted — Permit having only three months to run—Suit against non-acceptance of prayer is not proper remedy Writ is maintainable. **1956 Raj L W 359 : ILR (1956) 6 Raj 44.**

——**Art. 226**—Another remedy open—District Magistrate by order prohibiting pistol shooting game at applicant's varietys show — (Rajasthan Dramatic Performances and Entertainments Ordinance 29 of of 1949), S. 3 (c). **1952 Raj L W 369 : ILR (1952) 2 Raj 364 : A I R 1953 Raj 101 (104) (Pt B) (Pr 9) (DB).**

——Art. 226—Other remedy open —Suit not speedy.

An application under Art. 226 may lie in spite of an alternative remedy by way of civil suit being available when such remedy is not equally expedient and speedy in the circumstances of the case. A I R 1954 Vin Pra 50 (53) (Pt F) (Pr 13).

7 (b). Appeal or revision.

● ——Art. 226—Custodian-General had power under S. 27 to revise order passed by Custodian under Mysore Act 47 of 1949—Appeal against order passed in proceedings under S. 8 of the Mysore Act 47 of 1949 after its repeal lay to the Custodian-General under Act of 1950 and not to the High Court under Mysore Act — High Court could not interfere under Art. 226 of Constitution with order of Custodian holding certain person as evacuee under S. 2 (c) of the Mysore Act 47 of 1949. The Custodian of Evacuee Property, Bangalore v. Abdul Shukoor, (1961) 3 S C R 855 : (1963) 1 S C J 554 : A I R 1961 S C 1087 (1090, 1091) (Pr 9).

● ——Art. 226—Other adequate remedy open—Order imposing penalty affirmed by Appellate Assistant Commissioner of Income-tax — No appeal to Tribunal—Jurisdiction under Art. 226 cannot be invoked.

The Income-Tax Act provides a complete machinery for assessment of tax and imposition of penalty and for obtaining relief in respect of any improper orders passed by the Income-tax authorities. A person who is aggrieved by an order of the Appellate Assistant Commissioner imposing a penalty, cannot be permitted to abandon resort to that machinery and to invoke the jurisdiction of the High Court under Art. 226 when he had adequate remedy open to him by way of appeal to the Tribunal. C. A. Abraham v. I. T. Officer, (1961) 2 S C R 765 : (1961) 1 S C J 673 : (1961) 1 Mad L J (S C) 183 : (1961) 1 Andh W R (S C) 183 : 1961 Ker L J 165 : A I R 1961 S C 609 (611) (Pt A) (Pr 3).

——Art. 226—Writ petition — Remedy of appeal and revision available — Absence of good ground for by-passing remedy of appeal — Petition should be dismissed — Central Excises and Salt Act (1944), S. 35. AIR 1965 All 305 (306, 307) (Pt A) (Pr 4).

——Art. 226—Alternative remedy.

In a taxation matter an assessee cannot be permitted to invoke the extraordinary jurisdiction of the High Court when he has an alternative remedy by way of appeal to the departmental authorities. (1964) 15 S T C 523 (All).

——Art. 226—Other remedy open — Writ petition — Order passed under S. 34 of the Income Tax Act—Remedy of appeal available—Remedy under Art. 226 not to be allowed to by-pass the remedies under the Income-Tax Act. (1963) 47 I T R 472 (All).

——Art. 226—Other remedy open — Remedy under Income-Tax Act open — Writ petition will not be entertained.

Where the petitioners instead of pursuing their remedy by way of appeal to the Income Tax Appellate Tribunal and a further reference to the High Court on questions of law, have filed a writ petition to the High Court, they cannot be legitimately allowed to invoke the extraordinary writ jurisdiction of the High Court. AIR 1961 S C 609, Foll. (1963) 2 I T J 107 (All).

——Art. 226—Other remedy open — Income-Tax Act (1922), S. 33-A (2)— Remedy by revision — Nature of—Relief under Art. 226 of Constitution. See Income Tax Act (1922), S. 33A (2). (1962) 46 I T R 529 (All).

——Art. 226—Other remedy by way of appeal or revision or review available—Writ petition will not be entertained. AIR 1960 All 732 (734) (Pt C) (Pr 8).

——Art. 226 — Award under U. P. Consolidation of Holdings Act—Refusal to set aside—Appeal available — Writ petition not maintainable. See Arbitration Act (1940), S. 39. AIR 1959 All 330.

——Art. 226—Other remedy — Issue of writ —(Sales Tax—U. P. Sales Tax Act (15 of 1948), S. 21).

It is within the jurisdiction of the Sales Tax Officer to arrive at a finding that the entire turnover of the assessee was liable to sales tax because the entire goods were purchased by him outside U. P., and re-assess him accordingly. The assessee, if aggrieved by the order can go in appeal and there challenge the correctness of the order. This cannot be a case where question of jurisdiction is involved. Thus there being a remedy of appeal the assessee cannot invoke the High Court's powers under Art. 226, against the orders of the Sales Tax Officer. AIR 1954 S C 403, Disting. 1958 All L J 774 : (1959) 10 S T C 277 : AIR 1959 All 246 (246, 247) (Prs 2, 3) (DB).

——Arts. 226 and 227 — Other remedy open—Revision maintainable — Application under Arts. 226 and 227 — Competency. See Debt Laws—U. P. Encumbered Estates Act (25 of 1934), S. 45. 1958 All L J 844.

——Art. 226—Other remedy open—Municipalities—U. P. Municipalities Act (2 of 1916), S. 160.

An importer who is not satisfied with an assessment has a right of appeal to the Board and where the applicant has made no attempt to avail himself of this remedy, and it is not shown that such remedy would not be equally beneficial, convenient and effective, no relief under Art. 226 can be given to the applicant. 1951 All W R (HC) 552 : 1951 R D (HC) 329 : 1952 All L J 33 : I L R (1953) 2 All 327 : A I R 1953 All 551 (551) (Pt B) (Pr 3) (DB).

——Art. 226 — Application for writ — Existence of alternate remedy — Effect — Dispute referred to Industrial Tribunal — Plea of want of jurisdiction—Decision appealable under Act 48 of 1950 — No writ can be issued. (Industrial Disputes (Appellate Tribunal) Act (1950), S. 7).

In an industrial dispute referred for adjudication to the Additional Regional Conciliation Officer, the employer pleaded that the Officer had no jurisdiction to adjudicate as there was no 'industrial dispute'. The proceedings were stayed and the employer filed a petition under Art. 226 of the Constitution for a writ or direction to the Officer not to proceed with the case.

Held, that as an appeal lay to the Appellate Tribunal against the decision of the Officer on the question of jurisdiction under S. 7 of Act 48 of 1950, an alternative remedy was available to the petitioner and hence no writ could be issued under Art. 226. 1952 All L J 353 : 1958-1 Lab L J 1 : (1952-53) 4 F J R 479 : AIR 1952 All 992 (998, 1000) (Pt A) (Prs 8, 17, 18) (DB).

——Art. 226 — Andhra Pradesh Urban Areas Surcharge on Property Tax Act (13 of 1958), S. 5—Non-compliance with procedure — Remedy is by way of appeal and not by writ petition—See Andhra Pradesh Urban Areas Surcharge on Property Tax Act (13 of 1958), S. 5. AIR 1963 Andh Pra 379.

● ——Art. 226—Writ of certiorari — Other remedy by way of appeal open—(Per Majority) Existence of alternative remedy is no bar to the grant of writ of certiorari (Per Nayudu, J., Contra).

Per Mehrotra, C. J. and Dutta, J.—The existence of an alternative remedy is no bar to the grant of a writ of certiorari. The existence, however, of an alternative remedy may be taken into consideration by the High Court in exercising its discretion under Art. 226 of the Constitution. Ordinarily the High Court will require the petitioner to have recourse to his ordinary remedies, but if it finds that there is a breach of any,

fundamental principle of justice, the High Court will certainly not hesitate to issue a writ of certiorari. If the inferior Tribunal has no jurisdiction to act or in the exercise of its jurisdiction violates the principles of natural justice, the High Court will not refrain from granting the relief to the petitioner, simply because the alternative remedy by way of appeal has not been availed of. AIR 1958 S C 86, Rel. on.

Per Dutta, J.—Moreover to be a bar to the issue of certiorari the other remedy must be adequate. It is the inadequacy and the failure of justice, and not the mere absence of another remedy that determines the right to certiorari. For instance, the effect of the provisions of S. 189 of the Sea Customs Act, is that before a person can appeal under S. 188 of the Act, he has to deposit in the hands of the Customs Collector the amount of duty, or penalty adjudged against him. And in case heavy penalties are imposed it would be very burdensome for the accused to prefer an appeal under S. 188. For this reason alone the writ petitions are maintainable. A I R 1954 S C 403, Rel. on.

Per Nayudu, J. (Contra) —The High Court should not exercise its jurisdiction under Art. 226 of the Constitution in a matter where a regular right of appeal is provided by the statute under which the impugned action is taken and which right of appeal has not been availed of or exhausted by the petitioner. AIR 1954 Punj 73, Foll.; AIR 1952 Cal 656, Dissent from. Sanwarmal Purohit v. Collector of Central Excise and Land Customs, Shillong, **1964 (2) Cri L J 507 : A I R 1964 Assam 121 (123, 124, 131, 134, 135) (Pt A) (Prs 3, 31, 33, 42, 50) (FB).**

——Art. 226 — Other remedy open—No bar to issue writ of certiorari.

The condition precedent for exercise of power under S. 23 (4) of the Income-tax Act is the failure to file a return on the notice being given under S. 22 (2) of the Act. Under S. 23 (4) the Income-tax Officer has not been given any exclusive jurisdiction to determine the fact whether notice under section 22 (2) was or was not served and any determination by the Income-tax Officer, is amenable to a writ of certiorari by the High Court. Even if the existence of the preliminary condition has been assumed by the Income-tax Officer it is examinable by the High Court in a writ of certiorari, whether the condition did or did not exist in a particular case. AIR 1947 P C 78 and AIR 1953 Punj 55 and AIR 1947 F C 32, Disting. (1841) 1 Q B 66 and (1888) 21 Q B D 313 and (1922) 2 A C 128 and A I R 1951 S C 23 and A I R 1956 Bom 530 and (1951) 20 I T R 432 (Cal) Rel. on.

Section 27 does provide the method by which the validity of the service of notice under S. 22 (2) may be challenged. But where that remedy was already resorted to, a right of appeal against the order passed under S. 27 cannot be said to be an adequate legal remedy available to the assessee petitioner. AIR 1959 Bom 342, Rel. on. **(1960) 1 Assam L R 35 : (1961) 43 I T R 562 : I L R (1960) 12 Assam 164 : A I R 1960 Assam 162 (168, 170, 171) (Pt C) (Prs 18, 25) (DB).**

——Art. 226—Other remedy open — Certiorari may issue—Order under Sea Customs Act — Error of law —Effect.

There is no rule with regard to certiorari as there is with mandamus that it will lie only where there is no other equally effective remedy. The existence of another remedy may be taken into consideration in the exercise of the discretion.

Where there is a manifest error of law in the order confiscating goods and imposing penalty passed by the Collector of Central Excise and Land Customs under the Sea Customs Act, the High Court can properly issue a writ of certiorari to correct the error even if an appeal or a revision lay from the order of the Collector under the Sea Customs Act : **AIR 1958 S C 86, Foll. 1960 Cri L J 1307 : I L R (1960) 12 Assam 271 : AIR 1960 Assam 150 (158, 159) (Pt C) (Pr 20) (DB).**

——Art. 226 — Other remedy — Industrial Disputes Act (1947), S. 7.

Article 226 is an extraordinary remedy and is not intended to be a substitute for other effectual and normal remedies available to a party. Where remedy by way of appeal against award of Industrial Tribunal under section 7, Industrial Disputes Act, is available, there is absolutely no justification for the aggrieved party not having availed himself of the remedy by way of appeal which the law provided, of applying for the issue of a writ. **ILR (1954) 6 Assam 161 : AIR 1954 Assam 161 (167, 168) (Pt K) (Pr 14) (DB).**

——Art. 226—Other remedy—Issue of writ—Services of Ghat Inspector terminated by notice by Health Officer—No appeal filed—Relief under Art. 226. See Municipalities — City of Nagpur Corporation Act, 1948 (2 of 1950), S. 53. 1959 Nag L J (Notes) 106.

——Art. 226—Other remedy open—(Nagpur University Act (5 of 1923), S. 40 (1)).

Where the nomination paper of the petitioner along with those of five others had been rejected by the Registrar of the Nagpur University.

Held, that the petitioner had a right of appeal under S. 40 (1) of the Nagpur University Act and he having failed to avail himself of that right the High Court would not be justified in entertaining a petition under Art. 226 to quash that order. **1957 Nag L J 67 : 59 Bom L R 300 : A I R 1957 Bom 215 (217) (Pt B) (Prs 10, 11) (DB).**

——Art. 226—Other remedy open—Right of appeal. See Payment of Wages Act (1936), S. 17. **A I R 1955 Bom 75 (DB).**

——Art. 226—Scope—Other remedy open by way of appeal —(Government Premises (Eviction) Act (1950), Ss. 3 and 5).

Where the notice under S. 3, Government Premises (Eviction) Act, 1950 is given by a person who is not a competent authority at all, an application under Art. 226, Constitution of India, directly to the High Court is maintainable. If, however, it transpires that the notice is properly issued, the High Court will refuse to go into the disputed fact of possession, which should have been agitated before the tribunal provided for such matters by the Act itself by way of appeal. AIR 1950 F C 129, Ref. **A I R 1953 Cal 729 (731) (Pt D) (Pr 11).**

——Art. 226—Writ of mandamus—Cannot be issued when there is more effective and beneficial other remedy.

A was prosecuted for an offence of staying in India longer than what was allowed to him by his permit. His defence was that he was a subject of the Indian republic and that the statute and the rules did not apply to him. He also applied to the High Court under Art. 226 for writ of mandamus directing the State Government not to proceed with the prosecution.

Held, (1) that the Court would not exercise its powers under Art. 226 in the case as A had even more effective beneficial and convenient remedy by way of applying under S. 439, Criminal P. C., for quashing the proceedings before the Magistrate.

(2) that if there is an adequate and specific remedy other than by a writ and such a remedy is equally convenient then it would be an abuse of Art. 226 to ask the Court to interfere under that Article. A I R 1950 S C 163, Expl. **1952 Cri L J 1738 : A I R 1952 Cal 853 (854, 855) (Prs 10, 15) (DB).**

——Art. 226 — Other remedy available — Hyderabad Tenancy and Agricultural Lands Act (21 of 1950)—Order passed by Tahsildar under S. 32 (4) against petitioner—Remedy by way of appeal, second appeal and revision provided in Ss. 90 and 91 of the Act — Writ cannot be issued. Case law considered. I L R (1953) Hyd 29 : A I R 1953 Hyd 120 (120) (Pr 3) (DB).

——Art. 226—Madras Preservation of Private Forests Act (1949), S. 4—Order of Collector under S. 3 (2)—Adequate and effective alternative remedy provided —Writ petition under Art. 226 of the Constitution will not be entertained by High Court — Madras Preservation of Private Forests Act, 1949, S. 4.

Where an alternative remedy is provided and it is equally efficacious, a litigant must pursue that remedy and not invoke the special jurisdiction of the High Court to issue a prerogative writ under Art. 226 of the Constitution, not because the existence of another remedy affects the jurisdiction of the High Court, but because the existence of an adequate alternative remedy is of paramount importance for refusal of a writ which is discretionary. The normal rule in such cases is to refuse an interference under Art. 226 of the Constitution. A I R 1957 S C 882, Rel. on.

Section 4 of the Madras Preservation of Private Forests Act, 1949 provides an adequate and effective remedy by way of an appeal to the State Government against an order passed by the Collector under S. 3 (2) of the Act. That remedy is in no way more costly or less efficacious or speedy than an application under Art. 226 of the Constitution. Proceedings under the Article are not substitutes for ordinary remedies and the alternative remedy provided should not be allowed to be short-circuited by an application under the Article. 1964 Ker L J 154.

——Art. 226 — Another remedy open—(Municipalities—Bombay Municipal Boroughs Act (18 of 1925), S. 110).

A writ under Art. 226 would not ordinarily be issued where there exists an alternative remedy equally efficient and adequate. Whether alternate remedy is equally efficacious is a question of fact to be decided in each case. Where a statute provides a remedy, the Court would be reluctant to interfere under Art. 226 though in appropriate cases it would do so.

Where a tax was sought to be recovered under the Boroughs Act :

Held, that an appeal under S. 110 was an adequate remedy and therefore the Court would not interfere under Art. 226. A I R 1954 Kutch 50 (51, 52) (Pt D) (Prs 9, 10).

——Arts. 226, 227—Scope — Merits of the best judgment assessment cannot be considered in proceedings under Arts. 226 and 227—An assessment under S. 19 of the M. P. General Sales Tax Act is appealable under S. 38 and the assessee-petitioner should have canvassed the merits of the assessment by filing an appeal before the competent authority. 1962 M P L J 825 : 1962 M P C 337 : (1962) 13 S T C 759 : 1962 Jab L J 716 : ILR (1963) Madh Pra 822.

——Art. 226—Other remedy open — Scope of power of Superintendence—Order of Court of District Judge under S. 12 — Revisable under S. 115, Civil P. C. — Remedy under Art. 226 or 227, Constitution of India not available. See Houses and Rents — M. P. Accommodation Control Act (23 of 1955), S. 12. A I R 1963 Madh Pra 218 (DB).

——Art. 226 — Another remedy open — Failure to avail of — Absence of exceptional circumstances — Dismissal of petition justified — Arms Rules (1951), Rr. 41, 41-A and Arms Act (1878), S. 17 (a).

In cases of cancellation of current licence for fire-arms and refusal to renewal of licence, an appeal under R 41-A and R. 41 respectively of the Arms Rules, 1951, is particularly appropriate, because the executive authority immediately superior to the licensing authority will be able to examine the factual correctness and the sufficiency of the reasons better than the High Court which is unconnected with such executive functions. Failure to appeal would justify the dismissal of the petition under Art. 226. 1961 M P L J (Notes) 291 : 1962 Jab L J 475 : A I R 1962 Madh Pra 133 (135) (Pt B) (Pr 7) (DB).

——Arts. 226, 227—Other remedy open.

Where there is an adequate alternative remedy, the powers under Arts. 226 and 227 of the Constitution should not ordinarily be exercised. Hence, where the right of appeal can be invoked, it would be wrong for the High Court not to insist upon a proper appeal being filed but to resort to the extraordinary jurisdiction under Arts. 226 and 227 of the Constitution. 1958 M P L J 150 : 1958 Jab L J 168 : 1958 M P C 135 : A I R 1958 Madh Pra 224 (226) (Pt B) (Pr 13) (DB).

——Art. 226 — Other remedy open — Appeal under S. 188, See Customs Act — If bar to issue of writ — (Sea Customs Act (1878), S. 189.)

Where the Collector of Excise imposes a penalty on a person who is charged with smuggling gold besides the confiscation of the gold, it cannot be said that there is total absence of jurisdiction in the Collector so that a writ of certiorari would lie and that such person need not proceed by way of appeal. 1958 Mad W N 140 : 1958 Cri L J 778 : (1958) 2 Mad L J 115 : A I R 1958 Mad 306 (307) (Pt A) (Pr 1) (DB).

——Art. 226 — Other effective remedy open — Payment of Wages Act (1936), Ss. 16 and 17.

A combined reading of the provisions of S. 16 and S. 17 of the Payment of Wages Act indicates that for the purpose of the pecuniary limit the total amount awarded by the Commissioner in a single application is the guiding factor. In a single application, whether filed by one employee or by employees belonging to the same unpaid group, the Commissioner can direct payment of wages or award compensation. When a single application can be filed by an unpaid group, it is reasonable to hold that for the purpose of appeal, the total amount awarded in that application should be taken into consideration. Clause (a) of S. 17 (1) confers a right of appeal on an employer if the total amount directed to be paid by him in a single application should exceed Rs. 300.

The absence of the words "unpaid group" in cl. (a) will not establish that in the case of an employer the total amount paid by him to each of the employees alone should exceed Rs. 300. As the employer has a right of appeal to the Court of Small Causes against the order of the Commissioner, the writ of certiorari asked for will not issue when the petitioner employer who has got an adequate remedy has not availed himself of it. 65 Mad L W 460 : 1952 Mad W N 591 : 1952-1 Mad L J 703 : A I R 1952 Mad 808 (809) (Pr 5).

——Art. 226—Other remedy—Right of appeal under Art. 136.

It is true that the writ of certiorari will not be issued if a party has other effective remedies. Under Art. 136 of the Constitution of India the Supreme Court's residuary power to grant special leave cannot be an effective remedy which the petitioners could have resorted to for, apart from the fact that the granting of special leave is within the discretion of the Supreme Court, it is not likely that the Supreme Court will grant special leave unless there are extraordinary circumstances. 1952 Mad W N 519 : (1952)

1 Lab L J 772 : (1952-53) 4 F J R 77 : 1952-2 Mad L J 805 : AIR 1952 Mad 659 (662) (Pt A) (Pr 2).

——Art. 226—Mandamus—Other remedy open.

Article 226 is not intended to give an alternative easy remedy to enable a person to move the High Court instead of seeking his ordinary remedy under the law. It should be used only in those exceptional cases where there is no adequate remedy and the application under Art. 226 is the only convenient, beneficial and effectual means of getting redress. Where the petitioner had his remedy in revision but he failed to avail himself of it, the Article could not be invoked. 1956 Cri L J 252 : AIR 1956 Manipur 11 (12) (Pt B) (Pr 5).

——Art. 226—Other remedy open — Issue of writ of certiorari is matter of discretion — Equally efficacious remedy of appeal open to petitioner—High Court refused to exercise discretion in favour of petitioner.

The existence of other adequate legal remedies is not per se a bar to the issue of a writ of certiorari; in a proper case it may be the duty of the superior Court to issue a writ of certiorari in order to correct the errors of an inferior Court or tribunal exercising judicial or quasi-judicial functions and not to relegate the petitioner to other legal remedies available to him.

It is true that the availability of adequate alternate remedy is an aspect that has to be taken into consideration in exercising the discretion of the High Court. But this discretion being a judicial discretion, its limits are well defined. It will ordinarily be exercised subject to certain self-imposed limitations. Resort to that jurisdiction is not intended as an alternative remedy for relief which may be obtained otherwise. Ordinarily, the High Court will refuse to entertain a petition for a writ where the petitioner has an alternative remedy, which without being unduly onerous, is equally efficacious. AIR 1964 S C 1419, Rel. on.

From the decision announced by the Regional Transport Authority declining to grant to the petitioner the permit prayed for by him, the petitioner, instead of filing an appeal under S. 64 (a), Motor Vehicles Act as was done by a number of other applicants who were all refused the grant filed a writ petition in the High Court.

Held, that the petitioner could not be permitted to defeat the course of law by adopting an unreasonable attitude and that no compelling reasons which might justify interrupting the proceedings before the Authorities constituted under the Motor Vehicles Act, were shown to exist. (1965) 1 Mys L J 488 : AIR 1966 Mys 55 (57, 58: 60) (Pt A) (Prs 6, 7, 8, 18) (DB).

——Art. 226 and C. P. Land Revenue Act, Ss. 33. 128, 218 and 225 — Interference — D. C. imposing penalty on 20-8-45 for unauthorised quarrying—Petitioner not appearing but trying to reopen matter in recovery proceedings—High Court will not interfere under Art. 226.

A penalty was imposed on the petitioner by the D. C. on 20-8-45 for unauthorised quarrying. There was no appeal and recovery proceedings were started. The N. T. who was entrusted with the proceedings reported the matter for further instructions and the D. C. after satisfying himself that no deposit was made returned the case to N. T. with an endorsement that recovery of the amount be made. The endorsement was signed by an E. A. C. and the petitioner appealed to the D. C. who again called for a detailed report. The mining officer reported that there was due notice and enquiry before imposing penalty. The report was accepted. A revision to Government was dismissed.

Held, that the order dated 20-8-45 had become final and apart from the fact that it was passed before the Constitution, not having been challenged under the provisions laid down in the Land Revenue Act, the High Court will not interfere with it. AIR 1951 Nag 8, Foll. 1951 Nag L J (Notes) 186 (DB).

——Art. 226 — Other remedy — Appeal made available during pendency of petition—Mixed question of fact and law—Petition for writ—(Sales Tax — Orissa Sales Tax Act (14 of 1947) as amended by Act (26 of 1958), Ss. 9, 10, 11, 23 and 24).

Cases may arise where the unconstitutionality or the illegality of the order under challenge is so apparent that notwithstanding the existence of the alternative remedy the High Court may interfere under Art. 226.

Where the Orissa Sales Tax (Amendment) Act, 26 of 1958 provided right of appeal to the Tribunal against the Collector's order, the assessee should file a regular appeal to the Tribunal. Where when his application under Art. 226 was pending in the High Court the legislature conferred on him a regular right of appeal before an independent Judicial Tribunal, he should be directed to seek his redress before that Tribunal when the question involved is one of mixed question of law and fact. I L R (1960) Cut 129 : (1960) 11 S T C 12 : (1959) 10 J D 545 : AIR 1960 Orissa 79 (80, 81) (Prs 8, 11) (DB).

——Art. 226 — Other remedy — Life Insurance Corporation Act (1956), Ss. 11, 49 (2) (b) — Regulations under — Life Insurance Corporation of India (Staff) Regulation 1956 — Both new employees and old employees taken over by Corporation are governed by Regulations—Employee has a right of appeal against his dismissal under Regulation 42—Remedy of appeal not availed of — Writ petition is not maintainable — See Life Insurance Corporation Act (1956), S. 11. I L R (1963) 1 Punj 308.

——Art. 226 — Assessment of octroi duty under wrong item—Suit involving main issue whether goods fell under one item or other of octroi schedule—Jurisdiction of civil Court is barred under S. 86, Punjab Municipal Act (3 of 1911) — Remedy of appeal and reference under S 84, Punjab Municipal Act (3 of 1911) should be pursued. See Civil P. C. (1908), S. 9. AIR 1962 Punj 389 (FB).

——Art. 226 — Order of Collector refusing to make reference—Revision application is maintainable—That remedy being available writ refused and application treated as revision. See Land Acquisition Act (1894), S 18 (3). AIR 1956 Punj 231.

——Art. 226—Another remedy open — [Administration of Evacuee Preporty Act (1950), S. 26].

Where an order is passed by the Custodian leasing out the premises to another person and ejecting the petitioner, he has the right to go in revision under S. 26 of the Administration of Evacuee Property Act. If another remedy is open to the petitioner he cannot come to the High Court to invoke the extraordinary power of the Court. 53 Punj L R 11 S N Rel. on. 56 Punj L R 94 : I L R (1954) Punj 923 : AIR 1954 Punj 165 (166, 167) (Pt B) (Prs 1, 10).

——Art. 226 — Other remedy open — Interlocutory order liable to be challenged in appeal against final decision — No writ maintainable against such order.

The High Court will decline to go into the merits of a writ petition directed against the interlocutory order of the Election Tribunal directing a recount of the ballot papers as the order can be challenged in an appeal against the final decision of the Tribunal. AIR 1959 S C 422 and AIR 1961 S C 1506 and AIR 1963 Raj 157 and Civil Writ Petn. No. 55 of 1962, D/- 25.3-1963 (Raj), Rel. on. I L R (1963) 13 Raj

766 : 1964 Raj L W 98 : AIR 1964 Raj 99 (101) (Pt A) (Pr 8) (DB).

——Art. 226—Other remedy open—Issue of writ.

Where no part of the Income-tax Act is being attacked, there is no justification for the High Court to intervene under Art. 226 of the Constitution at an intervening stage of an income-tax proceeding when number of remedies by way of appeals which are not necessarily onerous are still open to the applicant under the Act. (1957) 32 I T R 592 : I L R (1956) 6 Raj 867 : 1958 Raj L W 183 : AIR 1957 Raj 54 (56, 57) (Pt B) (Pr 19) (DB).

——Art. 226 — Other remedy open — Order under S. 7 (1), Administration of Evacuee Property Act by Deputy Custodian—Party failing to file appeal against order—Petition under Art. 226 cannot be maintained — Administration of Evacuee Property Act (1950), Ss. 7, 24. AIR 1955 NUC (Raj) 365 (DB).

——Art. 226—Another remedy open.

The extraordinary jurisdiction vested in the High Court under Art. 226 of the Constitution to issue writs cannot be invoked for the purpose of setting aside interim orders of inferior tribunals unless there are very special circumstances justifying the exercise of that jurisdiction.

Appeal against order of Road Traffic Board issuing permit—Central Road Traffic Board ordering grantee of permit not to put the buses on road until disposal of appeal or until stay was vacated.

Held, that the order was only an interim order and that the remedy of the grantee of the permit was to seek to get the interim stay vacated by the Central Road Traffic Board itself and not to invoke the extraordinary jurisdiction of the High Court at that stage. 1953 Ker L T 879 : ILR (1953) Trav Co 1039 : AIR 1954 Trav-Co 303 (304) (Prs 4, 7).

——Art. 226—Other effective remedy—(Income tax (1922), Ss. 23, 30 and 66).

Where the petitioner gets an opportunity for getting complete efficient and effective redress by way of appeal and further appeal and reference in the matter of his complaint regarding assessment to income-tax that is made by him in his petition under Art. 226 and when there is no legality or fatal irregularity in the pursuit or the procedure provided by the Income-tax Act or a usurpation or excessive exercise of jurisdiction, then a resort to the High Court for relief in exercise of the extraordinary jurisdiction under Article 226 of the Constitution cannot be permitted. I L R (1953) Trav.Co 173 : AIR 1953 Trav.Co 296 (298) (Pt C) (Pr 5).

——Art. 226 — Order under V. P. Cloth & Yarn Dealers' Licensing Order—Application for writ of mandamus instead of revision—Maintainability.

The applicant instead of moving J.C.'s court for the issue of any direction of the nature of writ against an order passed under the V. P. Cloth & Yarn Dealers Licensing Order 1948, should move the Government in revision under the Order as it is an easy expedient alternative remedy available. AIR 1951 Vind Pra 47 (49) (Pt D) (Pr 10).

7 (c). Appeal or revision or suit, when no adequate remedy.

——Art. 226—Other remedy open — Remedy provided by S. 7 F, U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947) is not equally adequate and efficacious alternate remedy.

Section 7-F of U. P. Control of Rent and Eviction Act can hardly provide an equally adequate and efficacious alternate remedy, as the very wordings of that section show that the matter is left entirely to the discretion of the State Government to call or not to call for the record of the case and to interfere or not. It is not a right given to the party. He cannot claim any relief as a matter of right, such as he could have done if there was remedy by way of an appeal. 1959 All L J 263, Rel. on. 1964 All W R (HC) 732.

——Art. 226—Income-tax Act (1961), Ss. 146 and 246—Existence of alternative remedy to petitioner is not absolute bar to the exercise of writ jurisdiction under Article—Income-tax Officer not allowing filing of voluntary returns by assessee and passing ex parte assessment order—Assessee filing appeal under S. 246 and also application under S. 146 for setting aside ex parte assessment — Petition under Art. 226 alleging mala fides and bias also filed—Held, that alternative remedy by way of appeal was wholly inadequate and not equally efficacious and hence the writ petition could be entertained—(Order of Income-tax Officer quashed under writ jurisdiction.) (1964) 2 I T J 396 (All).

——Art. 226—Issue of writs under — Existence of adequate legal remedy not an absolute bar—In spite of right to appeal, writ may be issued in special circumstances—Case whether appealable doubtful — Writ can be issued. 1961 All W R (HC) 142 : 1961 All L J 109.

——Art. 226—Other remedy open—Citizenship Act (1955), S. 9 (2)—Writ for declaration that petitioner had not forfeited his Indian citizenship by applying for Pakistan passport—Civil suit for declaration of petitioners's rights or petition to Central Government for declaration of his status—Not convenient and efficacious alternative remedies and no bar to issue of writ in petitioner's favour—Section 9 (2), Citizenship Act 1955, read with R. 30, Citizenship Rules, 1956, does not provide for any application being made to Central Government by person who claims to be Indian national but whose status is disputed by Indian authorities—AIR 1958 All 165 and Civil Misc. Writ No. 1920 of 1957, D/- 31-7-1957 (All), Dissent from. 1960 All L J 461 : 1960 All WR (HC) 346 : AIR 1960 All 637 (641) (Pt E) (Pr 9).

[Overruled on another point in AIR 1962 S C 1052].

——Art. 226—Other remedy open—Issue of writ.

Where the petitioner had been removed from the municipal board for objectionable conduct under S. 40 (3) of the U. P. Municipalities Act and fresh elections were likely to come within a few months and the petitioner if he were to file a suit in the civil Courts could not have obtained a final decision due to the congested state of the lists in those Courts, before the elections would be held.

Held, that in the circumstances the alternative remedy of suit was not an adequate remedy and therefore the petitioner was entitled to seek relief by way of a writ petition. 1957 All W R (HC) 864 : 1957 All L J 885 : AIR 1959 All 26 (28) (Pt D) (Pr 13) (DB).

——Art. 226—Other remedy open—Failure to avail of, when does not bar application—(Motor Vehicles Act (1939), S, 64.)

The existence of another remedy is not an absolute bar to entertaining a petition under Art. 226 of the Constitution. All the circumstances and the facts of the case have to be taken into consideration and, if as a result of the consideration, the Court thinks that the justice of the case requires interference, it is open

to the Court to interfere with the order, even though the other remedy was not availed of by the petitioner.

Thus although under S. 64 (f) of the Motor Vehicles Act any person, who has been providing transport facilities, will have a right to go up in appeal against an order granting a permit provided he opposes the grant of the permit before the Transport Authority. Yet where if an appeal had been filed the appeal may not have come up for hearing for months and the entire purpose of filing the appeal would have been frustrated because the period of temporary permits would have expired and there is also the additional fact that, according to the admissions contained in the counter affidavit filed on behalf of the State, a clear illegality is being committed by the department, the Court cannot shut its eyes to the illegality because the petitioners committed the mistake of not filing an appeal against the order. 1957 All L J 818 : 1957 All W R (HC) 824.

——Art. 226 — Other remedy open— (Houses and Rents—U. P. Cantonments (Rent Control and Eviction) Act (10 of 1952), S. 10 (4))—Writ petition.

The power given under S. 10 (4) is revisional power given to the Central Government against the order passed by the Commanding Officer. That, however, gives no power to the Central Government to stay the operation of the order or to stay the ejectment of an occupant during the pendency of the revision proceedings. If an occupant is threatened with forcible ejectment he naturally needs an immediate relief and it cannot be said that relief, by way of revision would be equally adequate and efficacious so as to disentitle the occupant from obtaining any relief under Art. 226 of the Constitution. 1957 All L J 183 : 1957 All W R (HC) 35.

——Art. 226 — Another remedy open — Re-sale of Government forest produce—Deficit—Recovery of, as arrears of land revenue—Remedy by way of suit not adequate—Relief under Art. 226 is available—(Forest Act (1927), S. 82)—(Sale of Goods Act (1930), S. 54) —(Contract Act (1872), S. 73). AIR 1956 All 721 (723) (Pt B) (Pr 15) (DB).

——Art. 226—Other remedy open — Appeal under Art. 136, Constitution of India is not alternative remedy.

Where an order has been passed by the Labour Appellate Tribunal granting leave to the employer to dismiss workmen, an appeal to the Supreme Court by special leave under Art. 136, Constitution of India cannot be said to be an alternative procedure since such an appeal does not lie as of right. That is not an effective remedy and does not deprive the workmen of their right to apply to the High Court for the issue of a writ under Art 226 if the other circumstances justify it I L R (1957) 1 All 109 : (1957) 1 Lab L J 603 : AIR 1956 All 644 (648) (Pt B) (Pr 21) (DB).

——Art. 226—Other remedy open—Order of Municipal President refusing to accept withdrawal of resignation by municipal servant— Writ to quash such order — (Municipalities — U. P. Municipalities Act (2 of 1916), S. 74).

There is no provision in the U. P. Municipalities Act which gives any statutory right to a servant of a Municipal Board to go up in appeal to the State Government against an order of the President refusing to accept the withdrawal of a resignation.

The remedy of the municipal servant to go up by way of a representation to the State Government entirely depends on the discretion of the State Government and cannot be regarded as an adequate and efficacious alternative remedy. (1956) 1 Lab L J 736 : 1955 All L J 676 : AIR 1956 All 70 (70, 71) (Pt A) (Pr 4).

——Art. 226 — Another remedy not adequate or efficacious—Petition can be entertained — Income tax Act (1922), S. 30.

Section 30 of the Income-tax Act (1922), which is the appeal section does not provide for the filing of any appeal against an order passed under S. 49E of that Act. But since in fact, the assessee was asking for a refund an appeal would lie against an order passed under S. 48, granting or refusing to grant a refund. But an appeal lies against an order of only the Income-tax Officer. Where no such order was passed by the Income tax Officer himself but there was an order issued after receiving the instructions of the higher authorities, in these circumstances, it would have been futile for the petitioner to have filed any appeal against the order of the Income-tax Officer. The remedy of an appeal, under circumstances, could not be said to be an adequate or efficacious remedy. Writ petition could therefore be entertained. (1956) 29 I T R 60 (All).

——Art. 226— Other remedy open — (U. P. District Boards Act (10 of 1922), S. 174 (2) (k)).

Where a District Board acting under bye-laws framed under S. 174 (2) (k) of U. P. District Boards Act has imposed heavy licence fee for running a brick-kiln, the owner, it is true, can go in appeal against the assessment order but this remedy is not equally efficacious as a petition for writ under Art. 226, Constitution of India, so as to deprive the brick-kiln owner of his remedy by means of a writ petition under Art. 226, Constitution of India. A I R 1952 All 753 (FB), Rel. on. A I R 1955 All 541 (542) (Pt B) (Pr 4).

——Art. 226—Certiorari — Other remedy open — Enhancement of municipal tax without hearing party — Appeal not preferred due to some incorrect action by Municipality—Petition for certiorari cannot be thrown out. AIR 1955 N U C (All) 1988.

——Art. 226—Other remedy open—Not equally efficacious.

The non-availability of a remedy is not a sine qua non of the exercise of powers under Art. 226 though if any equally efficacious remedy is available, the petitioner must have recourse to that remedy and not invoke the extraordinary powers of the High Court.

Where the remedy by way of a suit for declaration and mandatory injunction would not be equally efficacious and undue delay would result, the High Court has power to grant appropriate reliefs including one of possession under Art. 226 AIR 1952 All 746 and AIR 1953 S C 373. I L R (1958) 1 All 162 : AIR 1954 All 608 (622) (Pt H) (Prs 85, 86) (DB).

● ——Art. 226—Appeal provided in Act against orders under Act—No reasons given for orders—Remedy by way of mandamus — Motor Vehicles Act, 1939, Ss. 47, 64.

Where no order under the Act (Motor Vehicles Act) has been passed or at any rate no reasons are given for refusal to grant permanent permits, no question of an appeal under S. 64 arises. In such a case an appeal would not be as satisfactory a remedy as a writ of mandamus.

Per Sapru J.— The principle that mandamus will not issue where the applicant has not exhausted his right of appeal, is not a rule from which no deviation can be made in appropriate cases. It is, however, only in the most exceptional cases where the conduct of the authorities concerned is such as to make it clear that they have not been discharging their duties and are not likely to do so without the guidance of the Court, that the Court will be justified in issuing mandamus. Moti Lal v. Govt. of Uttar Pradesh, I L (1951) 1 All 269 : AIR 1951 All 257 (264, 265, 290, 316) (Pt C) (Prs 33, 160, 161, 302) (FB).

——Art. 226—Other remedy open — (Sea Customs Act (1878), Ss. 188 and 191).

Though two remedies are open to a petitioner, one by way of appeal under S. 188, the other a revision under S. 191 of the Sea Customs Act before the petitioner could avail of these remedies he has to deposit the entire amount under S. 189 of the said Act. Such a provision can hardly be described as an adequate alternative remedy. (1957) 2 Andh W R 207 : A I R 1958 Andh Pra 122 (124, 125) (Pt A) (Pr 6) (DB).

——Art. 226—Other remedy open—Notification under S. 6, Land Acquisition Act—Intention of the Government to contribute portion of cost of acquisition not made manifest prior to notification — Remedy by suit not effective— Jurisdiction under Art. 226 can be invoked —(Land Acquisition Act (1894), S. 6). (1956) Andh W R 1135 : AIR 1957 Andh Pra 686 (687) (Pt B) (Pr 4).

——Art. 226—Other remedy open —Issue of writ.

Where subordinate Police officers after their conviction have been dismissed in violation of the mandatory provisions of the Madras Police Standing Order 77 and the effect of the general pardon granted by the Andhra government G. O. Ms. 26, dated 12-1-1954 has not been properly understood by the authorities, this is a fit case where the High Court should issue a a writ under Art. 226 even though the petitioners have not availed of the alternative remedy of an appeal under R 9 of the Madras Police Subordinate Services Discipline and Appeal Rules. 1956 Andh W R 682.

——Art. 226 — Mandamus — Other remedy open — Orders under Sea Customs Act — (Sea Customs Act (1878), S. 188).

The remedy of appeal provided by S. 188, Sea Customs Act is available only against orders under that Act and further is not an absolute bar to the exercise of the powers of the High Court under Art. 226. Where there was no justification in law for the issue of a notice to the petitioner demanding the payment of some money as customs duty the order if at all is without jurisdiction and the High Court will not stay its hands from giving relief to the petitioner on the ground that he could have approached the higher authorities under S. 188, Sea Customs Act. ILR (1958) 10 Assam 311 : A I R 1959 Assam 136 (138, 139) (Pt C) (Pr 9) (DB).

——Art. 226 - Mandamus — High Court when will interfere.

No writ of mandamus should issue unless the circumstances are such that referring the petitioner to seek remedy in civil Court would almost make the result nugatory, or the relief delayed beyond measure. Breach of contractual obligations would always give a chance to the party to seek relief in civil Courts and a petition under Art. 226 is not a fit vehicle for seeking redress. Case-law Ref. ILR (1953) 5 Assam 263 : AIR 1953 Assam 145 (149) (Pt E) (Pr 27) (DB).

——Art. 226 — Other remedy open — Writ against administrative order —S. 87, Sea Customs Act —(Sea Customs Act (1878), Ss. 87 and 188).

The reason why the Courts refuse to entertain writs when an alternative remedy is available is that the Legislature has set up tribunals for decision in appeals and that the remedy which the Court could give the petitioner could be obtained from these tribunals. But whether the petitioners should be disentitled to maintain the petition or not is a matter of discretion with the Court and if the Court is satisfied that the petitioner will not get justice from the appellate tribunal then the Court is not bound to accede to the submission that it should not hear the petitioner.

Where the Collector of Customs had clearly prejudged the decision of the appeal from an assessment order under S. 87, Sea Customs Act, the assessee cannot be compelled to go in appeal before him and the High Court would not refuse to entertain a writ application by the assessee under Art. 226 of the Constitution against the assessment order. 61 Bom L R 1 : ILR (1959) Bom 923 : AIR 1959 Bom 372 (380) (Pt F) (Pr 17) (DB).

——Art. 226—Other remedy open — Writ to quash order levying additional duty — (Sea Customs Act (1878), S. 189).

Where a person has to put in the entire amount demanded as additional duty, under S. 189, Sea Customs Act as a condition precedent for filing an appeal against an order levying additional duty complained of or for maintaining it, an appeal cannot be said to be an adequate alternative remedy. AIR 1958 S C 86, Foll. AIR 1958 Cal 694 (696) (Pt A) (Pr 3).

——Art. 226—Other remedy open—Right of appeal under S. 30 (1-A), Income-tax Act—(Income-tax Act (1922), Ss. 18 (3-B), 30 (1-A)).

Where a statute requires the entire money to be paid or deposited before an appeal could be preferred, that is not an alternative remedy which is adequate. A I R 1954 S C 403, Foll. As an appeal under S. 30 (1-A), Income-tax Act is dependent on the petitioner aggrieved by an order under S. 18 (3-B) of the Act depositing the entire sum claimed to be chargeable, it is not an alternative remedy which precludes an application for a high prerogative writ. (1956) 30 I T R 525 : AIR 1956 Cal 450 (453) (Pt C) (Pr 6).

——Art. 226—Alternative remedy not adequate—Application under Art. 226 lies—(Income-tax Act (1922), S. 33-A). AIR 1955 N U C (Cal) 5917.

——Art. 226—Another remedy open—Unless party has right to have his case heard it cannot be said that he has adequate remedy at law—S. 33-A, Income-tax Act, gives discretion to Commissioner—Assessee cannot ask for his interference as matter of right—He cannot be said to have another adequate remedy. A I R 1955 N U C (Cal) 411.

——Art. 226—Alternative remedy not absolute bar.

As an alternative remedy is not an absolute bar to the Court exercising its jurisdiction under Art. 226 of the Constitution the existence of a remedy by way of suit does not prevent the Court from granting reliefs in appropriate cases, No hard and fast rule can be laid down as to cases in which the Court will or will not grant relief under Art. 226. Each case will depend upon its special circumstances. 57 Cal W N 157 : AIR 1955 N U C (Cal) 40.

——Art. 226—Another remedy open.

Final electoral roll published by registering authority — District Magistrate on appeal by some voter under S. 529-A, Bengal Municipal Act, ordering amendment of the Roll by removing certain persons— Petition under Art. 226 by a voter who had taken no steps to challenge the Final Electoral Roll as published by the registering authority and who had not preferred an appeal, for direction to amend and republish the Electoral Roll according to the District Magistrate's order.

Held, that if the order passed by the District Magistrate in appeal was a valid order and free from all blemish, the petitioner could take advantage of it and say that the amendment should have been carried out irrespective of whether the order of amendment was procured at his instance or not. A I R 1954 Cal 285 (288) (Pt C) (Pr 11).

——Art. 226 — Alternative remedy — (Sea Customs Act (1878), Ss. 188, 191).

The existence of an alternative remedy is not an absolute bar to the maintenance of an application for a writ. Further where the Central Board of Revenue had itself taken the action impugned, it can hardly be said that the alternative remedy under S. 188 of the Sea Customs Act and a further right of an application in revision to the Central Government under S. 191 was or would be an adequate remedy. 58 Cal W N 209 : A I R 1954 Cal 151 (157) (Pt I) (Pr 15) (DB).

——Art. 226—Alternative remedy not equally efficacious—Writ may be issued (Municipalities—Bengal Municipal Act (15 of 1932), Ss. 156, 535).

Section 535 of the Bengal Municipal Act under which no suit or legal proceedings can be brought against the Commissioners of the Municipality without giving them one month's prior notice does not abrogate the powers of the High Court under Art. 226 of the Constitution.

Where a machine belonging to an occupier was seized under S. 156, Bengal Municipal Act, 1932, in execution of a warrant issued against the owner of the premises and if the occupier had pursued his ordinary legal remedies the result would have been that the machine would have been sold and lost to him before any effective action could have been taken the alternative remedy is not equally convenient or efficacious and under the circumstances, the occupier is justified in coming to the High Court for relief under Art. 226, for a writ against the administrator to forbear from levying distress illegally and in contravention of the Bengal Municipal Act. AIR 1954 Cal 131 (133, 134) (Pt C) (Pr 10).

——Art. 226 — Jurisdiction under — Exercise of — Existence of remedy by way of appeal — Special Officer hearing objections under S. 140, Calcutta Municipal Act, not giving opportunity to objector to place evidence.

The existence of an alternative remedy is not an absolute bar to the Court exercising jurisdiction under Art. 226 of the Constitution. Further the remedy by way of an appeal under the Calcutta Municipal Act would not be an adequate remedy in a case where the petitioner did not get any opportunity to place any material or evidence in support of the objections filed by him before the special officer who heard them under S. 140 of the Act. ('51) 55 Cal W N 667.

——Art. 226—Applicant having adequate remedy—Power of High Court to interfere—Order of attachment not within S. 46 (5-A) of Income-tax Act — Remedy provided by S. 33-A of that Act — If disentitles High Court from giving relief.

Under Art. 226 of the Constitution the High Court should not interfere if there is an adequate legal remedy provided in the statute itself. The remedy in question must be a specific remedy at law such which is not less convenient, beneficial and effective. Where an order of attachment of an Income tax Officer does not come within the four corners of S. 46 (5-A) of the Income-tax Act, the remedy provided by S. 33-A of that Act is not such a remedy which should disentitle the High Court from giving relief on an application under Art. 226 of the Constitution. (1951) 19 I T R 538 : 87 Cal L J 109 : A I R 1951 Cal 430 (434, 435) (Pt D) (Pr 16).

——Art. 226—Other remedy open—Gujarat Panchayat Act 1961 (6 of 1962), S. 131 (3) (ii) (a) — Order under S. 131, rendering petitioner disqualified to remain Chairman of Education Committee, in view of election of President of Panchayat as member of that Committee — Order neither resulting in any public inquiry nor showing any default in duty on part of Officer of Panchayat — Alternative remedy under Ss. 294 (6) and 296 (3) of the Act not open to petitioner—Writ petition maintainable—Gujarat Panchayat Act 1961 (6 of 1962), Ss. 131 (3) (ii) (a), 294 (6) and 296 (3). (1965) 6 Guj L R 329 : I L R (1965) Guj 326.

——Arts. 226, 227—Other remedy by way of revision open—Order of Land Acquisition Collector rejecting petition under S. 18, Land Acquisition Act — No bar to exercise of powers under Arts. 226 and 227—Land Acquisition Act (1894), S. 18. A I R 1963 Him Pra 1 (2) (Pt A) (Pr 5).

——Art. 226—Prohibition—Forest Act (1927), S. 82—Loss sought to be recovered from petitioner as land revenue under S. 82—High Court can grant relief by issuing a writ in the nature of prohibition although remedy by way of suit is available, as the alternative remedy is not equally efficacious. See Forest Act (1927), S. 82. AIR 1960 Him Pra 30.

——Art. 226—Other remedies open.

Article 226 of the Constitution could not be construed so as to replace the ordinary remedies by way of suits, etc. Nevertheless, the Sales Tax Act has been introduced for the first time in Hyderabad in 1950. Being a taxing Statute it is but proper that any doubt with regard to the liability to tax is made clear by a decision of the highest Court in the State so that it may serve as a guidance to the taxing authorities. Remedy by way of a suit would not serve the purpose, for it would entail enormous delay. Under such circumstances remedy by way of certiorari alone would ensure a pronouncement by the Highest Court in the State. A I R 1950 S C 163, Foll. Konduri Buchi Raialingam v. State of Hyderabad, I L R (1953) Hyd 673 : AIR 1954 Hyd 1 (2, 3, 9) (Pt B) (Prs 4, 30) (FB).

——Art. 226—Other remedy open—Court may issue a writ provided requisite grounds exist in spite of there being a right of appeal conferred on the petitioner by statute. A I R 1958 S C 86, Rel. on. 1961 Ker L T 423: 1961 Ker L J 577; (1961) 2 Lab L J 368: (1961) 3 Fac L R 166 : I L R (1961) 1 Ker 647.

——Art. 226 — Alternative remedy by way of suit available—Writ, when may be issued.

The real question to be considered is whether the alternative remedy is equally convenient, speedy, beneficial and effectual. And if the alternative remedy by way of suit is not equally efficacious the High Court will issue a writ under Art. 226; especially so, if the issue of a writ will be speedier and more beneficial than the remedy by way of suit. Case-law Ref AIR 1954 Kutch 11 (14) (Pt D) (Pr 8).

——Art. 226—Other remedy open — Registrar cancelling without any power registration of sale deed made by Sub-Registrar — Certiorari to quash Registrar's order — Remedy of suit under S. 77, Registration Act, if available—Writ, whether can be refused on that ground — (Registration Act (1908), S. 77).

The Registrar cancelled the registration of a sale deed made by the Sub-Registrar. The sale deed was executed by the opponent in favour of the petitioner. The execution of the document validly presented had not been denied by the executant (opponent). In a petition under Art. 226 for certiorari to quash the order of the Registrar, it was urged for the opponent that the petitioner was not entitled to any relief as he had a remedy by way of suit under S. 77, Registration Act.

Held, that even assuming that it is open to the petitioner to file a suit for setting aside the Registrar's decision under S. 77, Registration Act, or a suit for registration or a suit for specific performance of the contract or for possession of the property, this doubtful remedy of a suit cannot be regarded as equally convenient and efficacious remedy when the Registrar had clearly no power to cancel the registration of a

document made by the Sub-Registrar and the execution of the document validly presented had not been denied by the opponent.

If the opponent had not received the full price or any part of the price, it was a matter which the opponent had to contest only in a regularly constituted suit. But it was not a ground for refusing the writ. Madh Bha L R 1954 Civ 354 : Madh Bha L J 1954 H C R 1628 : A I R 1955 Madh Bha 205 (207) (Pt E) (Pr 7) (DB).

——Art. 226—Alternative remedy by way of revision under S. 115, C. P. Code — Alternative remedy was not adequate or sufficient—High Court not precluded from exercising discretion in writ proceedings even though alternative remedy by way of a revision lay in the case. AIR 1958 S C 86; A I R 1961 S C 1506 and AIR 1962 S C 1694, Rel. on. 1965 M P L J (Notes) 131.

——Art. 226 — Certiorari — Grant of permit under Motor Vehicles Act behind back of other permit-holder who could have opposed the grant — Fact of grant of permit becoming known after more than 30 days — Writ petition for cancellation of grant is maintainable, even though the remedy by way of appeal or revision was not availed of. See Motor Vehicles Act (1939), S. 64 (f). 1964 Jab L J 127.

——Art. 226 — Other remedy open — Certiorari — Central Excises and Salt Act (1944), Ss. 35, 36 — Remedies under—Availability of—No bar to invoke extraordinary jurisdiction of High Court under Art. 226, to quash proceedings under Act.

Mere availability of remedies under Ss. 35 and 36 of appeal and revision respectively is no bar for invoking the jurisdiction of the High Court under Art. 226 of the Constitution for issue of writ for quashing the proceedings taken under the Act. After there is an unsuccessful departmental appeal a revision under S. 36 of the Act is not an equally efficacious remedy. AIR 1958 S C 86 and A I R 1961 Madh Pra 154 (FB), Relied on. 1961 M P C 727 : 1961 Jab L J 1185 : ILR (1962) Madh Pra 197 : 1961 M P L J 1314 : A I R 1962 Madh Pra 112 (114) (Pt A) (Pr 5) (DB).

——Art. 226 — Other remedy — If bar to writ — Remedy of revision under section 64-A no bar for petition under Art. 226 — High Court however may decline to interfere in its discretion. See Motor Vehicles Act S. 64A. 1961 M P L J (Notes) 140.

——Art. 226—Other remedy open.

The scheme of Madhya Bharat Municipal Corporation Act is different from the Representation of the People Act, in that it provides an interim remedy against the rejection of the nomination paper. Cl. (3) of R. 31 of the Municipal Election Rules says that an order passed by Nirwachan Padadhikari would be final. In such a case the existence of another remedy in S. 441 of the Corporation Act is not, in every case, a bar to the exercise of the powers of a High Court under Art. 226 and the High Court can interfere if the circumstances of the case demand interference. AIR 1958 Madh Pra 181 and AIR 1955 Nag 49 (FB), Foll. 1958 Jab L J 227 : 1958 M P C 334 : 1959 M P L J 1222 : A I R 1958 Madh Pra 182 (183) (Pt A) (Prs 3, 4)

——Arts. 226, 311—Service agreement — Employee governed by State Bank of India (Sub-Accountants and Head Cashiers) Service Rules, 1959 — Termination of service under rules — Writ petition — Maintainability—Alternative remedy by way of suit for damages for breach of contract no bar.

The petitioner, who was a cashier in the former Imperial Bank of India, was taken over into the service of the State Bank of India under an agreement for service; and was governed by the State Bank of India (Sub-Accountants and Head Cashiers) Service Rules of 1959. His services were terminated under R. 14 of the said Rules. On his petition under Art. 226, it was contended on behalf of the State Bank that even though the State Bank was a public authority, the relationship between the State Bank and the petitioner was but that of ordinary master and servant and the termination of service as a unilateral act of the Bank, as an employer, was not like any other private employer subject to scrutiny under Art. 226. At the worst the remedy for wrongful termination was only to sue for damages for breach of contract of service :

Held, that the petition under Art. 226 could not be dismissed as not maintainable because the petitioner's case which had to be examined, was that the rules relating to his service were statutory and the order of termination being in effect an order of dismissal, it was in violation of those rules or of the principles of natural justice and therefore a nullity. The alternative remedy by way of a suit for damages might influence the discretion of Court but it did not limit the wide power under Art. 226. If the petitioner was unable to establish the grounds, the petition has to be dismissed as a result but not on the ground of maintainability of the petition. (1963) 2 Lab L J 304 : AIR 1964 Mad 335 (344) (Pt C) (Pr 12).

——Art. 226 — Other remedy open — When a bar to writ petition.

In Income-tax proceedings High Court can on a writ petition interfere with an order of an Income-tax Officer if the assessee has been illegally mulcted with a heavy payment of tax and such tax is likely to be recurrent for subsequent years, even though the assessee has a right of appeal against the order of the Income-tax Officer. (1964) 51 I T R 82 (Mad).

——Art. 226 — Order retiring Railway servant prematurely—Remedy—Application for writ of mandamus—Competency — Remedy by way of suit—Adequacy.

Where a person in the service of the Railway alleges that he is entitled to remain in service till 1963, but that the Railway passed an order that he must retire in 1957, wrongly entering his date of birth as 1902 instead of 1908, the most efficacious remedy is by way of an application for a writ of mandamus under Art. 226 of the Constitution. A suit is not the proper or appropriate remedy. (1958) 2 Mad L J 517 : 1958 Mad W N 623 : (1958) 2 Lab L J 324 : 71 Mad L W 864 : AIR 1959 Mad 88 (89) (Pt A) (Pr 1) (DB).

——Art. 226—Other remedy—Effect — Proceedings by Collector to recover income-tax as arrears of land revenue — Property in name of person other than defaulter—Issue of writ (Income-tax Act (1922), S. 46)—(Madras Revenue Recovery Act (2 of 1864), S. 25).

Though an aggrieved party may have a right of suit, he will not be precluded from invoking the power of High Court under Art. 226 to obtain appropriate orders for preventing the Collector from proceeding to attach and sell property registered in his name for the recovery of arrears of Income-tax on the ground that the property is held benami for the defaulter. 70 Mad L W 234 : (1957) 31 I T R 460 : AIR 1957 Mad 376 (378, 379) (Pt B) (Pr 10) (DB).

——Art. 226 — Writ of prohibition — Right to issue when alternative remedy is open. See H. R. and Charitable Endowments Act (19 of 1951), Ss. 20, 21, Etc. AIR 1952 Mad 613 (DB).

——Arts. 226, 258 246, 162, 73 and Sch. 7, List 1, Entry 41—Imports and Exports (Control) Act (1947), S. 3—Imports and Exports (Control) Order (1955), Clauses

8, 9 and 10—Import Trade Control Policy for April to September, 1963—Para 51 — Other remedy open—Disposal of applications for import licence — State Government constituting committee including State Government Officer who was acting as sponsoring authority under Act—Order constituting committee amounted to encroachment upon exclusive jurisdiction of Union Government and sponsoring authority ought to have exercised its own individual judgment —Applications could not be said to have been finally disposed of—Any remedy by way of appeal against improper rejection of licences was not adequate and relief could be granted in writ petition. (1964) 1 Mys L J 513 : A I R 1965 Mys 143 (147, 148, 149) (Pt B) (Prs 10, 14, 15, 16) (DB).

——**Art. 226**—Another remedy — Remedy by way of appeal — No appellate tribunal notified in Gazette, though Motor Vehicles Act providing for one on the date of writ petition — Writ petition against order of Regional Transport Authority, lies — Motor Vehicles Act (1939), S. 64. (1964) 1 Mys L J 307 : AIR 1964 Mys 288 (290) (Pt B) (Pr 4) (DB).

——**Art. 226—Other remedy open.**

A petition under Art. 226 cannot be thrown out on the ground that there is an alternative remedy by way of suit when the ordinary remedy by way of civil suit is not equally expeditious and effective to preserve the rights of the petitioner. ILR (1956) Nag 27 : AIR 1956 Nag 34 (36) (Pt A) (Pr 9) (DB).

——**Art. 226 — Other remedy if, a bar to exercise of power under Article.**

Where the provision in the statute, which granted a remedy, was introduced shortly before the impugned orders, when it was not possible for the parties to comprehened its true scope and there was no authoritative decision as to whether the power of review conferred by the provision was unlimited or should be deemed to be circumscribed and one thing, however was certain that the clause in question did not extend to the parties any legal right, and the relief that it contemplated was only discretionary with the appellate authority, such a remedy, would not be a ground for refusing to exercise jurisdiction under Art. 226 of the Constitution. 1955 Nag L J 367 : I L R (1955) Nag 408 : A I R 1955 Nag 158 (159) (Pt A) (Pr 4) (DB).

——Art. 226—Other remedy open—**Held**, though suit could be instituted it was not speedy and adequate remedy and hence application under Art. 226 was maintainable. AIR 1955 N U C (Nag) 1236 (DB).

——**Art. 226—Other remedy open.**

Obiter—Where the remedy of a civil suit, even if available would not be equally efficacious and expeditious, it cannot serve as a bar to the granting of immediate relief under Art. 226 in appropriate cases. 1954 Nag L J 287 : ILR (1954) Nag 363 : AIR 1954 Nag 205 (206) (Pt D) (Pr 3) (DB).

——**Art. 226 – Prerogative writ—Power of High Court to issue—Alternative remedy.**

The High Court will exercise the power when the ordinary remedy which exists is not really effective and the High Court may issue a writ of quo warranto where the alleged intrusion is patent. AIR 1951 Nag 138, Ref. I L R (1953) Nag 267 : 1953 Nag L J 503 : AIR 1953 Nag 81 (85) (Pt E) (Pr 19) (DB).

——**Art. 226—Another remedy not adequate.**

Where the ordinary process of law is not equally adequate or effective in safeguarding the right of the petitioner, it is but appropriate that the Court should exercise the power under Art. 226 to afford redress to the citizen. I L R (1951) Nag 959 : AIR 1951 Nag 138 (141) (Pt C) (Pr 20) (DB).

——**Art. 226—Other remedy open — Application for writ—Maintainability.**

Where a Hindu father has executed a surety bond guaranteeing the honesty of certain contractor and the contractor having committed default in making the payment an order is made directing recovery of the surety debt from the son of the surety, the Court can exercise its jurisdiction under Art. 226. The demand made on the son of the surety is prima facie unsustainable in law and the High Court would not be justified in putting the petitioner to harassment and expense of driving him to the Civil Court for establishing his right when the position leaves no room for doubt. 22 Cut L T 153 : A I R 1956 Orissa 144 (144) (Pt B) (Pr 3) (DB).

——**Arts. 226 and 227—Alternative remedy by way of regular suit not equally convenient or beneficial or effective—Application under Arts. 226 and 227 is maintainable.** 18 Cut L T 267 : ILR (1952) Cut 615 : AIR 1953 Orissa 238 (239) (Pt A) (Pr 5) (DB).

——**Art. 226 — Another remedy open — Remedy by way of revision under S. 27, Administration of Evacuee Property Act, 1950 — (Administration of Evacuee Property Act (1950), S. 27).**

When another remedy is open to a petitioner the Court may refuse to entertain an application for grant of a writ of mandamus or for any other kind of prerogative writ but this rule is applied only where the alternative remedy is speedy as well as efficacious. The right to move the Custodian General under S. 27 cannot be regarded a remedy of that nature, because unlike the case of an appeal even if the petitioner succeeds in establishing that the proceedings resulting in the order of the Custodian were without jurisdiction and illegal the Custodian General is not bound to interfere and grant him the proper relief. 3 Pepsu L R 195 : AIR 1952 Pepsu 115 (118) (Pt B) (Pr 11) (DB).

——**Art. 226—Jurisdiction of High Court not fettered by consideration of alternative remedy.**

Though the jurisdiction of the High Court under Article 226 of the Constitution is not fettered by any such consideration as that of alternative remedy, it is one of the things which must weigh with the Court in the exercise of its writ jurisdiction.

Where the questions involved are pure and patent questions of law and do not involve any question requiring any elaborate inquiry, a suit is not an equally efficacious alternative remedy to be adopted. ('66) 68 Pun L R 174.

——**Arts. 226, 19 (1) (f) and 31**—Other remedy open —Deprivation of property without notification under S. 4, Land Acquisition Act (1894)—Alternative remedy by way of civil suit available — High Court can still exercise its power where alternative remedy is not equally effectual and the petitioner is likely to suffer irretrievable loss and damage—AIR 1951 Pat 434, AIR 1952 All 753 and AIR 1952 Orissa 344, Rel. on. ('65) 67 Punj L R 616.

——**Art. 226**—Mandamus, writ of—Auction sale of excise licence—Highest bidder acquiring status of licensee after due compliance of law — Government not issuing any formal license but instead reauctioning same license without giving any reasons—Mandamus if can issue—Alternative remedy by way of suit for damages inadequate—Action of Government held was without jurisdiction and in violation of excise law—Writ issued. ILR (1963) 1 Punj 148 : AIR 1963 Punj 76 (86, 87) (Pt D) (Prs 31, 32, 35, 38) (DB).

——**Art. 226 — Other remedy—Quo warranto—Discretion—(Municipalities — Punjab Municipal Act (3**

of 1911), S. 240 — Election Rules under, by Pepsu, R. 52—Scope) - (Elections).

The power of the High Court cannot be affected by any legislative provision; in spite of anything contained in any legislative enactment, the High Court can issue such writs, directions and orders under Art. 226 of the Constitution, as they deem fit. R. 52 of the Election Rules framed by Pepsu under S. 240 of the Punjab Municipal Act only provides an alternative statutory remedy to call in question a Municipal Election. It cannot be said that when there is an adequate alternative remedy, an application to the High Court under Art 226 will not lie. All that can be said is that in such cases the High Court will not generally, in the exercise of its discretion grant the application and will refuse to interfere. The rule is only a rule of discretion and expediency and not one of jurisdiction or limitation on the power of the High Court. In the case of quo warranto also, the existence of alternative remedy, which is adequate for the needs of a case, is a matter to be taken into consideration in granting the writ. Where the proposed alternative remedy is not equally appropriate or efficacious and the circumstances of the case demand interference, the High Court will be well within its rights to exercise its discretion in favour of the petitioner and issue an appropriate writ, direction or order under the Article. ILR 1958 Punj 1938: AIR 1959 Punj 83 (87, 88) (Pt C) (Prs 15, 17) (DB).

——Art. 226 - Other remedy open—Objection to proceedings under S. 7, Administration of Evacuee Property Act dismissed -Same matter disputed in proceedings under S. 8 (4)—Appeal under S. 24 not filed — Matter can be agitated in proceedings under Art. 226 of the Constitution. See Administration of Evacuee Property Act (1950), S. 7. A I R 1957 Punj 197.

——Art. 226—Other remedy open.

The existence of an alternative remedy is not of itself a bar to the exercise of jurisdiction under Art. 226 and if in fact the existing alternative remedy is found not to be efficacious then an applicant should not be deprived of the remedy afforded to him by the Constitution 54 Pun L R 206 : A I R 1952 Punj 268 (269) (Pt A) (Pr 5) (DB).

——Art. 226—Other remedy open — If absolute bar to writ.

The circumstance, taken by itself, that an alternative remedy exists cannot operate as an absolute reason for the High Courts refusing to exercise jurisdiction irrespective of the surrounding circumstances of the case, and particularly where the alternative remedy cannot and would not be an equally convenient, speedy and efficacious remedy. ILR (1959) 9 Raj 821 : 1960 Raj L W 486 : AIR 1960 Raj 25 (43) (Pt I) (Pr 80) (DB).

——Art. 226 — Other remedy open — Remedy by appeal or revision likely to be a farce—Interference under Art. 226—(Sales Tax—Rajasthan Sales Tax Act 29 of 1954), S. 10).

Where the main contention of the applicant under Art. 226 is that the assessment order of 8-12-1956 in Sales tax proceedings could not be passed at all because there was already an order of 17-5-1956 and the Additional Commissioner has already ruled administratively that the order of 17-5-1956 did not exist, the High Court would not refuse to interfere on the ground that the order of 8-12-1956 was open to appeal, etc., under the sales tax Act. 1957 Raj L W 431, Foll. ILR (1958) 8 Raj 947.

——Art 226—Order under S. 98 can be passed at stage of conclusion of trial only — Trial — Meaning of—Order made irrespective of stage of conclusion of trial dismissing petition—No appeal lies—Petition under Art. 226 of Constitution lies. See Representation of the People Act (1951), S. 98. 1959 Raj L W 421 : ILR (1958) 8 Raj 474.

——Art 226—Other remedy open — Issue of writ—(Municipalities - Rajasthan Town Municipalities Act (23 of 195), Ss. 12 (5), 207 and 210).

Section 210 does not authorise the Government to revise orders passed by an officer to whom its powers are delegated under S. 207. Where, therefore the Director of Local Bodies to whom the Government has under S. 207 delegated its powers under S. 12 (5) passes an order under S. 12 (5), the aggrieved party cannot be said to have any remedy under S. 210. 1957 Raj L W 500 : ILR (1957) 7 Raj 993 : AIR 1958 Raj 91 (92) (Pt A) (Pr 6) (DB).

——Art. 226—Other remedy open —(Motor Vehicles Act (1939), S. 64).

On the direction by the Regional Transport Authorities to the Superintendent of Police, to take action against the applicant in the matter of permits which were not counter-signed, petition was filed under Art. 226. Objections to it were taken that the applicants had a remedy by way of appeal under S 64 (d) Motor Vehicles Act and that they could even file a suit for declaration and injunction. There was no order of the Regional Transport Authority refusing to countersign the permit and all that was urged in the writ petition was that the prayer for counter-signature was not accepted and therefore that amounted to a refusal ;

Held that the right of appeal arises under S. 64 (d) when there is a refusal to counter-sign, and such refusal can only be by an order of the Regional Transport Authority to that effect. In the circumstances it was not possible for the applicant to appeal to the higher authority and hence the objection to the writ petition was not maintainable. ILR (1956) 6 Raj 44 : 1956 Raj L W 359.

——Art. 226—Other remedy.

Notice on applicant to deposit amount of illegal fine on the threat of attachment of Jagir — Petition under Art. 226 held maintainable—Remedy of suit and injunction held would not be equally effective, beneficial and convenient. 1954 Raj L W 543 : ILR (1954) 4 Raj 743 : AIR 1954 Raj 200 (202) (Pt F) (Pr 8) (DB).

● ——Art. 226—Other remedy by way of suit.

The fact that suit would involve consideration of Articles of Constitution and would therefore be tried by the High Court, is immaterial, for even if the suit were to be tried by High Court it would be basically different from the procedure which is adopted in the disposal of writ applications. If and when a suit is filed, both parties will have an opportunity to lead their full evidence, definite issues will be fixed and tried, and when all that will have been done, the Court would be in a far better position to appreciate and adjudicate upon the complex nature of the right claimed and to decide the further question whether such a right was enforceable at law. (To such a case the more appropriate provision that would apply is Art. 226 and not S. 113 (as amended) of Civil P. C.), Manohar Singh v. State of Rajasthan, 1955 Raj L W 98 : ILR (1954) 4 Raj 113 : AIR 1954 Raj 85 (96) (Pt E) (Pr 35) (FB).

——Art. 226—Other remedy open—(Matsya Customs Ordinance (1948), S. 48).

Impugned order under S. 48 of Matsya Customs Ordinance of the Deputy Commissioner, Customs and Excise, Jaipur Division, without jurisdiction—Property of a very great value involved—High Court would not be justified in dismissing the application

under Art. 226 on ground of there being an adequate and alternative remedy by way of a regular suit. AIR 1953 Raj 22, Rel. on. 1953 Raj L W 47 : I L R (1952) 2 Raj 511: AIR 1953 Raj 158 (162) (Pt D) (Pr 9) (DB).

——Art. 226 — Another remedy by way of suit — Arguments in petition under Art. 226 heard — Validity of certain Ordinances challenged — If suit were filed, the question would have been referred for opinion of High Court under proviso to S. 113 Civil P. C. — Application under Art. 226 would not be dismissed.

Normally a person who is deprived of his property has a right to file a suit and should go to the Civil Court and should not invoke the extraordinary jurisdiction of the High Court.

But the High Court would not dismiss the application under Art. 226, challenging the validity of certain Ordinances after having heard the arguments, on the ground that the applicant has another remedy by way of a suit, where if the suit were filed the only point that would arise for its decision would be whether Ordinances were void in view of certain provisions of the Constitution and under recent amendment of S. 113, Civil P. C., that question would have to be referred to the High Court for its opinion. 1952 Raj L W 81 : ILR (1951) 1 Raj 888 : AIR 1953 Raj 22 (24, 25) (Pt B) (Prs 7, 8) (DB).

——Art. 226—Other remedy open — Expediency of writ — (Houses and Rents—Travancore-Cochin Buildings (Lease and Rent Control) Order (1950)).

Clause 16 of the Travancore-Cochin Buildirgs (Lease and Rent Control) Order, 1950, gives a revisional jurisdiction to the Government and normally the High Court would be inclined to direct a party aggrieved to exhaust his normal remedy by way of revision before he approaches the High Court. Where however the Appellate authority having heard the appeal at Ernakulam took seven months to pronounce his order at Trichur without notice to parties and on the next day of the order it resumed its work at Ernakulam, the long delay that occurred and in view of the fact that two months' time granted to the tenant had already lapsed, the High Court could interfere at that stage and exercise the powers under Art. 226. 1955 Ker L T 392 : I L R (1955) Trav-Co 572 : AIR 1957 Trav-Co 177 (179) (Pt B) (Pr 13) (DB).

——Art. 226 (1) — Certiorari — Industrial Tribunal under misapprehension as to points that arose before it for decision—Misapprehension appearing on face of order granting interim award—High Court would issue writ of certiorari even assuming that appeal would lie against such award—(Industrial Disputes Act (1947), S. 15). AIR 1953 Trav Co 167 (171, 172, 173) (Pt D) (Prs 9, 10).

7 (d). Burden as to.

——Art. 226—Another remedy open.

The remedy under Art. 226 is apparently extraordinary and should avail only when recourse to ordinary law cannot lead to adequate and prompt redress or where failure or miscarriage of justice flowing from the act complained of cannot otherwise be averted. It is not merely the existence of an alternative remedy that should justify declining action under Art. 226. It is only when adequate and prompt relief is available otherwise that Art. 226 would not be permitted to be utilised as an easy and inexpensive substitute for it. To pursuade the Court to grant discretionary relief immediately by an extra-ordinary process it should be for the petitioner to show if he has alternative remedy that the recourse to it would not bring him adequate and prompt relief. ILR (1951) 3 Assam 348 : AIR 1951 Assam 163 (167) (Pt F) (Pr 30) (DB).

——Art. 226—Bombay Tenancy and Agricultural Lands Act (67 of 1948), S. 32—Section cannot be impugned on the ground that it purports to take away the jurisdiction of the High Court under Arts. 226 and 227. See Tenancy Laws — Bombay Tenancy and Agricultural Lands Act (67 of 1948), S. 32. AIR 1957 Bom 252.

[Overruled on another point in AIR 1959 S C 459]

——Art. 226—Alternative remedy is not bar to application under Article — However applicant must satisfy Court that alternative remedy is not adequate.

An alternative remedy by itself is no bar to an application under Art. 226. But before such an application can be entertained and relief granted to an applicant, he must satisfy the Court that the alternative remedy would not be sufficient or adequate or would be infructuous. AIR 1957 S C 882 ; AIR 1950 S C 163 ; AIR 1964 S C 1451, AIR 1961 S C 1506; AIR 1958 S C 86 and AIR 1964 S C 506, Rel. on. ('65) 69 Cal W N 439.

——Art. 226—Other remedy open — Issue of writ.

Where an adequate alternative remedy lies, then unless very good reasons are shown, an application for a writ will not lie. 62 Cal W N 169 : (1959) 1 Lab L J 374 : AIR 1958 Cal 633 (634) (Pt B) (Pr 3).

——Art. 226—Other remedy—Burden of proof.

The burden lies on the applicant asking the High Court to exercise the jurisdiction under Art. 226 to show that he had no other specific and adequate legal remedy or that the remedy of a suit is not convenient, beneficial or effectual and one by which justice could be satisfactorily obtained by him. I L R (1953) Madh B 393 : AIR 1953 Madh B 165 (169, 171) (Pt B) (Prs 8, 12) (DB).

——Art. 226 (1)—Other remedy open — Specific Relief Act (1877), S. 45, Proviso (d) — Mandamus — Application for—Existence of other remedy—Effect of—Burden of proof.

Normally, the High Court will not issue a writ where there is an alternative remedy. But there is not absolute bar to entertaining writ petitions and issuing a writ, when the alternative remedies are, in the opinion of the Court, not effective, speedy, adequate or sufficient. The facts of each case have to be considered before deciding whether the alternative remedies are speedy, effective, sufficient or adequate. AIR 1956 Mad 454, Rel. on.

It is for the petitioners to satisfy the Court that they cannot get the remedy in a regular action for mandamus. (1956) 26 Com Cas 431: 70 Mad L W 28: (1957) 1 Mad L J 254 : ILR (1957) Mad 383 : AIR 1957 Mad 309 (317) (Pt E) (Prs 20, 21).

——Art. 226—Other remedy open — Right to apply for writ — Burden of proof — (Administration of Evacuee Property (Central) Rules (1950), R. 22).

The remedy provided for in Art. 226 is a discretionary remedy and the High Court has always the discretion to refuse to grant a writ if the aggrieved party has an adequate or suitable alternative remedy. A petitioner who applies for a writ of certiorari to quash the order of the Assistant Custodian declaring a person evacuee and his property an evacuee property has a remedy under R. 22, Administration of Evacuee Property Rules. The burden of proving that the alternative remedy is not adequate or equally efficacious is on the petitioners. A I R 1956 Sau 47 (50, 51) (Pt D) (Pr 7) (DB).

7 (e). Contractual rights.

——Art. 226—Availability of other remedy — Market owned by Municipality — Matter is one of contract between parties — Rights and obligations can be

enforced by suit—Enhancement of rent—High Court will not restrain Municipality under Art. 226. A I R 1955 N U C (All) 4431.

——Art. 226—Scope — Withdrawal of permission to carry on occupation of petition writer in collectorate compound — Remedy is by way of suit for breach of contract and not by a petition under Art. 226. See Ibid, Art. 19 (1) (g). A I R 1954 All 317 (DB).

——Art. 226—Other remedy open — Writ petition—Whether maintainable.

The Income tax Officer having issued a certificate under S. 46 (2) of the Income tax Act to the Collector of Bombay, the latter issued a prohibitory order under O. 21, R. 46, Civil P. C. prohibiting and restraining the respondent firm from making any transfer of shares belonging to the respondent but standing in the name of the petitioner as a benamidar of the respondent. The petitioner therefore filed a petition under Art. 226 challenging the prohibitory order and praying for the issue of a writ of mandamus.

Held, that assuming that he had, however, an interest in the property in question, it was not right nor proper to allow him to take out a petition which invoked the extraordinary jurisdiction of the High Court and to make that petition an arena to resolve the differences between the partners inter se. 60 Bom L R 748: A I R 1959 Bom 102 (106) (Pt B) (Pr 14).

——Art. 226—Scope — Order under Administration of Evacuee Property Act—Issue of writ — Administration of Evacuee Property Act (1950), Ss. 2 (f) and 7—Other remedy open.

Held, on facts that the title was still with the Evacuee and the Custodian was prima facie entitled to take actual possession; that if the petitioner who was the final transferee of the field sold had any claim to the property by virtue of certain contract it was for him to establish those claims in an ordinary Court and that High Court would not entertain such claims under Art. 226, Constitution of India. 1958 Nag L J (Notes) 21.

——Art. 226 — Constitution of Jammu and Kashmir, S. 103—Scope—Contractual rights — Other remedy available — Power of High Court to issue writ. See Constitution of Jammu and Kashmir, S. 103. A I R 1959 J & K 10.

——Art. 226 — Contract with Government under provisions of certain Government Orders — Contract alleged to be result of duress — Proper remedy is by civil suit and not by petition under Art. 226.

Where a person enters into a contract with the Government under certain provisions of Government Orders, a petition under Art. 226 for a declaration that the contract was void because of duress etc. is hardly the correct remedy and the proper course for the person is to go to a civil Court and file a regular suit. A I R 1951 Pat 231 and A I R 1952 Cal 496, Rel. on. I L R (1952) Patiala 482: A I R 1953 Pepsu 9 (11, 12) (Pt B) (Pr 8).

——Art. 226 — Alternate remedy — Breach of contract—Issue of writ.

On demand of previous dues for the supply of electrical energy made by the Electrical Department of Rajasthan Government, the consumer company filed a writ petition urging that their consumptions were at concessional rates as per sanction accorded by the then Jaipur Government and that the demand of the present Rajasthan Government at the normal rates was in breach of that contract. The State Government denied any such contract.

Held, that even assuming that there was a case of a breach of contract, the consumer company has its remedy by way of a suit. 1959 Raj L W 439: I L R (1959) 9 Raj 786: A I R 1959 Raj 275 (277) (Pt A) (Pr 5) (DB).

——Art. 226—Other remedy open.

Where the contract was concluded between the State and the applicant, and later the State went back on that contract, and decided to call for fresh tenders the High Court should not exercise its extraordinary jurisdiction under Art. 226 as even if there has been a breach of the contract, a specific, adequate and convenient remedy is available by a suit for damages for breach of contract. As the damage done can be compensated for by a decree for damages, the fact that the applicant would have had to give notice under S. 80 of the Code of Civil Procedure and could not file the suit for two months does not mean that that there was not an adequate remedy available to him. A I R 1947 Cal 307, Rel. on. 1952 Raj L W 66: I L R (1951) 1 Raj 755: A I R 1952 Raj 151 (151, 152) (Prs 4, 6) (DB).

——Art. 226—Both in the matter of mandamus and other appropriate directions under Art. 226 the powers under Art. 226 are extraordinary powers and should be sparingly used under law, only in those cases where the rights of a person have been seriously infringed, and he has no other adequate and specific remedy available.

The relationship between the petitioner and the State of Rajasthan was that of a lessee and lessor, a lease deed had been executed between them. There were a number of terms in the lease-deed and under one of the terms the lessors had been given a right to distrain as well as to re-enter on the leased land. It was disputed between the parties whether there was any amount due from the petitioner and if so, whether the conditions giving rights of distraint and of re-entry had accrued.

Held, that the petitioner had another remedy against the opposite party by way of a regular suit and for an injunction restraining the opposite party from realising the amount of dues and also for the recovery of possession of the leased property, which had been re-entered upon by the opposite party. Case law discussed. 1951 Raj L W 426: I L R (1951) 1 Raj 496 (DB).

7 (f). Costly or ineffective.

——Art. 226—Other remedy open—Existence of alternative remedy is not an absolute bar — Alternative remedy not equally adequate or efficacious where vires of Rule is under challenge—Court is competent to quash orders passed under ultra vires Rule even though alternative remedy is available. A I R 1964 Ker 131 (FB) Rel. on. (1965) 16 S T C 21: A I R 1965 All 483 (486) (Pt B) (Pr 10).

——Art. 226—Other remedy open — Banaras Hindu University Act (1915) (asamended by Act 55 of 1951), S. 5 (7) and Statute No. 22 — Disciplinary action taken against students by Standing Committee—Issue of writ.

The Standing Committee is the executive of the Academic Council and, according to Statute No. 22, the duties of the Standing Committee are subject to revision and control of the Academic Council. By sub-s. (7) of S. 5 of the Act the visitor has been authorised to annul any proceeding of the University. The language of Statute No. 22 and of sub-s. (7) of S. 5 of the Act can be interpreted only to mean that wide powers had been conferred on the above Authorities, but neither the Statute nor the sub-section conferred any right on the students to take their cases to these Authorities. It was in the absolute discretion of these Authorities to entertain the representations or to refuse to look into them. As such, they could not be said to afford an adequate remedy to the petitioners

justifying the rejection of the writ petitions on this ground. A I R 1960 All 256 (262, 263) (Ft B) (Prs 31, 39).

——Art. 226—Other remedy—Effect.

The existence of an alternative remedy does not prevent writ petitions being entertained or a remedy by way of a writ being afforded to aggrieved parties, if that alternative remedy is not efficacious or involves the party in expenses and harassment. (1958) 33 I T R 457 : (1958) 1 Andh W R 322.

——Art. 226 — Alternative remedy — Long and tedious.

The fact that the petitioners have another remedy is no bar to a petition under Art. 226 where it is directed against the orders of the Government which have no justification in law and constitute an unauthorised attack on the petitioner's rights, and where it would be sheer harassment of the petitioners to be left to follow a long and tedious remedy by way of a suit. ILR (1954) 6 Assam 347 : AIR 1955 Assam 45 (46, 47) (Pt B) (Pr 3) (DB).

——Arts. 226 and 227 — Existence of alternative remedy no bar to jurisdiction, particularly when interference with impugned decision would save costs and avoid further judicial proceedings. 65 Mah L J (Notes) 62.

——Art. 226 —Other remedy open — Petition under Art. 226 Maintainability — (Life Insurance Corporation Act (1956), S. 11)— (Specilic Relief Act (1877), S. 45).

Where the powers of the Life Insurance Corporation of India and of the Central Government to alter under s. 11 of the Life Insurance Corporation Act, 1956, the pay scale and other conditions of service of the employees of the insurer units taken over by the Corporation are challenged, a petition for the issue of a writ is the proper remedy for the purpose. An application under the Industrial Disputes Act. 1947 or the Payment of Wages Act is not an adequte legal remedy. 60 Bom.L R 318 : AIR 1958 Bom 451 (455) (Pt A) (Prs 9, 10)

——Art. 226— Alternative remedy—Statute requiring appellant to deposit full amount of duty demanded pending appeal —Remedy being onerous and burdensome is not adequate alternative remedy—Sea Customs Act (1878), S. 189. A I R 1954 S C 403 Foll. 69 Cal W N 328 : AIR 1965 Cal 428 (433) (Pt A) (Pr 14).

——Art. 226—Other remedy open—Remedy by way of appeal — Applicability of Income-tax Act (1922), S. 30 (1-A).

Under S. 30 (1-A), a person who denies his liability to make a deduction under S. 18 (3-A) and to pay the amount deducted can prefer an appeal only if he has actually deducted and paid the tax And when a statute requires the entire amount to be paid or deposited before appeal can be preferred, the alternative remedy by way of an appeal is not an adequate remedy. The company can in such a case move the High Court by a petition under Art. 226 A I R 1954 S C 403, Rel. on. (1958) 33 I T R 866 : (1957-58) 12 F J R 324 : A I R 1957 Cal 514 (519) (Pt B) (Pr 18) (DB).

——Art. 226 — Interference under — Attachment order under S. 46 (5 A), Income Tax Act — Revision of—Income-tax Act, 1922, S. 33-A.

If there is an adequate legal remedy provided in the Statute itself then High Court should not interfere under Art 226 of the Indian Constitution. But the remedy in question must be a specific remedy at law which is not less convenient, beneficial and effective.

Where the petitioner sought under Art. 226 the revision of an attachment order passed by the Income Tax Officer under S. 46 (5.A), Income Tax Act, as it was inconsistent with the order for instalment passed by the Collector subsequently.

Held that the remedy provided by S. 33A was not such a remedy which would disentitle the Court from giving relief under Art. 226 of the Constitution. (1951) 19 I T R 538 : 87 Cal L J 109 : AIR 1951 Cal 430 (434, 435) (Pt D) (Pr 16).

—Arts. 226 and 133—Other remedy open—Remedy by suit — Dismissal of application under Art. 226—Expensiveness of remedy whether ground for the petition to succeed. See Ibid, Art. 133. AIR 1956 Him Pra 25.

—— Art. 226 —Order under S. 167, Sea Customs Act for confiscation and imposition of fine - Heavy sums imposed as fine by the order — Appeal to Central Board of Revenue not only very expensive but also not an effective remedy in the circumstances—Held, the absence of an explanation in the affidavit as to why the petitioner did not avail of the alternative remedy did not bar the exercise of jurisdiction by the High Court under Art. 226—Sea Customs Act (1878) S. 167 (3) 1962 Mad W N 302 : 1962 Mad L J (Cri) 659 : 75 Mad L W 276 : (1962) 2 Mad L J 499 : AIR 1962 Mad 366 (367) (Pt A) (Pr 4).

——Art. 226 — Other remedy open — Removal of President under S 47 (4), Madras Village Panchayats Act — Remedy under S. 47 (4) — Madras Village Panchayats Act (10 of 1950), S. 47 (1) and (4).

The general rule is that the High Court does not interfere by the issue of a writ of certiorari or grant such extraordinary remedies when there is another convenient and adequate legal remedy open to a petitioner. But where action under S. 47 was taken by the Inspector against the President of a Panchayat Board only after prior consultation with the Government, the alternative remedy given by S 47 (4) which empowers the Government to cancel the notification under S 47 (1) is really illusory and his petition under Art. 226 ought not to be rejected on the ground that he should seek his remedy at the hands of the Government. (1955) 2 Mad L J 116 : 1955 Mad W N 639 : 68 Mad L W 419 : A I R 1955 Mad 584 (586) (Pt A) (Pr 4) (DB).

——Art. 226 — Application for writ of certiorari — Existence of other remedy—Effect.

The existence of other remedy is not a bar to the High Court's entertaining an application in 'certiorari.'

Held, on facts, that the order dismissing the petitioner from service was ultra vires and void and it would be unjust, if not cruel, to deny the petitioner the benefit of that adjudication as pursuit of the remedy in another Court meant further expenses and delay. A I R 1956 Trav-Co 35 (41, 42) (Pt E) (Prs 24, 29).

7 (g) Fundamental rights, infringement of.

——Art. 32 — Applicability — Alternative remedy open—If bar to petition under Art. 32.

Even if the existence of other adequate legal remedy may be taken into consideration by the High Court in deciding whether it should issue any of the prerogative writs on an application under Art. 226 of the Constitution, the Supreme Court cannot, on a similar ground, decline to entertain a petition under Art 32, for the right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by Part 3 of the Constitution is itself a guaranteed right. The mere existence of an adequate alternative legal remedy cannot per se be a good and sufficient ground for throwing out a petition under Art. 32 if the existence of a fundamental right and a breach, actual or threatened, of such right is alleged

and is prima facie established on the petition A I R 1950 S C 163 and A I R 1950 S C 124, Rel. on. Kochunni Nayar v. State of Madras, (1959) Supp (2) S C R 313 : 1959 Ker L J 464 : (1959) 2 S C A 248 : 1959 S C J 858 : (1959) 2 Andh W R (S C) 70 : (1959) 2 Mad L J (S C) 70 : A I R 1959 S C 725 (729, 730) (Pt A) (Pr 8).

——Arts. 32, 226—Petition under Art. 226 complaining breach of fundamental rights — Existence of alternative remedy under the impugned Act.

The powers of the Supreme Court under Art. 32 and of the High Court under Art. 226 are concurrent and if the Supreme Court cannot refuse the application of any petitioner who comes before it complaining of contravention of fundamental rights equally so the High Court cannot refuse to entertain the application of a person who comes before it under Art. 206 on the ground that his fundamental rights should be protected.

The principle that a Court will not issue a prerogative writ when an equally adequate alternative remedy is available which has always been applied when the Court is called upon to issue writs like writs of certiorari and mandamus would not, therefore apply when a party comes to the Court with the allegation that his fundamental rights have been contravened and he wants relief from the High Court under Art. 226. AIR 1950 S C 124, Rel. on.

Further though the Bombay Sales Tax Act, 1952 provides the machinery for challenging the Act, when the petitioners contend that the authorities under the Act have no right to assess them because the Act is ultra vires of the Legislature, they are challenging the very authorities who are supposed to decide the assessment made against them. It is not open to those authorities to decide whether the very statute of which they are the creatures is a valid statute or not. Moreover, the jurisdiction of those authorities is limited to decide questions regarding the validity of the assessment, but no jurisdiction has been conferred upon them to adjudicate upon the validity of the Act on the ground that it affects the fundamental rights of the petitioners. AIR 1947 P C 78, Disting. ('53) 55 Bom L R 246 : (1953) 4 S T C 10 (DB).

[Reversed on another point in AIR 1953 S C 252.]

——Art. 226 — Other remedy open — Violation of fundamental rights made out—Existence of adequate other remedy not a bar to exercise of jurisdiction under Art. 226.

The existence of an alternative remedy is not a bar to the existence of jurisdiction of the High Court under Art. 226 of the Constitution. It is one of the factors germane to the exercise of it. When violation of fundamental rights has been made out, it will be a sound exercise of discretion to exercise these powers and undo the mischief. (1965) 2 I T J 85: A I R 1966 All 176 (181) (Pt F) (Pr 26).

——Arts. 226, 19 (1) (f) and (g) —Imposition of sales tax—Infringement of fundamental right —Validity of Sales Tax Law challenged—Relief through writ petition is a more proper remedy — Existence of alternative remedy, no bar to issue of writ. AIR 1964 All 284 (288) (Pt B) (Prs 10, 11).

——Art 226 - Certiorari—Cancellation of motor permit under S. 60, Motor Vehicles Act—Application for writ made on allegation of infringement of fundamental right to ply vehicle — Petitioner also pleading that S. 60, Motor Vehicles Act was ultra vires—Petition is maintainable even if alternative remedy by way of appeal under S. 64, Motor Vehicles Act, available to petitioner, is adequate AIR 1954 S C 403, Rel. on It is maintainable also because it involved consideration of constitutional validity of S. 60, Motor Vehicles Act. Motor Vehicles Act (1939), Ss. 60 and 64. 1962 All L J 116.

——Art. 226—Other remedy open — Infringement of fundamental rights.

The principle that a Court will not issue a prerogative writ when an adequate alternative remedy was available could not apply where a party comes to the Court with an allegation that his fundamental right has been infringed and seeks relief under Art. 226. AIR 1953 S C 252 and AIR 1954 S C 403, Foll. 1955 All L J 860 : AIR 1955 All 653 (656) (Pt A) (Pr 9).

——Art. 226 – Another remedy open—Application for sanction for scheme under S. 204, U. P. Municipalities Act—Applicant reminding Board of failure to sanction—Applicant treating scheme as sanctioned —Board warning people against purchasing plots from applicant — Application under Art. 226 held called for. AIR 1955 N U C (All) 2778.

——Art. 226 — Other remedy available - Infringement of fundamental right—Duty of Court.

Though it cannot be said that in all cases in which there is an infringement of a fundamental right a relief under Art 226 should be granted necessarily, nevertheless the Court must in each case see whether in the circumstances it would be more convenient, effectual and beneficial to grant relief by means of a writ than to ask the applicant to seek it by a regular suit. 1952 All L J 163 : 1952 All W R (HC) 241 : 1952 R D (H C) 161 : I L R (1953) 1 All 216 : A I R 1952 All 836 (838) (Pt B) (Pr 4) (DB).

—Art. 226—Jurisdiction—Palayam enfranchised as Inam –If Zamindary Estate — Government seeking to take over possession and management—Other remedy. See Tenancy Laws — Madras Estates (Abolition and Conversion into Ryotwari) Act (26 of 1948), S. 2 (16) (ii). AIR 1957 Andh Pra 23.

——Art. 226 — Other remedy open— Exceptions to rule.

The two exemptions to the ordinary rule that the Court will not give relief by means of a writ when the petitioner can get the same relief by ordinary legal remedies available to him are these : One is that if the threat involves an encroachment upon the fundamental right of the petitioner, the Court will interfere and will not compel him to exhaust his legal remedies, and the other exception is that if the authority against whom a complaint is made has violated rules of natural justice, the Court will interfere and protect the petitioner. 58 Bom L R 184 : (1956) 29 I T R 856 : I L R (1956) Bom 374 : A I R 1956 Bom 530 (534) (Pt D) (Pr 12) (DB).

[Reversed on another point in AIR 1963 S C 1356.]

——Art. 226 — Other remedy open—If bar to writ—Order opposed to fundamental principles of justice—Quashing of. See Ibid, Art. 226. A I R 1952 Bom 213.

——Arts. 226, 286, 19 (1) (g) — Fundamental right violated — Question of alternative remedy as a bar does not arise.

Where fundamental rights are violated, the question of alternative remedies as a bar to relief under Art. 226, does not arise. It is, also settled that the imposition of a sales tax in contravention of the prohibition contained in Art. 286, constitutes an infringement of the fundamental right guaranteed to the assessee under Art. 19 (1) (g). AIR 1953 S C 252 and AIR 1954 S C 403, Rel. on. 68 Cal W N 776 : A I R 1965 Cal 236 (241) (Pt B) (Pr 37).

——Art. 226—Fundamental rights of persons interfered with — Adequate remedy provided in law—Jurisdiction of High Court under Art. 226 if can be invoked.

The extreme proposition namely, that under S. 226 of the Constitution the Court has power to grant relief only in cases where either the State or an officer

of the State interferes with the fundamental rights of the subject, is not acceptable. However, if adequate and specific remedy has been provided in law and a subject whose fundamental rights have been interfered with can take recourse to the ordinary course of law, the jurisdiction under Art. 226 of the Constition should not be invoked in such circumstances.

Thus, where it is alleged that a policeman who was posted to keep watch over the petitioner's activities, intimidated the petitioner's customers but it had not been established that such alleged intimidation took place by virtue of any instructions received from any higher authorities then the remedy open to the petitioner in such a case is to file either civil or criminal proceedings, against the particular policeman or if he can establish that the higher authorities are concerned in the matter, he may take appropriate proceedings against them as well as in an appropriate court of law. In such a case the High Court will not pass any order under Art. 226. **1952 Cri L J 345 : I L R (1952) 1 Cal 94 : A I R 1952 Cal 137** (138, 139) (Prs 10, 11).

——Arts. 226 and 311 — Another remedy open — Fundamental principle of justice not violated — Dismissal from Government service — High Court will not interfere.

Unless a fundamental principle of justice appears to have been violated, the High Court will refuse to interfere under Art. 226 by issuing a writ against the Collector who has dismissed the petitioner from Government service when such servant has an adequate and specific remedy by way of appeal to the Financial Commissioner which he did not choose himself to avail of. AIR 1947 Bom 46 and AIR 1952 Bom 209, Foll. **AIR 1956 Him Pra 71 (72) (Pr 4).**

——Art. 226 — Other remedy open — Petition, maintainability of.

There must be exceptional reasons for asking for the exercise of the extraordinary jurisdiction, for otherwise, the ordinary legal remedy by a suit under the general law would be rendered wholly nugatory. Such an exceptional reason must be invariably held to exist where an application for relief under the said Article is based on infringement of one of the fundamental rights guaranteed by the Constitution. Such an exceptional reason would also seem to exist, where, though not for enforcement of any of the fundamental rights, such an application is moved for "any other purpose," if that purpose cannot be served by an ordinary suit. It has therefore been held that the extraordinary jurisdiction in question may be invoked if the alternative remedy by suit is less convenient, beneficial or effective. **A I R 1953 Him Pra 33** (35, 36) (Pt B) (Prs 10, 13, 14).

——Art. 226 — Infringement of fundamental right — Another remedy is not open. See Ibid, Art. 19 (1). **AIR 1953 Him Pra 8.**

——Art. 226 — Other remedy under taxing statute — Infringement of fundamental right — Existence of other remedy which is onerous and not efficacious is no bar to writ petition. A I R 1952 S C 115 and AIR 1954 S C 403 and AIR 1961 S C 65, Rel. on. **AIR 1962 J and K 48 (58) (Pt B) (Pr 18).**

——Art. 226 — Other remedy open — Breach of fundamental or statutory right — Issue of writ. See Jammu and Kashmir Constitution, S. 103. **A I R 1959 J and K 13.**

——Art. 226 — Another remedy open — Fundamental right invaded.

A petitioner is not in error in coming to the High Court on a consolidated petition challenging the order both on the ground that it violated the fundamental right and that it was in violation of fundamental principles of justice even though he has a right of appeal against the order. **Madh B L J 1955 H C R 959 : Madh B L R 1955 Civil 674 : AIR 1954 Madh B 173** (176) (Pt H) (Pr 23) (DB).

——Art. 226 — Other remedy open.

The objection regarding another remedy under the Act cannot prevail where the complaint of the petitioner is as regards his fundamental right. AIR 1954 S C 403 and AIR 1953 S C 252, Rel. on. **1957 M P C 214 : ILR (1957) Madh Pra 206 : 1957 Jab L J 373 : (1957) 8 S T C 429 : 1957 M P L J 317 : AIR 1957 Madh Pra 109** (111) (Pt B) (Pr 14) (DB).

——Arts. 226 and 32 — Infringement of fundamental right — Another remedy is not open. See Ibid, Art. 19 (1). **AIR 1953 Him Pra 8.**

——Art. 226 — Other remedy open — Writ of mandamus — Existence of other remedy — Exception to general rule — Infringement of fundamental right.

The principle that a Court will not issue a prerogative writ when an adequate alternative remedy was available could not apply where a party came to the Court with an allegation that his fundamental right had been infringed and sought relief under Art. 226. AIR 1954 S C 403 and AIR 1956 Bom 530, Rel. on. (1956) 28 Com Cas 431 : ILR (1957) Mad 383 : 70 Mad L W 28 : (1957) 1 Mad L J 254 : **AIR 1957 Mad 309** (318) (Pt H) (Pr 23) (DB).

——Art. 226 — Other remedy open — Writs of certiorari or prohibition — If can issue.

The general rule as to another adequate remedy open has an exception in a case where the want of jurisdiction complained of is based upon the violation of some fundamental principle of justice. In such an exceptional case, the existence of a remedy by way of appeal or revision is no answer to an application asking for a writ of certiorari or prohibition. **AIR 1955 Pat 49** (55) (Pt E) (Pr 18) (DB).

——Art. 226 — Certiorari or prohibition.

A case where the want of jurisdiction complained of is based upon the violation of some fundamental principle of justice, is an exceptional case where the existence of a remedy by way of appeal or revision is no answer to an application asking for a writ of certiorari or prohibition. (1927) 1 K B 491, Rel. on. **ILR 32 Pat 630 : 1953 B L J R 494 : AIR 1954 Pat 43** (46) (Pt C) (Pr 9) (DB).

——Art. 226 — Powers of High Court — Bihar Administration of Evacuee Property Ordinance (1948), S. 29 — Special remedy provided by special statute under which action complained of is taken — If bar to exercise of power to issue writ or direction: — Duty of High Court in case of flagrant and unjustified invasion of fundamental right of citizen.

Under Art. 226 of the Constitution it is not only open to the High Court, but it is its duty to interfere when there has been a flagrant and unjustified invasion of the fundamental rights of citizens. S. 28 of the Bihar Administration of Evacuee Property Ordinance of 1949 (or of the Administration of Evacuee Property Act 31 of 1950) does not stand in the way of the High Court exercising the powers which has been vouchsafed to it under Art. 226. Even where a special remedy is provided under the special statute, in the case of a flagrant and unjustified invasion of the fundamental rights of a citizen the High Court must act in the exercise of its powers to protect him against injury and afford him relief, if the circumstances of the case are such that otherwise the alternative remedy available to the citizen may not be equally effectual, convenient and beneficial, and by the time he gets the relief the citizen may have suffered irretrievable loss and damage. **ILR 30 Pat 21 : AIR 1951 Pat 434** (436, 437) (Pt B) (Prs 6, 7, 11) (DB).

[Reversed in AIR 1955 S C 282].

——Art. 226 — Other remedy open — Government order sanctioning sale of entire resin from Government stock to Co-operative Society — Order challenged by petitioner on ground that it was mala fide and in violation of Arts. 14 and 19 (1) (g) — Remedy by way of suit – Remedy not equally adequate and efficacious as delay likely to be caused by resorting to it would defeat cause of justice — Petition held maintainable. ILR (1965) 2 Punj 32 : 67 Punj L R 921 : AIR 1966 Punj 16 (20) (Pt A) (Pr 7) (DB).

——Art. 226 — Other remedy open—Deprivation of property without notification under S. 4, Land Acquisition Act (1894) — Alternative remedy by way of civil suit available – High Court can still exercise its power where alternative remedy is not equally effectual and the petitioner is likely to suffer irretrievable loss and damage. See Ibid, Art. 226. ('65) 67 Pun L R 616.

——Art. 226 — Other remedy open — Fundamental right to hold and dispose of property infringed — Petition under Art. 226.

Where the petitioner, who was holding a lease of private forest from the zamindar of certain village, and was in actual possession of the forest, and whose rights and interests as lessee of the property were recognised by the State Government, suddenly received an order from the Ranger of Forest given in pursuance of the order of the Government to stop the cutting of the forest immediately without any prior notice and was deprived of his possession over the forest, and the petitioner challenged the validity of that order under Art. 226, the petitioner's fundamental right to hold and dispose of the property has been infringed and there is no justification in the contention that the High Court should not exercise its extraordinary jurisdiction but should ask the petitioner to move the Government to reconsider its order or to exercise his alternative remedy by way of suit. 1959 Raj L W 476.

——Art. 226 — Other remedy open — Invasion of fundamental rights.

Where the petitioner's fundamental rights are infringed the fact that an adequate alternative remedy is available to the party and has not been taken will not prevent, the High Court from granting relief under Art. 226. Case law Ref. 8 Sau L R 90 : AIR 1955 Sau 57 (62) (Pt F) (Pr 13) (DB).

——Arts. 226, 32 — Existence of other remedy — Effect of, in case of breach of fundamental right.

Where the other remedy provided by a statute is in respect of acts done "under the Act" but the petition under Art. 226 is filed against acts alleged to be 'ultra vires' the statutory authority, it is certainly open to the complaining parties to approach the High Court and get immediate relief by way of writs in case of breach of fundamental right. ILR (1955) Trav Co 1089 : 1957 Cri L J 105 : AIR 1957 Trav-Co 2 (5) (Pt C) (Pr 13) (DB).

7 (h). General rule applies to other directions, orders and writs.

——Art. 226 – Powers of High Court — Extent of — Other specific and adequate remedy – Effect – Whether remedy is specific and adequate depends on facts of each case — Firman-i-shahi issued by Government of erstwhile Patiala State for mutating lands attached to religious Institutions — Infringement of Art. 19 – Application under Art. 226 – Maintainability – Principles of English Courts stated — (Specific Relief Act (1877), S. 45).

The powers given to the High Court by Art. 226 to issue various kinds of writs vest the High Court with an extraordinary jurisdiction which is of summary but coercive nature. They are very wide and go much beyond the powers of the High Court of England and of those of Presidency High Court before the Constitution.

They are not confined to the issuing of high prerogative writs but extend to the issuing of all kinds of directions and orders and those writs and directions, etc., can be issued not only for the enforcement of the fundamental rights conferred by Part 3 of the Constitution but for any other purpose and to all kinds of authorities and public officials and even to any Government, i.e., to the Government of a State or the Central Government. Further the relief is discretionary with the Court and though the discretion must not be exercised arbitrarily, capriciously or indiscriminately, no hard and fast rule can be laid down as to how it should be exercised. Each case must depend upon its peculiar facts. The Court should, however, follow the same principles that were observed by the English Courts in so far as they are consistent with the provisions of our Constitution and other laws. The powers are much wider than those given to the three High Courts by S. 45, Specific Relief Act.

With all this, when it is shown that there is open to the applicant another remedy and that remedy is specific and adequate an application under Art. 226 does not lie. Whether the other remedy can be regarded specific or adequate must depend upon the facts of each case.

Principles of English Courts stated. [Facts of the case set out].

Held, the petitioners could file a civil suit for establishment of their title, and such a remedy was specific but not adequate. The question involved was of public importance and it affected a large number of mahants of other deras in addition to the petitioners and if these petitions were thrown out and the petitioners were left to file civil suits ; it would subject them to great hardship inasmuch as the onus would be placed upon them to prove that the lands belonged to them whereas if the deras were to file suits against the petitioners or worshippers of the deras were to take proceedings under S. 92, Civil P. C., it would be for them to establish that the lands belonged to the respective deras and not to the petitioners. These were not, therefore, the kind of cases in which petitioners' prayer for relief under Art. 226 of the Constitution should be refused because of an alternate remedy of a suit that was open to them.

Tendency to apply for issue of writs deprecated. Case law examined. I L R (1953) Patiala 63 : A I R 1953 Pepsu 58 (61, 62, 63) (Prs 9, 10, 11, 12) (DB).

7 (i). Special responsibility of Supreme Court.

● ——Art. 32 — Jurisdiction of Supreme Court — Its scope.

An act of the State executive infringes a guaranteed liberty only when it is not authorised by a valid law or by any law as in this case, and every such illegal act would obviously give rise to a cause of action — Civil or criminal—at the instance of the injured person for redress. It is wholly erroneous to assume that before the jurisdiction of the Supreme Court under Art. 32 could be invoked the applicant must either establish that he has no other remedy adequate or otherwise or that he has exhausted such remedies as the law affords and has yet not obtained proper redress, for when once it is proved to the satisfaction of the Supreme Court that by State action the fundamental right of a petitioner under Art. 32 has been infringed, it is not only the right but the duty of the Supreme Court to afford relief to him by passing appropriate orders in that behalf. Kharak Singh v. State of U. P., (1964) 2 S C J 107 : (1964) 1 S C R 332 : 1963 All L J 711 : 1963 (2) Cri L J 329 : A I R 1963 S C 1295 (1301, 1302) (Pt H) (Pr 16).

● —Arts. 226, 32 — Though the existence of an adequate legal remedy is to be taken into consideration in the matter of granting prerogative writs, the powers given to the Supreme Court under Art. 32 are much wider and are not confined to issuing prerogative writs only. See Ibid, Art. 13 (1). AIR 1950 S C 163.

7 (j). Inconvenience or delay in getting redress.

—Art. 226—Another remedy open—Issue of writ.

A petitioner is entitled to avail himself of the expeditious remedy provided by Art. 226 when an alternative remedy of raising the objection before the criminal Court is not so speedy as the matter might have to be taken to two or three Courts before final decision could be available. **A I R 1956 Ajmer 73 (77) (Ft G) (Pr 27).**

● **—Art. 226 — Existence of alternative remedy—Effect of — Party should normally exhaust it before applying under Art 226 — Alternate remedy whether onerous — Question of fact — S. 129 of U. P. District Boards Act, 1922, held not onerous.**

Taxing statutes provide a complete machinery for assessment of tax and for remedy against the assessment, and normally the party aggrieved should exhaust that remedy before invoking the aid of the Court. Whether the remedy of appeal under the taxing statute is onerous or not is not to be determined in abstract. It is a relative matter. The remedy may be onerous in one case and not in the other. The quantum of the assessment, the time when the tax is to be paid for obtaining a rehearing in appeal, and the financial condition of an assessee should all be considered in deciding about the onerousness of the remedy. Attachment of any condition to the exercise of the alternative remedy does not as a matter of law render it inadequate.

Held, that judged by these criteria S. 129 of the U P. District Boards Act, 1922 which required the deposit of tax assessed, before the hearing of appeal and not at the time of filing appeal was not onerous. Babu Ram Ashok Kumar v. Antarim Zilla Parishad, **ILR (1964) 2 All 76 : 1964 All W R (HC) 167 : 1964 All L J 353 : AIR 1964 All 534 (535, 536, 537) (Pt B) (Prs 4, 13, 28) (FB).**

—Art. 226 — Rule as to alternative remedy and refusal to act under Art. 226 — Nature of — Rule is one of self-discipline and not absolute — U. P. Entertainment and Betting Tax Act (VIII of 1937), S. 9-A.

The rule regarding the existence of an alternative remedy and refusal to act under Art. 226 on that ground is not an absolute rule but is a rule in the nature of self-discipline imposed upon itself by the High Court. In appropriate cases where owing to urgency or other similar considerations the Court considers that a substantial injustice will be caused to the person affected by requiring him to pursue the alternative remedy, the Court will not hesitate in granting redress under Art. 226.

Where the District Magistrate cancelled the licenses to carry on a cinema house under S. 9-A of the U. P. Entertainment and Betting Tax Act without giving notice to the proprietors and the cancellation was to take effect forthwith as a result of which they were debarred immediately from carrying on the business and the damage to their right to carry on the business had already occurred

Held, that, in the circumstances, it was a fit case for not declining the relief under Art. 226 on the ground of the existence of an alternative remedy. **1960 All W R (HC) 685 : 1960 All L J 894.**

——Art 226 — Other remedy open — Certiorari — Order of dismissal of public servant.

Where a dismissed Sub-Inspector of Police sought the issue of a writ of certiorari to quash the order of his dismissal and the only question raised was one of law.

Held, that apart from the fact that it was eminently desirable in the public interest that cases, in which the validity of the dismissal of a public servant was in question, should be speedily determined, it was difficult to hold that the remedy by way of suit was in the instant case equally convenient or beneficial and effective. **1958 All Cri R 217 : 1958 All W R (HC) 265 : 1958 All L J 205 : (1958) 2 Lab L J 27 : AIR 1958 All 607 (609) (Pt C) (Pr 7) (DB).**

——Art. 226—Another remedy — Order without evidence—Litigation will delay and be costly.

The question whether the other remedy open to the applicant in a particular case is specific and adequate should be decided upon the facts of each case.

Considering the fact that the applicant was a poor man and a resident of a village and that his complaint was simple one viz., that he was removed from service under the garb of his alleged resignation which he had never tendered and which was not found on any of the documents or files in possession of the Government or the Collector and was non-existent, that he could not afford to indulge in a costly litigation with a formidable opponent like the Government and what was complained of was that the mandatory provisions of Art. 311 (2) were violated, it was held to be fit case where petition under Art. 226, could be entertained. **A I R 1954 Bhopal 25 (28) (Pt D) (Prs 13, 14).**

——Art. 226 — Mandamus — Legal remedy available but not immediately or at the moment — Risk of loss incapable of being compensated in money — Jurisdiction to issue writ. ILR (1951) Cut 398.

[Reversed in AIR 1952 S C 12.]

——Art 226 - Other remedy—Powers of High Court to issue writ under Art 226 — Panchayats — Bihar Panchayat Election Rules (1959), R. 70.

It is true that ordinarily the special remedy provided for in any law or statute for violation of its provisions must first be resorted to. There is however no inflexible rule to oust in all cases the jurisdiction of the High Court to correct an error or illegality by means of proper writs. Where resort to the special remedy available may prove inadequate and dilatory and the mischief sought to be averted may not be remedied in time, then notwithstanding the remedy available under ordinary law, the extraordinary powers of the High Court under Art. 226 may be invoked to remove an error or to cure an illegality on the well-recognised grounds. AIR 1952 S C 84 and A I R 1954 Cal 52, Distinguished. **1960 Pat L R 263 : 1961 B L J R 43.**

——Art. 226 — Petitioner dismissed Government employee — Full salary allowance sought to be recovered— Other remedies open to petitioner does not bar maintainability of petition —Reference to larger Bench by Single Bench — Preliminary objection of maintainability of petition can be considered.

The petitioner who was in the employment of Government was placed under suspension pending departmental enquiry against him. On a civil suit filed by him the order of his suspension was modified and he was treated as on duty for the period and was awarded full pay and allowances. He, however, continued to be under suspension till the completion of the departmental enquiry held against him when he was dismissed from service. The order of dismissal was later quashed by the High Court on his petition under Art. 226 of the Constitution, on the finding that the departmental enquiry was vitiated because of

the refusal to supply to the petitioner previous statements of witnesses taken under Ss. 61 and 164, Criminal P. C Consequent upon this verdict the petitioner was reinstat d but by the same order he was again placed under suspension pending completion of the departmental enquiry and it was stated in the order that during period of suspension he w uld get subsistence allowance admissible to him under R. 7.2 of the Punjab Civil Services Rules Vol. 1 Part 1. The petitioner claimed arrears of his full salary and allowances.

Held, that the existence of other legal remedies was not per se a bar to the issue of writ under Art. 226 and there was no obligation imposed on the Court to relegate the aggrieved party to other legal remedies available-

In the case in question the reference to the larger Bench was made under proviso (b) to sub-rule (20) of R. 1 of Chapter 3 B of the Punjab High Court Rules and Orders which enabled the Single Judge to obtain the assistance of another Judge for disposal of petition under Art. 226 and hence the preliminary objection of maintainability of the petition could be considered. Case law discussed.

The provision contained in R. 7 (2) applies even to cases of interim suspension pending a departmental enquiry or criminal proceeding Further Rule 7.3 of the Punjab Civil Services Rules, Volume I Part I being inapplicable to the petitioner's case the order fixing the amount that is to be paid to the petitioner for the period of his suspension prior to his dismissal is clearly without any legal basis and is of no effect. Since there is no corresponding rule for fixing the amount payable to a Government servant whose dismissal has been set aside by a Court, the Government will have no power to deprive the petitioner of his full emoluments even for the period during which he had remained suspended pending departmental enquiry against him. 67 Pun L R 1092.

——Art. 226 - Other remedy — Discretion of High Court.

The High Court is not altogether barred from interfering under Art. 226 of the Constitution if any alternative remedy is available to the petitioner. The High Court exercises its discretion in the matter of petitions under Art. 226 and if it thinks in its discretion that although technically there might be an alternative remedy, yet no useful purpose would be served if that remedy is resorted to, the High Court can in its discretion interfere under Art. 226. **I L R (1959) 9 Raj 297 : 1959 Raj L W 443 : A I R 1959 Raj 220 (222) (Pt A) (Pr 5) (DB).**

——Art 226—Other remedy open.

The language of Art 226 of the Constitution of India is certainly very wide but it cannot be so construed as to provide an alternative remedy to all sorts of civil or criminal actions. The intention of the makers of the Constitution should be understood to be to provide a remedy where no specific and adequate legal remedy would otherwise be available. The remedy provided by Art. 226 is an extraordinary one and some inconvenience or delay in getting redress by filing a regular suit in the law Courts alone should not be considered sufficient to entitle a person to have recourse to the extraordinary remedy under Art. 226 unless it can be shown that delay and inconvenience would be such as to make the relief nugatory : Case law discussed.

(Remedy by suit under S. 42 of the Specific Relief Act held available). **1951 Raj L W 429 : I L R (1951) 1 Raj 474: AIR 1952 Raj 112 (113, 114) (Prs 9, 12) (DB).**

——Art. 226— Another remedy open — Nomination paper accepted by Officer in charge of elections — Executive heads usurping appellate jurisdiction and rejecting nomination paper—Aggrieved party having his remedy by way of election petition — Yet High Court should issue writ — (Municipalities —Jodhpur Municipal Act (1943), S. 27).

The applicant's nomination paper had been accepted under S. 27, Jodhpur Municipal Act by the Officer in charge of the elections but that acceptance had been set aside by the Additional Commissioner which order in its turn had been upheld by the Minister and these two authorities had no business to interfere with the order of the Officer in charge of the elections.

Held, that it would not be right to leave the applicant to the remedy of an election petition against the order of what could be considered at the best busy bodies when the order of a properly constituted authority namely, the Officer in charge of the elections was in his favour. There was also another danger if the High Court were to follow the principle that it should not interfere in case like the present because it was possible to get redress by an election petition. That danger was that if some authority decided to interfere with the decisions of the officer in charge of elections, or the returning officer and rejected all nomination papers accepted by him of candidates belonging to particular parties, the result would be that candidates of one particular party might get elected unopposed. It was possible to have a wholesale abuse of this kind and it was therefore necessary for the High Court to interfere at this stage so that no authority may ever be disposed to take the course mentioned above. Therefore, even though the applicant might be able to get his remedy in this case through an election petition, there was good reason why the High Court should grant him relief at this stage. **1952 Raj L W 199 : ILR (1952) 2 Raj 18 : AIR 1952 Raj 104 (106, 107) (Pt E) (Pr 15) (DB).**

7 (k). Matter pending before ordinary Court or tribunal.

● **——Art. 226—Discretion of Court —Other remedy available and being pursued - Taxation of Income (Investigation Commission) Act (XXX of 1947), S. 8.**

The remedy provided for in Art. 226 of the Constitution is a discretionary remedy and the High Court has always the discretion to refuse to grant any writ if it is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere. Where the petitioners have already availed themselves of the remedy provided for in S. 8 (5) of the Taxation of Income (Investigation Commission) Act and a reference has been made to the High Court in terms of that provision which is awaiting decision it would not be proper to allow the petitioners to invoke the discretionary jurisdiction under Art. 226 of the Constitution at this stage. In case the proceeding occasions a gross miscarriage of justice, there is always the jurisdiction in Supreme Court to interfere by way of special leave. Rashid K S. v. Income.Tax Investigation Commr., **1954 S C J 264 : 1954 S C A 264 : 1954 S C R 738 : (1954) 25 I T R 167 : A I R 1954 S C 207 (210) (Pt B) (Pr 4).**

——Art. 226—Other remedy — Interference by writ —Discretion of High Court.

High Courts are lenient in admitting petition under Art. 226 of the Constitution where fundamental rights of persons are affected. It is where fundamental rights are not affected that High Courts do not interfere with the orders of a subordinate authority if an alternative remedy, equally efficacious, is available to the aggrieved person. Where it was in the interest of the parties that the writ petition against the order cancelling the petitioner's permit should be decided on merits, the fact that an appeal against that order was pending would not be valid ground for not exercising jurisdiction under Art. 226. **A I R 1960 All 247 (249) (Pt A) (Pr 13).**

——Art. 226—Other remedy—Interference.

Where the petitioners have not only an alternative but they are pursuing that remedy, the High Court will not interfere under Art. 226. The fact that the petitioners have not been able to obtain stay of execution of sales tax assessment order from the Sales Tax authority pending their appeal against the assessment order, is no reason to enterain the writ petition. 1958 All L J 44 : AIR 1958 All 676 (677) (Pr 4) (DB).

——Art. 226—Certiorari — Petition for, during pendency of appeal from order — Maintainability — (Municipalities — U. P. Municipalities Act (II of 1916), S. 40 (1) (c)).

Where a member of a Municipal Board applied for a writ of certiorari under Art. 226 on the ground that the order of removal passed against him under S. 40 (1) (c), U. P. Municipalities Act, 1916, is without jurisdiction, the fact that the petitioner has filed an appeal against the order before the State Government which is still pending is no bar to his petition for the writ. A I R 1956 All 147 (148, 149) (Pt D) (Pr 5).

——Art. 226 — Other remedy — Suit challenging the order pending—Writ petition not entertained. (1957) 2 Andh W R 250.

——Art. 226 — Alternative remedy — Other remedy available and being pursued—Writ cannot issue.

It is not a proper course or a proper exercise of the discretion of the High Court to grant relief under Art. 226 of the Constitution by pre-judging a pending appeal or revision which the petitioner himself has chosen. No doubt, an alternative remedy is not always a bar to exercise of discretion by the High Court under Art. 226 of the Constitution. But where the petitioner has actually availed of an alternative remedy and that remedy is being pursued and prosecuted and is pending, a constitutional writ under Art. 226 should not be issued, for that will encourage gambling in litigation because the petitioner in such cases would take the chance of asking for the writ from the High Court and winning it, and if he fails then trying his luck in the alternative remedy which he had already initiated before he has come to the High Court for constitutional relief. The Constitution should not be lent or used for such legal betting. A I R 1954 S C 207, Rel. on. (1963) 67 Cal W N 405.

——Art. 226—Remedy by appeal open—Appeal preferred against impugned order — Appeal pending — Appellant will not be allowed to move High Court under Art. 226.

Normally, an application for a writ in the nature of mandamus will not lie if there is an alternative remedy which grants adequate relief. In the case of a writ of certiorari or prohibition, the existence of an alternative remedy is by itself no bar to an application in the writ jurisdiction under Art. 226, provided certain factors exist, e.g., an initial lack of jurisdiction, violation of the rules of natural justice, etc. But the Court is not bound to entertain such an application. In neither case is the Court's jurisdiction to entertain an application ousted by the existence of an alternative remedy, and in a suitable case such an application may be entertained. A I R 1955 Cal 241, Foll.; A I R 1958 S C 86; A I R 1956 Cal 273, A I R 1954 S C 207, Rel. on. 1963 Cal L J 24 : 66 Cal W N 170 : A I R 1962 Cal 180 (181, 182) (Prs 1, 2, 5).

——Art. 226—Certiorari—Other remedy open.

The existence of alternative remedy is no bar or at least not an absolute bar to the issue of a writ of certiorari when the circumstances call for its issue although the fact that such a remedy exists may be taken into consideration by the Court approached for a writ. But where, after moving the Court for a writ and after obtaining a Rule, the petitioner went to pursue simultaneously a parallel remedy by way of an appeal under the ordinary law and kept its recourse to the alternative remedy from the knowledge of the Court up to the last moment the pendency of the appeal would be sufficient reason for refusing to issue a writ even if the Court is satisfied that the petitioner is entitled to the remedy on the merits. (1959) 36 I T R 365 : ILR (1960) 1 Cal 49 : A I R 1959 Cal 131 (140, 141) (Pt F) (Prs 34, 35) (DB).

——Art. 226—Right to apply—Adoption of alternate remedies under a special Act — If bar to application for writ.

The question as to whether the adoption of alternative remedy as prescribed in a Special Act precludes the petitioner from invoking the jurisdiction of the High Court under Art 226 of the Constitution should be decided on the special facts of the case.

Held, on the facts and circumstances of the case, that the writ petition could not be thrown out on the ground that the petitioner by pursuing the remedies provided in the Bengal Public Demands Recovery Act had precluded itself from having recourse to Art. 226 of the Constitution. 61 Cal W N 694 : (1958-59) 15 F J R 193 : (1958) 1 Lab L J 285 : A I R 1957 Cal 702 (708, 709) (Pt D) (Prs 19, 20).

——Art. 226 — Other remedy open—Issue of writ — Failure to disclose facts—Effect.

Though the existenee of an alternative remedy is not an absolute bar to the maintenance of an application under Art 226, if a party has chosen to betake itself to the alternative remedy provided by the relevant statute itself, it cannot possibly be allowed to abandon that remedy in the middle of the way, as it were, and elect to proceed from that point of the road by way of Art. 226. Parties will be justified in coming to the High Court and invoking its extraordinary jurisdiction under Art 226, only when there is either no alternative remedy at all or the alternative remedy is bound to prove a wholly inadequate remedy. Article 226 was not intended to provide a substitute in a condensed form for all types of litigation. (1957) 8 S T C 517 (Cal).

——Art. 226 — Other remedy open — Whether bar to application under Art 226 — Order of Collector imposing penalty under Sea Customs Act — Party preferring appeal under S. 188, Sea Customs Act and appeal pending — Party cannot apply under Art. 226—(Sea Customs Act (1878), S. 188)

It is quite true that when there is an alternative remedy, the mere existence of such remedy is not an absolute bar to the entertainment of an application under Art. 226, but far different is the case when the party moving the Court under Art. 226 has already availed himself of the alternative remedy and whether or not he is entitled to any relief in that chain has not yet been decided.

Thus, where a party has preferred an appeal under S. 188, Sea Customs Act, against the order of the Collector of Customs imposing penalty under the Sea Customs Act and that appeal is pending the party cannot be allowed to move the High Court under Art. 226, Constitution of India. A I R 1955 Cal 241 (244) (Pt B) (Pr 8) (DB).

——Art 226 and Sales tax Act — Petitioner pursuing remedy of appeal under the Act and also moving High Court under Art. 226 of the Constitution—High Court would not exercise its extraordinary jurisdiction under Art. 226. (1962) 2 S C R 81 : 1961 S T C 449, Rel. on. 1965 M P L J (Notes) 91.

——Art. 226—Other remedy.

The petitioner preferred an appeal against an order of assessment of sales tax as well as moved the High Court for a suitable writ to quash the assessment order.

Held, that the applicant had already availed itself of the remedy of appeal. In the circumstances it would not be proper to permit the petitioner to invoke the discretionary jurisdiction of the High Court under Art. 226 of the Constitution. A I R 1954 S C 207, Rel. on. 1961 M P L J (Notes) 89.

——Art. 226 — Disciplinary proceeding pending against railway servant—Servant suspended—Power of High Court to interfere.

The circumstance that disciplinary proceedings are pending against a Government servant may be treated by the High Court as a good ground for refusing to interfere under Art. 226; but such a circumstance is not an absolute bar and does not deprive the High Court of its jurisdiction to act in appropriate instances. Thus, where the said servant has been suspended from his duties and has thereby been actually and substantially hurt, the High Court will discountenance the contention that as he has not been injured he has no right to come to the High Court. A I R 1954 S C 403, Rel. on. 1956 Mad W N 262 : (1956) 1 Lab L J 29 : A I R 1956 Mad 220 (222) (Pt A) (Pr 3).

——Art. 226—Writ of Certiorari—Matter not finally decided—Petitioner able to defend himself in Lower Courts—Writ not to be issued.

A Magistrate rejected an application under S. 144, Criminal P. C. on the ground that the applicant did not show any bona fide right on his part and directed the police to institute proceedings under S. 107, Criminal P. C., against the applicant, if he intended to exercise the right claimed by him. The applicant applied for a writ of certiorari quashing the direction.

Held, that the High Court was not called upon to exercise its jurisdiction under Art. 226 simply on an executive direction given by the Magistrate which did not finally decide the right of the applicant. Moreover, the applicant had the right to defend himself fully if and when the proceedings under S. 107, Criminal P. C., were instituded. 1952 Mad W N 268 : 1952 Mad W N Cr 68 : 1952-1 Mad L J 471 : 1953 Cri L J 63 : AIR 1952 Mad 880 (880) (Pr 2) (DB).

——Art. 226 — Other remedy—Supplementary election roll — Names of large number of voters illegally entered at more than one place—Pendency of election petition is no bar to grant of relief in writ petition. See Representation of the People Act (1950), S. 18. AIR 1965 Punj 361.

——Art. 226 — Party availing himself of the alternative remedy by filing suit—It would not be proper to allow him to invoke the discretionary jurisdiction under Art. 226: AIR 1954 Pat 476 and AIR 1954 S C 207, Rel. on. ('63) 65 Pun L R 125 : I L R (1963) 1 Punj 297.

——Art. 226—Certiorari — Other remedy—Income tax Act (1922), S. 34 — Reassessment proceedings resulting in assessment order — Pendency of appeal by assessee — Petition to quash reassessment proceedings—Maintainability.

There is a distinction between cases where an assessee moves the High Court under Article 226 immediately after the receipt of notice and where he waits till the assessing authorities have made assessments. The Income-tax Act itself provides remedies for wrong assessments and once an assessee has chosen to prefer his remedies under the Act he cannot invoke the extraordinary jurisdiction of High Court. In case of reassessment of tax on escaped income when the Income-tax authorities have actually assumed jurisdiction and passed assessment orders against which the assessee has also preferred an appeal which is pending, the reassessment proceedings cannot be challenged in writ proceedings under Art. 226 of the Constitution. (1962) 46 I T R 633 : AIR 1962 Punj 375 (377, 378) (Prs 11, 12).

——Arts. 226 and 227 — Other remedy open — (Employees Provident Funds Act (1952), Ss. 16 (b) and 19-A)—Reference of dispute under S. 19-A, to Central Government pending — Petition under Arts. 226 and 227 not maintainable till decision of dispute — Proceedings for recovery of contributions not to be started till final decision. (1959-60) 17 F J R 85 : (1960) 1 Lab L J 489 (Punj).

——Art. 226 — Other remedy open—Futile or unnecessary writ—Notice against assessee under S. 34, Income-tax Act — Assessee assessed and penalty also imposed under S. 46 (1) — Appeal by assessee pending—High Court will not interfere.

The High Court will not exercise its powers under Art. 226 of the Constitution in the case of a self-contained Statute like the Income-tax Act, when there is no allegation of the invalidity of any provision of the Act, and the allegation only is that a particular income tax officer was acting without jurisdiction in taking action under S. 34 and in assessing the applicant.

Further, with respect to the penalty imposed on the assessee under S. 46 (1), Income-tax Act, when the main question in an application by the assessee under Art. 226, Constitution of India, which has to be decided is whether the assessee has been properly assessed on a notice under S. 34 (1) and that question is pending before the proper appellate authority, the High Court will refuse to go into the question of penalty for the penalty will fall with the assessment immediately the assessee succeeds in appeal. (1958) 33 I T R 812 : 1957 Raj L W 92 : I L R (1957) 7 Raj 509 : AIR 1957 Raj 210 (211) (Prs 6, 7, 10) (DB).

——Art. 226 — Other remedy open — Best judgment assessment under Income-tax Act — Appeal against pending — High Court will not act under Art. 226—(Income-tax Act (1922), S. 23 (4)). AIR 1952 S C 192 and AIR 1953 Punj 55 and AIR 1953 Trav-Co 296; AIR 1954 S C 207 Rel. on. **AIR 1957 Tripura 15 (18) (Pt C) (Prs 24, 25).**

——Art. 226 — Other remedy open — Application under S. 43, Rewa State Municipalities Act, pending with Government—Application under Art. 226 to set aside election will not be entertained—(Municipalities—Rewa State Municipalities Act (1946), S. 43). AIR 1955 N U C (Vin Pra) 5784.

7 (l) Matters to be taken into consideration.

——Art. 226 — Nature of jurisdiction exercised by High Court — Existence of alternative efficacious remedy—Discretion of High Court to entertain writ petition.

The jurisdiction of the High Court under Art. 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Articles. But the exercise of the jurisdiction is discretionary; it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort to that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the Court will not entertain a petition for a writ under Art. 226, where the petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court

does not therefore act as a Court of appeal against the decision of a Court or tribunal. to correct errors of fact, and does not by assuming jurisdiction under Art. 226 trench upon an alternative remedy provided by statute for obtaining relief Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Art. 226 of the Constitution the machinery created under the statute to be by-passed, and will leave the party applying to it to seek resort to the machinery so set up. Thansingh Nathmal v. Superintendent of Taxes Dhabri, I L R 16 Assam 203 : (1964) 6 S C R 654 : (1964) 15 S T C 468 : AIR 1964 S C 1419 (1423) (Pt B) (Pr 7)

● ——Art. 226 — Existence of alternative remedy — How far a bar to entertainment of writ petition — Matter is one for proper exercise of discretion — No inflexible rules can be laid down.

The rule that the party who applies for the issue of a high prerogative writ should, before he approaches the Court, have exhausted other remedies open to him under the law is not one which bars the jurisdiction of the High Court to entertain the petition or to deal with it, but is rather a rule which Courts have laid down for the exercise of their discretion. The wide proposition that the existence of an alternative remedy is a bar to the entertainment of a petition under Art. 226 of the Constitution unless (1) there was a complete lack of jurisdiction in the officer or authority to take the action impugned, or (2) where the order prejudicial to the writ petitioner has been passed in violation of the principles of natural justice and that in all other cases. Courts should not entertain petitions under Art. 226, cannot be accepted. The two exceptions are by no means exhaustive, and even beyond them a discretion vests in the High Court to entertain the petition and grant the petitioner relief notwithstanding the existence of an alternative remedy. A V. Venkateswaran, Collector of Customs, Bombay v. Ramchand Sobhraj Wadhwani, (1962) 1 S C J 170 : (1962) 1 Mad L J (S C) 83: (1962) 1 Andh W R (S C) 83 : 64 Bom L R 386 : (1962) 1 S C R 753 : (1961) 2 S C A 622 : AIR 1961 S C 1506 (1508, 1509, 1510) (Pt B) (Prs 8, 9, 10).

● ——Art. 226—Other remedy open — Issue of writ.

Under the law, a person whose services have been wrongfully terminated, is entitled to institute an action to vindicate his rights, and in such an action, the Court will be competent to award all the reliefs to which he may be entitled, including some which would not be admissible in a writ petition. It is true that the existence of another remedy does not affect the jurisdiction of the Court to issue a writ; but, the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs. Where such remedy exists it will be a sound exercise of discretion to refuse to interfere in a petition under Art 226, unless there are good grounds therefor: AIR 1950 S C 163 and AIR 1954 S C 207, Relied on. Union of India v T. R. Verma, 1958 M L J (Cr) 123 : 1958 All W R (H C) 165: 1958 M P C 61 : 1958 All L J 126 : 1958 S C R 499 : 1958 S C J 142 : 60 Punj L R 126 : 1958 S C A 110 : (1958) 1 M L J (S C) 67 : (1958) 1 Andh W R (S C) 67 : (1957) 13 F J R 257 : I L R (1958) Punj 274 : AIR 1957 S C 882 (8 4) (Pt A) (Pr 6).

——Art. 226 — Other remedy open — Guiding considerations — (Administration of Evacuee Property Act (1950), Ss. 26, 27).

An alternative remedy is not a bar to an application for the enforcement of a fundamental right. The exercise of power for any other purpose' under Art. 226 is discretionary and ordinarily the existence of an alternative remedy is a bar. But where there is no jurisdiction or it has been exercised in violation of the principles of natural justice, then an alternative remedy is not a bar.

Where the custodian passes an order cancelling the appointment of the petitioner as manager of an evacuee property or the Assistant custodian passes an order cancelling a lease of the property and for the recovery of rent from the petitioner even for a period which according to the petitioner is barred by limitation and the petitioner has in fact preferred a revision against the order of the Assistant Custodian cancelling the lease and could file revisions against the other two orders as well, it would not be open to him to invoke the discretionary jurisdiction under Art. 226. AIR 1955 Ajmer 41 (42, 43) (Pt A) (Prs 5, 7, 10).

——Art. 226 —Other remedy open — (Houses and Rents — U P. (Temporary) Control of Rent and Eviction Act (III of 1947), S. 7 (a).)

The remedy by way of revision to the Commission under S. 7 (a), U. P (Temporary) Control of Rent and Eviction Act, is not a legal remedy and, in any case, not as efficacious as a petition under Art. 226 of the Constitution. Moreover, the proper time in most cases to consider this question of alternative remedy is at the time when a petition is moved before the High Court. It cannot, however, be held that the question of alternative remedy can never be raised at the final hearing of the writ petition. AIR 1959 All 440 (444, 445) (Pt B) (Pr 13).

——Art. 226—Alternative remedy — Balance of convenience.

It is not the balance of convenience at the time of the application which has to be considered, but the balance of convenience—in cases in which the matter is material—at the time the applicants first had the choice of pursuing alternative remedies. ILR (1952) 1 All 880 : AIR 1953 All 739 (741) (Pt F) (Pr 6) (DB).

——Art. 226—Quo warranto— Application for writ admitted—Parties heard — Court coming to the view that application should be allowed — The argument that application should not be allowed because applicant had another alternative remedy and because of the delay on the part of the applicant and the fact that general elections were drawing near will not be entertained at such a late stage. (1952) R D (H C) 388 : 1953 All W R (H C) 35 : 1953 All L J 81 : ILR (1953) 1 All 891 : AIR 1953 All 193 (194) (Pt D) (Pr 5) (DB).

——Art. 226—Existence of alternative remedy—Not an absolute bar to exercise of jurisdiction

The existence of an alternative remedy does not operate as an absolute bar to the grant of prerogative writs under the extraordinary jurisdiction of the High Court. It is true that the High Court will as a general rule and in the exercise of its discretion refuse a Writ of Mandamus when there is an alternative specific remedy at law which is not less convenient, beneficial and effective. But it is a matter to be considered on the facts and circumstances of each case whether such remedy will be an adequate remedy. ('51) 87 Cal L J 369 (374) : AIR 1953 Cal 333 (335) (Pt B) (Pr 11).

——Art. 226—Other remedy open.

Under Art 226, the power of the Court is not confined to the power to issue writs in the nature of mandamus and other writs mentioned therein. Under the Article the Court has wider powers. But the power of the Court is discretionary and the proceedings under Art. 226 being of a summary and coercive nature the powers under the Article should be sparingly used and only in those clear cases where the rights of persons have been seriously infringed and he has no other adequate and specific remedy avail-

able to him. 55 Cal W N 326 : ILR (1952) 1 Cal 282: AIR 1951 Cal 420 (422) (Pt B) (Prs 22, 25, 26).

——Art. 226—Existence of alternative remedy — Still discretion is vested in High Court to entertain petition and grant relief—Petitioner an election candidate aggrieved by wrong rejection of his nomination papers -Alternative remedy of applying under S 24, Gujarat Panchayats Act, 1961 (Guj Act VI of 1962), not resorted- Question as to existence of alternative remedy was highly debatable one—Petition if thrown out, petitioner was to become without any remedy—Held, it would not be right to refuse relief merely on ground that petitioner did not pursue alternative remedy. AIR 1961 S C 1506, Rel. on. ILR (1966) Guj 111 : (1965) 6 Guj L R 200 : AIR 1966 Guj 19 (28) (Pt B) (Pr 11) (DB).

——Art. 226—Issue of writs —Conduct of petitioner, if to be considered —Specific Relief Act (1877), S. 45.

The conduct of the petitioner, ought to be taken into consideration in determining whether the Court will exercise the discretionary jurisdiction to issue the writ. Thus where a party who owing to his own default did not avail himself of the only remedy given to him by law, is not when the remedy of the issue of a writ becomes subsequently available, entitled to that remedy ILR (952) Madh Bha 231 : AIR 1950 Madh Bha 46 (53) (Pt J) (Pr 15) (DB).

——Arts. 226 and 227 — Alternative remedy open — Where impugned order is plainly absurd and unjustifiable under statutory provisions concerned, existence of alternative remedy will not be ground for denying relief : 1961 Mys Law Jour 319 Rel on. (1965) 4 Law Rep 405 : (1965) 2 Mys L J 486 (DB).

——Art. 226—Another remedy—Jurisdiction of High Court to issue writs — Limitation Another remedy not absolute bar to exercise jurisdiction—Rules of guidance.

Article 226 confers on the High Court power of very comprehensive magnitude. Save for the territorial restrictions there are no other restrictions imposed by the Constitution. But absence of express constitutional limitation does not imply that the jurisdiction to issue writs etc , must be exercised whenever it is invoked merely because it is permissible on the language of the Article. The general words of that Article have a content and a significance, which is enforcement of the rule of law and furtherance of the cause of substantial justice according to law. The question of interference under Art. 226, is therefore left to the judicial discretion of the High Court on the facts and circumstances of each case. The High Court as the final and the highest Court of law and justice in the State is apparently expected not to decline exercise of the power of issuing writs arbitrarily if the true dictates of justice, consistently with the rule of law, in a given case demand its exercise to further the cause of justice.

Hence mere existence of an alternative remedy cannot by itself or per se enjoin the High Court to decline interference on the writ side. It must consider and weigh all the facts and circumstances before it, eliminate prejudice and sympathy, and judicially determine whether or not interference would further the purpose of securing justice to the citizens Ordinarily a right created by a statute should be enforced through the machinery provided by the statute creating it. But if the remedy provided by the statute is not reasonably adequate, effective and speedy, the High Court would not hesitate to interfere provided the nature of the right and of its violation is such that the cause of justice would be better promoted by interference. If the nature of the dispute requires for its adjudication evaluation of evidence and determination of disputed facts, then the High Court is almost invariably disinclined to interfere and would prefer to refer the parties to the statutory or other alternative remedy provided : even in cases of clear-cut violations of law, the High Court would undertake to go into the merits of the controversy only if the statutory or alternative remedy is not adequate or efficacious so as to afford to the aggrieved party effective redress of his grievance. True dictates of justice on the facts and circumstances of the given case thus constitute the requisite yardstic which the High Court employs in determining in its discretion whether or not to exercise its constitutional prerogative.

Where in order to adjudicate upon the election petition the prescribed authority would have to consider the correctness of his own previous order, the order of the prescribed authority finally disposing of an election petition was not subject to any appeal or revision, the election petition was likely to take longer time for its disposal than the writ petition and further, some more elections under the law relating to the Panchayat Samitis and Zilla Parishads were likely to take place.

Held, that these were all important factors justyfying disposal of the writ petition on the merits. 67 Pun L R 1238 : ILR (1966) 1 Punj 347 : AIR 1966 Punj 274 (278, 279) (Pt A) (Prs 6, 7) (DB).

——Art. 226—Other remedy open—Wrong rejection of nomination papers in an election to Panchayat Samiti—Writ petition challenging the same — Alternative remedy open -No bar to issuance of writ under article in a fit case— Punjab Panchayat Samitis and Zilla Parishads Act (III of 1961), S. 121.

The existence of an alternative remedy does not per se operate as an absolute legal bar to the exercise of jurisdiction of the High Court to issue a writ of certiorari, etc under Art. 226 or to such relief being granted on its writ side and this factor has only self-created relevance in the exercise of the Court's judicial discretion. In so far as interference on writ side with grievances relating to elections to Municipal Committees or to the Panchayats, etc. is concerned, one of the basic and fundamental considerations which largely influence the judicial mind of the writ Court inducing it to interfere is when manifest injustice resulting from jurisdictional or grave and material legal infirmity, patent on the face of the record, is plainly discernible without requiring deep probe into conflicting facts, and the alternative remedy, if any, is not equally effective.

In order to determine whether or not a given alternative remedy is equally adequate and quick so as to merit refusal by High Court to go into the controversy, it is necessary to consider the nature of the challenge to the order rejecting petitioner's nomination paper as also the conduct of the writ petitioner. Thus, where the challenge to the order rejecting petitioner's nomination paper was based on a clear-cut legal argument urging grave error of law on the face of the record which did not require enquiry into the disputed fact and the petitioner's conduct was also free from blame and the writ petition was presented with the utmost expedition, the existence of alternative remedy could not deprive the petitioner of his right to claim adjudication of his grievance from High Court on the writ side : 66 Pun L R 1185 and Civil Writ No. 927 of 1964 (Punj) and AIR 1963 Punj 28 and AIR 1961 S C 65, Foll. 67 Pun L R 413 : ILR (1965) 1 Punj 466 : AIR 1965 Punj 170 (172, 173) (Pt A) (Prs 3, 4) (DB).

——Arts. 226 and 228 - Prosecution of person for violation of some section or rule — Procedure to be followed - (Criminal P. C. (1898), S 438).

The proper course of a person who is being prosecuted for the violation of some section or rule of an Act is to raise an objection before the trying Court

for its decision on that point and to move the High Court on revision if the decision goes against the petitioner or in the alternative to move the High Court under Art. 228 and to satisfy the High Court that a case pending in a Subordinate Court involves a substantial question of law as to the interpretation of the Constitution the determination of which is necessary for the disposal of the case and to request the High Court to withdraw the case to itself and either to dispose of the case or to determine the question of law involved. Instead of this where he puts in an application for a writ under Art. 226 to have the provisions declared ultra vires the High Court would reject the petition on the ground that the proper procedure had not been followed. **I L R (1953) Punj 618 : 1953 Cri L J 549 : 55 Punj L R 187 : AIR 1953 Punj 77 (73) (Pt A) (Pr 2) (DB).**

7(m). Patent assumption of jurisdiction or want of jurisdiction or flagrant disregard to principles of law.

——Art. 226—Other remedy — Income-tax Officer acting without jurisdiction under S 34, Income-tax Act—Other remedy under S. 66 (2) of Income tax Act available — It is not sufficient reason for refusing a party quick relief by a writ or order prohibiting the authority acting without jurisdiction from continuing such action. Calcutta Discount Co., Ltd v. Income tax Officer, Calcutta, (1961) 2 S C R 241 : (1963) 1 S C J 741 : (1961) 1 S C A 661 : (1961) 41 I T R 191 : AIR 1961 S C 372 (380) (Pt D) (Pr 28).

——Arts. 226, 19 and 31—Illegal seizure of goods in possession of petitioner in India, under no authority of law, at instance of Jammu and Kashmir Police — Infringement of fundamental rights —Writ under Art. 226 — Remedy under S. 523, Criminal P. C. (Criminal P. C. (1898), S. 523).

Where the police in India seized goods in possession of the petitioner in India, at the instance of Police of Jammu and Kashmir, and the seizure was not under any authority of law, inasmuch as they were not under orders of any Magistrate nor were they under any of the Ss. 51, 95, 98 and 165 of the Criminal P. C., since no report of any offence committed by the petitioner was made to the Police in India and the Indian Police were not authorised to make any investigation and the whole affair was a hole-and-corner affair between the officers of the Kashmir Police and the Indian Police, the seizure of the goods from the possession of the petitioner amounted to an infringement of his fundamental rights both under Art. 19 and Art. 31 and relief should be granted to him under Art. 226.

The fact that the petitioner had made an application under S. 523, Criminal P. C., to the Magistrate will not bar the remedy under Art. 226, inasmuch as S. 523 would have no application to the facts of the case and the Magistrate would have no jurisdiction to order the return of the goods. Wazir Chand v. The State of Himachal Pradesh, **1954 S C J 600 : 1954 S C A 1257 : 1954 Cri L J 1029 : 1955 S C R 408 : AIR 1954 S C 415 (417) (Prs 8, 9).**

——Arts. 32 and 226—Breach of rules framed under Act—Remedy open to person aggrieved thereby.

Where there has been any breach of the rules framed under an Act by the officers concerned, the remedy for such breaches is as provided for in the Act itself. Mere irregularities committed in conducting an auction sale held under the provisions of the Act cannot be said to have abridged the petitioner's fundamental rights and so, Art. 32 is not attracted. It is open to the petitioner under Art. 226 to approach the High Court for a mandamus if the officers concerned have conducted themselves not in accordance with law or if they have acted in excess of their jurisdiction. Cooverjee B Bharucha v. **Excise Commissioner, 1954 S C J 246 : 1954 S C A 258 : 1954 S C R 873 : AIR 1954 SC 220 (224) (Pt E) (Pr 10).**

——Art. 226—High Court can issue direction to return amount of tax realised without authority of law—Existence of alternate remedy is not an absolute bar to entertain petition under Art. 226. See Excess Profits Tax Act (1940), S. 21 (1965) 1 I T J 192 : I L R (1965) 1 All 193 : (1965) 58 I T R 777.

——Arts. 226 and 227—Remedy by way of certiorari open for quashing conviction on ground of lack of juri diction—Petition under Art. 227 is not maintainable. 1963 All Cr R 208 : 1963 (2) Cri L J 595 : I L R (1964) 1 All 178 : A I R 1963 All 585 (587) (Pt B) (Pr 7) (DB).

——Art. 226 — Certiorari — Order passed without jurisdiction — Existence of alternative remedy — No bar.

A certiorari will lie against an order which is held to be without jurisdiction; the presence of an alternative remedy where the initial competence is wanting is no answer. **AIR 1962 All 77 (80) (Pt C) (Pr 17).**

——Art. 226—Other remedy open—If, bar to issue of writ of prohibition.

The existence of an alternative remedy is not a bar to the issue of a writ of prohibition. Where the question whether a house was evacuee property was decided in 1953, to reagitate the same matter would amount to harassment of the petitioner. So in spite of the existence of the alternative remedy, the proceedings ought to be terminated by the issue of a writ of prohibition. **1959 All W R (HC) 685 : 1959 All L J 880.**

——Art. 226—Other remedy—If bar to writ of certiorari—Initial want of jurisdiction—Effect of.

Where certain Licensing Board constituted under a Statute could act only if it was properly constituted refuses certain application for license before it and the applicant applies for a writ of certiorari for quashing its proceedings on the ground of initial want of jurisdiction, it cannot be objected that the petitioners had an alternative remedy by way of appeal against the order. Further, the right to go up in appeal is not an absolute bar to the maintainability of a petition under Art. 226 of the Constitution and in circumstances of the case it could not also be said that the alternative remedy was equally adequate and efficacious. **A I R 1957 All 773 (777) (Pt D) (Pr 15).**

——Art. 226 — Other remedy open — Issue of writ—Rent Control proceedings - Order of allotment without jurisdiction — Issue of certiorari and madamus. See Houses and Rents—U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 7. 1957 All L J 93.

——Art. 226—Other remedy open—(Motor Vehicles Act (1939), S. 64).

Ordinarily the High Court will not exercise its discretion under Art. 226 if another alternative remedy is available.

Where the petitioner's application for grant of stage carriage permit had already been rejected once on the ground that there was no vacancy and the order of the Appellate Authority confirming the decision of the Transport Authority was also set aside by the High Court and in spite of the directions issued by the High Court to consider the application, the application had again been rejected on a ground which was beyond the provisions of S. 47.

Held, that in those circumstances it could not be said that the alternative remedy was equally adequate. **1956 All L J 375 : 1956 All W R 505 : AIR 1956 All 594 (596, 597) (Pt B) (Pr 2).**

——Art. 226 — Adequate alternative remedy open — Writ of certiorari it can be issued.

The question of existence of a specific and adequate alternative remedy is material only when the question of issue of a writ of mandamus is under consideration and not in the case of a writ in the nature of certiorari or a prohibition. Misc. Writ. No. 287 of 1950, Rel. on.

Where the High Court comes to the view that jurisdiction not vested in a judicial or quasi-judicial tribunal has been exercised and a writ of certiorari should issue, such a writ can be issued even if there is an alternative remedy. I L R (1952) 2 All 949 : AIR 1952 All 99 (104) (Pt D) (Pr 8) (DB).

——Art. 226—Tribunal or authority acting without jurisdiction — Existence of an alternative remedy — Whether bars petition under Art. 226.

The existence of even an adequate remedy does not bar the High Courts from issuing a writ under Art. 226 in appropriate cases. Since the remedy is a discretionary one, Courts will not interfere where an adequate alternative remedy is available. But if it appears that the Tribunal or authority entertaining a particular matter is totally devoid of jurisdiction, it will be nothing short of oppressiveness to refuse to entertain a petition and leave the aggrieved party to pursue the alternative remedy. (1963) 47 I T R 101 : (1961) 2 Andh W R 393 : A I R 1962 Andh Pra 323 (326, 327) (Pt A) (Pr 5) (DB).

——Art. 226—Prerogative writ—Issue of — Alternative remedy available—Assumption of jurisdiction by Estate Duty Officer not vested—Writ can issue—Petition not barred. AIR 1962 Andh Pra 107 (109) (Pt B) (Pr 4).

——Art. 226—Other remedy open—Exercise of jurisdiction—Article—Rule — (Madras Hindu Religious and Charitable Endowments Act (1951), S. 87).

Under S. 87, Hindu Religious and Charitable Endowments Act, it is obligatory on the Commissioner to give notice to the affected parties and to consider their objections before issuing a certificate. The enquiry before the Commissioner is intended to give an opportunity to the person in possession to prove his title and for the purpose of ascertaining prima facie whether the office-holder or the servant, as the case may be, has title to the property. Section 87 gives the aggrieved party an alternative remedy by way of a suit. That being the position, the petitioner is not entitled to invoke the jurisdiction of High Court under Art. 226 of the Constitution. (1957) 1 Andh W R 13 : AIR 1957 Andh Pra 777 (778, 779) (Pt A) (Pr 5).

——Art. 226—Other remedy open—(Income-tax Act (1922), Ss. 33-A, 45).

The Commissioner's jurisdiction under S. 33-A of the Income-tax Act depends upon the order passed by the authority subordinate to him. Where no order has been made by the Income-tax Officer and the complaint is that he did not make an order giving stay but issued a certificate to the revenue authorities for collecting the amount by coercive process and that the revenue authorities are bringing properties of the assessee to sale, the grievance being that the Income-tax Officer did not exercise his duty under S. 45 and that he should be compelled to do so the provisions of S. 33-A may not avail the assessee. Even if it does, the mere existence of revisional jurisdiction is not necessarily fatal to the maintainability of the application under Art. 226 of the Constitution. (1956) 30 I T R 252 : I L R (1956) Andh Pra 994 : 1956 Andh L T 656 : 1956 Andh W R 752 : AIR 1957 A P 114 (120) (Pt C) (Pr 16-A) (DB).

——Art. 226—Prohibition—Writ of—Other remedy open—(Madras Co-operative Societies Act (6 of 1932), S. 51 (1) (c)).

Where the Deputy Registrar entertains a claim by the society under S. 51 (c) of the Madras Co-operative Societies Act, although the claim is barred under R. 15 (1-A) of the rules framed under the Act, the alternative remedy by way of appeal and revision provided under the machinery of the Madras Act is no bar to the issue of a writ of prohibition against the Deputy Registrar from taking any further action in respect of the claim in a case of this kind. AIR 1952 Mad 613 : (1952) 1 M L J 557, Foll. A question of limitation involves a question of jurisdiction : AIR 1949 P C 239 (242), Rel. on. If on the facts it is clear that the High Court would interfere ultimately with the order that might emerge from proceedings taken under the Act, it is certainly not only proper but necessary for that Court to interfere earlier by way of a writ of prohibition. AIR 1957 Andh Pra 98 (100) (Pt B) (Prs 5, 7, 8, 9).

——Art. 226—Other remedy—Issue of writ—Consideration — (Sales tax — Assam Sales-tax Act (17 of 1947), Ss. 10 and 32).

In appropriate cases, the High Court can always interfere by prerogative writs where it finds that manifest injustice is likely to result from unauthorised and unwarranted acts of the Taxing Authorities which are not sanctioned by the law. It is not correct to say that there being a remedy under the Sales Tax Act itself the person aggrieved unless he questions the constitutionality of the Act itself cannot seek his remedy under Art. 226 against any action proposed to be taken under the Act by the authorities. It is open to the person who is served with the notice, to question the validity of the notice, even by an application under Art. 226. (1958) 9 STC 60 : ILR (1957) 9 Assam 365 : AIR 1957 Assam 179 (180, 181) (Pt A) (Prs 2, 3) (DB).

——Art. 226 — Other remedy open—Mistakes by Sales-tax authority in exercise of jurisdiction.

Where the authorities under the Sales Tax Act have admittedly jurisdiction to go into certain matters and they committed mistakes in the exercise of their jurisdiction the aggrieved party can have recourse to the remedies prescribed by the Act for setting matters right. If he has failed to do so the extraordinary jurisdiction of the Court under Art. 226 may not in these circumstances be permitted to be invoked. AIR 1953 Cal 712, Rel. on. ILR (1954) 6 Assam 191 : AIR 1955 Assam 195 (200) (Pt C) (Pr 20) (DB).

——Art. 226—Mandamus—Another remedy available—Comissioner of Sales Tax failing to exercise jurisdiction (Sales Tax — Assam Sales Tax Act (17 of 1947), Ss. 31 and 32).

The fact that there is a specific remedy available is not in all cases an absolute bar to the entertainment of an application under Art. 226 of the Constitution. Where in a sales tax proceeding the order by the Assistant Commissioner dismissing the appeal of the assessee was passed on 20-8-52 and communicated to the petitioner on 4-9-52, and on 24-10-52 well within 90 days from the date of that order, the petitioner moved the Commissioner against the appellate order of the Assistant Commissioner, but the Commissioner instead of acting under section 31 of the Assam Sales Tax Act and dealing with the application presented by the petitioner made a reference to the High Court under S. 32 because the application of the petitioner was wrongly made for reference, which was misconceived, and the reference was dismissed by the High Court as being misconceived, and by this time, the remedy of the petitioner under the Act had become time barred and it was clear that both the

petitioner as well as the Commissioner were under a misapprehension of the real position in law.

Held, that in case like this, and under the circumstances aforesaid, the High Court would be justified in issuing a writ quashing the orders which are found to be wrong and direct the Commissioner to exercise his power under section 31 of the Act. **ILR (1954) 6 Assam 207 : AIR 1954 Assam 170 (172, 173) (Pt C) (Pr 5) (DB).**

——Art. 226—Another remedy—Order wholly void.

Orders passed by Minister of Excise in exercise of powers under notification No. M E. X. 120/48/1 dated 15-8-1948—Orders are wholly void and should be set aside in order that appellants may have their appeals disposed of—They can be quashed even if they are treated as orders of administrative authority —Petitioners having no other remedy for obtaining disposal of appeals—Relief under Art. 226 may not be refused AIR 1951 Assam 96, Dist. **I L R (1953) 5 Assam 363: AIR 1953 Assam 170 (176) (Pt C) (Pr 29) (DB).**

——Art. 226—Other remedy open—Patent want of jurisdiction—Interference—Income-tax Officer exceeding authority — (Income-tax Act (1922) S. 34).

A patent want of jurisdiction entitles the petitioner to obtain immediate relief from the High Court, even though he could raise the plea of want of jurisdiction in a higher tribunal and even though he may have acquiesced in the want of jurisdiction. But the want jurisdiction must be a patent one. **58 Bom LR 184 : (1956) 29 ITR 856 : ILR (1956) Bom 374 : AIR 1956 Bom 530 (536) (Pt F) (Pr 16) (DB).**

[Reversed on another point in AIR 1963 SC 1356].

——Art. 226—Other remedy—R T. A. refusing application for grant of permit — Appeal — Adverse order by Appellate Authority—Order of R T. A., if can be challenged by writ petition—Relief against appellate order when can be granted—(Motor Vehicles Act (1939), Ss. 47, 64).

It is quite true that the existence of an alternative remedy is not an absolute bar to a recourse to Art. 226 of the Constitution, but if a party has availed himself of the ordinary remedies provided for by a special Act, he cannot thereafter turn round and begin once again from the bottom by challenging the original order under Article 226 of the Constitution. The petitioner can only attack the order of the Appellate Authority and the High Court can grant relief if the Court is satisfied that there is in such appellate order any error apparent on the face of it or the order is tainted with any illegality on the face of it. **I L R (1958) 1 Cal 486 : 61 Cal W N 726 : AIR 1957 Cal 638 (643, 644) (Pt E) (Prs 18, 21).**

——Art. 226—Other remedy—Want of jurisdiction in Tribunal—Effect.

Though no exception can be had to the principle that if a person has an alternative legal remedy which is sufficient, then he must exhaust it before coming to High Court where a person can show initial lack of jurisdiction in any judicial or quasi-judicial Tribunal, the High Court should deal with such matter and grant relief. **61 Cal W N 759 : (1958) 33 ITR 794 : AIR 1957 Cal 591 (592) (Pt A) (Pr 4).**

——Art. 226—Resolution under S. 138 (1) (c), Bengal Municipal Act, 1923, in excess of powers—Remedy under S. 148 Bengal Municipal Act (1923), inadequate — High Court can interfere under Art 226. See Municipalities — Bengal Municipal Act (15 of 1932), S. 138 (1) (c). AIR 1955 NUC (Cal) 2073.

——Art. 226—Other remedy open—Proceedings to quash order of Rent Controller under W. B Premises Rent Control (Temporary Provisions) Act, 1950 — Inferior Court acting wholly without jurisdiction — High Court will interfere even though there is other remedy, such as right of appeal or review—(Houses and Rents—W. B. Premises Rent Control (Temporary Provisions) Act (1950) Ss. 5 and 32). AIR 1955 NUC (Cal) 798.

——Art. 226 — Although the Writ is not of course it will nevertheless be granted ex debito justitiae, to quash proceedings which the Court has power to quash, where the application is by aggrieved party and it is shown that the Court below has acted without jurisdiction or in excess of jurisdiction and the Writ is available to the applicant although there is an alternative remedy. The Commissioner for Workmen's Compensation has no right to refuse hearing and deny natural justice to the party Where the objection to jurisdiction was apparent on the face of the proceedings, the alternative remedy of appeal cannot stand in the way of the Writ being issued if there is found to be an absence of or excess of jurisdiction in the Commissioner of Workmen's Compensation in dealing with the matter in question. I L R (1952) 2 Cal 412 : 88 Cal L J 137 : 56 Cal W N 73 : AIR 1952 Cal 112 (115) (Pt C) (Prs 16, 20, 21).

——Art. 226 — Other remedy open—Writ petition challenging jurisdiction of adjudicating authority and also challenging enquiry and order as being ex facie erroneous — High Court can entertain petition although petitioner has not exhausted remedies under Sea Customs Act (1878).

It is well settled that where a petitioner challenges the jurisdiction of the adjudicating authority or the validity of the enquiry itself or the impugned order on the ground that there is an ex facie error thereunder, he need not wait until he has exhausted the alternative remedy and therefore can file a petition to set aside the impugned order without having recourse to such alternative remedy: A I R 1962 S C 1621, Disting. **(1964) 5 Guj L R 633 : AIR 1965 Guj 135 (138) (Pt C) (Pr 3) (DB).**

——Art. 226 — Other remedy open — Election of director of Bank held invalid by misinterpretation of bye-law — Issue of writ Himachal Pradesh Co-operative Societies Act (13 of 1956), S. 112)

Where an arbitrator appointed by the Registrar Co-operative Societies under S. 88, Himachal Pradesh Co operative Societies Act, 1956, holds the election of the petitioner as a Director of the Co-operative Bank as invalid by misinterpreting bye-law 59 (v) of the Bank, resulting in the miscarriage of justice, and the decision of the Arbitrator is upheld by the superior authorities, this is a fit case where the High Court should exercise its powers conferred by Art. 226 and not drive the petitioner to the necessity of filing a regular civil suit. The petitioner may have a right of suit, under S. 112 of the Himachal Pradesh Co-operative Societies Act but under the circumstances of the case it would not be considered as an equally efficacious remedy. **A I R 1959 Him Pra 1 (2) (Pt A) (Pr 8).**

——Art. 226 — Writ of certiorari — Other remedy open.

It is true that a writ of certiorari will not ordinarily be entertained or issued where the applicant has a remedy under the law and could easily pursue it, but where proceedings are taken by an inferior tribunal without jurisdiction a writ of prohibition will lie. AIR 1955 S C 233 : (1955) 1 Mad L J (S C) 157 Rel. on. **ILR (1955) Hyd 818 : A I R 1956 Hyd 56 (57) (Pt A) (Pr 3) (DB).**

——Art. 226—Other remedy open—Ex parte assessment of income-tax — Application under Article— (Hyderabad Income tax Act (8 of 1357.F) S. 31 (4).)

An ex parte assessment having been made under S. 31 (4) against the applicant he applied for the

issue of a writ of certiorari. No notice of demand under S. 41, Hyderabad Income-tax Act, was made upon the petitioner and he could not therefore file the application within 30 days from the service of notice of demand as specified in S. 39 nor could he present an appeal or a revision within the time specified in Ss. 42 and 45. The petitioner, however, filed a petition under S. 39 before the Income-tax Officer and under S. 45 before the Commissioner. The Income-tax Officer did not agree to reopen the assessment in spite of reminders by the petitioner. The Commissioner on the other hand rejected the petition on the ground that it was barred by limitation :

Held that in these circumstances the objection that the applicant could have pursued other remedies under the Act had no validity. **ILR (1955) Hyd 486 : AIR 1955 Hyd 187 (189) (Pt A) (Pr 8) (DB).**

——Art. 226 — Another remedy open—Remedy by way of suit open under Hyderabad Endowments Regulation — (Hyderabad Endowments Regulation (1358 H.) S. 10 (b) and R. 83 framed under S. 16).

Where the petitioner had another remedy open under s. 10 (b) of the Regulation and R. 83 by way of a regular suit, but the Minister had acted without due authority of law and without any jurisdiction or in excess of his legitimate jurisdiction in ordering de novo inquiry and in the imposition of the committee of his own choice.

Held, that the High Court was not fettered by the circumstance that an alternative remedy existed in issuing an order under Art. 226. **I L R (1955) Hyd 337 : AIR 1955 Hyd 82 (93, 94) (Pt D) (Pr 47).**

——Art. 226 — Other remedy - Contract Act (1872), S. 72—Party entitled to relief by way of refund under S. 72, Contract Act—Not precluded from resorting to relief under Art. 226 — Contract Act (1872), S. 72. 1963 Ker L J 356.

——Art. 226 — Other remedy open—Issue of writ—(Motor Vehicles Act (1939), Ss. 62 and 64).

If the petitioner is able to satisfy the Court that in granting a temporary permit to the Director of State Transport, the Regional Transport Authority has acted, not merely erroneously but in patent and total disregard of the provisions of the Motor Vehicles Act, or in flagrant violation thereof, the Court is not debarred from exercising the jurisdiction under Art. 226 on the ground that the petitioner could have obtained his remedy in some other manner. By issuing a temporary permit on such a ground to the State Transport what is achieved by the Regional Transport Authority is to set at naught the provisions of S. 62 of the Motor Vehicles Act. Therefore, in such a case the Regional Transport Authority acts in patent and total disregard of the provisions of the Motor Vehicles Act and in excess of its powers and the petition under Art. 226 is maintainable though the petitioner has a remedy by way of appeal under S. 64 of the Act. **1959 Ker L J 549 : 1959 Ker L T 601 : I L R (1959) Ker 1224 : AIR 1960 Ker 35 (37) (Pt A) (Prs 4, 5).**

——Art. 226—Who can apply — Private school governed by Kerala Education Act, 1958 – Petition by teacher against order of transfer by manager on allegation that order was beyond competence of manager Defiance of order of manager, even if petitioner was entitled to do so, could not afford adequate remedy to petitioner and his petition for relief under Art. 226 could not be rejected on that ground. A I R 1952 S C 16 (21), Ref. 1960 Ker L T 803 : (1960) Ker L J 1182.

——Art. 226 — Other remedy open—Writ of certiorari—When can be issued.

There is no rule, with regard to certiorari, that it will lie only where there is no other equally effective remedy. Ordinarily, the superior court will decline to interfere until the aggrieved party has exhausted his other statutory remedies, if any. But this rule is a rule of policy, convenience and discretion rather than a rule of law. If an inferior court or tribunal (a) acts wholly without jurisdiction or (b) patently in excess of jurisdiction or (c) manifestly conducts its proceedings contrary to the rules of natural justice and all accepted rules of procedure which offends the superior court's sense of fair play, the superior court may issue the writ of certiorari. In a proper case of the kind mentioned above the superior Court should interfere. A I R 1958 S C 86; AIR 1957 S C 882 and AIR 1952 S C 192, Rel. on.

The fact that the petitioner, acting on the wrong advice had not preferred any appeal under S. 17, Payment of Wages Act, against a direction made under S. 15 (3) of that Act is no ground for departing from the ordinary rule against interference by certiorari under Art. 226. **(1960) 1 Lab L J 299 : 1959 Ker L J 1416.**

——Art. 226 — Other remedy open—Order without jurisdiction—Interference.

Where the question raised is one of want of jurisdiction the judicial review under the Article is always available, and the objection that the remedy by way of appeal available precluded an application under Art. 226 has no substance in such a case. **1959 Ker L J 93.**

——Art. 226—Other remedy open—Returning officer accepting nomination paper not validly presented—Relief can be granted under Art. 226—Remedy under R. 130 of Madhya Bharat Municipal Election Rules (1950) is wholly inadequate — (Municipalities — Madhya Bharat Municipal Election Rules (1950), R. 130). Madh B L J 1955 H C R 848 : ILR (1955) Madh Bha 387 : Madh B L R 1955 Civ 254 : AIR 1955 M B 179 (181) (Pt B) (Pr 5) (DB).

——Art. 226 — Preliminary objection raised by petitioner regarding consideration of his application alone for grant of permit rejected by R. T. A. — Objection being one which goes to root of matter can be taken in writ proceedings even if not raised in appeal—Omission to take any steps against rejection order, before filing of appeal, does not preclude petitioner from challenging that order in writ proceedings. 1965 M P L J 272 : 1965 Jab L J 486 : A I R 1965 Madh Pra 145 (147, 148) (Pt B) (Prs 5, 6) (DB).

——Art. 226—Displaced Persons (Compensation and Rehabilitation) Act (1954), Ss. 19, 22 — Notice under S. 19 issued—Conditions laid down in the Act however not complied with—Interference under Art. 226 of the Constitution held justified though petitioner had not filed an appeal under S. 22 of the Act. See Displaced Persons (Compensation and Rehabilitation) Act (1954), S. 19. AIR 1962 Madh Pra 56 (DB).

——Art. 226 — Other remedy open — Error on part of inferior tribunal very manifest and patent—High Court will interfere though other remedy open.

It is always discretionary with the High Court to exercise its writ jurisdiction when another remedy, equally efficacious, is available to the party coming to the High Court for issuance of any writ. But when the error on the part of the inferior tribunal is so manifest and patent, the High Court will be fully justified in stepping in to correct the same instead of directing the party aggrieved to go the proverbially tortuous way of a regular suit to have it corrected. **1961 Jab L J 952 : 1961 M P C 698 : 1961 M P L J 1081 : ILR (1962) Madh-Pra 38.**

——Art. 226–Other remedy — Order without jurisdiction — Issue of writ to quash — (Income-tax Act (1922), S. 33-A.)

The existence of another remedy by way of revision to the Commissioner of Income-tax may not be sufficient to refuse relief to the petitioner, if she is otherwise entitled to it. The question is really one of jurisdiction. Where the Income-tax Officer had no jurisdiction to include minor partner's income in the income of his mother who was also a partner in the firm in the sense the law did not authorise such an inclusion, there is no bar to the exercise of discretion in favour of the petitioner to grant her the relief to which she is entitled, as ex debito justitiae. (1959) 2 Mad L J 437 : (1959) 37 I T R 204 : A I R 1960 Mad 357 (358, 359) (Ft C) (Frs 9, 12).

——Art. 226—Other remedy—Issue of writ — (Madras Hindu Religious and Charitable Endowments Act (19 of 1951), Ss. 39 (2) and 41).

The Area Committee under Madras Act (19 of 1951) exercises a quasi-judicial function in making the appointment of non hereditary trustees under S. 39 (2) and they have to bring to bear on the question an independent and unbiassed judgment. Where the Area Committee had really no reasons, to make the appointment the order of appointment cannot be treated as one passed as contemplated by Ss. 41 and 39 (2) of the Act. The existence of an alternative remedy and the failure to resort to it cannot be a bar to the jurisdiction of the High Court. (1958) 2 M L J 47 : ILR (1958) Mad 637 : 71 Mad L W 265 : A I R 1958 Mad 275 (277) (Pt A) (Pr 6).

——Art. 226 — Jurisdiction of High Court — Other remedy open—It bar to interference with erroneous finding of subordinate tribunal — Madras Estates (Abolition and Conversion into Ryotwari) Act (26 of 1948)—Erroneous decision of Abolition Tribunal on no evidence at all or on no real evidence — Interference by High Court under Art. 226–Practice.

The fact that under the Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948, the party aggrieved by an order of the Estates Abolition Tribunal has a remedy open to him by way of a suit to establish his claim, does not preclude the High Court from interfering with an erroneous finding of the Tribunal, in exercise of its jurisdiction under Art. 226.

Where the majority of the Estates Abolition Tribunal decided that three grants of five isolated hamlets in rain-fed areas with wet and dry lands and isolated wet blocks in scattered places in four villages, together constituted an estate as defined by S. 3 (2) (d) of the Madras Estates Land Act, which has been incorporated into the definition in S. 2 (7) of the Madras Act (26 of 1948), on no evidence at all, or at least on no real evidence, such an error apparent on the face of the record can be rectified by the High Court in exercise of the powers vested in by Art. 226 of the Constitution. (1956) 1 M L J 382 : AIR 1955 N U C (Mad) 4333.

——Art. 226 — Order without jurisdiction — Other remedy open. See Income-Tax Act (1922), S. 5-A (8). (1955) 2 M L J 26 : AIR 1955 Mad 39 (DB).

——Art. 226—Prohibition writ of — Existence of alternative remedy is irrelevant consideration in granting writ.

A writ of prohibition lies to prevent an inferior tribunal from exceeding its jurisdiction or even from assuming a jurisdiction which does not vest in it under law. It also lies if a provision of a statute is contravened by the tribunal or even if any principles of law are contravened. In deciding the question whether a writ of prohibition should issue or not, the existence of an alternative remedy is an irrelevant consideration when the complaint is that an inferior tribunal is exceeding its jurisdiction or is assuming a jurisdiction not vested in it by law. If the tribunal is permitted to exercise that jurisdiction which is objected to, if it exercises it wrongly, the mischief would be done before the alternative remedy is availed of. It is unnecessary to insist upon a party complaining that he should first suffer and submit himself to the jurisdiction which is being wrongly exercised or is wrongly exceeded and then take advantage of the alternative remedy. 1952 Mad W N 299 : 1952-1 Mad L J 557 : AIR 1952 Mad 613 (631) (Pt G) (Fr 26) (DB).

——Art. 226 — Other remedy — Constitution of the statutory tribunal which passed the impugned order can be challenged only by writ petition — Motor Vehicles Act (1939), S. 44 (2).

Where the petitioner challenges the constitution of the Regional Transport Authority on the ground that there was no non-official member appointed to that Authority, as required by S. 44 (2) of the Motor Vehicles Act that question can properly be urged only in a writ petition and not before statutory tribunals under the Act. (1964) 1 Mys L J 307 : A I R 1964 Mys 288 (290) (Pt A) (Pr 4) (DB).

——Art. 226 — Panchayats — Bombay Village Panchayats Act (6 of 1933), Ss. 9, 107-A—Enquiry under —Powers of Enquiry Officer — Extent of—Production of oral evidence disallowed –Parties asked to prove allegations exclusively by documentary evidence–Order held arbitrary and beyond jurisdiction—Existence of remedy under S. 107-A—Not a bar to seek relief under Art. 226 of Constitution. See Panchayats — Bombay Village Panchayats Act (6 of 1933), S. 9. ILR (1960) Mys 442.

——Art. 226—Other remedy open — Want of jurisdiction—Writ petition–(Motor Vehicles Act (1939), Ss. 62, 134 (2)).

Where the Regional Transport Authority in passing the orders granting temporary permits has failed to apply its mind to find out whether one or other of the circumstances mentioned in section 62, Motor Vehicles Act, did exist, he acts without jurisdiction and the grant of the temporary permits is liable to be quashed in a petition under Art. 226, Constitution of India, although the aggrieved party has not exhausted the remedies available under the Motor Vehicles Act. 37 Mys L J 113 and 37 Mys L J 115, Rel. on. The existence of an alternative remedy is, no doubt, an important circumstance to be taken into consideration in the matter of the exercise of the jurisdiction under Art. 226. But when there is a patent want of jurisdiction, the petitioner would be entitled to obtain immediate relief from the High Court. AIR 1956 Bom 530, Rel. on.

There is nothing in S. 134 (2) of the Motor Vehicles Act which can be construed as being applicable to a case in which a competent authority under the Act, acts wholly without jurisdiction. Nor can the powers of the High Court under Art. 226, be affected in any way, by such a provision. 37 Mys L J 117 : I L R (1959) Mys 143 : A I R 1959 Mys 120 (121, 122) (Prs 3, 4, 5) (DB).

——Art. 226 — Alternative remedy — Jurisdiction of High Court—Writ of quo warranto.

No doubt, the fact that there is an alternative remedy does not take away the jurisdiction of the High Court under Art. 226; but none of the remedies provided by that Article are as of right. Where there is another remedy available, which is adequate and effective, a writ will not ordinarily be issued, but the Court may issue a writ of quo warranto where the alleged intrusion is patent. AIR 1953 Nag 81, Relied on. 1954 Nag L J 644 : ILR (1955) Nag 557 : A I R 1955 Nag 9 (10) (Pt A) (Pr 5) (DB).

——Art. 226 — Petitioner challenging demand made upon him under S. 7 (2) of Finance Act, 1951 as being wholly without jurisdiction — Validity of S. 7 (2) itself challenged — Contention that in case section be valid, case did not fall under it, raised — Contention that before invoking Art. 226, petitioner should have exhausted remedy provided by Act 1 of 1944 held not maintainable in view of fact that Government had not proceeded under Act 1 of 1944 and also because the petitioner questioned the very authority and jurisdiction to make the demand which was alleged to be not under the Act but wholly outside it I L R (1952) Nag 156 : A I R 1952 Nag 139 (141) (Pt A) (Pr 11) (DB).

——Art. 226 — Other remedy open—Order made by authority having no jurisdiction — Appeal from order not availed by petitioner—Writ petition is not barred.

The work of a contractor and a sub-contractor cannot be termed as work and employment. The Bihar Shops and Establishments Act has therefore no application where the relationship between the petitioners and respondent is that of a contractor and a sub-contractor. Since the Act has no application to the relation of contractor and his sub-contractor the authority prescribed under the Act has no jurisdiction to deal with the matter; and this absence of jurisdiction in the authority is a special circumstance in the case for the maintainability of the writ application under Art. 226, even though the petitioners have not availed themselves of the alternative remedy. C W I C No. 135 of 1965 (Pat), Foll.; A I R 1955 S C 661 and A I R 1954 Pat 43, Rel. on. 1965 B L J R 702 : A I R 1966 Pat 127 (129) (Pt A) (Prs 3, 5, 6) (DB).

——Art. 226 — Other remedy open — (Bihar and Orissa Public Demands Recovery Act (IV of 1914), Ss. 43 and 44—Applicability).

Sections 43 and 44 of Act (IV of 1914) apply only to a case where the certificate has been 'duly filed' under the Act; in other words, when 'public demand' is due within the meaning of S. 3 (6) of the Act. If at the time when the certificate is signed by the Certificate Officer there is no 'public demand' due from a person the certificate is ultra vires and all the proceedings founded thereon are null and void. In such a case, Sections 43 and 44 of the Act have no application, and the person is not bound to have recourse to the special machinery provided in these sections. 25 Cal 833 (PC) Foll. A I R 1928 Cal 808, Rel. on. AIR 1956 Pat 89 (90) (Pt B) (Pr 4) (DB).

——Art. 226 — Mandamus — Other appropriate remedy open but not availed — Discretion of High Court to issue writ.

The power to grant relief under Art. 226 of the Constitution is discretionary — Where the petitioner has another effective remedy open to him but has failed to avail of it a petition under Art. 226 will not generally be entertained. It is only in most exceptional cases where the conduct of the authorities concerned is such as to make it clear that they have not been discharging their duties and are not likely to do so without the guidance of the Court that the Court will be justified in issuing mandamus. (1952) 3 S T C 7 : A I R 1952 Pepsu 106 (108, 109) (Pt C) (Pr 9) (DB).

——Art. 226 — Writ Petition under — Existence of alternative remedy — Effect — Irregularity in conduct of election — Writ petition is maintainable though election petition could have been filed.

The existence of an alternative remedy is an extremely important factor, and more particularly so in those election contests in which the Legislature has provided remedy by way of election petition. But it does by no means per se affect, curtail or impinge upon that jurisdiction under Art. 226 which can be invoked in a fit case by an aggrieved party when the true dictates of justice so demand. The matter is pre-eminently one of judicial discretion. No inflexible and rigid rule can or should therefore be formulated to serve as a straight jacket in all cases. Each case has to be dealt with in its own peculiar setting and circumstances. The mere availability of an alternative remedy does not itself impose an obligation on the High Court to relegate the aggrieved party to such remedy. (1964) 66 P L R 1185, Rel. on. When the irregularity committed by the Returning Officer has gone to the very root of the matter, the mere fact, therefore, that the petitioners did not file an election petition will not debar them from seeking the appropriate remedy by way of a petition under Art. 226. 1965 Cur L J 482 : 67 Pun L R 672.

——Art. 226 — Punjab Co-operative Societies Act (XXV of 1961), Ss. 27 68 (1) (c) — Action under S. 27 (1) by Registrar — Condition precedent — Non-compliance — Removal of directors held contrary to S. 27—Remedy of appeal under S. 68 (1) (c) available — Petition of directors under Art. 226 of Constitution not barred. See Punjab Co-operative Societies Act (XXV of 1961), S. 27. 1964 Cur L J 157 (Punj).

——Art. 226—Other remedy.

Ordinarily, the High Court does not interfere in writ proceedings if the petitioner has not made use of any alternative remedy available to him under the law, but where the impugned order, is patently illegal and has resulted in great injustice to the petitioners, it is a fit case in which the High Court should interfere by issuing the prerogative, writ of certiorari. 65 Pun L R 742 : 1963 Cur L J 60.

——Art. 226 — Other remedy available — Grant of temporary permit under S. 62 of Motor Vehicles Act — It is doubtful whether appeal lies against such grant — But even if an appeal lay, if the authority acted without jurisdiction in granting temporary permits without applying its mind whether the circumstances mentioned in S. 62 (c) existed or not, the High Court would be justified in quashing the grant by way of a writ of certiorari even though the petitioner had not exhausted the remedies available under the Act. A I R 1959 Mys 120 and A I R 1958 Ker 19, Rel. on. 64 Punj L R 34 : AIR 1962 Punj 17 (23) (Pt E) (Pr 13).

——Art. 226 — Alternative remedy — Though open not availed of — Effect — Discretion of Court to entertain writ petition.

The existence of an alternative remedy is not an absolute bar to the entertainment of writ petition and the Court has discretion to entertain the petition even though the petitioner had not availed of the alternative remedy provided by law.

Where the writ petitioner challenged the order of assessment to sales tax as being without jurisdiction in view of Art. 286 (1) (b) of the Constitution, without filing any appeal against that order as provided by S. 13 (1), Rajasthan Sales Tax Act.

Held, that in the circumstances it would not be proper to dismiss the petition in limine on ground that the petitioner had not availed of the alternative remedy. A I R 1961 S C 1506, Rel. on. (1964) 15 S T C 966 : I L R (1963) 13 Raj 908 : 1963 Raj L W 517 : AIR 1964 Raj 5 (8) (Pt A) (Pr 5) (DB).

[Reversed in A I R 1966 S C 142, wherein the Supreme Court held that the High Court should have declined to entertain the petition as there must be something more in a case to warrant the entertainment of a petition under Art. 226, something going to the root of the jurisdiction of the Sales Tax Officer, something to show that it would be a case

of palpable injustice to the assessee to force him to adopt the remedies provided by the Act. But the case was, however, reversed on the ground that the High Court should not have decided disputed questions of fact, but should merely have quashed the assessment order on the ground that the Sales Tax Officer had not dealt with the question raised before him and remanded the case—Ed.]

——Art. 226—Other remedy — Plea of bias—Proper approach.

The existence of an alternative remedy is no doubt one point to be considered in deciding whether a writ application should be entertained or not. But it does not affect the jurisdiction of the High Court to entertain such application even though there may be available to the petitioner an alternative remedy keeping in view the special circumstances : I L R (1957) 7 Raj 723, Rel. on. Where the interest and bias of the appellate authority is alleged to be the ground for not following the alternative remedy, the proper approach to the case is to determine whether there are reasonable grounds for inferring a bias justifying a reasonable apprehension that the appellants will not secure a fair and objective determination of their appeals. A I R 1960 S C 468 Rel. on. **I L R (1960) 10 Raj 1392 : 1962 Raj L W 523 : AIR 1961 Raj 130 (132, 133) (Pt A) (Prs 6, 8).**

——Art. 226—Other remedy open—Issue of writ.

Where the local limits of an existing municipal board are sought to be altered, but they have not been altered by a competent authority, and in this state of affairs the municipality goes to the polls and elects its members, then it is not the duly delimited municipality which has gone to the polls but a different body, and the error is so fundamental that it is not an error merely in the holding of an election but something which goes to affect the very constitution of the municipality in the eye of law. Every substantial error made in violation of the provisions of the Act may not be capable of being challenged before an election tribunal. In such a case the error can be corrected under Art. 226 of the Constitution. **ILR (1959) 9 Raj 1084 : AIR 1960 Raj 152 (156, 157, 158) (Pt A) (Prs 12 to 14, 17, 20, 21) (DB).**

——Art. 226—Other remedy open—Rajasthan Public Demands Recovery Act (V of 1952), S. 20 — Conditions requisite for laying foundation for proceeding under the Act not complied with—Defaulter should not be driven to remedy of suit under S. 20 — High Court should issue order in the nature of prohibition.

There are four essentials which are the foundation for proceedings under the Rajasthan Public Demands Recovery Act. It is only when all these conditions are present that foundation is laid for the Collector to take action for recovery under the Act. If any of these conditions is not present, there is a patent lack of jurisdiction in the Collector to proceed under the Act. In such a case, a defaulter should not be driven to the remedy of a suit under S. 20, for such a remedy would not be equally effective, beneficial and convenient, and it is but right that High Court should prohibit the Collector in his extraordinary jurisdiction from proceeding in a matter in which he has not laid the foundations of his jurisdiction. The remedy sought by the defaulter in such a case would be of the nature of prohibition **1957 Raj L W 370 : I L R (1957) 7 Raj 148 : AIR 1958 Raj 17 (18) (Pt A) (Pr 7) (DB).**

——Art. 226—Other remedy open—Rajasthan Public Demands Recovery Act (5 of 1952), S. 20—Conditions requisite for laying foundation for proceeding under the Act not complied with—Defaulter should not be driven to remedy of suit under S. 20 — High Court should issue order in the nature of prohibition. AIR 1958 Raj 17 (18) (Pt A) (Pr 7) (DB).

——Art. 226 — Another remedy open — (Administration of Evacuee Property Act (1950), Ss. 26 and 27).

Held, that the action of the custodian authorities was apparently so unauthorised that the petition under Art. 226 against their orders would not be dismissed simply on the ground that the Custodian or Custodian-General, as the case may be, had discretionary powers of interference in revision under S. 26 and 27 of the Evacuee Property Act and the petitioner did not avail of it. **1958 Raj L W 308.**

——Art. 226—Other remedy open — (Municipalities —Aimer-Merwara Municipalities Regulation (VI of 1925), S. 93).

Section 93 permits appeal against assessment or levy of the tax — Where what is objected to in the petition under Art. 226 is the very foundation of the imposition of the tax the application is entertainable. **1958 Raj L W 304 : ILR (1958) 8 Raj 195.**

——Art. 226—Other remedy open—Order impeached not showing under what law it was passed—Effect.

Unless an order interfering with the rights of certain persons shows under what law it was passed and by what officer, so that they may know what alternative remedy they have, the High Court would not be prepared to deny justice to them under Art. 226 on the ground of availability of another remedy. 1954 R L W 664 Explained and Distinguished. **1958 Raj L W 241 : ILR (1958) 8 Raj 205.**

——Art. 226—Other remedy open — (Panchayats — Rajasthan Panchayat Raj Rules 1954), R. 19).

Rule 19 contemplates election petition against individual Panchayat. It does not contemplate an election petition asking the tribunal to declare the entire election invalid on the ground of a fundamental deficiency in carrying out the mandatory rules relating to the holding of the election. Where by the petition under Art. 226 it is not the election of any individual panch or Sarpanch or Up sarpanch that is challenged but that the entire election is void on the ground of a fundamental deficiency in the procedure preceding the election, the High Court is entitled to interfere in the exercise of its extraordinary jurisdiction. **1957 Raj L W 317 : ILR (1957) 7 Raj 177 : AIR 1957 Raj 95 (97, 98) (Pt B) (Pr 7) (DB).**

——Art. 226—Another remedy—Election proceeding — Rajasthan Panchayat Election Rules (1954), R. 20 Election of candidate though declared, ignored by Returning Officer and another election held — Misconduct of Returning Officer—Remedy of candidate is under Art. 226.

Reading R. 20 as it stands, there can be no doubt that the misconduct or corrupt practice referred to therein must refer to the misconduct or corrupt practice of the candidate or his agent, and not to the misconduct or corrupt practice of the Returning Officer. Therefore, no election petition will lie on the ground of any irregularity committed by the Returning Officer. In such a case, as the candidate, whose election has been ignored, cannot obtain a remedy by filing an election petition, he can rightly move the High Court by a writ petition filed under Art. 226, Constitution of India. **1956 Raj L W 311 : I L R (1956) 6 Raj 797 : A I R 1956 Raj 188 (190) (Pt C) (Prs 6, 7) (DB).**

——Art. 226 — Other remedy open—Ss. 92 and 95 of Jaipur Customs Act only permit appeal or revision against orders under Act—Action of customs officer not authorised by Act — There is no necessity of recourse to remedy under Act They are not bar to petition under Art. 226 — (Jaipur Customs Act (XLV

of 1943), Ss. 92 and 95). AIR 1955 N U C (Raj) 1631 (DB).

——Art. 226 - Other remedy open—(Matsya Customs Ordinance (1948), Ss. 48, 72).

Where the order under S. 48 of the Matsya Customs Ordinance has not been made by the Superintendent Customs, the appeal would not lie to the Civil Judge under S. 72. 1953 Raj L W 47 : I L R (1952) 2 Raj 511 : A I R 1953 Raj 158 (162) (Pt C) (Pr 8) (DB).

——Art. 226—Prohibition, writ of — Other remedy open.

Where the superior Court comes to the conclusion that an inferior tribunal is exercising jurisdiction which is not vested in it, the superior Court will issue a writ of prohibition, even though there may be an alternative remedy. 1951 R L W 56 ; 1952 R L W 71 and 1952 R L W 184, Rel. on. A I R 1953 Raj 71 (72) (Pt A) (Pr 4) (DB).

——Art. 226 — Motor Vehicles Act (1939), S. 64 — Application for permit — No orders given — That because no orders have been given, it cannot be held that application has been rejected - Question of appeal under S. 64 does not arise — Petition under Art. 226, Constitution of India, is maintainable — See Motor Vehicles Act (1939), S. 64. AIR 1953 Raj 1.

——Art. 226—Other remedy available—Usurpation of Jurisdiction—Grant of relief under Art. 226.

The High Court can in a proper case grant relief under Art. 226 of the Constitution although the applicant has another remedy, (e g.) where the order of a properly constituted authority is in his favour and that order is set aside by unauthorised persons who have purported to act as appellate authorities by usurping jurisdiction. 1952 R L W 199 : ILR (1954) 2 Raj 18 : A I R 1952 Raj 104 (106) (Pt D) (Pr 14) (DB)

——Art. 226 — Prohibition — Writ, when may be issued—Alternative remedy available.

Prohibition lies not only for excess of or absence of jurisdiction, but also for the contravention of some statute or the principles of the common law ; it does not, however, lie to correct the course, practice, or procedure of an inferior tribunal or a wrong decision on the merits of the proceedings. The Court in deciding whether or not to grant a writ of prohibition will not be fettered by the fact that an alternative remedy exists to correct the absence or excess of jurisdiction or an appeal lies against such absence or excess. 1951 R L W 56 : I L R (1951) 1 Raj 96 : (1951) 20 I T R 214 : AIR 1951 Raj 94 (2) (104) (Pt K) (Pr 27a) (DB).

[Overruled on another point in AIR 1954 S C 158.]

——Art. 226—Alternate remedy by way of appeal.

Where in the case of an industrial dispute the Appellate Tribunal dismissed the appeal without going into merits thereof, the High Court cannot accept the argument that because a right of appeal lay and such right was actually availed of the High Court should not grant the relief such as a writ of certiorari under the Constitution. Even if the Appellate Tribunal had given its finding on the question whether the Agarias are workmen within the definition of the Industrial Disputes Act, its decision would not be final and binding as the quetion was collateral to the assumption of jurisdiction by the Industrial Tribunal. AIR 1955 Sau 33 (35, 36) (Pt D) (Pr 7) (DB).

——Art. 226—Another remedy open — Order under S. 47C of Saurashtra District Police Ordinance (46 of 1948) as amended by Act (23 of 1951).

When an appeal is provided, the High Court will not issue a writ as a general rule but if the High Court is satisfied that the District Magistrate purported to act under S. 47-C of Saurashtra District Police Ordinance without applying his mind to the question whether the conditions which gave him jurisdiction existed or not he contravenes the fundamental rights of a citizen and it becomes the duty of the High Court to interfere. 1953 Cr L J 86 : A I R 1953 Sau 3 (4) (Pt B) (Pr 4) (DB).

●——Art. 226—Other remedies—Prohibition.

The existence of an alternative remedy is no bar to the issue of a writ of prohibition in appropriate cases. If the defect of jurisdiction is apparent on the face of the proceedings the order of prohibition must go as of right and is not a matter of discretion. (1853) 1 All E R 862 ; (1921) 3 K B 169 ; (1899) 80 L T 472 ; (1860) 9 L J Q B 267, Ref. A. N. Lekshmana Shenoy v. Income-tax Officer, 1953 Ker L T 725 : ILR (1953) T C 1232 : AIR 1954 Trav-Co 137 (138) (Pt B)(Pr 7) (FB).

7 (n). Disregard of principles of natural justice.

——Art. 226—Uttar Pradesh District Boards Act (10 of 1922), Ss. 71, 90 (3) — Suspension of Secretary—Procedure is same as for dismissal under S. 71—Suspension ordered by ordinary resolution passed by simple majority — Not valid — No appeal lies under S. 71 — Proper remedy is by writ petition. See Uttar Pradesh District Boards Act (10 of 1922), S. 71. 1962 All L J 1111.

——S. 226 — Petitioner charged for abetting offences of smuggling — Flagrant disregard of principles of natural justice in proceedings before Collector—Proceedings would be quashed in writ proceedings although petitioner did not exhaust statutory remedies under the Customs Act. See Customs Act (1962), S. 124. A I R 1965 Andh Pra 415.

——Art. 226 — Certiorari, writ of — Other remedy open—Breach of fundamental principles of justice—Administration of Evacuee Property Act (31 of 1950), Ss. 7, 26.

The notice referred to in S. 7 is a notice to "the persons interested". Now, it cannot be that at the stage of giving notice, the Custodian shall have finally determined who are the persons interested, or could have had any means of determining it; and therefore if these words in the section have to be given a reasonable interpretation, they can only mean persons who either claim to be interested or whom the custodian considers to be interested, both being separate categories of persons, though not necessarily mutually exclusive, who would be entitled to notice. In the case of a person claiming to be interested even if the Custodian considers that he is not interested, the person would still be entitled to notice under S. 7, and the Custodian may, even in a case in which no person comes forward and claims to be interested, give notice to a person whom he considers to be interested. This class of persons necessarily includes persons having the legal title to the property, but it is not restricted to such persons only and embraces all persons who have an interest in the property howsoever limited. Giving of notice is a statutory requirement. It is not procedural only but it is mandatory and goes to the very root of jurisdiction of the Custodian and if no notice is given to persons interested, the declaration made that any property is evacuee property is without jurisdiction and liable to be set aside. Where a suitable manner of notice is prescribed, the Custodian will have to follow it; but if no manner of notice is prescribed, the Custodian will yet have to give notice to all persons interested who are entitled to notice under the section. Form No. 1 provided by the Rules does not cover the case of a transferee from an evacuee who is entitled to notice, nor does it cover the case of a person who

claims to be interested in the property which the Custodian has reason to believe belongs to an evacuee and who claims adversely to the evacuee. There is, therefore, no form prescribed of notice to such persons, who are none the less entitled to notice by virtue of the mandatory provisions of S. 7, sub s. (1). That being so, the Custodian is bound to give a proper notice to such persons. Although there may be another remedy the Court will interfere by a writ of certiorari if something has been done which is contrary to the fundamental principles of justice. It is quite obviously contrary to the fundamental principles of justice that property in which a person claims to be interested should be declared to be evacuee property without notice of intention to do so being given to the party concerned. It is also contrary to the fundamental principles of justice that in a proceeding to confirm the relinquishment and transfer of the 1/4th share of an evacuee in a certain tenancy right, the Custodian should proceed to determine that the entire tenancy right belongs to the evacuee. Therefore, notwithstanding the fact that the petitioners have a remedy under S. 26 of the Act, a writ of certiorari lies. **53 Bom L R 923 : I L R (1952) Bom 851 : A I R 1952 Bom 213 (215, 216) (Prs 4, 5, 6, 8, 9).**

——Art. 226—Other remedy open—Remedy by way of appeal—Industrial Disputes (Appellate Tribunal) Act (48 of 1950), S. 7—Bombay Industrial Relations Act (11 of 1947), S 87 (a) (ii).

Unless there is a violation of the fundamental principles of justice, the Court will be loath to issue a writ of certiorari if an appeal lies.

The words "fundamental principle of justice" cannot be interpreted so as to make mere want of jurisdiction or excess of jurisdiction a violation of that principle.

Where the Industrial Court in an appeal under S. 38 of the Industrial Relations Act modified, added to and rescinded certain portions of the standing Orders settled by the Commissioner of Labour and confirmed the rest, there is a decision by the Industrial Court within the meaning of S. 87 (a) (ii) of the Act and it cannot be taken out of the scope of the word 'decision' in S. 7 of the Industrial Disputes (Appellate Tribunal) Act by urging that what the Industrial Court did was to pass an order and not to give a decision. Hence there being an adequate and specific legal remedy by way of appeal against the decision of the Industrial Court open to the party aggrieved a writ of certiorari would not be issued. (1946) 48 Bom L R 565, Foll. **53 Bom L R 917 : 3 F J R 436 : I L R (1952) Bom 839 : A I R 1952 Bom 299 (212, 213) (Pt E) (Prs 6, 7).**

——Art. 226—Certiorari—Issue of—Powers of High Court — Other remedy open to applicant by way of appeal — It disentitles him to remedy by writ—Principles.

Although the High Court is ordinarily very loath to issue the high prerogative writ of certiorari, if there is another suitable remedy open to the petitioner, e. g., a right of appeal, it may issue a writ even in such a case, if it is satisfied that the officer or authority against whom the writ is sought had acted in a manner contrary to the fundamental principles of justice. That there is an adequate and specific alternative remedy is always a factor to be taken into consideration by the Court in deciding whether a writ of certiorari should issue or not. If the Court finds that a fundamental principle of justice has been violated, that is an important factor which the Court should also take into consideration, and if it finds that a fundamental principle of justice has been violated, it should not and will not refuse to issue a writ merely on the ground that there is an alternative adequate remedy in existence, unless there are special circumstances operating against the applicant in obtaining the relief by way of writ. Under Art. 226 the powers of the High Court are much wider than they were before the Constitution, and the fact that the applicant had a right of appeal should not by itself disentitle him to the issue of a writ of certiorari. (1950) S C R 566; 48 Bom L R 565, Ref. **53 Bom L R 621 : A I R 1951 Bom 440 (445) (Pt C) (Pr 4) (DB).**

——Art. 226—Order infringing principles of natural justice—Existence of alternative remedy — No bar to issue of writ to quash the order. A I R 1965 Cal 498 (506) (Pt J) (Pr 57).

——Art. 226—Other remedy—Bar to writ—Violation of principles of natural justice—Effect.

Ordinarily, the Court would not interfere where there be an alternative remedy available, though in a proper case, it should do so, and a superior Court would readily issue a certiorari where there is denial of natural justice. But where the order of a quasi-judicial authority is vitiated by having violated the principles of natural justice that would be a fit case for interference. 1958 S C J 242 : 1958 Mad L J (Cri) 197 : A I R 1958 S C 86, Rel. on. **1960 Ker L T 632 : 1960 Ker L J 915 : (1960) 2 Ker L R 189 : A I R 1960 Ker 351 (352) (Pr 3) (DB).**

——Art. 226—Other remedy open — Issue of writ — Principles of natural justice violated — Effect — Travancore-Cochin Agricultural Income-tax Act (XXII of 1950), Ss. 18, 31 and 32.

It is well settled that the existence of an adequate statutory relief bars the exercise of jurisdiction under Art. 226; but it is equally well settled that a person complaining of rules of natural justice having been violated in proceedings that he seeks to vacate, should not be denied the benefit of the Article, even though he may have other adequate statutory remedy, which he can seek. Where the complaint is of infraction of the principles of natural justice by authorities exercising quasi-judicial powers, the writ petitions under Art. 226 cannot be dismissed on the ground that the party complaining is entitled to the statutory right of appeal : A I R 1960 Ker 351. Rel. on. The jurisdiction under Article 226 is not concurrent, and the petitioners having appealed, must not get the benefit of the Article until the final stages of the relief under the Act are reached. **1960 Ker L J 1019 : (1960) 2 Ker L R 361 : 1960 Ker L T 930 : I L R (1960) Ker 1153.**

——Art. 226—No equally efficacious remedy open—Interference under Article is called for.

Where rejection of a nomination paper is flagrantly wrong and arbitrary, and no enquiry or evidence is required, the remedy by way of an election petition cannot be said to be equally efficacious and hence it is an appropriate case where appropriate relief under Art. 226 must be given to the person whose nomination is so rejected. **1965 Jab L J 248 : 1965 M P L J 375.**

——Art 226 — Alternative remedy — No bar to issuance of a writ.

It is true that normally the failure to resort to the appropriate remedies may be a bar to the issue of a writ but where the Court did not reject the petition on that ground at the stage of admission, it is not proper to rely on that circumstance when the hearing of the petition discloses a violation of principles of natural justice. It is well accepted that the existence of an adequate alternative remedy is not always a bar to the issue of a writ. (1960) 2 M L J 392, Followed. **(1963) 2 Mad L J 309 : 76 Mad L W 845 : 1964 Mad W N 80 : (1964) 14 S T C 420.**

——Art. 226—Alternative remedy—Punjab Gram Panchayat Act 1952 (IV of 1953) as amended by Act XXVI of 1962, S. 13-C and S. 13 O—Presiding Officer changing result of election illegally behind the back of petitio-

ner duly declared as elected—As under circumstances of the case election petition under S. 13-C could not be filed, High Court could interfere under Art. 226. 1964 Cur L J 392 (Punj).

——Art. 226—Writ of mandamus—Permanent municipal servants—Bye-law 52 of Simla Municipality and Rules 1 to 4 framed under S. 240 (n), Punjab Municipal Act—Discharge from service for alleged misconduct—Procedure prescribed by rules framed under Act not followed—Writ held should be issued—Punjab Municipal Act (III of 1911), Ss. 31 (1) and 240 (a).

The mere fact that remedy by way of appeal under R. 4 was open to the applicant and was not availed of, could not disentitle him to the writ prayed for, particularly when it was not possible for the applicant to shape his appeal when he did not know the grounds of decision against him. 1882 Q B D 426, Rel. on.

Even in the absence of any rules the principle of natural justice, i. e, the maxim audi alterum partem—no man shall be condemned unheard—would apply in cases of this kind. ILR (1954) Punj 528 : 55 Pun L R 100 : A I R 1953 Punjab 88 (90, 94) (Pt A) (Prs 13, 17, 19, 20, 36 38, 39).

——Art. 226—Writ of certiorari when will be issued even if another remedy is available.

It cannot be laid down as a general rule that the High Court should interfere by a writ of certiorari in every case where there is a breach of a rule or a violation of a fundamental principles of justice, in spite of there being an alternative remedy by a suit or appeal. But where there had been a non-compliance of a statutory rule laying down a fundamental principle of justice, viz., the right of being heard before an order of eviction is made and which order might cause irreparable injury to the party concerned, held that such party could apply to the High Court for a writ even though there was a right of appeal against the order. (Case under Administration of Evacuee Property Rules). AIR 1952 Sau 1 (2, 3) (Pt C) (Pr 4) (DB).

——Art. 226—Certiorari, writ of—Proceedings under S. 5-A, Land Acquisition Act—Non-compliance with mandatory provisions of S 5-A—Effect—Writ of certiorari if can be issued—Land Acquisition Act, 1894, S. 5-A—Rewa Land Acquisition Law, 1935. S. 8.

The provisions of S. 5-A, Land Acquisition Act, (corresponding to S. 8 of the Rewa Land Acquisition Law 1935) which require that the objector should be given an opportunity to be heard either in person or by pleader are mandatory and therefore where the land acquisition authority decides under S. 6 (1) of the Act to acquire the land without giving such opportunity to the objector its decision is illegal and a writ of certiorari can be issued against him directing him not to take further proceedings till the objector is given an opportunity of being heard in the manner required by S. 5-A. Though the objector has another remedy open to him by way of declaratory suit in the proper civil Court it would not be equally speedy, convenient and effectual remedy and therefore a writ of certiorari should be issued to meet the ends of justice and convenience. AIR 1951 Vindh Pra 3 (4, 5) (Prs 7, 10, 11, 12).

7 (o). Question of great constitutional or public importance.

——Art. 226—Another remedy open—Issue of writ—Municipality impugning constitution of—(Municipalities—Ajmer Municipalities Regulation (VI of 1925), S. 33 (1)).

A petition regarding the validity of R. 6 of the Ajmer Municipalities Election Rules, 1951, is not covered by S. 33 (1), Ajmer Municipalities Regulation (VI of 1925). Therefore, the absence of an election petition cannot be a bar to writ petition under Art. 226, Constitution of India, wherein the validity of the said rule is impugned. AIR 1956 Ajmer 73 (74) (Pt A) (Pr 8).

——Art. 226—Other remedy open—Writ petition to High Court without resorting to statutory remedies—Single Judge of High Court entertaining petition and referring it to Division Bench as points raised in petition were important and vires of the Act were challenged—High Court can exercise its discretionary jurisdiction and will not be justified in dismissing petition in limine : A I R 1961 S C 609, Apld. (1964) 15 S T C 505 : AIR 1965 All 86 (89) (Pt A) (Prs 11, 12, 13) (DB).

——Art. 226—Other remedy open—Extent of power. Though under Art. 226 the High Court does not generally interfere if other suitable remedies are open to the applicants where a tax or a licence fee is imposed which is challenged as improper, and it affects a large number of people the Court has the right to see if the complaint is justified.

It is not possible, nor is it desirable that the High Court should in such cases examine the figures in any detail to judge whether the licence fee was or was not excessive, but the affidavits must prima facie show that the licence fee was not unreasonable. 1954 All L J 697 : 1954 All W R (HC) 615 : AIR 1955 All 184 (185, 186) (Pt B) (Pr 13) (DB).

——Art. 226—Other remedy open—Question of constitutionally of law—Levy of circumstances and Property Tax under U. P. District Boards Act—Assessee's appeal under S. 128 of Act dismissed—Question of constitutionality of Ss. 108 and 114 of Act raised—Objection that assessee had remedy by way of suit—High Court should entertain petition and decide question. AIR 1955 N U C (All) 3522 (DB).

——Art. 226—Other remedy open—High Court can issue writ when question is regarding taxation affecting large number of persons. AIR 1955 N U C (All) 172 (DB).

——Art. 226—Other remedy—Appeal under S. 186, U. P. District Boards Act—Scope of—Challenging validity of bye-law itself—Maintainability of writ application. See U. P. Dist. Boards Act (X of 1922), S. 186. 1954 All LJ 405 : AIR 1954 All 675.

——Art. 226—Interlocutory Order—Interference.

The High Court will not ordinarily interfere by certiorari or prohibition with an interlocutory order which may be challenged in appeal or revision. But that rule does not apply when the statutory provision under which the interlocutory order is made is itself attacked as being void under the Constitution. A I R 1954 All 161 (161) (Pt A) (Pr 4) (DB).

● ——Art. 226—Another remedy open—Question involved one of public importance—Speedy decision desirable—Petition can be entertained even though there is another remedy by way of suit.

There is no inflexible rule that in every case in which a fundamental right is involved, a decision should be given by the Court on merits on an application under Art. 226. There may be cases in which the existence of an alternative remedy may be a ground for the rejection of the application. The circumstances of each case should be considered and then a decision should be taken whether or not the discretion should be exercised. Where a general question of some public importance has been raised, namely whether a certain bye-law of the munici-

pality prohibiting slaughter of cows, bullocks, etc. infringes the fundamenial right of the petitioner to carry on any profession, and it is desirable that it should be speedily decided and the parties should not remain under suspense for a long time and on the determination of the question the decision of the petitioner and others of his class whether to continue in the present avocation or to take to some other will depend, the High Court can entertain the petition under Art. 226, even though the petitioner has another remedy of a suit. Case law reviewed.

Per Dayal J.—The issue of the various writs or directions is in the discretion of the Court. It is not much use to lay it down in the form of any formula that the discretion is to be exercised in such and such a circumstance only. Whatever desirability there may be for expressing any general formula in this respect in connection with ordinary cases, it does not appear to be much when the writ or direction is sought by a person who alleges that his fundamental rights under Chapter III of the Constitution have been infringed. These rights are of a very different character from the rights which are ordinarily agitated before Courts. The importance of these rights is apparent from their incorporation in the Constitution and from its providing a guarantee for the right of a person to move the Supreme Court for their enforcement. It should, therefore, be a very extreme case that such a grievance be brought before the Court and the Court should be in a position to say that another remedy under the ordinary law would provide redress.

When an aggrieved person is given a right to get an adjudication of the dispute about the infringement of his right from the Supreme Court, it would not be right to say that he is not to get a similar adjudication by a High Court if there exists an alternative legal remedy. Budhhu v. Municipal Board, Allahabad, 1952 All L J 505 : 1952 All W R (H C) 558 ILR (1953) 2 All 112 : AIR 1952 All 753 (757, 760, 761) (Pt A) (Prs 9, 10, 32, 36) (FB).

——Art. 226 — Other remedy open—Issue of writ—Discretion.

The principle of another remedy can have no application where a party comes to Court with an allegation that his right has been or is being threatened to be infringed by a law which is ultra vires the powers of the Legislature which enacted it and as such void and prays for appropriate relief under Art 226. AIR 1955 S C 661, Rel. on. (1957) 8 S T C 417 : ILR (1957) 9 Assam 167 : AIR 1957 Assam 61 (64) (Pt B) (Pr 13) (DB).

● ——Art. 226 — Other remedy — Petitioner's case that his discharge from service was illegal and ultra vires — Another remedy open — High Court is not precluded from entertaining petition under Art. 226.

The proceedings under Art. 226 are of a summary nature. The jurisdiction is extraordinary. It has to be exercised very sparingly and only in cases where the rights of persons have been contravened and they have no other adequate remedy available to them. The remedy cannot be allowed to be utilised as a substitute for ordinary remedies that are available under the general law. But distinction will have to be made between ordinary cases and cases of flagrant injustice where immediate or urgent action of an extraordinary kind is called for. The merits of the case would be the determining factor in most cases. The Courts, therefore have avoided laying down an inflexible rule to the effect that the mere existence of an alternative remedy operates as a bar against the exercise of the jurisdiction of the High Court under Art. 226. The alternative remedy has to be adequate and efficacious and in cases of urgency, it should be capable of affording prompt relief.

Where there is removal of the petitioner from service by Government itself as result of repeated Cabinet decisions based on ground of policy, there would be no right of appeal. The right of appeal is available from decisions under the rules in individual cases and not against policy decision affecting employees in different departments who had to be discharged. It is extremely doubtful if a constitutional head of the State could reverse the decision of the Government under the ordinary rules of service. If therefore the right of appeal existed, it could not, in the circumstances of the case, be regarded as an adequaie remedy. It was merely illusory.

Moreover in this case there was demand for justice which was not granted.

Remedy by way of suit also could not be regarded as appropriate. Forcing the petitioner to the ordinary remedy by suit might well amount to a denial of justice.

Contra.—No relief could be given to the petitioner under Art. 226 of the Constitution inasmuch as he neither filed an appeal to the Governor nor was he prompt in taking necessary measures for redress.

Even if it be contended that the petitioner was given certain contractual rights his remedy was by way of suit and not by an application under Art. 226 of the Constitution. Hiranmoy v. State of Assam, AIR 1954 Assam 224 (240, 246, 247, 253, 255) (Pt K) (Prs 16, 46, 48, 49, 63, 69) (FB).

——Art. 226 — Other remedy — Remedy by way of appeal — Bengal Agricultural Income-tax Act — (Bengal Agricultural Income-tax Act (4 of 1944), S. 34.)

Where the Income tax Officer makes an assessment of the petitioner's income under Bengal Agricultural Income-tax Act and issues a demand notice, an application straight to the High Court under Art. 226 of the Constitution without filing an appeal under the Act is liable to summary dismissal for failure of the petitioner to avail of an alternative remedy, but if the point agitated is that certain provisions of the said Act are ultra vires, it is better to deal with the point rather than dismiss the application, as in the long run it is bound to come back to the High Court. AIR 1958 Cal 585 (586) (Pt A) (Pr 2).

——Art. 226 — Other remedy.

The question of alternative remedy is a matter resting on the discretion of the Court and it is not an absolute rule of law. The existence of an alternative remedy is not an absolute bar to the jurisdiction of the Court entertaining application for Writs under Art. 226 of the Constitution. Where important questions of interpretation of the provisions of the Sales Tax Act and Rules made thereunder have been raised and were raised before the Commercial Tax Officer it is desirable that such questions should be decided by the High Court instead of their being agitated and decided by the Sales Tax Authorities. 61 Cal W N 953 : AIR 1958 Cal 289 (295) (Pt F) (Pr 18).

——Art. 226 - Other remedy open - (Motor Vehicles Act (1939), Ss. 57 (7), 64 — Reasons for refusal — Appeal.)

Ordinarily where there is an alternative legal remedy the High Court should not interfere. The power of the High Court to interfere by a writ of certiorari is not limited absolutely to cases where there is no alternative remedy. That remedy must be adequate, and likely to grant relief to the aggrieved person. Further where there is an error on the face

of the proceedings, the High Court has ample jurisdiction to interfere. The Motor Vehicles Act is a self-contained Act and imposes reasonable restriction. Every applicant for a permit under the Act is entitled to demand that his application should be specifically considered in accordance with the provisions of law laid down in the Act. The Act lays down in S. 57 (7) that in the event of a refusal, the Authority shall give the applicant in writing its reasons for refusal. If the reasons given are vague an appeal by the petitioner would have been futile. Where the R. T. A. has taken into consideration materials which it is not entitled to do it is necessary to intervene, so that it might become known as to what are the limitations for a statutory body like R. T. A. in the matter of considering applications for permits and in granting or rejecting them. AIR 1953 Mad 59, Rel. on. 60 Cal W N 13 : AIR 1956 Cal 490 (492, 493, 494) (Pt B) (Prs 4, 5).

——Art. 226—Grounds for urgency of remedy.

The fact that the petitioner is an old man, of itself, is not a decisive reason for exercising the jurisdiction under Art. 226 when the petitioner does not allege that an early payment of the pension due to him is so vital to him that without it he cannot live and maintain his family.

Similarly though the question whether the Gwalior Civil Service Rules confer a statutory right in respect of pension is of some importance to public servants who have earned pensions under the Rules and to whom pension has been denied, it does not make a speedy decision on that question a matter of urgency. ILR (1953) M B 393 : A I R 1953 Madh B 165 (171, 172) (Pt D) (Pr 12) (DB).

——Art. 226—Other remedy open but not availed of —Validity of enactment challenged by writ petition —Maintainability — (Sales Tax — Madras General Sales Tax Act (9 of 1939), S. 12-B).

The existence of effective alternative remedies though normally a relevant factor is by itself no bar to the assumption of jurisdiction under Art. 226.

Where a person complains that the taxing provision in the statute offends a fundamental right of his guaranteed by the Constitution and is, therefore, void and unenforceable against him, the discretion of the Court should be exercised even at an earlier stage, because even at the stages at which an appeal is provided for by the Act, the validity of the impugned provision cannot be adjudicated upon by the statutory tribunals.

The fact that the assessment was completed does not make any real difference to the question, should the High Court exercise its discretion in favour of examining the validity of the impugned provision and pronouncing upon it at a stage, when the assessee has not availed himself of his statutory right of appeal, and his further statutory right of moving the High Court in revision under S. 12-B of the Act, after the right of appeal to the appellate tribunal has been availed of (1956) 2 M L J 179 : (1956) 7 S T C 346 : 69 Mad L W 427 : I L R (1956) Mad 1368 : A I R 1956 Mad 480 (481) (Pt A) (Prs 4, 5) (DB).

——Art. 226—Another remedy open—Madras Estates Land Act (1 of 1908), S. 3 (2) (d).

Where the grant was before the High Court and the only point for determination was whether on its true construction, it was an estate as defined in S. 3 (2) (d) of the Madras Estates Land Act (1 of 1908) and the decision of the Estates Abolition Tribunal was on the face of it erroneous,

Held, that it would be a proper exercise of the powers of a High Court to interfere in such cases even if there was another remedy open to the petitioner. (1953) 2 M L J 478 : 66 Mad L W 916 : AIR 1954 Mad 161 (165) (Pt E) (Pr 7).

——Art. 226—It is true that the High Court will not ordinarily interfere with an order where there is another adequate remedy available to the party. This, however, is a rule of discretion for the guidance of the Court and not a limitation on its powers.

Held that as the question involved was one of right procedure to be followed in exercise of the powers conferred under the Railway Services (Safeguarding a National Security) Rules and as the rights of the petitioner had been clearly infringed, this was a fit case in which the writ must issue. AIR 1950 S C 163, Foll. 1928-1 K B 291, Rel. on. 1952 Mad W N 253 : 65 Mad L W 377 : 1952-1 Mad L J 540 : I L R (1953) Mad 229 : AIR 1953 Mad 54 (59) (Pt B) (Prs 16, 18) (DB).

● **——Art. 226 — Other remedy open—Election dispute.**

No doubt the High Court would not ordinarily interfere under Art. 226 where another remedy which is equally convenient, is open to the petitioner. But the existence of another remedy is not in every case, a bar to the exercise of the powers of a High Court under Art. 226 and the Court can interfere if the circumstances of the case demand interference.

The point, which had been raised in the petition under Art. 226, was of a fundamental character and affected a large number of election disputes. Those very questions were argued before the High Court at least on two previous occasions on which two different views were taken. Further, though a preliminary objection as to the tenability of the petition on the ground of other remedy open had been raised, the Court heard counsel on the merits of the petition for several days.

Held, that there were substantial grounds for interference, assuming it was open to the petitioners to file an election petition.

The right of a voter who is denied the right to exercise his right of franchise is not limited to claim only damages but the High Court has ample powers to act under Art. 226 even though an election petition is maintainable. Kanglu Baula v. Chief Executive Officer, I L R (1954) Nag 875 : **A I R 1955 Nag 49** (58) (Pt B) (Prs 23, 24) (FB).

——Art. 226—Writ petition challenging entire election—Other remedy open — Election to Municipality sought to be set aside on ground of illegality of the rolls used for election—R. 62 of Bihar Municipal Elections and Election Petitions Rules 1953, prescribing remedy of election petition in such contingency—Maintainability of writ — Elections having been challenged on account of violation of the Election Rules, R. 62 held could not bar the petitioners from getting relief in writ petition. AIR 1958 Pat 149, Applied. 1964 B L J R 465 : AIR 1964 Pat 459 (466, 467) (Pt E) (Prs 14, 15) (DB).

——Art. 226 – Other remedy open — (Employees' Provident Funds Act (1952), S. 19-A).

Though S. 19-A of the Employees' Provident Funds Act, 1952 contemplates that in case of difficulty or doubt in connection with the existence of a factory employing fifty or more persons, the Central Government is authorised to decide the matter and that decision is final, and the Central Government has not had opportunity of considering the matter, this does not debar the petitioners from seeking a remedy under Art. 226 of the Constitution. Further if the dispute between the parties is as to the interpretation of the statute governing the entire matter, the ends of justice would not be furthered by postponing the decision in the hope of seeking a direction by the Central Government. Even if the view of the Central

Government were against the petitioners' contentions, the petitioners would still be entitled to have that decision examined in the High Court if the decision is to turn on the interpretation of the Act itself. ILR (1958) Punj 1863 ; (1958-59) 14 F J R 441 ; 61 Punj L R 160: (1959) 1 Lab L J 56 : AIR 1959 Punj 89 (90) (Pt A) (Pr 4) (DB).

——Arts. 226 and 320—Other remedy—Violation of Constitution.

Existence of another remedy canno be a bar to the exercise of the extraordinary jurisdiction of the High Court in a case where a clear breach of the mandatory provisions of the Constitution, such as under Art. 320, has been committed. 1954 Raj L W 56 : AIR 1954 Raj 12 (15) (Pt B) (Pr 5) (DB).

7 (p). Sales-tax, illegal taxation.

● ——Art. 226 — Another remedy — Other remedy when no bar.

The remedy under an Act cannot be said to be adequate and is, indeed, nugatory or useless if the Act which provides for such remedy is itself ultra vires and void and the principle of another remedy can, therefore, have no application where a party comes to Court with an allegation that his right has been or is being threatened to be infringed by a law which is ultra vires the powers of the Legislature which enacted it and as such void and prays for appropriate relief under Art. 226.

The existence of another remedy is a very material circumstance to be taken into account when the Court is called upon to issue a writ of certiorari but wholly different considerations arise when the writ asked for is prohibition. Writ of prohibition is issued whenever a subordinate Court or Tribunal usurps jurisdiction which does not belong to it, and when that has been shown, the issue of the writ, though not of course, is of right and not discretionary. Where the contention of the appellant is that the Bihar Sales Tax Act itself is void in so far as it authorises the imposition of a tax on dealers who are not residents within the State or do not carry on business there, and that, in consequence the proceedings taken under S 13 (5) of the Act should be restrained on the ground of want of jurisdiction it is no answer to this contention that the appellant should seek redress through the channels provided in the Act therefor. Indeed, the contention that the Act is ultra vires is not one which the Tribunals constituted under the Act, whether original, appellate, or revisional, could entertain, their duty being merely to administer the Act. A I R 1953 S C 252 and A I R 1954 S C 403, Foll.; A I R 1953 Pat 87, Reversed. Bengal Immunity Co., Ltd. v. State of Bihar ILR 34 Pat 905 ; (1955) 6 S T C 446 : (1955) 2 S C R 603 : (1955) S C J 672: 1955 S C A 1140; (1955) 2 M L J 168 ; 1955 Andhra W R 422 : A I R 1955 S C 661 (669, 726) (Pt E) (Prs 8, 144).

● ——Art. 226—Mandamus—Another remedy open—Threat of using coercive machinery against applicant under provisions declared to be ultra vires — Mandamus can issue—Another remedy under impugned Act onerous — It is not adequate alternative remedy —Sales tax —C. P. and Berar Sales-tax Act (II of 1947 as amended by Act XV of 1949), S. 2 (g) Expl. (2). (1952) 35 T. C 448, Reversed.

Explanation II to S. 2 (g) of the Act having been declared ultra vires any imposition of sales-tax under it is without the authority of law, and that being so a threat by the State of using the coercive machinery of the Act to realize it from the assessee is a sufficient infringement of his fundamental right under Art. 19 (1) (g) and he is clearly entitled to relief under Art. 226 of the Constitution. AIR 1952 S C 115, Ref.; (1952) 35 T C 448, Reversed.

The contention that because a remedy under the impugned Act is available to the assessee, he is disentitled to relief under Art. 226 stands negatived by the decision in A I R 1953 S C 252 of this Court in the State of Bombay v. The United Motors (India), Ltd. The principle that a Court will not issue a prerogative writ when an adequate alternative remedy was available does not apply where a party has come to the Court with an allegation that his fundamental right had been infringed and sought relief under Art. 226. Moreover, since the remedy provided by the C. P. and Berar Sales-tax Act is of an onerous and burdensome character and before the assessee can avail of it he has to deposit the whole amount of the tax. Such a provision can hardly be described as an adequate alternative remedy. AIR 1953 S C 252, Ref. Himmatlal Harilal Mehta v. State of M. P., 1954 Mad W N 802 : 1954 S C R 1122 : (1954) S C J 445 : (1954) 1 M L J 690 : 67 Mad L W 629 : 1954 S C A 654 : AIR 1954 S C 403 (405, 406) (Pt B) (Pr 9).

——Art. 226—Certiorari — Writ of — Other remedy open—Assessee under U. P. Sales Tax Act having alternative adequate remedy by way of departmental appeal—Writ not to be granted to shortcircuit departmental remedy : A I R 1961 S C 609, Rel. on. (1964) 15 S T C 245 : AIR 1965 All 166 (170) (Pt C) (Pr 16) (DB).

——Art. 226—Other remedy open— Improper orders of Sales Tax Authorities — Sales tax law providing remedy by way of appeal — Normally aggrieved person cannot be permitted to abandon resort to that machinery and invoke jurisdiction under Art. 226— Taxing authority acting beyond powers or threatening to recover tax on erroneous interpretation of statute — High Court can exercise jurisdiction under Art. 226. (1963) 14 S T C 410 (S C), Appld. (1964) 15 S T C 505 : A I R 1965 All 86 (89) (Pt B) (Pr 14) (DB).

——Art. 226—Certiorari to quash the notice issued under S. 22 of the U. P. Sales Tax Act — Absence of mistake only an error — Notice for rectification invoking a jurisdiction not vested can be quashed by issue of a Writ — Existence of an alternative remedy no bar for issue of a Writ. A I R 1961 S C 372, Foll. 1964 All L J 671.

——Art. 226 — Certiorari — Alternative remedy is no bar —U. P. Sales Tax Act (15 of 1948), S. 9 — Assessment made under R. 23 of U. P. Sales Tax Rules — Provision for appeal against assessment — Maintainability of Writ Petition. See Sales Tax — U. P. Sales Tax Act (15 of 1948) S. 9. 1964 All L J 645.

——Art 226—Assessment proceedings —Alternative remedy available—Remedy of writ not permissible.

Where in assessment proceedings there is a controversy on a question of fact namely as to the date on which the dissolution of the firm took place the assessee should have availed of the alternative remedy of appeal provided under the Act. A party cannot be allowed to by-pass a remedy provided under an Act and to avail of the remedy of a writ petition under Art. 226 of the Constitution. AIR 1961 S C 609, Rel. on. AIR 1963 All 446 (447) (Pt C) (Pr 8).

——Art. 226 — Certiorari — Existence of alternative remedy—Granting of relief not barred.

The existence of alternative remedy, is one of the factors which has to be taken into consideration in granting or refusing relief. Where therefore the error committed by the Sales-tax Officer was very obvious and unjustified, it would not be right to refuse relief under Art. 226 of the Constitution. (1962) 13 S T C 591 (All).

——Art. 226 — Writ of prohibition —Sales tax proceedings.

Where the Sales Tax Officers are competent to deal with the assessment proceedings in question they cannot be barred from continuing those proceedings by

issue of writ of prohibition. I cannot be said that they have no jurisdiction because the assessees anticipate wrong decisions.

Further, when, even if the Sales Tax Officers do give incorrect decisions the assessees have the right to go up in appeal to Judge Appeals appointed under the Act and from their incorrect decisions to the Judge revisions and if these decisions be incorrect to seek reference to the High Court, there is no reason why the ordinary remedy provided for by law should be by-passed and the High Court should start entertaining writ petitions in case of individual assessees though at a stage when the validity of the provisions of the Sales Tax Act is yet in question and no decision had been given by the High Court, in spite of the ordinary remedy provided by law, exercise of jurisdiction under Art. 226 would be appropriate as the question would be of general importance and one decision by the High Court would be necessary for the purpose of guiding the Sales Tax authorities. AIR 1952 All 764, Rel. on.

The argument that the alternative remedy provided by law is not equally convenient and speedy inasmuch as proceedings under the Sales Tax Act are likely to be prolonged and the assessees' right to come to the High Court will only accrue at a very late stage after having first moved the Judge Appeals and Judge revisions is not tenable because to accept that argument would mean that the regular procedure prescribed under the law should be completely scrapped. Obviously writ jurisdiction was not meant to do away altogether with the alternative procedure which the legislature considered was appropriate for the particular situation.

Nor should the writ jurisdiction be used on the ground that a resort to the procedure provided by law would operate hardship on the assessees because to go in appeal they shall have to deposit the tax. The legislature having required that condition in pursuance of its express policy the writ proceedings should not be used as a means of overriding that policy.

Held, also that the writs could not issue in the case. The reason was that the assessees who alleged that the Sales Tax Officers were seeking to assess on forward contract transactions contrary to the decision of the High Court had not stated in their affidavits that the assessment proceedings were simply in respect of transactions in forward contracts in which no deliveries took place at all and that there was no other business of theirs in respect of which proceedings were being taken. Further even if the proceedings were in respect of forward transactions not liable to tax, the affidavits did not contain anything to show that they were not liable to be assessed on other grounds such as realisation of tax by them which was not due in their capacity as registered dealers and which they were liable to deposit in the treasury under the provisions of Sales Tax Act. These were all questions of fact which could only be determined by proceeding according to the procedure laid down in the Sales Tax Act itself and which could not be properly gone into in writ petitions. 1954 All W R (HC) 289 : 1954 All L J 348 : AIR 1954 All 553 (554, 555) (Prs 4, 5, 6, 7).

——Art. 226 – Other remedy—Taxing matter—Taxing authority acting without jurisdiction accompanied by threat of using coercive method for collecting tax — High Court will entertain writ petition even if other remedy by way of appeal is available—AIR 1958 S C 86 ; AIR 1961 S C 272, Rel. on. (1965) 16 S T C 511: A I R 1966 Andh Pra 128.

——Art. 226 — Other remedy open — Hyderabad General Sales Tax Act (14 of 1950), S. 2 (k) and (e) —Question whether petitioner is a dealer and transaction amounts to sale — If can be agitated in writ petition.

The question whether the transaction relied on is sale and the petitioner a dealer within the meaning of S. 2 (k) and (e) of the Hyderabad General Sales Tax Act, is a matter which can and ought to be determined by the Sales-tax authorities. Any right or liability to sales tax cannot therefore accrue apart from the provisions of the General Sales Tax Act. The aggrieved parties have various remedies open to them under the mechinery set up under the Act. They can go in appeal before the Appellate Authority and have a right of further appeal to the Tribunal and also a remedy by way of revision. When the Act is thus exhaustive and self-contained in all its provisions, the parties must adopt with respect to that class of cases, the forum of remedy given by the Act. These questions of 'sale' and 'dealer' could not be possibly determined without deciding that certain provisions of law in that behalf are unconstitutional and the decision of which matter may not be within the competency of sales-tax authorities. There exists, therefore, no just or sufficient cause to resort to an extraordinary remedy of writ jurisdiction. It was the duty of the petitioner to exhaust all his remedies before he could think of coming to the High Court. Unless the petitioner makes out a case against the respondent that he failed to do something which is his legal duty, so that he may be compelled to discharge that statutory obligation, he cannot possibly invoke the jurisdiction of mandamus. (1960) 2 Andh W R 545, Followed (1961) 2 Andh W R 18.

——Art. 226—Other remedy open—Remedies under Assam Sales Tax Act (1947).

Where tax has been assessed under Assam Sales Tax Act, and the assessee has not sought or exhausted remedies provided under the Act, he cannot ask for remedies under Art. 226 of the Constitution of India. ILR (1954) 6 Assam 191 : A I R 1955 Assam 195 (198) (Pt B) (Pr 9) (DB).

——Art. 226 — Other remedy open — (Sales Tax — Bengal Finance (Sales Tax) Act (VI of 1941), S. 20)

It cannot be said that S. 20 (1) of the Bengal Finance (Sales Tax) Act (1941), deals with an assessment and therefore cannot include a revision of assessment and that S. 20 (3) talks about assessment and not revision of assessment. Revision of assessment must clearly be the same as assessment. In any event, even if there is not an appeal, there is certainly a revision. It is either an assessment or an order and S. 20 (3) should therefore apply. 61 Cal W N 831 : (1957) 8 S T C 641 : A I R 1957 Cal 463 (465) (Pt A) (Pr 3).

——Art. 226—Application for writ for cancelling requisition for sales tax — Efficacious and adequate statutory remedy available—Application is not maintainable — Sales Tax — Bengal Finance (Sales Tax) Act (VI of 1941), S. 15 and R. 71 — Bengal Finance (Sales Tax) (West Bengal Amendment) Ordinance (10 of 1950).

The petitioner got himself registered under the Bengal Finance (Sales Tax) Act as transferee and dealer. A requisition calling upon the petitioner to produce books of accounts and records for the purpose of assessment of sales tax in respect of certain periods was made by the Sales-tax Authority. The petitioner applied for a writ under Art. 226 of the Constitution for quashing the requisition on ground

that he had been registered as a dealer and a transferee under a misapprehension as to his correct status ;

Held, that there being a efficacious and adequate legal remedy under the Act which was not availed the application was not maintainable.

Notwithstanding the repeal of S. 18 of the Act by Ordinance of 1950, the matter of registration of dealer, amendment of certificate of registration or cancellation of registration could be delegated to commercial Tax Officer under S. 15 of the Act read with R. 71, and it had been so delegated. Hence the petitioner could not contend that there was no officer to determine the question under the Act. ('51) 87 Cal L J 314 : 1952-3 S T C 444 : A I R 1953 Cal 712 (713, 714) (Pt C) (Frs 9, 11, 12, 13).

——Art. 226—Assessment by Sales Tax Officer acting under Hyderabad Sales Tax Act (14 of 1950) — Writ of certiorari sought to quash assessment — Petitioners not availing themselves of remedy of appeal to Sales Tax Commissioner — Writ held could not be issued at that stage — Sales Tax — Hyderabad Sales Tax Act (14 of 1950), S. 3. ('52) ILR (1952) Hyd 56 (DB).

——Art. 226 - Other remedy open—High Court will still interfere.

The existence of an alternate remedy is not an absolute bar to the issue of a writ of certiorari when there has been violation of the principles of natural justice and when there is an infringement of a fundamental right. A I R 1958 S C 86 and A I R 1953 S C 252 and A I R 1954 S C 403, Rel. on.; (1963) 14 S T C 410 (S C) and A I R 1964 S C 1419, Expl. The remedy available by way of appeal to the Appellate Authority and then by way of second appeal to the Tribunal functioning under Sales Tax Act and then a Revision to the High Court may not be adequate when an assessee assessed to sales tax is compelled in the meantime to pay the tax imposed on him by an arbitrary assessment which has been solely guided by the whim and fancy of the assessing authority. It is very rare, if ever, that the Appellate Authorities grant a stay of the payment of the tax imposed on an assessee by an assessment order whether it be arbitrary or otherwise. Moreover it would take years before an assessee is able to reach the High Court in Revision to have a final adjudication. Under these circumstances, the remedies under the Sales Tax Act would not be even adequate and in the case of arbitrary assessments the High Court must protect the citizen from the whimsicalities of officials, who allow enthusiasm to overrun judicial discretion and a sense of fair play. These authorities have to be kept on the 'leading strings' of fair play. **1965 Ker L T 803 : ILR (1965) 2 Ker 240 : 1965 Ker L J 866 : A I R 1966 Ker 55 (58) (Pt A) (Prs 11, 12)**

——Art. 226—Certiorari—Other remedy open—Order made under S. 43 (1) of M. P. General Sales Tax Act (II of 1959), found to be manifestly arbitrary and capricious—Provision of appeal under S. 38 of Act is not a bar to issue of writ of certiorari — Sales Tax — M. P. General Sales Tax Act (II of 1959), Ss. 43 38. 1965 Jab L J 631 : (1965) 16 S T C 756 : 1965 M P L J 553.

——Art. 226—'Another remedy'—Assessee preferring revision instead of appeal—Effect—Assessee cannot be held to have failed to avail himself of remedy — Sales-tax—M. P. General Sales Tax Act (II of 1959), Ss. 38, 39 (1).

A prudent assessee desiring to contest finding of fact reached by the Sales-tax Officer would no doubt resort to the remedy of an appeal under S. 38. But where the assessee is content with the findings of fact reached by the Sales-tax Officer and wishes to challenge the legality of the assessment order otherwise, he can do so by filing a revision petition under S. 39 (1) of the Act. If he does that, he avails himself of the remedy provided by the Act for challenging the assessment. Merely because the petitioner did not file an appeal against the order of assessment passed by the Sales Tax Officer and chose to file a revision petition under S. 39 (1) of the Act, it cannot be held that he failed to avail himself of the remedy provided by the Act for challenging the assessment. **(1964) 15 S T C 554 : 1964 Jab L J 320 : 1964 M P L J 390.**

——Art. 226 — M. B. Sales of Motor Spirit Taxation Act (20 of 1953), Ss. 2 (k) and 3 — Nature of transaction and its liability to tax — Determination of by Sales Tax Officer — Remedy against decision of Sales Tax Officer provided in Act itself — High Court will not normally entertain petitions under Art. 226 against the decision. **1963 M P L J 485 : 1963 Mah L J 493 : 1963 Jab L J 508 : (1963) 14 S T C 410 : (1964) 1 S C R 488**

——Art. 226 — Alternative remedy — Notices issued to the assessee and the re-assessment proceedings taken against him, patently defective and without jurisdiction — Existence of alternative remedy by way of appeal or revision could not be allowed to stand in the way of quashing the notices and the assessment proceedings and orders — Sales Tax — M. P. General Sales Tax Act (II of 1959), S. 19 (1). **1962 M P C 318 : (1963) 14 S T C 67 : ILR (1963) Madh-Pra 840 : 1962 M P L J 889 : 1962 Jab L J 749 : AIR 1962 Madh Pra 315 (317) (Pt D) (Pr 7) (DB).**

——Art. 226 — Other remedy — Cases under C. P. and Berar Sales Tax Act.

A petitioner, who comes to invoke the aid of the extraordinary and special remedy provided by Art. 226 of the Constitution, should first have exhausted all his remedies under the general law. Article 226 is not to be resorted to as a short-cut to the ordinary procedure provided by the general law.

The C. P. and Berar Sales Tax Act itself has provided elaborate machinery for correcting any error in the assessment of which the assessee may feel aggrieved. So it would be against the scheme of the Sales Tax Act to determine facts by affidavit evidence in writ proceedings before the High Court for the purpose of deciding the cases.

Exception has, however, to be made in cases where the Act or provisions of it under which the tax was being levied are ultra vires or unconstitutional.

But this exception is not available in cases where no provision of the Act could be successfully challenged as ultra vires, the grievance being not against the Act but against its incorrect interpretation or application. **1961 M P L J 804 : 1961 Jab L J 1011 : 1961 M P C 582 : AIR 1962 Madh Pra 225 (237) (Pt A) (Prs 50, 52, 53) (DB).**

——Art. 226 — Other remedy open — Assessment under C. P. and Berar Sales Tax Act — Assessee not exhausting remedies open to him — Assessment held could not be questioned in an application under Art. 226. (1962) 13 S T C 562 : 1962 M P C 82 : 1962 M P L J 346 : (1962) Jab L J 743 : ILR (1961) Madh-Pra 663.

——Art. 226 — Other remedy — Assessment under Madhya Bharat Sales Tax Act — Assessee's right to

come before High Court under Art. 226, without filing departmental appeal — Writ can be filed, since a burden is cast on the assessee as tax assessed has to be deposited before filing appeal—Madhya Bharat Sales Tax Act, Smt. 2007 (XXX of 1950). **1957 M P C 286 : 1957 Jab L J 431 : (1957) 8 S T C 407 : 1957 M P L J 301 : AIR 1958 Madh-Pra 16 (18) (Pt A) (Pr 4) (DB).**

——Art. 226 — Tax assessment — Other remedy by way of appeal open and resorted to — Court can still interfere in proper case during pendency of appeal.

When a remedy is available to an assessee under the Statute, he must first resort to it and when actually he has resorted to it and the appeal is pending, the Court acting under Art. 226 would be reluctant to interfere with an order of assessment. But there may be cases where this rule may not outweigh other considerations which may compel interference by the Court.

Where the assessing authority relying on the report of the Sales Tax Intelligence staff accepted the figure given in the report relating to the value of items omitted in stock books although there was a clear totalling mistake committed in arriving at the figure, and placed the figures relating to omissions before the assessee on the day of assessment and asked him to explain them then and there :

Held that the assessment order was clearly vitiated by an apparent error. The assessing authority had failed in his duty to scrutinise the materials for assessment and satisfy himself that the tax was payable on the basis of the materials.

Held further that the assessee ought to have been given, both in law and in fairness, reasonable opportunities to look into all the necessary documents and other books so as to enable him to explain and show cause why the proposed turnover ought not to be taken as the basis for assessment, and the assessment order was liable to be quashed although the assessee's appeal against the order was pending before the appellate authority. **(1965) 16 S T C 769 (Mad).**

——Art. 226 — Other remedy open — Remedy of appeal open under Madras General Sales Tax Act — Still writ of 'certiorari' will lie.

Madras General Sales Tax Act no doubt provides an appeal against an assessment. It is now well established that notwithstanding the existence of a right conferred by a statute to an aggrieved person to appeal against the orders of tribunals constituted under it, certiorari will lie. But the existence of such a right will be a matter to be taken into account by the superior Court in arriving at a conclusion whether it should issue a writ of certiorari, for that jurisdiction is a discretionary one.

Held, that the question of constitutional validity of Ss. 2 (g) and 2 (n) of the Madras General Sales Tax Act was not capable of being determined completely or satisfactorily by the department or the tribunal. Therefore an appeal to them could at best be only a stage in a matter which had ultimately to come up before the High Court. Secondly, where the alleged turnover represented the expenses incurred and shared by the then members of the Y. M. I. A. who might not be all members of the Association later on it would not be possible for the Association to effectively call upon the former members to share the tax, which had been illegally levied. Then there was also the important circumstance that the question before the High Court did not entirely depend on the validity of the assessment in respect of which it could be said there was an alternative remedy by way of appeal where the Commercial Tax Officer had called upon the Association to register itself as a dealer on threat of penal proceedings. The Association which would in no sense be regarded as a dealer was entitled to come to the High Court under Art. 226 for the protection against the threatened invasion of its rights. The need to grant relief on the ground of the invalidity of the assessment necessarily involved an investigation into the validity of the assessment. The petitioner sought relief with great promptitude and this was not one of those cases where a litigant, after allowing the period of limitation prescribed for an appeal to pass by, resorted to proceedings under Art. 226. In the circumstances of this case, there were sufficient grounds for the exercise of jurisdiction under Art. 226. 1958 S C J 242 : 1958 M L J (Cr) 197 : AIR 1958 S C 86, Rel. on. **76 Mad L W 704 : 1964 Mad W N 56 : (1963) 14 S T C 1030 : AIR 1964 Mad 63 (66) (Pt C) (Prs 7, 8) (DB).**

——Art. 226 — Another remedy open — Appealable order not appealed from — Effect of — Natural justice — Opportunity to show cause — Denial of — Assessment to sales tax.

Where another statutory remedy is available to the petitioner seeking a writ of certiorari, namely an appeal provided by the statute, but he fails to avail himself of that remedy, such failure under normal circumstances, would be sufficient for the High Court to decline to investigate the validity of the order impugned by the petitioner, preliminary to the grant of the discretionary relief of a writ of certiorari under Art. 226 of the Constitution.

A mere refusal by the assessing authority under the Madras Sales Tax Act to grant certified copies of certain documents cannot be held to amount to a denial of a real and effective opportunity to show cause against a proposed revision of an assessment and re-assessment under R. 17 (1) of the Madras General Sales Tax Rules. **(1958) 1 M L J 30 : (1958) 9 S T C 1 : 71 Mad L W 12: AIR 1958 Mad 176 (178) (Pt A) (Pr 9) (DB).**

——Art. 226 — Other remedy open.

The objection that the petitioners ought to have resorted to the usual remedies by way of appeal, etc., to the Tribunals under the Madras General Sales Tax Act and that the High Court should, in its discretion, decline to entertain the petition under Art. 226 cannot be upheld. This is a matter of discretion and not any absolute rule of law that bars jurisdiction of the High Court.

Where the questions raised were of great importance and complexity and if the point made by the assessee were upheld it would mean that R. 5 of the General Sales Tax Act Rules was invalid.

Held, that this was not certainly a ground which the assessee could put forward before the Tribunal constituted under the Act, and therefore, the petitioners were entitled to approach the High Court for relief. **(1956) 2 Mad L J 374 : (1956) 7 S T C 792 : AIR 1957 Mad 33 (39, 40) (Pt C) (Pr 25) (DB).**

[Reversed in AIR 1960 S C 1254].

——Arts. 226 and 286 - Petitioner assessed to tax under Madras General Sales Tax Act — Appeal — Notice of demand — Petition under Art. 226 — Maintainability — (Sales Tax — Madras General Sales Tax Act (IX of 1939), S. 12 A).

Where, under the provisions of the Madras General Sales Tax Act, the Deputy Commercial Tax Officer determined the taxable turnover of the petitioner and assessed the tax payable thereon and the petitioner preferred an appeal against the orders of such officer and on receiving notice calling upon him to pay the tax the petitioner took out the writ challenging the validity of the Act and disputing the correctness of the assessment under Art. 286 of the Constitution:

Held, that it was open to the petitioner to raise all questions as to the extent of his liability under the

Act and under Art. 286 before the Appellate Officer and therefore the High Court would decline to entertain the petition. (1952) 3 S T C 433: AIR 1953 Mad 131 (132) (Pr 2) (DB).

——Art. 226—Other effective remedy open — Jurisdiction under Art. 226 cannot be invoked as against Sales Tax authority — (Sales Tax—Madras General Sales Tax Act (9 of 1939), Ss. 9, 11, 12, 12A, 12B, 12C and 12D).

From the provisions of Ss. 9, 11, 12, 12A, 12B, 12C and 12D of the Madras General Sales Tax Act, 1939 it is clear that the Act is a self-contained one and provides for a hierarchy of tribunals to enable the aggrieved person or authority to get a final and authoritative adjudication on the validity or the correctness of the assessments made by the Sales Tax Authorities. Hence the petitioner cannot seek the aid of the High Court under Art. 226, which, if given would circumvent the entire statutory procedure prescribed. The fact that the remedy provided by the Act may involve delay or expenditure or that the decision of the Sales Tax Authority will affect other persons cannot be a ground for invoking the extraordinary jurisdiction of the High Court under Art. 226. 1952 Mad W N 599 : 1952-2 Mad L J 285: 1952-3 S T C 317 : AIR 1953 Mad 10 (12) (Prs 4, 5).

——Art. 226 — The Madras General Sales Tax Act with its subsequent amendments has not ousted the jurisdiction of the ordinary civil Courts when a party is alleged to have been aggrieved by the administration of the Act. An application under Art. 226 for issuing a writ of certiorari to quash the orders of the taxing Authorities assessing the petitioner for sales tax cannot be granted as the petitioner has an effective remedy by way of a suit in the civil Court for the relief claimed. ('51) 65 Mad L W 337: 1952-2 Mad L J 27 : 1952-3 S T C 76 : AIR 1952 Mad 830 (831) (Pr 2).

——Art. 226—Other remedy — Existence of—Effect —Madras General Sales Tax Act (IX of 1939), S. 2—Supply of refreshments to members of social club — Liability to sales tax.

The maintainability of writ petitions under Art. 226 of the Constitution is extremely difficult if not impossible to circumscribe, define and restrict. The mere failure of the petitioner (the Cosmopolitan Club) to object to the payment of sales tax (on the supply of refreshments to its members) since 1939 and to explore the long and tidious avenue of appeal and revision provided by the Sales Tax Act is not an impediment in the way of issuing a writ if it be found that the sales tax levy is really illegal.

The writs under Art. 226 (1) are all discretionary writs, which are dependent on the facts of each case and the nature of the illegality and wrong alleged.

The general principle would be that Government should have notice of the alleged illegality or wrong on which the writ petition is founded before it is filed and give a reasonable opportunity of investigating of the grievance remedying it before such a step is taken. There is of course no provision in the Constitution requiring notice to Government before putting it on its defence as under S. 80, Civil P. C. There is no inflexible rule. The petitions in the instant case in the particular circumstances should not be rejected on the ground that the Government was not given previous notice. The legality of the levy of sales tax in the circumstances can only be properly investigated by the High Court on a petition under Art. 226.

Where a social club being an association formed not for profit, supplies refreshments to its members at a fixed rate the supply is not a transfer of property from the club as such to a member. The levy of sales tax on such supplies of refreshments by clubs to members must be held to be illegal. (1952) 3 S T C 77 : 1952 Mad W N 200 : (1952) 1 M L J 401 : AIR 1952 Mad 814 (816, 817) (Pt A) (Prs 6, 10).

——Art. 226—Mandamus — Other remedy open.

Held, that if the adjudication by the Commissioner that the petitioner assessee was not a dealer was binding on the Sales Tax Officer or 'if the counsel of the latter admitted before the High Court that the petitioner's grievance that in view of the decision of the Commissioner the assessee was not liable to assessment and the notice issued by the Sales Tax Officer requiring the assessee to submit returns was contrary to law was accepted by the authorities by ordering withdrawal of the notice and that had induced the High Court to refrain from passing a formal order quashing the proceedings, the petitioner-assessee had certainly a grievance which could not be redressed by the Sales Tax Authorities who had proceeded not only to assess the petitioner assessee but also to prosecute it. The proceedings were likely to result in the assessment of the assessee to tax which it would have to deposit before preferring an appeal against that order. In order to escape from such serious consequences and infringement of its fundamental rights, relief by way of mandamus was the appropriate relief. This relief could not be denied to the petitioner assessee merely on the ground that it had not exhausted the remedies available under the Sales Tax Act, which in the circumstances of this case, could not be described as an adequate alternative remedy. AIR 1954 S C 403, Foll, AIR 1952 Mad 605, Rel. on. ILR (1954) Nag 935 : 1955 Nag L J 332 : AIR 1956 Nag 27 (30) (Pt A) (Pr 10) (DB).

——Art. 226—Application under—Maintainability—Assessment made by Additional Sales Tax Officer — C. P. and Berar Sales Tax Rules, R. 53.

The High Court would be justified in entertaining an application under Art. 226 of the Constitution with respect to an assessment made by an Additional Sales Tax Officer under S. 11, C. P. and Berar Sales Tax Act, if it found that that assessment was made without jurisdiction. Further, under R. 53 of the rules framed under the Act, the State Government provides for appeals against the assessments made by a Sales Tax Officer and an Assistant Sales Tax Officer and not against the assessments of an Additional Sales Tax Officer. Clearly, therefore, the applicant has no right to prefer an appeal to any authority under the Sales Tax Act. That being the position, two courses are open to him—to institute a civil suit or to come to the High Court under Art. 226. 1951 N L J 611.

——Art. 226—Alternative remedy — No question of infringement of fundamental right or ultra vires of Act involved — Alternative remedy has to be exhausted—Alternative remedy available under Orissa Sales Tax Act, 1947, by way of appeal, second appeal and reference—Writ petition is not maintainable before exhausting these remedies—Sales Tax — Central Sales Tax Act (1956), S. 9 (3).

Though undoubtedly the High Court has jurisdiction to interfere under Art. 226 of the Constitution even though an aggrieved party might not have exhausted all the alternative remedies available to him under the laws in force, nevertheless under normal circumstances the internal remedies provided by the statute should be exhausted in the first instance. The question is more one of propriety than lack of jurisdiction. Thus the Orissa Sales Tax Act contains ample provisions to enable a party aggrieved by the orders of assessment under the Central Sales Tax Act passed by the Sales Tax Officer to take up both questions of fact and law before two appellate

authorities, namely the Assistant Commissioner of Sales Tax and the Sales Tax Tribunal and also to get points of law finally decided by the High Court on a proper reference made to it under S. 24. In addition, the Second proviso to sub-s. (5) of S. 13 of the Orissa Sales Tax Act empowers the Commissioner of Sales Tax to treat an assessee as not being in default so long as an appeal filed by him under S. 23, is pending. Where neither the provisions of the Central Sales Tax Act nor the provisions of the Orissa Sales Tax Act have been challenged as ultra vires, or as restrictive of any of the fundamental rights; nor is any serious error of procedure alleged to have been committed by the Sales Tax Officer concerned, but the question is a simple one of ascertaining the true nature of the transaction which is alleged to be taxable, this must be left in the first instance to be adjudicated by the taxing authorities. (1963) 14 S T C 411, Rel. on. Where the questions were (1) was the sale completed in Orissa so as to empower the Orissa Sales Tax authorities to levy Sales Tax, or else whether the sale was completed in Bengal and (2) was the transaction a sale "in the course of inter-State trade or commerce" as explained in S. 3, or a sale "in the course of export" as explained in S. 5 of the Central Sales Tax Act, it is the Sales Tax Officer who is the authority to decide this question in the first instance, and the aggrieved party has been given ample opportunity to challenge his decision before three superior authorities, namely, the Appellate Assistant Commissioner, the Sales Tax Tribunal and the High Court. There is no special reason why the assessee should be permitted to approach the High Court direct before exhausting the remedies available to him under the Orissa Sales Tax Act. The fact that on the date of actual hearing of the writ application, the appellate authority under the Act had already dismissed the appeal which was filed before it by the assessee is immaterial, since he has a further right to appeal to the Tribunal and also can ask the Tribunal for a statement of the case. ILR (1964) Cut 464.

——Art. 226 — Other remedy open — Sales Tax — (Bihar Sales Tax Act (19 of 1947), S. 25).

Where the assessee objecting to the inclusion of a certain amount in the turnover does not move the High Court under S. 25(2) within the time prescribed after the refusal of the Board of Revenue to state a case under sub-s. (1) of that section he will not be allowed to obtain a writ of mandamus directing the taxing authorities to refund the amount of tax paid on the amount about the inclusion of which in the turnover he is aggrieved. **1959 B L J R 343 : (1959) 10 S T C 483: A I R 1959 Pat 389 (390) (Pt A) (Pr 2) (DB).**

——Art. 226—Other remedy open — Sales tax assessment—Issue of writ—(Sales Tax—Bihar Sales Tax Act (19 of 1947), S. 25.) (1959) 10 S T C 601 (Pat).

——Art. 226—Sales Tax—Bihar Sales Tax Act (1947), S. 13 (5) — Jurisdiction of Sales Tax Officer — Other remedy open. See Sales Tax—Bihar Sales Tax Act (19 of 1947), S. 13 (5). **A I R 1953 Pat 87.**
[Reversed in AIR 1955 S C 661.]

——Arts. 226 and 227 — Alternative remedy — Existence of such remedy not absolute bar to exercise of writ jurisdiction—Registration certificate sought to be cancelled under S. 7 (4) of Punjab General Sales Tax Act (46 of 1948) on grounds not covered by S. 16—High Court can interfere although alternative remedy was available under Act—Sales Tax—Punjab General Sales Tax Act (46 of 1948), Ss. 7 (4) and 16. 1965 Cur L J 317 : (1965) 16 S T C 406 : 68 Pun L R 447.

——Art. 226—Alternate remedy—Remedy by assessee by writ when alternate remedy under Ss. 20 and 21—Punjab General Sales Tax Act, was available—Availability. See Sales Tax—Punjab General Sales Tax Act (1948), S. 10 (7). **I L R (1965) 1 Punj 683.**

——Art. 226—Other remedy available to assessee to sales tax under Punjab General Sales Tax Act (46 of 1948)—High Court will not generally entertain writ petition—Sales Tax—Punjab General Sales Tax Act (46 of 1948), Ss. 10 (6), 21 (1).

There should be exceptional circumstances to warrant the exercise of the jurisdiction of the High Court under Art. 226 of the Constitution. It is not the object of this Article to convert the High Court into an original or appellate or revisional Assessing Authority, (in the matter of Sales Tax assessment), whenever an assessee may feel inclined to attack an order or imposition of penalty on account of his default. There must be, as a general rule, something going to the root of the jurisdiction of the Sales Tax Authority when passing the impugned order or something showing that the assessee would be subjected to grave and palpable injustice if obliged to seek relief from the hierarchy as provided by the usual statutory machinery. The Legislature has in its wisdom provided the machinery for aggrieved parties to ventilate their grievances and secure relief. It would be a healthy practice not to encourage the assessees at their mere option to rush to the High Court on the slightest pretext when specific machinery exists elsewhere for relief.

Even though the writ petition is initially admitted to a Division Bench if it is found that the points raised are not such as can or should appropriately be determined on writ side and if since the admission of the writ petition, the petitioner has deliberately and voluntarily preferred a revision in accordance with law, it would not be a sound exercise of discretion to go into the points under Art. 226 of the Constitution. **67 Pun L R 686 : (1965) 16 S T C 590.**

——Art. 226—Other remedy — Remedy of appeal to higher authority under Punjab General Sales Tax Act not followed, authorities having expressed their opinion — Revision not competent, when remedy of appeal is not availed of—Writ petition held maintainable — Civil P. C. (1908), S. 115 — Sales tax —Punjab General Sales-tax Act (46 of 1948), Ss. 20 and 21. ('65) 67 Punj L R 155 : (1965) 16 S T C 534.

● ——Art. 226 — Certiorari — Other remedy open — Action without jurisdiction — Sales-tax assessment order passed although it was barred by limitation — Existence of other remedy, no bar to exercise of jurisdiction under Art. 226.

Per Mahajan J.:—Where action taken is without jurisdiction, the existence of an alternative remedy is no bar to the exercise of powers under Art. 226. It cannot be disputed that the bar of limitation is a bar affecting jurisdiction, for no authority has jurisdiction to proceed with the matter if the bar of limitation intervenes. Hence, where the sales-tax authorities pass a final order for assessment in spite of the bar of limitation under the Sales-tax enactment, the existence of alternative remedy is no bar to the issue of certiorari or other appropriate writ under Art. 226. AIR 1962 S C 1621 and AIR 1963 S C 548 and AIR 1949 P C 239 and AIR 1953 S C 23, Rel. on. Rameshwar Lal Sarup Chand v. U. S. Naurath, Excise and Taxation Officer, Amritsar, (1964) 15 S T C 932 ; 65 Punj L R 768 ; 1963 Cur L J 398 : ILR (1963) 2 Punj 370 : AIR 1964 Punj 1 (9) (Pt B) (Pr 21) (FB).

——Art. 226—Sales Tax—East Punjab General Sales Tax Act (46 of 1948), S 16—Petition against assessment — Alternative remedy available to petitioner—Interference by High Court would not be justified—Petition cannot also be entertained merely because statutory remedy might be barred by lapse of time.

Held, that in the case in question the proceedings for assessment were actually initiated prior to the giving of the notice of its dissolution by the assessee-firm, and hence the petitioners could scarcely be entitled to take shelter behind the ratio of the Full Bench decision in 1962 P L R 351. (1963) 14 Sales Tax Cases 976 and C W 413 of 1962, Rel. on. **(1964) 15 S T C 648 (Punj).**

——**Art. 226—Other remedy—Best judgment assessment under Punjab General Sales Tax Act, S. 11 (4)** — Question whether or not the assessment is best judgment assessment is one of fact — No error apparent — Other remedy by way of appeal — No interference under Art. 226 — Interpretation of taxing statute. (1960) 62 Punj L R 322, Rel on. **(1963) 14 S T C 821: AIR 1963 Punj 383 (385, 387) (Prs 8, 17, 18) (DB).**

——**Art. 226 — Other remedy — Sales Tax — Punjab General Sales Tax Act (46 of 1948), Ss. 20, 21, 22**

Normally speaking, parties must be left to have recourse to the procedure prescribed in the Punjab General Sales Tax Act for redress of their grievances and they should not be encouraged to treat proceedings under Art 226 of the Constitution as substitutes for the proceedings which are provided by the taxing statute itself. **(1963) 14 S T C 469 (Punj).**

——**Art. 226 — Alternative remedy — Assessment of sales tax—Relief against order of assessment—Petition under Art 226 — Assessee directed to seek redress under Punjab General Sales Tax Act (46 of 1948), Ss. 11, 20, 21.**

A was registered dealer. During 1955-56 A submitted returns in respect of sales of sugar and ghee. A claimed certain exemption under S. 5 (2). A was served with notice in form S. T. XIV on 8-12-56 issued under Ss. 11 and 14. By a memo dated 13-8-60 for assessment years 1955-56, 1956-57 and 1957-58, A was informed that his case would be taken up on 26 8-60 failing which action shall be taken according to law. Similar letter was also issued on 14-5-61. The Assessing Authority after examining A's account books and their probative value discredited them. Assessment was finalised on 24-7-61. In writ against the assessment it was contended that the Assessing Authority could not proceed to make best-judgment assessment in respect of the quarter ending 31-3-1956 after 31-3-1959 and as regards the earlier quarters, three years' period must be considered to have expired long before 31-3-1959. The department pleaded that adequate and efficacious remedies by way of appeal and revision under Ss. 20 and 21 were available to A against the order of the Assessing Authority.

Held, that the facts and circumstances did not justify interference by High Court under Article 226 of the Constitution and that A must be left to seek redress in accordance with the usual mode prescribed by the Legislature under the Sales Tax Act. A's assessment was neither without jurisdiction nor manifestly contrary to law. Case law Consd.

The Act provided a complete machinery for assessment of tax and for obtaining relief in respect of any illegal or improper order, and, the aggrieved party would not, save in exceptional cases, where the imposition is clearly without jurisdiction or patently contrary to law, and further when there is nothing in the conduct of the assessee which would justify refusal of the discretionary relief under Article 226 of the Constitution, be permitted to abandon resort to or by-pass that machinery and invoke High Court's extraordinary jurisdiction. **(1963) 65 Pun L R 422.**

——**Art. 226—Petition under—Scope of Alternative remedy — No bar to jurisdiction of High Court — Nature of powers under — Interference in sphere of taxation—Not desirable.**

That there is an alternative remedy prescribed under the Sales Tax Act would certainly be a relevant factor to take into account as also would be the factor that violation of fundamental right is alleged, in determining, whether or not to exercise the discretionary power vested in the High Court under Article 226.

Interference in the sphere of taxation should, generally speaking, be confined to special circumstances in which violation of fundamental right or the illegality of the tax is apparent on the face of the record or of the law on which the taxing authority relies for the imposition.

Under Art. 226, the High Court cannot act as a Court of appeal so as to remand the case for fresh decision. It can only either quash the impugned order as being defective or else dismiss the petition. L P. A No. 46 of 1955 (Punj), Rel. on **62 Punj L R 322 : (1960) 11 S T C 486 : ILR (1960) 1 Punj 763.**

——**Art. 226—Other remedy open — Assessee paying tax by mistake — Application for refund under Sales Tax Act dismissed—Failure to avail of remedy under Act—If bar to issue of writ—(Sales Tax—East Punjab General Sales Tax Act (46 of 1948), S. 22).**

An assessee who was not liable to pay sales tax for certain period paid it by mistake. He applied for its refund under S. 12, East Punjab General Sales Tax Act (46 of 1948) but the application was refused. His petition for revision under S. 21 of the Act was rejected on the ground that it was not proper to refund the amount on grounds of propriety. The assessee without availing himself of the remedy under S. 22 of the Act applied under Art. 226 of the Constitution.

Held, that the remedy provided under S. 22, East Punjab General Sales Tax Act was not an adequate remedy. Hence the failure of the assessee to avail himself of the remedy under S. 22 did not bar relief under Art. 226. **(1956) 7 S T C 336 : AIR 1956 Punj 222 (223, 224) (Pt B) (Pt 3).**

——**Art. 226 — Other remedy open — (Sales Tax—Bengal Finance (Sales Tax) Act (1941) (as extended to State of Delhi), Ss 20 and 21).**

Any person who wishes to challenge a particular assessment to sales tax on the point that the transactions on which the tax is sought to be levied do not fall within the definition of the word "sale," and does not bring him within the definition of dealer contained in S. 2 (c), is not entitled to take the shortcut of coming to the High Court with a petition under Art. 226 instead of exhausting the remedies provided under Ss. 20 and 21 in the Act. AIR 1955 Punj 184 and AIR 1953 Punj 27. Rel. on. **(1956) 7 S T C 819 : AIR 1956 Punj 167 (168) (Pr 6).**

——**Art. 226 — Other remedy open — (Sales Tax—Bengal Finance (Sales Tax) Act (VI of 1941), S. 21).**

In many cases where an Act, like the Bengal Finance (Sales Tax) Act (VI of 1941), provides machinery, the High Court has held that it will not entertain a writ petition filed by a person who has not exhausted his remedies under the Act. It may be that a writ petition provides a more speedy and more efficacious remedy than the machinery provided by the Act in the sense that when any appeal, or perhaps revision, is filed under the Act it is necessary for the dealer in the meantime to pay the tax which is a subject of the dispute, but for the High Court to entertain writ petitions raising questions of law and the interpretation of the Act would make S. 21 of the Act wholly redundant. The machinery furnished by the Act is not in any way ineffective or unfair. AIR 1953 Punj 27, Foll. **AIR 1955 Punj 184 (185) (Pr 5).**

——Art. 226 — Another remedy open—(Sales Tax—East Punjab Sales Tax Act (XLVI of 1948), Ss. 19, 20, 21, 22).

Jurisdiction to question assessment otherwise than by use of the machinery expressly provided by East Punjab Act, XLVI of 1948, is inconsistent with the statutory obligation to pay under S. 20. If the petitioners do not avail themselves of it, then the High Court would not interfere under Art. 226. Case-law discussed. **ILR (1954) Punj 119 : 55 Punj L R 413 : AIR 1953 Punj 245 (246) (Prs 9, 10) (DB).**

——Art. 226—Tax levied without legal authority—Remedy under Art. 226 open — Fundamental right infringed — Existence of alternative remedy is no bar — No distinction between mistake of law and mistake of fact — Payment made under mistake—Item exempted without fee included in return—No creation of estoppel against assessee.

Where a tax is levied without legal authority on any trade or business it is open to the citizen aggrieved thereby to approach High Court or even the Supreme Court for a writ since his right to carry on trade and commerce is violated Right to carry on trade and commerce subject to certain limitations is a fundamental right and the matter has to be enquired into. The existence of an alternative remedy is no bar to a party who comes to High Court with an allegation that its fundamental right has been infringed without the authority of law. A I R 1957 S C 790 and 1954 S C J 445 : (1954) 1 M L J 690 : AIR 1954 S C 408, Foll.; AIR 1957 Raj 210 and AIR 1958 Raj 262, Dist.

Section 72 of the Indian Contract Act makes no distinction between a mistake of law and a mistake of fact. The true principle is that if one party under a mistake, whether of fact or law pays to another party money which is not due by contract or otherwise that money must be repaid No question of estoppel can ever arise when both the parties are labouring under the mistake of law and one party is not more to blame than the other. AIR 1959 S C 135, Rel. on.

Where, therefore, the assessee included in his return before Sales Tax Officer the amount relating to the supply of coal to Government under the head 'Turnover of goods exempted without fee' and agitated the question before the Department and the State, the assessee on account of a mere submission of a consolidated statement in his return cannot be regarded as having acquiesced in the levy of the tax the legality of which is challenged. The mere inclusion of an item in the return on which no tax is leviable under the law would not create an estoppel against an assessee. **1961 Raj L W 420 : ILR (1961) 11 Raj 688 : AIR 1963 Raj 51 (53, 54) (Pt A) (Prs 8, 11) (DB).**

[Reversed on another point in AIR 1965 S C 913.]

——Art. 226—Other remedy—Taxing enactment—Certiorari — Powers of High Court — (Sales Tax — Rajasthan Sales Tax Act (XXIX of 1954), Ss. 13, 14 and 15).

Where the vires of any taxing enactment are not challenged and the question is only a question of law, the High Court should not intervene, when alternative remedies under the enactment are open to a party.

Rajasthan Sales-tax Act is a special self-contained Act providing for assessment of sales-tax and for remedies to correct wrong assessment. As the amount in the instant case could not be said to be so onerous as to make the appeal after paying them an inadequate alternative remedy, the High Court would not interfere in their extraordinary jurisdiction. AIR 1957 Raj 210, Foll.; AIR 1957 S C 790, Disting.; AIR 1954 S C 403, observations in, held obiter. **(1959) 10 S T C 270 : 1959 Raj L W 605 : ILR (1958) 8 Raj 935 : AIR 1958 Raj 262 (263, 264, 265) (Pt A) (Prs 4, 9, 12, 13, 14) (DB).**

——Art. 226 — Other remedy open—Remedy under Rajasthan Sales Tax Act — (Sales Tax — Rajasthan Sales Tax Act (XXIX of 1954), S. 15).

The applicants who carried on trade in ground-nut oil were asked by the officers of the Sales Tax Department to submit the accounts of their dealing in ground-nut oil in order that sales tax might be assessed on them. Their contention was that ground-nut was exempted from sales tax as it was edible oil. But they were met by a confidential circular of the Sales Tax Commissioner in which the Sales Tax Officers were told that ground nut was a commodity liable to sales tax. The Sales Tax Commissioner who was also the revising authority and appellate authority also knew of the circular.

Held, that in the circumstances it would really be a farce for any assessee to go to the appellate authority or the revising authority and therefore the High Court should intervene at that stage in an application under Art. 226 of the Constitution. **1957 Raj L W 431 : ILR (1957) 7 Raj 723.**

——Art. 226 — Enforcement of contractual rights—(Sales Tax—T.C. General Sales Tax Act (XI of 1125), Ss. 13 and 19).

A certain firm which had contracted to supply bonemeal to the government entered into an agreement with a bank for being financed by the bank. The bank forwarded to the government a copy of this agreement and a power of attorney executed by the firm in their favour and the government acknowledged receipt of both. Subsequently a certain amount became payable by the firm to the State towards the sales tax and the government ordered adjusting the amount from what was payable by them to the firm under their contract with the firm. The bank applied under Art. 226 questioning the legality of the adjustment,

Held, (i) that from the terms of the agreement between the firm and the bank and the power of attorney which were forwarded to the government it was clear that the bank had sufficient interest to file the petition questioning the adjustment. (ii) From the fact that the bank could file the petition it did not follow that it was entitled to any relief This was a matter which should be agitated by an ordinary suit and not in proceedings under Art. 226. (iii) The State had the ordinary right of adjustment available to its citizens under similar circumstances and could not be confined to one of the three courses of recovery, namely by proceeding under S. 13 or 19 of the T. C. General Sales Tax Act 1125 or by a regular suit. **AIR 1957 Trav Co 121 (121, 122) (Prs 2, 3, 4, 5).**

7 (q). Specific remedy provided.

——Art. 226—Powers under—Scope — Industrial dispute—Remedy available under Industrial Disputes Act—Matter cannot be considered under Art. 226.

After the notification was issued under S. 1 (3), Employees' State Insurance Act (1948), appointing 28-8-1960 as the date on which some of the provisions of the Act should come into force in certain areas, the Chief Executive Officer of a company issued notices giving effect to the notification and intimating the workmen of the company, that by reason of the said notification, the medical benefits which were being given to them in the past would be received by them under the relevant provisions of the Act. It was urged by the workmen before the High Court in a petition under Art. 226 that these notices were invalid and should be struck down on the ground that the

company was not entitled to curtail the benefits provided to them by the company and that the said benefits were not similar either qualitatively or quantitatively to the benefits under the Scheme which had been brought into force under the Act.

Held: that although the powers conferred on the High Court under Art. 226 are very wide they could not take in within their sweep industrial dispute of the kind which the contention of the workmen sought to raise. The proper remedy which was available to the workmen to ventilate their grievances in respect of the said notices and circulars was to take recourse to S. 10 of the Industrial Disputes Act, or seek relief, if possible, under Ss. 74 and 75 of the Act. ILR 40 Pat 193, Affirmed. **(1964) 6 S C R 913 : 1964 (8) Fac L R 334 : 1964 B I J R 447: (1964-65) 26 F J R 133: (1964) 2 Lab L J 105 : (1964) 2 S C J 566 : AIR 1964 S C 1260 (1263) (Pt B) (Pr 7).**

● **——Art. 226—Income-tax matters—Resort to High Court under Art. 226 when proper.**

The Income-tax Act provides a complete machinery for assessment of tax, and for relief in respect of improper or erroneous orders made by the Revenue Authorities. It is for the Revenue authorities to ascertain the facts applicable to a particular situation, and to grant appropriate relief in the matter of assessment of tax. Resort to the High Court in exercise of its extraordinary jurisdiction conferred or recognised by the Constitution in matters relating to assessment, levy and collection of income-tax may be permitted only when questions of infringement of fundamental rights arise, or where on undisputed facts the taxing authorities are shown to have assumed jurisdiction which they do not possess. In attempting to by-pass the provisions of the Income-tax Act by inviting the High Court to decide questions which are primarily within the jurisdiction of the Revenue Authorities, the party approaching the Court has often to ask the Court to make assumptions of facts which remain to be investigated by the Revenue Authorities. AIR 1961 S C 609, Rel. on. Shivram Poddar v. I.-T. Officer, Central Circle II, Calcutta, **(1964) 51 I T R 823 : (1964) 1 S C J 434 : (1964) 1 I T J 476 : 1964 Cur L J (S C) 139 : (1964) 1 S C W R 606 : AIR 1964 S C 1095 (1099) (Pt B) (Pr 11).**

——Art. 226 — Applicability — Delay in depositing compensation—Proceedings, if liable to be quashed —Proper remedy— Claim for interest under S. 34 of Land Acquisition Act.

Where the proceedings for the acquisition of land for the D. A. V. College under S. 4 of the Land Acquisition Act dragged on for six years before the Collector, and after the award, the amount of compensation was not deposited for years and the applicants approached the authorities concerned a number of times but to no purpose they applied under Art. 226 of the Constitution for a writ of mandamus quashing the proceedings and to award compensation for loss to them.

Held : The question of issue of a writ of mandamus does not arise at all in the case; for the acquisition proceedings were not without jurisdiction. The delay in the disposal of the proceedings or the delay in deposit of compensation awarded is no ground for holding that the proceedings were taken without jurisdiction. The proper remedy for the loss occasioned to the petitioners was by way of filing a supplementary statement before the Collector asking him to take action under S. 34 of the Land Acquisition Act. It could then be decided by the District Judge. **AIR 1952 Ajmer 30 (30) (Prs 5, 7).**

● **——Art. 226—Existence of alternative remedy—Effect—Order of eviction under U. P. Act III of 1947 —Tenant filing writ petition without applying for revision under S. 7-A (4) or S. 7-F of the Act—Remedy under the sections is adequate alternative remedy—High Court can refuse writ on that ground —Whether it should do so depends on its discretion—U. P. (Temporary) Control of Rent and Eviction Act (III of 1947), Ss. 7-A (4), 7-F. AIR 1954 All 428 and 1959 All L J 897 and 1960 All L J 546 and 1965 All L J 211, Overruled; A I R 1957 S C 882 and AIR 1961 S C 1506 and AIR 1958 S C 86, Rel. on. Gyan Chand Bhatia v. Rent Control and Eviction Officer, Lucknow, 1965 All L J 924 : 1965 All W R (H C) 676 : AIR 1966 All 57 (61, 62) (Pt A) (Prs 17, 21) (FB).**

——Art. 226—Other remedy open—Land Acquisition Act (1894)—Award under S. 11 against petitioner—Remedy by way of reference to Court provided under S. 18 not availed of—Writ cannot be issued. AIR 1965 All 356 (363, 364) (Pt F) (Pr 25).

——Art. 226—Mandamus—Writ of — Attached property sold in recovery proceedings under Income tax Act— Petitioner having equally adequate alternate remedy under provisions of Income-tax Act—Writ petition should be dismissed. (1964) 2 I T J 550 (All).

——Art. 226—Certiorari — Other remedy—Certiorari will not issue to by-pass departmental remedy — It can only be granted when no other suitable remedy exists — Application for writ to short-circuit procedure provided by Act is not maintainable — Existence of provision for appeal in statute might bar certiorari—Order of Appellate Assistant Commissioner in Wealth tax matter—Appeal to Appellate Tribunal provided by S. 23, Wealth Tax Act not availed of —Assessee however filing revision to commissioner under S. 25 —Writ petition against order in revision—Revision was not adequate remedy, revision being discretionary—High Court refused to interfere by writ on ground that assessee did not avail of adequate alternative remedy, namely appeal — Failure held could not be justified on ground of illness since Tribunal could admit appeal even after expiry of limitation. See Wealth Tax Act (1957), S. 23. AIR 1963 All 488 (DB).

——Art. 226—Other remedy—Arbitration Act (1940), Ss. 20, 46, 47—Lucknow University Act (V of 1920), S. 44.

Where the Chancellor of the Lucknow University turned down a request of the petitioner, who was teacher of the University made in his representation to the Chancellor that an arbitration tribunal be appointed under S. 44 of the Lucknow University Act to decide the issues raised under the representation, the petitioner's remedy against the refusal lies by an application under S. 20, Arbitration Act, and a petition under Art. 226 of the Constitution would be dismissed on the ground of another remedy being open. S. 44 of the Lucknow University Act does not charge the Chancellor with the duty of constituting the tribunal. His duty is to appoint an umpire which contingency can arise when the tribunal is otherwise constituted. If therefore, the Chancellor has no duty under the law to constitute the tribunal, no writ or direction can be issued against him requiring him to do so. **AIR 1961 All 331 (332, 333, 334) (Prs 2 to 9).**

——Art. 226—Other remedy open — Revision application dismissed by Board of Revenue without hearing petitioner—Petitioner applying for setting aside order —Order vacated without hearing petitioner — Writ petition by petitioner—Petitioner's proper course held was to approach Board itself and not to approach High Court directly with writ petition — (Civil P. C. (1908), O. 47, R. 4). 1959 All L J 611 : ILR (1959) 2 All 173 : 1959 All W R (HC) 432 : AIR 1960 All 93 (96) (Pt E) (Pr 9) (DB).

——Art. 226—Other remedy open—Issue of writ.

Where a reference to arbitration is possible not only after the completion of the works but also when the contract has been determined and it is the common case of the parties that the contract has been terminated, the conditions pre-requisite for a valid reference to arbitration exist in the case and if the reference is not premature, the petitioner has got a clear alternative remedy. (1925) 1 K B 745, Disting. **AIR 1960 All 72 (77, 78) (Pt B) (Pr 13).**

——Art. 226—Other remedy open — Citizenship Act (1955), S. 9 — Question whether person is Indian national — Forum for determination of question — Petition under Art. 226 of Constitution — Competency. See Citizenship Act (1955), S. 9. **AIR 1958 All 165.**

——Art. 226 — Other remedy open — Writ of certiorari—If can be issued — (U. P. Panchayat Raj Act (XXVI of 1947), S. 85.)

Merely because a Court entertained an application which was barred by limitation and passed certain orders on it, an application for writ under Art. 226 will not lie. The applicant has further to satisfy that his fundamental right conferred by Part III of the Constitution of India or any other legal right has been infringed and great injustice has been done to him and that he has got no other adequate legal remedy. If the law provides another legal remedy it is doubtful that an application for writ will lie under Art. 226 of the Constitution.

Consequently, the High Court will not grant a writ to quash the order of a Sub-divisional Officer under S. 85, U. P. Panchayat Raj Act, cancelling the jurisdiction of the Panchayati Adalat when the applicant has the alternative remedy under S. 85 (2) of filing a fresh complaint before a competent criminal Court and no injustice had been done to the applicant by such order. **1954 A W R (H C) 143 : 1954 All L J 200 : 1954 Cr L J 847 : A I R 1954 All 391 (393) (Pt D) (Pr 11).**

——Art. 226—Other remedy open — Municipalities—U. P. Municipalities Act (2 of 1916), S. 160. **A I R 1953 All 551 (551) (Pt B) (Pr 3).**

——Art. 226—Other remedy available—S. 13 of the U. P. Court of Wards Act, 1912, if provides any remedy to disqualified proprietor.

Section 13 of the U. P. Court of Wards Act held could not be said to provide an adequate remedy for a person aggrieved by an order under S. 8 so as to disentitle him to apply under Art. 226 **ILR (1952) 2 All 949 : AIR 1952 All 99 (104) (Pt C) (Pr 9) (DB).**

——Art. 226 — Writ of certiorari — Single petition filed on behalf of several petitioners on identical question—Maintainability — Alternative remedy by way of Reference to Government — Existence not fatal to a writ petition.

Where the case of the 14 petitioners in the writ petition was almost identical and raised the same questions of fact and law, a single writ petition was maintainable.

The orders of rejection passed by the Revenue Divisional Officer under the Andhra Pradesh Panchayat Samithis and Zilla Parishads Act (35 of 1959) are in the nature of judicial orders liable to removal on certiorari. The existence of an alternative remedy is not per se fatal to the invocation of the prerogative jurisdiction of the High Court under Art. 226 of the Constitution. The election petition under the Act can be filed only after the election and such course would be misconceived for correcting an error with reference to an order passed anterior to the election. A reference under S. 72 of the Act is not an effective alternative remedy. **(1963) 1 Andh W R 54.**

——Art. 226 — Other remedy open — Prosecution without necessary sanction—Issue of writ of prohibition—(Panchayats—Madras Village Panchayats Act (X of 1950), S. 106).

Where after a complaint was filed under Ss. 167 and 468, Penal Code, against the President of a village panchayat, the latter filed an application under Art. 226 for the issue of a writ of prohibition restraining the Magistrate from proceeding with the case on the ground that he could not take cognizance of the offence except with the previous sanction of the Government under S. 106 of the Madras Village Panchayats Act;

Held, that the petitioner could raise the objection more appropriately before the Magistrate in whose Court the complaint was filed. If the objection was overruled and if the case went against him, he could if so advised, take proper proceedings by way of appeal. Where the petitioner has an effective remedy High Court will not ordinarily exercise its extraordinary jurisdiction. **1959 Cr L J 23 : A I R 1959 Andh Pra 28 (29) (Pr 4) (DB).**

——Art. 226 — Other remedy open — Income-tax proceedings — Writ application — Competency — (Income-tax Act (1922), Ss. 44 and 66).

The petitioner who was assessed to tax as a firm did not challenge the notice issued to him but submitted a return; after considering the objections raised by him an assessment order was finally passed. The petitioner filed appeals to the Appellate Assistant Commissioner. While the appeals were pending he filed a petition for a writ of mandamus directing the income-tax authorities to forbear from enforcing the assessment order on the ground of want of jurisdiction.

Held, having regard to the undoubted and adequate remedies which the petitioner had under the Income-tax Act and to the further fact that he had himself taken advantage of the remedy this was not a fit case for the exercise of jurisdiction vested in the High Court under Art. 226. **(1959) 36 I T R 239 (Andh Pra).**

——Art. 226 — Citizenship Act (57 of 1955), S. 9 (2) and Sch III, Cls. 3, 4, 5 (d) — Right of citizenship—Question as to acquisition and termination of — Determining authority—Evidence and proof—Remedy under R. 30 of Citizenship Rules open—Writ refused. See Citizenship Act (1955), S. 9 (2). **AIR 1958 Andh Pra 761.**

——Art. 226 - Other remedy open.

The High Court will not exercise its extraordinary jurisdiction under Art. 226 when there is a specific, effective and alternative remedy. **(1958) 2 Andh W R 598 : ILR (1958) Andh Pra 701 : AIR 1958 Andh Pra 697 (704) (Pt E) (Pr 19) (DB).**

——Art. 226 — Other remedy open — Bar to writ—(Madras Hindu Religious and Charitable Endowments Act (XIX of 1951), S 99).

Where the Commissioner confirms the appointment of additional trustees, the aggrieved trustee has an effective alternative remedy under S. 99 and it would disentitle him to seek relief under Art. 226. **AIR 1957 Andh Pra 108 (109) (Pt B) (Pr 9).**

——Art. 226—Other remedy open—Assam Municipal Act (15 of 1957), Ss. 18 (1) (c), 23 — Election of Commissioner of Municipal Board—Non-compliance with rules — Election can be challenged only under S. 18 (1) (c), not in writ proceedings. A I R 1952 S C 64 and A I R 1958 S C 139, Rel. on. **I L R (1963) 15 Assam 29 : A I R 1963 Assam 168 (173, 174, 175) (Pt B) (Prs 18, 19, 23) (DB).**

——Art. 226—Powers of High Court — Order under S. 20, Minimum Wages Act — Apart from remedy under Art. 226 order of Authority under S. 20 of the Act is subject to revisional jurisdiction of High Court under S. 115, Civil P. C. — Interference by writ. See Civil P. C. (1908), S. 115. **A I R 1958 Assam 1 (DB).**

——Art. 226—Other remedy available — Discretion of Court.

Where petitioner s application to the Collector to refer the case under S. 18, Land Acquisition Act for adjudication of the rights or interest which he claimed in the property was rejected on the ground that his name was not on the award and therefore he was not entitled to apply for relief under that section.

Held, it was for the Court to consider whether relief should be given under Art. 226 to the petitioner or whether he should be referred to the civil Court for proper relief. In this case, whether on a reference under S. 18, or by virtue of a suit brought by the petitioner to whom no compensation was given although he claimed an interest in the property, the matter had ultimately to go to the civil Court. Therefore it would make no difference as to the balance of convenience of the respondent if the collector was directed in the proceedings under Art. 226 to make a reference to the civil Court for deciding as to whether the petitioner had any interest in the property as claimed by him, when the reference is otherwise competent. I L R (1958) 10 Assam 113.

——Art 226 — Mandamus — Other remedy open — Petitioners aggrieved by order of Executive Council —Order subject to approval of District Council— (Assam Autonomous Districts (Constitution of District Councils) Rules (1951), R. 29 (2) (a)).

Where the Executive Committee of the District Council cancelled orders of the previous Executive Committee whereby the petitioners were recognised as electors of Mylliem Durbar but as the matter fell under R. 29 (2) (a), it referred the matter to the District Council and the petitioners applied for a writ claiming that they were entitled to function as voters and that the Chief Executive Member of the District Council should be restrained from interfering with the right of theirs

Held that the application should fail as the order passed by the new Executive Committee was not a final order and was still subject to approval by the District Council itself and there was nothing to prevent the petitioners from making a representation to the District Council of their legitimate claim if they had any. **A I R 1955 Assam 238 (240) (Pt B) (Pr 8) (DB).**

——Art. 226 — Offence under Assam Maintenance of Public Order Act (1947), S. 2 (7) is bailable — Bail refused — Proper procedure is to move appropriate Court by application under Criminal P. C. and not by application under Art. 226, Constitution of India. See Public Safety — Assam Maintenance of Public Order Act (5 of 1947), S. 2 (7). **1952 Cri L J 1710 : A I R 1952 Assam 192.**

——Art. 226 – Other remedy—Assessment of Income-tax—Finality—(Income-tax Act (1922), Ss. 23, 25).

Held, that the assessee did not prefer an appeal against the original assessment, even though it was competent to him to do so. The order had, therefore, become final. It was open to the assessee to submit an application invoking the jurisdiction of the Income tax Officer under S. 35 to rectify the errors complained of, but no such application having been preferred, the alleged errors could not be set up in answer to a rectification already made by the Income-tax Officer. **59 Bom L R 268 : (1957) 32 I T R 350 : I L R (1957) Bom 428 : A I R 1957 Bom 134 (137) (Pt H) (Fr 7) (DB).**

——Art. 226 — Alternative remedy under S. 20 (2) of West Bengal Estates Acquisition Act See Tenancy Laws — West Bengal Estates Acquisition Act (1 of 1954), S. 5 A. **A I R 1965 Cal 539.**

——Art. 226 — Other remedy open — Provisions of West Bengal Commissioners of Municipality (First General Election) Orders, 1963, providing procedure to challenge correctness of electoral roll — **Held, that without availing of remedy provided by that law, the petitioner was not entitled to take collateral proceedings under Art. 226. A I R 1965 Cal 380 (386, 387) (Pt C) (Pr 10).**

——Art. 226—Agricultural income on sale of Tendu leaves—Exemption granted in assessment on interpretation of expression 'agricultural income' based on footing of judicial decision — That decision subsequently dissented from by Supreme Court—Re-opening of escaped assessment — Information received as to change of law held was information within meaning of S 34 (1) (b) — Income-tax Officer holding that basic operations on land were not established and therefore the income was not agricultural income—Relief of escapement of assessment held was reasonable—Remedy for assessee was departmental and not by writ petition. See Income-tax Act (1922), S. 2 (1). **A I R 1964 Cal 486 (DB).**

——Art. 226 – Other remedy open — Remedy under Art. 226 not to be used to subvert ordinary process of law and procedure –Stay of criminal proceedings.

Where the provisions of the Criminal P. C., can easily be invoked by the petitioners for the determination of the point which they seek by an application under Art. 226 of the Constitution, stay of pending criminal cases and prosecution except in very special circumstances, should not as a rule be encouraged under the cover of Art. 226 of the Constitution. Ordinary procedure under the Criminal Procedure Code is in such cases speedier and ampler remedy and the discretion of constitutional remedy under Art 226 should not be used to subvert the ordinary process of law and procedure. **67 Cal W N 159 : 1963 (1) Cri L J 49 : A I R 1963 Cal 61 (62) (Pt A) (Pr 2).**

——Art. 226– Other remedy open.

The High Court under Art. 226 can do nothing with regard to the assessment order as the Income-tax Act lays down the procedure to be followed in respect of any objection to assessment and the petitioner has been pursuing that procedure. There cannot be second line of attack under Art. 226. **A I R 1957 Cal 430 (430) (Pt A) (Pr 3).**

——Art. 226 — Another remedy available — High Court will not interfere — Municipalities — Bengal Municipal Act (15 of 1932), S. 36.

There is nothing which operates as an absolute bar to the jurisdiction of the High Court under Art. 226 of the Constitution to interfere at any stage of an election under the Bengal Municipal Act, 1932. But when there is a particular remedy given by the Act or the rules, the aggrieved party will be relegated to it and the High Court will decline to interfere. **61 Cal W N 11 : A I R 1957 Cal 164 (167, 169) (Pt E) (Prs 9, 30, 31).**

——Art. 226 — Another remedy open — (Sales-tax—Bengal Finance (Sales Tax) Act (6 of 1941), S. 20 (3)).

Against an order passed by the Commercial Tax Officer under the Bengal Finance (Sales Tax) Act, 1941, amending the certificate of registration granted to the petitioner, the petitioner has an alternative and adequate remedy of preferring an application for revision under S 20 (3) of the Act and therefore an application under Art. 226 against the order will not ordinarily be entertained. **I L R (1957) 3 Cal 187 : (1956) 7 S T C 527 : A I R 1956 Cal 299 (301) (Pt A) (Pr 7).**

——Art. 226 — Another remedy open — Question of compensation under Land Acquisition Act cannot properly form subject-matter of petition under Art. 226 — Recourse should be had to remedy under Act, e g., under S. 18, Land Acquisition Act — (Land Acquisition Act (1894), S. 18). **A I R 1955 N U C (Cal) 1789.**

——Art. 226 — Petitioner recorded in Jamabandi as tenant-at-will of land was dispossessed by Government — Remedy would be under ordinary law and petitioner cannot invoke provisions of the article. A I R 1956 Cal 437 and A I R 1961 Assam 20, Rel. on; A I R 1958 Punj 325 and A I R 1959 Punj 532, Distinguished. A I R 1965 Him Pra 53 (54, 55) (Pt B) (Pr 8).

——Art. 226—Existence of alternative remedy—Effect—Adequate alternative remedy available — Petition held not competent—J. and K. Co-operative Societies Act (1993), S. 104 (2). A I R 1961 S C 1506, Foll. 1964 Kash L J 306 : A I R 1965 J & K 39 (40, 41) (Pt A) (Prs 9, 15, 17) (DB).

——Art. 226 — Other remedy — Order of Executive First Class Magistrate under S. 144, Criminal P. C. (V of 1898) — Application to quash — Maintainability —Interim relief—Scope of jurisdiction.

Whatever may be the merits of the order or the attack made as against that order, the petitioner has got appropriate remedies available to him under the Criminal Procedure Code to challenge the said order. Therefore the order of the Executive First Class Magistrate cannot be quashed under Art. 226. The High Court in proceedings under Art. 226 cannot give a declaration of the title of the petitioner to the disputed property and also cannot declare his right to possession. Such claims can only be more appropriately investigated in a proper civil suit. The fact that the petitioner cannot get suitable orders or direction in a civil Court, immediately should not be a ground for the High Court giving interim relief under Art. 226, when the High Court is of the view that a party cannot be granted any of the reliefs in the main application itself. (1951) S C J 764, Rel. on. (1961) M L J (Cr) 326 : 1961 Ker L T 20 : A I R 1961 Kerala 259 (260) (Prs 2, 4, 5, 6).

——Art. 226—Habeas Corpus—Other remedy open — Irregularity or mistake of procedure in granting bail — Party affected having remedy under Criminal P. C. —Remedy under Article cannot be availed of. A I R 1955 N U C (M B) 3872.

——Art. 226—Other remedy open — (Municipalities — Madhya Bharat Municipalities Act (1 of 1954), S. 10).

The High Court can refuse to grant a writ under Art. 226, if it is satisfied that the aggrieved party can have an adequate relief elsewhere. Case-law ref.

A voter aggrieved by an election under the Madhya Bharat Municipalities Act has a suitable remedy by an election petition under S. 10 of that Act and hence the High Court will refuse to grant a writ under Art. 226 of the Constitution of India. It cannot be contended that in absence of rules framed under S. 10 the District Judge would not be able to decide the election petition. Even if there have been no rules, the petition can be disposed of in accordance with the principles of natural justice. Madh B L J 1955 H C R 1070 : A I R 1955 M B 143 (144) (Prs 3, 4) (DB).

——Art. 226 — Certiorari — Other remedy open — M. P. Panchayats Act (VII of 1962), Ss. 357, 20 — M. P. Panchayats (Election Petitions Corrupt Practices and Disqualifications for Membership) Rules (1962), R. 22 — M. P. Gram Panchayats Election and Co-option Rules (1963), Rr. 24 (2), 27 (6) — Election under Panchayats Act — Order of Returning Officer rejecting nomination paper cannot be interfered with under Art. 226 — Remedy is by election petition after election is over — Word "notified" — It means that election petition is competent only when election is notified and not before — Word does not curtail wide meaning of the word. A I R 1962 S C 64, Rel. on. 1965 N L J 183, Not foll. 1965 Jab L J 332 : 1965 M P L J 480 : A I R 1965 Madh Pra 258 (260, 262, 263) (Prs 7, 9, 10, 11) (DB).

——Art. 226—Other remedy open—Union registered as a recognised union under Ss. 3 and 4, C. P. and Berar Industrial Disputes Settlement Act—Aggrieved union can apply under S. 7 for cancellation of registration or under S. 7-A for its own recognition in place of registered union — Writ petition not maintainable for quashing order of recognition as registered union. 1961 Jab L J 1117 : 1961 M P L J 1040 : (1961) 3 Fac L R 481 : I L R (1962) Madh Pra 166.

——Art. 226—Other remedy open — Issue of writ of certiorari—Municipalities—C. P. and Berar Municipalities Act (II of 1922), S. 83.

The existence of an alternative remedy is no bar, or at least not an absolute bar, to the issue of a writ of certiorari when the circumstances call for the issue of the writ, although the fact that such a remedy existed may be taken into consideration by the Court in arriving at a conclusion as to whether it should in exercise of its discretion issue a writ of certiorari to quash the proceedings. The person interested cannot ask for a reference under S. 83 (2) of the C. P. and Berar Municipalities Act as a matter of right and consequently he cannot be said to have a convenient, beneficial and effective remedy. I L R (1959) Madh Pra 734 : 1960 M P L J 221 : 1960 Jab L J 228 : 1960 M P C 180 : A I R (1960) Madh Pra 217 (220) (Pt B) (Pr 7) (DB).

——Art. 226 — Municipalities — C. P. and Berar Municipalities Act (II of 1922), S. 83 — Other remedy—Remedy under S. 83, Municipalities Act.

Held on facts that a writ having already been issued by this Court forbearing the opponent from imposing or recovering octroi tax on spare parts at a rate higher than 0-2-0 per maund, there could be no question of the issue of another writ to the same effect. If a dispute arose whether specific goods were or were not spare and component parts of a machinery, remedy was available under S. 83 of the Municipalities Act. 1960 M P L J (Notes) 75

——Art. 226 — Other remedy open — Issue of writ—Election case. See Panchayats — C. P. and Berar Panchayats Rules (1948), R. 2. A I R 1960 Madh Pra 37 (DB).

——Art. 226 — Other remedy open — Demand notice under S. 137 B of Madras City Municipal Act (4 of 1919) issued even before effecting amendment of property tax assessment—Existence of other remedies under Act is no bar to issue of writ of certiorari, notice being illegal. A I R 1965 Mad 515.

——Art. 226 — Mandamus — Other remedy open — Beneficial change in conditions of service effected by consent of some workers — Rest of workers remaining unaffected by change — Remedy is to seek reference under S. 10 (1) (c) of Industrial Disputes Act and not writ petition.

Where a change has been effected by imposition, it may be sufficient that the concerned workmen think it prejudicial whether it be truly so or otherwise. But, where the change has been effected by consent as between certain workmen and the employer, upon an offer by the employer and the acceptance of the terms by the concerned workmen, and the rest of the workmen are unaffected because the status quo prevails, the organisation of labour Court: step in and presume to dictate, by telling the workmen that the choice was erroneous and that they are ignorant of their true welfare. Where the workers are sui juris and the employer has a legal right to make an offer as to terms of service, even though it may, under certain circumstances, be called an unfair labour practice, that will not justify interference under writ jurisdiction. At the highest for the organised labour, this may be a justification for raising an 'Industrial dispute' and for seeking a reference from the Government under S. 10 (1) (c) of

the Industrial Disputes Act, (1947). (1965-66) 28 F J R 184 : 77 Mad L W 566 : ILR (1964) 2 Mad 1 : (1964) 2 Lab L J 392 : A I R 1965 Mad 111 (115) (Ft C) (Pr 12) (DB).

—— Art. 226 — Other remedy open — (Cr. P. Code (1898), S. 435).

A writ petition will not be entertained, where the petitioner has an alternative statutory remedy under S. 435, Cr. P. Code of which he avails himself. (1957) M L J (Cr) 330 : 1957 All W R (Sup) 73 : 1957 Cri L J 761 : 70 Mad L W 629 : (1957) 2 M L J 62 : I L R (1958) Mad 72 : A I R 1957 Mad 405 (407) (Pt A) (Pr 8).

——Art. 226 — Certiorari — Other remedy open — Warrant issued to recover stamp duty — Moving Board of Revenue or reference to High Court are not adequate remedies — (Stamp Act (1899), Ss. 48, 56 and 57).

The High Court normally will not issue a writ where there is an alternative remedy. But there is no absolute bar to entertaining writ petitions, and issuing a writ, even when there are alternative remedies, when these alternative remedies are in the opinion of the Court, not effective.

Where the properties of the petitioners could be attached and sold for recovering the stamp duty and penalty as the amount as arrears of land revenue under S. 48 of the Stamp Act, and warrants were issued or were about to issue, and the petitioners moved the High Court under Art. 226 instead of moving the Board of Revenue either to revise the order or to make a reference to the High Court.

Held, that the writ petitions were rightly entertained as the alternative remedies were not speedy, effective and adequate. (1956) 2 Mad L J 126 : 1956 Mad W N 417 : ILR (1956) Mad 1074 : 69 Mad L W 409 : AIR 1956 Mad 454 (457) (Pt A) (Pr 11) (DB).

——Art. 226 — Other remedy open — Writ to quash order of Regional Transport Authority refusing to renew permit — (Motor Vehicles Act (1939), Ss. 64, 64-A).

As a general rule, the power under Art. 226 will not be exercised by the High Court when another effective and adequate remedy exists.

A person aggrieved by the order of the Regional Transport Authority refusing to renew his permit for plying buses, has a specific and adequate remedy (by way of appeal under S. 64 and revision under S. 64-A) under Motor Vehicles Act. Where he has not availed himself of the remedy under the Act his petition under Art. 226 to quash the order of the Regional Transport Authority should be dismissed 'in limine'. (1955) 1 M L J 231 : 67 Mad L W 1217 : A I R 1955 Mad 205 (206) (Pt A) (Pr 5) (DB).

——Art. 226 — Remedy by way of suit open — Application under Art. 226 if maintainable.

An application under Art. 226 of the Constitution is not an alternative remedy to the usual remedy by way of suit. AIR 1951 All 1 (FB); AIR 1951 Mad 249; A I R 1952 Mad 112, Rel. on.

Hence, where the applicant under Art. 226 has his remedy by way of suit in which he can obtain every relief to which he is entitled, including the interim relief of injunction restraining the Government from committing any anticipatory breach of contract with the petitioner, an application under Art. 226 of the Constitution is misconceived. (1954) 1 M L J 429 : 1954 Mad W N 27 : I L R (1954) Mad 754 : (1954) Andhra L J (W) H C 29 : A I R 1954 Mad 549 (553) (Pt C) (Prs 13, 14) (DB).

——Art. 226 — Scope of — Mandamus when can be issued.

Art. 226 of the Constitution should not be construed so as to replace the ordinary remedies by way of a suit and application available to the litigant under the general law of the land. Directions in the nature of a writ of mandamus should not issue under this Article except to a public, a quasi-public body or officer which is under an obligation, statutory or otherwise to do or refrain from doing anything which is likely to interfere with the rights of persons. Where the ordinary remedy of a person is by way of a suit and an application for injunction in the suit, the fact that the Court in which the suit should have been filed is closed for the summer recess would not render Art. 226 applicable. 64 L W 665 : (1951) 2 M L J 171 : AIR 1952 Mad 112 (112) (Pt A) (Pr 1) (DB).

——Art. 226 — Other remedy — Issue of writ — (Motor Vehicles Act (1939), Ss. 64 and 64-A — Order granting application for renewal of permit — Appeal).

An order passed by the Secretary, Regional Transport Authority granting an application for renewal of permit does not fall within any of the clauses of S. 64 and is not appealable at the instance of person who had objected to the grant of renewal of permit. Specific legal remedy which would bar a writ of certiorari, can only mean that the petitioner must have a right to approach a Court and he must have a right to a remedy if his case was just : A I R 1951 Bom 423, Rel. on.

Section 64-A of the Motor Vehicles Act only deals with the power of the State Transport Authority to interfere with an order of the Regional Transport Authority and not with the rights of a party who is affected by the said order. The power to interfere under S. 64-A, unlike Art. 227 of the Constitution is not given to a Court but to an administrative body. Hence it cannot be said that S. 64-A is a specific legal remedy which would bar a certiorari. 1958 Mad L J (Cr) 979 : 36 Mys L J 558 : I L R (1958) Mys 421 : AIR 1959 Mys 17 (18, 19) (Pt A) (Pr 4) (DB).

——Art. 226 — Scope — Person duly elected Councillor and President — Objection on grounds of under age not taken at any stage, provided for in Rules — He cannot be unseated by Government by order under S. 14 (1-A) — Order quashed. See Municipalities — Mysore Town Municipalities Act (XII of 1951), S. 14 (1-A). I L R (1953) Mys 497 : 33 Mys L J 125 : AIR 1954 Mys 18 (DB).

——Art. 226 — Other remedy — Election disputed — Petitioner not initially availing remedy provided by S. 37 of Orissa Municipal Act — Election will not be set aside — See Municipalities — Orissa Municipality Election Rules (1950), R. 22 (1). ILR (1965) Cut 705.

——Art. 226 — S. 30 of Mines and Minerals (Regulation and Development) Act, 1957, read with Rr. 54 and 55 Mineral Concession Rules confer wide powers of revision on Central Government — In exercise of this power Central Government acts quasi judicially — They can go into disputed questions of fact also, which the High Court cannot while exercising jurisdiction under Art. 226 — It will not be proper, in view of this power, for High Court to entertain writ petition — This is specially so when the revisional jurisdiction of superior authority is plenary. See Mines and Minerals (Regulation and Development) Act (XLVII of 1957), S. 30. AIR 1962 Orissa 183 (DB).

——Art. 226 — Election — No writ can issue to Returning Officer to quash his order rejecting or accepting nomination paper — Decision can be questioned only by means of election petition after the election is completed. See Ibid, Art. 329 (b). A I R 1954 Orissa 87 (DB).

——Art. 226 — Other remedy open — Patna University Act (III of 1962), Sections 9 (4), 26 (4) — Appointment of two professors of surgery in Medical College — A, B and C lecturers in the College since July 1951, July 1947 and January 1949 — State Public Service

'Commission recommending B and C for appointment — A filing writ petition for restraining University to make appointment —Maintainability of petition.

A, B and C were posted as Lecturers in Medical College in July 1951, July 1947 and January 1949. The control and management were with the State Government. Under S. 51 (1) of Patna University Act of 1951 the College was transferred to the University. By Notification No. 211164/H dated 6-7-1960 Governor laid down terms of transferred teachers. The 1951 Act was repealed by Bihar State University Act of 1960 with certain savings. This 1960 Act was replaced by Patna University Act of 1962. On 1-1-1961 the Government sent to the Registrar a panel of seven doctors for appointment to the two posts of Professor of Surgery under S. 15 (5) of 1960 Act. A, B & C were first, fifth and sixth in the panel. On 8-1-1962, the Registrar sent the panel to State Public Service Commission for consideration. The 1962 Act came into force on 1-3-1962. On 19-12-1962 the Commission recommended the names of B and C for the above posts. On 15-2-1963, A filed injunction suit for restraining the University for making the appointment. Prayer for temporary injunction was refused on 25-2-1963. A filed writ petition for the same relief. Ad interim order was passed in favour of A who withdrew the suit. Meanwhile A also made representations to the Chancellor demanding justice. In the Writ Petition,

Held, (1) that before the University had proceeded to act under S. 26 (4) of the 1962 Act, A should have waited until he could properly move the Chancellor under S. 9 (4) for annulling the proceeding of the University, if the appointments made by the University under S. 26 (4) went against him. A must exhaust his remedies under S. 9 (4) of the 1962 Act, if he was aggrieved by the decision of the University, before he could be permitted to move High Court under Art. 226 of the Constitution. When there was an alternative remedy, which without being unduly onerous, provided an equally efficacious remedy, relief to A must be denied by High Court, (2) that the Chancellor would not be precluded from considering the matter, as a whole, under S. 9 (4) of the 1962 Act, if he was called upon to do so at the proper stage, (3) that until the final decision of High Court was given, the existence, efficacy and nature of any other alternative remedy was open to scrutiny, and only because the case had been admitted A could not insist on a decision on merits, even if it be held that there was a more efficacious remedy under the Statute governing the University. An ex parte admission of a case could not lead to such a serious consequence, controlling cases at the stage of hearing. It is only at the stage of final hearing in the presence of parties that this point could be fully dealt with for a reasoned conclusion. (1963) 2 Mad L J 309, Not foll., (4) that public policy required that a controversy of this nature should first be placed before the Chancellor of the University under S. 9 (4) of the 1962 Act, for solution, if necessary, rather than that High Court should give its mandate at this stage. A ought not to be allowed to choose his forum at this stage according to his own desire **AIR 1965 Pat 253 (256, 257, 258, 259) (Prs 4, 6, 7, 9).**

——Art. 226— Other remedy open — Election officer accepting application of withdrawal of candidate — Candidate denying to have filed such application and alleging that same was accepted in violation of R. 24 of Bihar Panchayat Election Rules, 1959 — No interference under writ jurisdiction as case involved determination of disputed facts and alternative and better remedy was available under S. 84-B of Bihar Panchayat Raj Act (1947). 1965 B L J R 110 : AIR 1965 Pat 250 (250, 251) (Pt A) (Prs 2, 3) (DB).

——Art. 226 - Breach of S. 33 — Industrial Disputes Act (1947)—Remedy under Art. 226 is not available. See Industrial Disputes Act (1947), S. 33. AIR 1954 Pat 1 : 32 Pat 688 (DB).

——Art. 226 — Writ of mandamus — Application under S. 13 of Police Act — Prayer in application refused—Issue of writ—(Police Act (1861), S. 13).

Section 13 Police Act gives statutory protection to the Police Officers named therein if any of them deputes, subject to the general direction of the Magistrate of the district, any additional police force to keep the peace at any place within the general police district, on the application of any person at his cost. But if the authorities named in the section, in the exercise of their discretion, do not consider it necessary to depute additional police force for the maintenance of peace and order, the person aggrieved or interested cannot claim protection as of right, even if he shows the necessity for the same and undertakes to meet the cost. If the prayer is not granted the petitioner can seek protection of his right under the provisions of Criminal P. C. or seek remedy in a Civil Court; and as another remedy is open to him a writ in the nature of mandamus cannot be granted. 30 Pat 1252 : 1952 Cri L J 1639 : A I R 1952 Pat 386 (387) (Pt A) (Pr 3) (DB).

——Art. 226 — Certiorari — Other remedy open — Order dismissing Revision under S. 56 (1), Stamp Act (1899)—Application under S. 57 (1) for stating case to High Court not made—Order could not be set aside by writ of certiorari — But High Court could direct Chief Controlling Revenue Authority to state case under S. 57 (i), though no matter was pending before it—Stamp Act (1899), Ss. 56 (1) and 57 (1).

Where an application for revision under S. 56 (1) of the Stamp Act (1899) was dismissed by the Chief Controlling Revenue Authority and the applicant challenged the order of the Chief Controlling Revenue Authority in a writ petition even without applying for a statement of case to the High Court under the provisions of sub-s. (1) of S. 57 of the Act;

Held, that although in exercise of powers under Art. 226 of the Constitution order could not be quashed by issuing writ of certiorari High Court could by mandamus direct Chief Controlling Revenue Authority to state case under S. 57 (1) of the Stamp Act, although no matter was pending before Chief Controlling Revenue Authority and in spite of the fact that the petitioner before approaching the High Court by writ petition had himself never made any application that the Chief Controlling Revenue Authority should make reference to the High Court under S. 57 (1). AIR 1950 S C 218 and A I R 1955 Mad 304 and AIR 1960 Mad 21, Rel. on. A I R 1958 All 320, Dissent. from; Decision in L. P. A. No. 85-D of 1960, dated 29-10-1963 (Punj), Ref.

A reference under sub-s. (1) of S. 57 of the Stamp Act (1899) is treated as quite an important matter and it is for all practical purposes the settled position that where an approach is provided to the High Court by the statute itself, then it is that approach that has to be made to the High Court and not any other, such as recourse to Art. 226 of the Constitution. This is what happens normally, and unless there is an exceptional circumstance entitling departure from this practice, High Court will not quash the orders by issuing writ of certiorari.

But there is another aspect of the matter and that is the power of High Court by mandamus to direct the Chief Controlling Revenue Authority to make a reference of the case to the High Court. If there was ever any doubt about any such powers in the High Court it has been finally resolved in A I R 1950 S C 218. This power can be exercised even where writ

petition had been filed after all matters have been disposed of by the Chief Controlling Revenue Authority.

Whether the case is before the Chief Controlling Revenue Authority in revision under sub-s. (1) or sub-s. (2) of S. 56, it can make a reference under sub-s. (1) of S. 57, and in either event the case is pending before it. There is concensus of judicial opinion that the Chief Controlling Revenue Authority cannot make a reference under sub-s. (1) of S. 57 unless the case is pending before it. Though there is this difficulty, it is overcome as soon as a mandamus is issued to the Chief Controlling Revenue Authority to state a case to the High Court under S. 57 (1) of the Act, since the substantial effect of mandamus is to quash its order and then direct it to make the reference so that immediately as its order is quashed the matter becomes at large and must be deemed to be pending when the authority is called upon to make the reference. It would make hardly any difference whether any such application demanding reference has or has not been made because in the absence of any matter pending before Chief Controlling Revenue Authority, it would be meaningless to make any application to that authority with a prayer which it has no jurisdiction to allow **I L R (1965) 1 Punj 140 : A I R 1966 Punj 169 (171 to 173) (Pt A) (Prs 3, 4).**

——**Art. 226**—Other remedy open — Election dispute — Panchayats — Punjab Panchayat Samitis and Zila Parishads Act (III of 1961), S. 121 — Punjab Panchayat Samitis (Primary Members) Election Rules (1961), R. 17—Punjab Panchayat Samitis and Zila Parishads (Election Petition) Rules (1961), R. 3 — Complaint by defeated candidate of illegal rejection of valid votes by Returning Officer — Election petition was competent under R. 3—Other remedy though not per se bar to exercise of writ jurisdiction, High Court could not interfere as complaint involved determination of disputed questions of fact. 66 Punj L R 1196, Disting. **ILR (1965) 2 Punj 246 : AIR 1966 Punj 28 (30) (Pr 7).**

——**Arts. 226 and 227** — Advance tax notice under S. 210 of the Income-tax Act (1961) demanding payment of Advance tax within the prescribed time — Petitioner neither complying with notice nor applying for remedies available under Income-tax Act - **Held**, High Court will not interfere with impugned notice in writ proceedings — Income-tax Act (1961), Ss. 210 and 211. **('64) 66 Pun L R 972 : (1964) 2 I T J 624.**

——**Art. 226**—Other remedy open — Impugned order not clearly without jurisdiction or manifestly contrary to law—Petitioner should not be permitted to by-pass the remedy available and invoke the extraordinary writ jurisdiction under Art. 226. **('63) 65 Punj L R 422.**

[Overruled on another point in A I R 1964 Punj 1 (FB).]

——**Art. 226** — Remedies by Election Petition not availed of — Art. 226 of Constitution not attracted. See Panchayats — Punjab Gram Panchayat Election Rules (1960), R. 3. **ILR (1962) 1 Punj 45.**

——**Art. 226** — Other remedy—Remedies open to party aggrieved—Writ petition does not lie. See Municipalities — Punjab Municipal Act (3 of 1911), S. 121. **AIR 1961 Punj 275 (DB).**

——**Art. 226**—Other remedy — Issue of writ — Panchayats—Order or sentence under Punjab Gram Panchayat Act — High Court's revisional powers under S. 439, Criminal Procedure Code and Arts. 227 and 226 of the Constitution. See Panchayats — Punjab Gram Panchayat Act (4 of 1953), S. 66. **ILR (1957) Punj 687 : AIR 1960 Punj 160.**

——**Art. 226—Another remedy open** — [Sea Customs Act (1878), Ss. 167 (8), 188 to 191 — Import Export (Control) Act (1947), S. 3 — **C. W. A. No. 99-D of 1953, dated 9th September, 1953 (Punj.), Reversed].**

A person aggrieved by an order of confiscation passed under S. 167 (8), Sea Customs Act, read with S. 3 (2), Import Export (Control) Act has to follow the specific and efficacious remedy provided by the Sea Customs Act, viz., the remedy of appeal and revision provided under Ss. 188 to 191 of that Act and the High Court will not interfere by way of a writ of certiorari under Art. 226 of the Constitution if the petitioner has not resorted to those remedies.

An appeal under the Sea Customs Act which has been laid down by the statute itself should not be bypassed merely on the ground that it is an appeal from one administrative tribunal to another, because that is the policy of the law and an application under Art. 226 is no substitute for these appeals and cannot be made a ground for by-passing them. If the law has laid down a particular procedure for redress of grievances, another remedy would not be available. AIR 1953 Punj 55; AIR 1947 P C 78; A I R 1940 Cal 174; A I R 1942 Mad 704, Rel. on. A I R 1952 Punj 268 and AIR 1953 Punj 88, Dist. Case-law Discussed; AIR 1952 Cal 656, Dissented from. **ILR (1954) Punj 731 : AIR 1954 Punj 73 (80) (Prs 36, 37) (DB).**

——**Art. 226—Other remedy.**

In order to found an application for mandamus there should be a specific legal right, as well as the want of a specific legal remedy.

Thus where the remedy was in applicant's own hand in that he could file a complaint which the District Magistrate was bound to receive and deal with according to law but instead he filed an application under Art. 226, the High Court refused to enforce the law of the land by the extraordinary remedy of a writ of mandamus. A I R 1928 Bom 390, Distinguished. **ILR (1954) Punj 125 : 1953 Cri L J 1637 : A I R 1953 Punj 242 (243) (Pr 8).**

——**Art. 226**—Other remedy open—Notice served on assessee under S. 271 of Income-tax Act, 1961, to show cause why penalty be not imposed for delay in furnishing returns — Order of penalty appealable under S. 246 (o) (iii) and remedy by way of reference available under S. 256 of the Act—Instead, assessee applying under Art. 226 without showing any exceptional circumstances for interference at inception of proceedings — **Held**, High Court should not interfere under extraordinary powers under Art. 226—Income-tax Act (1961), Ss. 271, 246 (o) (iii), 256. **ILR (1965) 15 Raj 23 : 1965 Raj L W 11 : A I R 1965 Raj 104 (105, 106, 107) (Pt A) (Prs 5, 13) (DB).**

——**Art. 226**—Other remedy—Dispute between member and Chairman of Municipal Board as to whether the former has incurred disqualification — Remedy is under S. 12(5) of Rajasthan Town Municipalities Act to approach Government and not under Art. 226 — (Municipalities—Rajasthan Town Municipalities Act (23 of 1951), Ss. 12 (3) (d) and 12 (5)). **AIR 1955 N U C (Raj) 5023 (DB).**

——**Art. 226** — Other remedy open — Remedy under S. 19, Rajasthan Town Municipalities Act, 1951 available—No writ petition held maintainable. **A I R 1955 NUC (Raj) 4684 (DB).**

——Art 226 — Irregularities in election of village panchayat—Remedy is to apply to Minister in charge —High Court cannot be called upon to interfere— (Marwar Village Panchayats Act (1945), S. 8). **A I R 1955 N U C (Raj) 4663 (DB).**

——**Arts. 226, 228**—Another remedy open—Opposite party in suit under Rajasthan Premises (Control of Rent and Eviction) Act, 1950, contending that Act offended against Arts. 14, 15 and 19 (1) (f) — Proper course is to apply to High Court under Art. 228— Opposite party can also take advantage of S. 113,

Civil P. C. — High Court will not interfere under Art. 226 — (Civil P. C., (1908), S. 113). **A I R 1955 N U C (Raj) 2184 (DB).**

——**Art. 226**—Election petition—Order to proceed ex parte—Sufficient reasons to set aside order—Tribunal is proper authority. See Civil P C. (1908), O. 9, R. 7. **1954 Raj L W 326 : ILR (1953) 3 Raj 768 : A I R 1954 Raj 129 (DB).**

——**Art. 226 - Other remedy open—(Railways Establishment Code, Rr. 1702, 1717, 1725 and 1727).**

The remedy under Art. 226 of the Constitution is an extraordinary remedy and it should not be normally resorted to specially in cases where adequate alternative remedy lies.

Where a railway servant removed from service under R. 1702 (8), Railways Establishment Code, applied under Art 226 without pursuing the remedies given to him under Rr 1717, 1725 and 1727 of that Code, the High Court refused to grant relief under Art. 226 in the absence of any special or extraordinary reasons to do so A I R 1952 Cal 610; A I R 1951 Mad 882 and A I R 1952 Raj 112, Rel. on. **ILR (1953) 3 Raj 123 : 1953 Raj L W 390 : A I R 1953 Raj 199 (200) (Prs 8, 13) (DB).**

——**Art. 226—Other remedy open.**

When the remedies for the redress of grievances or the correction of errors are found in a statute which creates new rights and liabilities it is to those remedies and those remedies alone that resort should normally be made. The Industrial Disputes Act, 1947, and the Industrial Disputes (Appellate Tribunal) Act, 1950, form a self-contained code with an elaborate and adequate machinery for the composing of industrial disputes and ordinarily the aggrieved party should seek his redress within the framework of those enactments and not in the High Court under Art 226 of the Constitution. AIR 1952 S C 192, Foll. **1953 Ker L T 856 : ILR (1954) Trav-Co 322 : A I R 1954 Trav-Co 240 (243) (Pt B) (Pr 9) (DB).**

——**Art. 226—Other legal remedy open — Infringement of copyright — Remedy by way of writ under Art. 226 if open to author** — Copyright Act (1914), **S. 6.**

Where copyright in a work has been infringed, the owner of the copyright shall be entitled to all such remedies by way of injunction or interdict damages, accounts, and otherwise, as are or may be conferred by law for the infringement of a right. The proper remedy for the author is to pursue that allowed to him by a civil suit. The owner is not entitled to a writ under Art 226 against the person alleged to have infringed the copyright to prohibit and prevent him for publishing and selling any copies of the infringing work. **A I R 1952 Trav-Co 38 (40) (Pr 3).**

——**Art. 226—Other remedy open — Termination of service of teacher.**

In the matter of ordinary rights or other purposes, the remedy under Art. 226, is an extraordinary and discretionary remedy, and the High Court has always the discretion to refuse a writ if it is satisfied that the aggrieved party can have adequate or suitable relief elsewhere. An assistant headmaster of a school whose services are terminated by the managing committee of the school cannot be allowed to agitate the question of his reinstatement by way of a writ petition, unless and until he has exhausted the remedy provided for in the rules contained in the Revised School Code of the Calcutta University which are applicable to him. A I R 1954 S C 207 and A I R 1957 S C 882, Rel. on. **A I R 1959 Tripura 27 (31) (Pt D) (Pr 24).**

——**Art. 226 — Other remedy — (Sea Customs Act (1878), Ss. 19, 167 (8)) - (Foreign Exchange Regulation Act (1947), S. 8 (2)—Reserve Bank of India Notifications Nos. F.E.R.A 105 R. B. 51, dated 27th February, 1951 and 108 R. B 51, dated 12th April, 1951).**

Under Constitution it is not intended that resort should be made to the extraordinary procedure under Art 226 where an adequate remedy was made available to the petitioner by a legal process. An alternative remedy though not an absolute bar ordinarily should be a bar to the Court exercising jurisdiction under Art. 226.

The petitioner was detected attempting to export currency from India to Pakistan in contravention of S. 19, Sea Customs Act, 1878 and S. 8 (2), Foreign Exchange Regulation Act, 1947 read with Reserve Bank of India Notifications No. F.E.R.A. 105 R.B 51, dated 27th February, 1951 and No. 108 R.B. 51, dated 12th April, 1951. On confiscation of the amount under S. 167 (8), Sea Customs Act, the petitioner, instead of going in appeal provided for, filed an application under Art. 226 for different writs. There had been no breach of a fundamental principle of justice.

Held, that in face of the proper remedy provided writ could not be issued. **A I R 1954 Tripura 7 (8) (Prs 7, 8).**

——**Art. 226 - Other remedy open**—Applicant having remedy under R. 52, V P Municipal Election Rules —He cannot without availing of that remedy obtain relief under the Article. **A I R 1955 N U C (Vindh Pra) 4368.**

——**Art. 226—Other remedy open.**

An application under Art. 226 for an order of the nature of prohibition on the D. C. Panna, enjoining him from executing the decision of award given by the Maharaja of Panna in regard to the guzara payable to certain junior branches of his family by the applicant who is the proprietor of an estate said to be governed by the rule of primogeniture is not maintainable, if the remedy in the Revenue Courts has not been exhausted. Cases of this class are within the jurisdiction of the revenue Courts. The Revenue Board is the highest revenue Court and a party who still has the right of moving it cannot apply for a writ simply because he fears an adverse decision. If he has lost the right by limitation then also he cannot seek relief by asking for a writ. Article 226 is not meant to be a refuge for litigants who are either diffident of success in the regular Courts or have got time barred cases. Further, where the Panna Maharaja's decision was given 4 years ago and the applicant has tried to avoid it by just sitting tight, it does not lie on him to say now that continuing his litigation in revenue Courts would involve delay. **A I R 1952 Vindh Pra 65 (66) (Pt A) (Prs 2, 3).**

——**Art. 226 (1)—Another remedy open—Writ if can be issued.**

Where an applicant for an issue of a writ has another remedy open to him by way of suit for permanent injunction, the High Court cannot issue the writ simply because the applicant apprehends that he might lose the suit and get compensation only. **A I R 1952 Vindh Pra 13 (15) (Pt B) (Pr 7).**

7 (r). Statute providing self-contained machinery.

● ——**Art. 32**—Regional Transport—Authority granting permit acts as quasi-judicial authority—Mistaken decision can be corrected by appropriate remedy available to aggrieved party — Writ petition is not maintainable. See Ibid, Art. 14. **AIR 1960 S C 801.**

● ——**Art. 226 — Scope of — Grant of permits under Motor Vehicles Act.**

Such writs as are referred to in Art. 226 are obviously intended to enable the High Court to issue them in grave cases where the subordinate tribunals

or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record, and such act, omission, error, or excess has resulted in manifest injustice. However extensive the jurisdiction may be, it is not so wide or large as to enable the High Court to convert itself into a Court of appeal and examine for itself the correctness of the decisions impugned and decide what is the proper view to be taken or the order to be made. The Motor Vehicles Act is a statute which creates new rights and liabilities and prescribes an elaborate procedure for their regulation. No one is entitled to a permit as of right even if he satisfies all the prescribed conditions. The grant of a permit is entirely within the discretion of the transport authorities and naturally depends on several circumstances which have to be taken into account. There is a complete and precise scheme for regulating the issue of permits, providing what matters are to be taken into consideration as relevant, and prescribing appeals and revisions from subordinate bodies to higher authorities. The remedies for the redress of grievances or the correction of errors are found in the statute itself and it is to these remedies that resort must generally be had.

Held, that this was not a case for interference with the discretion that was exercised by Transport Authorities paying regard to all the facts and the surrounding circumstances. Veerappa Pillai v. Raman and Raman Ltd., Kumbakonam, 1952 S C R 583 : 90 Cal L J 194 : (1952) S C A 287 : 65 Mad L W 620 : 1952-1 Mad L J 806 : 54 Pun L R 210 : 1952 Mad W N 431 : 1952 S C J 261 : A I R 1952 S C 192 (195, 196) (Pt A) (Prs 20, 21, 22, 23).

——Art. 226—Other remedy — Motor Vehicles Act—Decision to increase number of permits on certain route — Petition by existing permit-holders — Competency. See Motor Vehicles Act (1939) (Prior to Amendment by Act C of 1956), Ss. 48, 47 (1). AIR 1959 All 782 (DB).

——Art. 226—Scope of — Declaring certain property as evacuee property — (Administration of Evacuee Property Act (1950)).

Where the tribunals mentioned in a particular Act fail to exercise their jurisdiction, or exceed their jurisdiction or act in any other manner which may be said to be on the face of it illegal or grossly improper, a writ petition may lie under Art. 226 of the Constitution for issue of proper directions to the Tribunal concerned or even to correct their errors.

But where the reliefs claimed are that the High Court should declare that certain items of property belong to the applicant evacuee and restrain the Assistant Custodian of Evacuee Property from taking possession of those items of property and from selling the fruits of certain groves, they are beyond the scope of Art. 226, as the Administration of Evacuee Property Act makes an elaborate provision for enquiry into the question and the decision has to be made under that Act only by Tribunal named therein. 1954 All L J 545 : 1954 All W R (H C) 552 : AIR 1955 All 97 (97, 98) (Prs 1, 2) (DB).

——Art. 226—Alternative remedy open.

There was an application under Art. 226 (1) of the Constitution, for the issue of a writ in the nature of certiorari quashing the assessment orders in respect of forward contracts. Included in the application was a prayer for a writ in the nature of prohibition commanding opposite-party to desist from proceeding further with assessment proceedings relating to forward contracts. Also included in the relief claimed was a writ in the nature of mandamus to opposite party calling upon them to forbear from giving effect to the provisions of the U. P. Sales Tax Act, 1948, in so far as they related to forward contracts.

Per Sapru J.—The Act provides a complete machinery provided a question of law arises in a case, to ascertain a binding opinion of the High Court. It cannot therefore, be said that there was no alternative remedy available to the applicant. It is undesirable from many points of view to encourage litigants to approach the High Court directly in cases where a proper machinery has been provided by statute for ultimate reference to and decision by the High Court. In a case under the U. P. Sales Tax Act there are various items which become the subject-matter of assessment To some the applicant may have no real objections. To others however, the applicant may have an objection of a legal or constitutional nature. It would not be right for the High Court to encourage litigants to rush to it with applications for a writ in every case where they can discover a point of law involving what is called an interpretation of the Constitution. The following circumstances however justified intervention by the High Court in this case by the issue of writs of certiorari and prohibition. The question of constitutionality of the provisions of the U. P. Sales Tax Act which had been raised by him was of such a nature that the appellate authority and the revising authority might feel embarrassed in dealing with it. In order to avoid a multiplicity of proceedings and inconvenience to all the parties it was desirable, particularly as proceedings relating to forward contracts were pending before the Sales Tax Officer, that the High Court should make the position in regard to the assessment of forward contracts in this particular case clear when the Court had all the materials before it and had heard full arguments. The Sales Tax Officer was going ahead with proceedings relating to the year in which the writ application was filed. It was desirable, in order to expedite matters, that the Sales Tax Officer should have the guidance of the High Court in this case in regard to the manner in which he should proceed.

Per Agarwala J.: — In the present case the matter could be agitated in the High Court in a reference made by the Revising authority under the Sales Tax Act. But that would have entailed several proceedings to have been gone into It could not therefore be said that the reference to the High Court would be an adequate, convenient, beneficial or effectual remedy. If it were urged that there was an alternative remedy by means of a suit in which an injunction could have been issued to the Sales Tax Officer prohibiting him from proceeding with the case before him, still that case would have to be filed in a Court subordinate to the High Court and would have to be transferred to the High Court under Art. 228 of the Constitution. Having regard to all these matters it could not be said that in the present case there was another adequate, convenient, beneficial or effectual remedy so far as the writ of prohibition asked for was concerned. A right of appeal against the order of assessment which had already been made was provided for under S. 9 of the Sales Tax Act. This was an alternative remedy which was adequate for the purpose of obtaining the relief by way of the issue of a writ of certiorari. Since, however, questions involved in the two writs were exactly the same, it was better to issue the writ of certiorari when the writ of prohibition had got to be issued. Further the question raised was a question of constitutional importance whether a certain provision of the Sales Tax Act was ultra vires or not. It concerned a large number of litigants and it was in the fitness of things that a constitutional question of such importance should be decided by the High Court at the earliest opportunity so that there may be no multiplicity of proceedings and unnecessary litigation in subordinate Courts and offices

may be avoided. Case law discussed. 1952 All L J 332 : AIR 1952 All 764 (766, 768, 769, 770, 771, 772) (Pt B) (Prs 1, 9, 10, 11, 12, 22, 24, 25, 26) (DB).

——Art. 226—Mandamus — Other remedy—Mineral Concession Rules and Mines and Minerals (Regulation and Development) Act, 1957, furnishing complete machinery for working out rights conferred by Act and Rules — Jurisdiction of High Court under Art. 226 held could not be invoked. AIR 1959 Punj 510 Dissented from. (1962) 1 Andh L T 152 : (1962) 1 Andh W R 146 : I L R (1963) Andh Pra 668 : AIR 1963 A P 54 (56, 57) (Pt A) (Prs 12, 13, 15) (DB).

——Art. 226 — Existence of adequate alternative remedy—Mandamus will not be issued.

When an alternative and effective remedy is available to an aggrieved party, a writ of mandamus will not issue. The Mineral Concession Rules and the Mines and Minerals (Regulation and Development) Act, 1957 (67 of 1957) furnish a complete machinery for working out the rights of the parties conferred under that Act and the Rules. Person aggrieved by order of State Government cannot invoke, Art 226. AIR 1961 Andh Pra 170 and AIR 1958 S C 86, Rel. on. I L R (1963) Andh Pra 668 : (1962) 1 Andh L T 152 : (1952) 1 Andh W R 146 : AIR 1963 Andh Pra 54 (57) (Pt B) (Pr 17) (DB).

——Art. 226 — Other remedy open—Bombay Industrial Relations Act, S. 36 — Order of Industrial Court settling standing orders—Writ of certiorari to quash—Right to issue of - Grounds — Appeal available under Industrial Disputes (Appellate Tribunal) Act, S. 7 — If bar to writ issuing — "Fundamental principles of justice" - Meaning of. See Industrial Disputes (Appellate Tribunal) Act S. 7. AIR 1952 Bom 209.

——Art. 226 — Other remedy open — Electoral Roll prepared in violation of provisions of law — Application for issue of writs — Maintainability — (Municipalities—Bengal Municipal Act (15 of 1932), S. 529-A and R. 8 (framed under S. 44)).

The right of franchise created by an Act is governed by the provisions of that Act, and if the Act creating the franchise provides a remedy, then that remedy must be followed at least in the first instance, before invoking the jurisdiction of the High Court.

Where the objection is to the Electoral Roll as a whole and not to any particular entry therein the allegation being that the so-called final Electoral Roll is not an Electoral Roll at all, such a matter does not come within the scope of either Rule 8 of the Election Rules or Section 529-A of the Act. Since the Registering authority is bound to prepare the Electoral Roll in accordance with the provisions of the Act and the Rules, an application under Art. 226 lies, if there is any violation thereof, to compel the Registering authority to act according to law. 63 Cal W N 541 : AIR 1959 Cal 548 (549, 550) (Pt A) (Pr 2).

——Art. 226—Other remedy—Issue of writ.

Franchise is a matter of Statute and where the Statute or the Rules made under it provide for a remedy that must first be followed before coming up to the High Court for a high prerogative Writ. It is not as if the High Court has no jurisdiction but under such circumstances it will not use it in favour of the petitioner if he has neglected to follow the procedure laid down by the very law which has created the franchise. AIR 1958 Cal 287 (289) (Pt C) (Pr 5).

——Art. 226—Other remedy availed—Issue of writ.

A petitioner having exhausted his remedies under a special Act cannot come to the High Court by way of application under Art. 226 to reopen the whole proceedings from the beginning. 60 Cal W N 1042, Foll. AIR 1957 Cal 249 (250) (Pt B) (Pr 3).

——Art. 226—Other remedy open—Petition relating to election under Bengal Village Self-Government Act — (Election — Bengal Village Self-Government Act (5 of 1919), Ss. 17-B and 17-A).

To encourage parties to have recourse to the extraordinary remedy provided in Art. 226 of the Constitution in regard to election disputes, and to give a go-by to S. 17-B, Bengal Village Self-Government Act, will not be a proper exercise of the discretion of the Court. ('57) 61 Cal W N 341.

——Art. 226 — Existence of other remedy—Election by party — Remedies under special Act exhausted — Party cannot proceed again under Art. 226. ('56) 60 Cal W N 1042.

——Art. 226 — Other remedy open — (Election — Bengal Municipal Act (15 of 1932), S. 44 — Rules under—Municipalities).

Before the petitioner succeeds in having a high prerogative writ issued stopping an impending the election, it must be shown that the provisions of the law relating to the election have not been followed. It is not open to a voter who has some grievance, to omit to take the steps as provided for in the Bengal Municipal Act, and the Rules, and to come straight to the High Court for relief. AIR 1956 Cal 456 (457) (Pt A) (Prs 4, 5).

——Art. 226 — Election matter — Specified remedy under statute not followed—(Bengal Municipal Act (15 of 1932), Ss. 36 to 39-B).

The right to vote at an election, the right to nominate candidates or be nominated as a candidate in a Municipal election, are all rights which have been created by the Bengal Municipal Act and do not exist apart from it. It therefore follows that where a specific remedy is provided for by the Act for the violation of a provision of the Statute, that remedy should be followed.

The procedure to challenge an election is contained in Ss. 36 to 39-B of the Act. Where the party aggrieved by an election fails without any just excuse to pursue the remedy by way of election petition under the Act, the High Court will not exercise its extraordinary jurisdiction under Art. 226 of the Constitution.

Absence of diligence in pursuing a legal remedy can never be a justification for issuing a high prerogative writ. AIR 1952 S C 64; AIR 1940 P C 105, Rel. on. AIR 1954 Cal 32 (35) (Pt B) (Prs 12, 13).

——Art. 226—Quo warranto—Other remedy open—High Court may still issue writ.

The existence of another remedy is not in every case a bar to the exercise of the powers under Art. 226. The Court can interfere if the circumstances of the case demand interference. AIR 1955 Nag 49 (FB) and ILR (1960) 2 Punj 192, Rel. on.

Held, in the circumstances of the case the non-filing of a petition challenging the election of a successful candidate in accordance with Rules 54 and 55 of the Municipal Election Rules, 1957 did not operate as a bar to the entertainability of the petition praying for writ of quo warranto. AIR 1962 Him Pra 19 (24) (Pt F) (Pr 31).

——Art. 226 — Other remedy — Order of R. T. A.—Writ to quash - (Motor Vehicles Act (1939), Section 64 (a)).

The issue of a writ of certiorari is discretionary and the existence of another remedy, as for instance under S. 64 (a) of the Motor Vehicles Act may be taken into consideration in the exercise of discretion where a writ of certiorari is sought for quashing the order of the Regional Transport Authority. 1959 Ker L R 299 : 1959 Ker L J 358 : 1959 Ker LT 405 : AIR 1959 Ker 398 (399) (Pt A) (Pr 4).

——Art. 226 — Other remedy — Labour Appellate Tribunal — Award based on compromise — Application to quash.

It is not within the scope of an application under Art. 226 of the Constitution for a writ to quash an award of the Labour Appellate Tribunal to hold an enquiry concerning the question whether the persons who entered into the compromise were authorised to do so or not. If the appellant desired to have the award vacated on that ground he ought to have had recourse to other proceedings and not to invoke Art. 226 in that behalf. 1957 Ker L T 994 : 1957 Ker L J 1016 : ILR (1957) Ker 950 : (1958) 2 Lab L J 72 : AIR 1958 Ker 286 (288) (Pt D) (Pr 5).

——Art. 226—Other remedy—Domestic tribunal—Disciplinary action — Writ for declaring null and void—If can issue.

Where the case of the petitioner, who was the President of certain Union, a private body incorporated under Travancore Regulation I of 1063, was that the order of disqualification passed against him by the Board to which the Union was subordinate, was null and void and he still continued to be the President.

Held, that the petitioner having an adequate remedy under the ordinary law, should have resort to the ordinary Courts instead of invoking the High Court's special jurisdiction under Art. 226 of the Constitution. 1958 Ker L J 538 : 1958 Ker L T 48 : AIR 1958 Ker 164 (165) (Pt A) (Pr 3) (DB).

——Art. 226 — Other remedy open — Writ to impeach revenue sale under T. C. Revenue Recovery Act, 7 of 1951 — (T. C. Revenue Recovery Act (7 of 1951), Ss. 39, 55 and 56).

Where the petitioner ignores the provisions of the Travancore-Cochin Revenue Recovery Act, 7 of 1951, which prescribe the mode in which a sale held under the provisions of that Act could be impeached, and chooses to invoke the extraordinary jurisdiction of the High Court under Art. 226 of the Constitution, the attitude is an indication of the lack of bona fide on his part and is by itself a sufficient ground for dismissal of the petition. 1958 Ker L T 1133 : 1957 Ker L J 1095.

——Art. 226 - Question of fact—Interference in writ jurisdiction — Act itself providing mode of determining controversy of facts— Party claiming to be aggrieved seeking relief under Art. 226 — High Court will not interfere and undertake enquiry into questions of fact.

Where an Act itself provides a statutory mode of determining a controversy of facts it would be wholly out of place for a party claiming to be aggrieved to seek relief at the hands of the High Court under Art. 226 of the Constitution. When S. 28 (1) of Madras Act 35 of 1958 makes explicit provision for determination of any question of alleged disqualification of a member of Panchayat where there is a dispute in the matter and there is a further prescription of a judicial authority who has to be approached for a conclusion on the dispute whose decision shall be final, the High Court has no jurisdiction to interfere and undertake an investigation into a question of fact. W. P. No. 415 of 1964 dated 2nd December 1964 Mad), Affirmed. (1965) 2 Mad L J 375 : 78 Mad L W 196 : AIR 1965 Mad 431 (431) (Pr 3) (DB).

——Art. 226—Quo warranto—Writ of—When can issue — Madras District Municipalities Act (5 of 1920), S. 51—Remedy under, not availed of—Writ cannot issue.

The relief of quo warranto is only a discretionary relief which the Court can grant or refuse according to the facts and circumstances of each case. The Court would inquire into the conduct and motives of the applicant, and the Court might in its discretion decline to grant a quo warranto where it would be vexatious to do so, or where it would be futile in its results, or where there is an alternative remedy which is equally appropriate and effective.

Section 51 of the Madras District Municipalities Act provides a machinery for adjudication of disputes arising out of alleged disqualification of any member to hold office under S. 50 and if the applicant has failed to avail himself of the special remedy relief in the nature of quo warranto cannot be granted. 75 Mad L W 136 : (1962) 2 M L J 182 : AIR 1962 Mad 314 (314, 315) (Prs 3, 6, 7).

——Art. 226—Other remedy—Jurisdiction of High Court—Orders of Sea Customs Authorities—Interference—(Sea Customs Act (1878), Ss. 188, 191).

(1) Even the ordinary civil Courts would have jurisdiction to entertain suits and afford relief against the acts or orders of the Customs Authorities where the provisions of the Sea Customs Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) If the above were established the aggrieved party is not bound to pursue the statutory remedies provided by Ss. 188 and 191, Sea Customs Act, and the fact that he has not done so is no bar to the jurisdiction of the civil Courts.

(3) It also follows that if the above were established, the right to resort to the civil Court would not be barred even if these statutory remedies were availed of, for the same infirmity would attach to the final orders as would apply to the original one.

(4) The jurisdiction and powers of the High Court under Art. 226 of the Constitution would be wider and would cover not merely the cases set out in para. (1) above but also those where the order of the authority is vitiated by error apparent on the face of the record. Broadly speaking each case must be considered on its merit and in the absence of excess or lack of jurisdiction or the violation of the principles of natural justice or error apparent on the face of the record in the proceedings or orders of these authorities or tribunals, the High Court would not interfere. In other words, the grounds which would attract the jurisdiction of the High Court under Art. 226 in the case of orders of the Customs Authorities acting under the Sea Customs Act are precisely the same as those which apply to authorities and tribunals functioning under other enactments. If a party were able to establish a case of the type abovementioned, the fact that he has not availed himself of the remedies by way of appeal or revision provided for by the Sea Customs Act by Ss. 188 and 191 is not a bar to the maintainability of the application or the granting of relief to such applicant. Case-law discussed. 68 Mad L W 36 : ILR (1955) Mad 1248 : (1955) 1 M L J 42 : AIR 1955 Mad 187 (197) (Pt A) (Prs 19, 20) (DB).

——Art. 226—Industrial Disputes Act (1947) — Preamble—Writ of certiorari against Tribunal—Maintainability — Remedy under Industrial Disputes Act available. See Industrial Disputes Act (1947), Pre. AIR 1953 Mad 102.

——Art. 226—Other remedy open—(Madras Commercial Crops Markets Act (20 of 1933), S 11).

Where, pursuant to the Order of the Collector, Central Excise, relating to the levy of fees, under S. 11, Madras Commercial Crops Markets Act, the merchants deposited the amounts and those amounts were held in suspense account by the Customs Department until the question of the validity of the Rules and Notifications issued under the Commercial Crops Markets Act was decided by competent

authority, the merchants have a remedy to get a declaration in a competent Court, that the Rules and Notifications requiring the payment of fees were invalid and thereupon to get an order for refund of the amounts deposited by them The High Court in its jurisdiction under Art. 226 of the Constitution would not be justified in making an order for the refund of the amounts so deposited even if the contention that the Rules and Notifications issued under the said Act were invalid is acceptable 36 Mys L J 783 : ILR (1958) Mys 206: AIR 1959 Mys 29 (31, 32) (Pt A) (Pr 7) (DB).

——Art. 226—Another remedy open—Remedy under S. 66, Income-tax Act—No interference under Art. 226 — (Income-tax Act (1922), S. 66). AIR 1955 NUC (Nag) 1238 (DB).

——Art. 226—Another remedy open—(Motor Vehicles Act (1939), S. 57 (3))

Where the petitioner has not made his representations under S. 57 of the Motor Vehicles Act (1939), for an additional permit he is not entitled to be heard in opposition to the application of the non-applicant to whom the permit is granted. ILR (1953) Nag 675 : 1953 Nag L J 166 : AIR 1953 Nag 150 (151) (Pt B) (Pr 5) (DB).

——Art. 226 — Exercise of power — Citizenship of applicant in dispute — Applicant coming on temporary permit and overstaying — Art. 226 is not meant to circumvent normal legal proceedings — Power under Art. 226 should not be exercised — Influx from Pakistan Control Act, S. 5 (1).

Article 226, Constitution of India is not meant to circumvent the normal legal procedure.

The applicant claimed to be a resident of Madhya Pradesh but it was admitted that he had his domicile of origin in a territory now included in Pakistan and he had gone over to Pakistan and entered Bharat on a temporary permit and overstayed. He was prosecuted but in the meantime applied under Article 226, Constitution of India for restraining the State of Madhya Pradesh from taking action against him In the return filed by the State the applicant's citizenship was disputed.

Held, that the applicant may have an excellent defence but he was not without an adequate and even a proper remedy and that the authorities had a prima facie case to place before the Court and that under the circumstances the case was not one for the exercise of powers under Article 226, Constitution of India. ILR 1950 Nag 361, Dist. 1952 Nag L J (Notes) 2 (DB).

——Art. 226 – Other remedy—Petitioner complaining of excess of powers by A. D. M. but not availing himself of sub-sections (4) and (5) of S. 144, Cr. P. C. — Art. 226 cannot be involved. See Criminal Procedure Code (1898), S. 144 1951 Nag L J (Notes) 117.

——Art. 226—Where a hierarchy of tribunals out of the ordinary is created for administering a special law, unless there be a very strong or exceptional reason it will not be appropriate for the High Court to invoke the power it has under Art. 226, in aid of a person before he has availed himself of the remedy provided by the special law. 1951 Nag L J (Notes) 107 (DB).

——Art. 226—Orissa Municipal Act (23 of 1950), S. 25—Alternative remedy—Petitioners challenging election in writ proceedings without taking recourse to S. 25 of Orissa Municipal Act — Duty of High Court.

The powers of the High Court under Article 226 are untrammelled by any law made by the legislature and though any Act may provide that an election as contemplated therein is to be challenged by way of an election petition and thereby may, by necessary implication, oust the jurisdiction of the general Court in regard to that subject matter that can in no way affect, abridge, or curtail the jurisdiction of the High Court which is derived under Art. 226. But when there is already a specific and effective remedy provided in the Orissa Municipal Act under the provisions of S. 25 of that Act the High Court should not, as a rule in the exercise of its discretionary power under Art. 226, issue a high prerogative writ. In law it is true that the mere existence of a special and adequate remedy in a special statute is not a bar to the exercise of jurisdiction under Art. 226; in other words, it is not a rule of law that where there is a remedy equally convenient, beneficial and effectual, a mandamus will not be granted, but a rule regulating the discretion of the Court in granting such a writ. AIR 1954 S C 203 and AIR 1954 S C 320, Rel. on.

But it does not mean that for that reason the remedy by way of writ should be put at par with the specific and adequate remedy provided in the Act. ILR (1965) Cut 765.

——Art. 226 — Other remedy open — Mining leases executed in favour of petitioner by former Ruler continued by State Government after merger — Dispute as to mode of computation of royalties — Remedy of petitioner is revision under S. 30, Mines and Minerals (Regulation and Development) Act (1957) or recourse to arbitration clause contained in leases — High Court will not exercise jurisdiction under Art 226 — 'Political Agents' described as arbitrator in one of leases — Remedy under S. 8, Arbitration Act or by suit on contractual obligation if available — Mines and Minerals (Regulation and Development) Act (1957), S. 30 — General Clauses Act (1897), Ss 3 (43), 17 and 18 — Arbitration Act (1940), S. 8 — Civil P. C. (1908), S. 9.

Held, (i) that the petitioner had two alternative remedies, either by applying to the Central Government in revision under S. 30 of the Mines and Minerals (Regulation and Development) Act, 1957, or by taking recourse to the arbitration clause provided in the leases themselves, and it would not be proper for the High Court to exercise its extraordinary jurisdiction under Art. 226. AIR 1962 Orissa 183, Foll. (ii) that the civil Court might ultimately have to decide who is the present official who exercises the functions of the former Political Agent, for the purpose of the arbitration clause contained in one of the leases. If the civil Court eventually holds that arbitration clause has become ineffective, nevertheless its main jurisdiction to decide the contractual obligations between lessor and lessee for the purpose of payment of royalty still remains. Hence it cannot be said that the petitioner has no alternative remedy, especially when the right of revision, under S. 30 of the Act is there. ILR (1962) Cut 348.

——Art. 226 — Alternative remedy under Ss. 23, 24 of Orissa Act 14 of 1947, not exhaustive — Effect (Quaere).

Quaere :—When the Orissa Sales Tax Act, 1947, itself provides an equally convenient alternative remedy for the aggrieved party to apply for revision to the superior Sales Tax authority and to request that a case may be stated for the decision of the High Court under its Ss. 23 and 24, whether it was appropriate to invoke the powers of the High Court under Art. 226. 19 Cut L T 357 : ILR (1953) Cut 553 : AIR 1953 Orissa 334 (335) (Pt C) (Pr 3) (DB).

——Art. 226 — Other remedy open — Industrial Disputes Act (1947), Ss. 2 (k), 10.

The contention of the petitioners was that the conciliation proceeding was not binding on them as they were not parties to the proceedings. They further contended that the fixation of bonus by virtue of the settlement for future years was illegal and invalid.

Held, that this difference constituted industrial dispute within the meaning of S. 2 (k) for which an effective remedy was provided in the Act itself. The quashing of the settlement or a declaration that the settlement was not binding upon the petitioners will not serve the purpose. The petitioners have to make an application under sub-s. (2) of S. 10 of the Act. **AIR 1957 Pat 493 (494, 495) (Pr 4) (DB).**

——Art. 226 — Scope and object.

That the petitioner was not given sufficient opportunity of placing all the materials before the authorities in order to satisfy them about his own case, is a matter which could well be urged by the petitioner before the superior authorities dealing with the matter under the law and not the matter to be dealt with in an application under Art. 226. **AIR 1953 Pat 235 (236) (Pt D) (Pr 4) (DB).**

——Art. 226 — Other remedy open — (Administration of Evacuee Property Act (1950), Ss. 24, 25, 26, 27).

The Administration of Evacuee Property Act itself has provided adequate remedies. An interference by way of a writ of certiorari therefore would not be desirable, except under very extraordinary circumstances. **1953 B L J R 185 : 32 Pat 131 : AIR 1953 Pat 112 (114, 115) (Pt D) (Pr 4) (DB).**

——Art. 226 — Jurisdiction — Application for writ of mandamus or writ for rectification of order of Returning Officer rejecting nomination paper of candidate—Competency of. See Ibid, Art. 329 (b). 31 Pat 145 : AIR 1953 Pat 47 (DB).

——Art. 226—Other remedy open—Writs of mandamus and prohibition against State and State officials refraining them from realizing cost of punitive police — Allegation that notification posting additional police had not been made by proper authority and was ultra vires — Patiala Police Act (1985), Ss. 14, 16 — Criminal P. C. (1898), Ss. 386 and 387,

The petitioner was a resident of a village where additional police was posted under S. 14, Patiala Police Act, 1985. His allegation was that since the notification posting the additional police was not issued under a proper authority it was ultra vires and void; and the proceedings that the District Magistrate was taking for realisation of the cost of the additional Police from the petitioner and other residents of the village were without jurisdiction. Accordingly he prayed that writs of mandamus and prohibition be issued to the State, the Inspector General of Police and the District Magistrate, directing them to refrain from making the realisations of the cost of the punitive Police by distress and sale of the property of the inhabitants of the villages affected by the notification. Some realisation had already been made.

Held (i) that the petition should be dismissed as there was open to the petitioner another and more effective remedy. Recovery of the money payable by the petitioner and other persons liable for the cost of the additional Police could only be made under Ss. 386 and 387 of the Code of Criminal Procedure, by virtue of S. 16 of the Police Act and if the petitioner's allegation be correct that the notification posting the additional Police was ultra vires and void and the order making the petitioner and others liable for the cost of the additional Police were without jurisdiction, he could raise that objection before the authority who would make the recovery from him.

(ii) The operation of S. 386 (1) (a) was confined only to the recovery of a fine imposed by a Court and it had no applicability to a case where the amount to be recovered was payable under S. 14 of the Police Act. Not only the amount recoverable was not fine, but the District Magistrate who determined the liability of various persons under sub-s. (4) of S. 14 of the Police Act did not act as a Court. Therefore, recovery could only be made under clause (b) of sub-s. (1) of S. 386, i e., through a Civil Court under sub-s. (3) of the Section.

(iii) As the contentions raised by the petitioner affected the validity of the warrant that would be issued to the Collector under S. 386, Criminal P. C. authorising him to realize the amount by execution, the Court to which the warrant was sent for execution could not refuse to adjudicate upon it : 60 Cal 670, Rel. on. **ILR (1952) Patiala 165 : AIR 1952 Pepsu 136 (137, 138) (Prs 2, 5, 6) (DB).**

——Art. 226 — Adequate alternative remedy—Election of members of Panchayat Samiti — Validity — Act providing remedy by an election petition — No interference under Art. 226.

In general, there should be no interference under Art. 226 when an election petition lies and the grounds of the writ petition are such that they could be raised in an election petition.

Held on facts that the writ petition in the case was no more than an election petition under the Act, which had been filed long after the prescribed period of limitation of 20 days, and it was liable to be rejected on this ground alone. **1965 Cur L J 810 : 68 Pun L R 93.**

——Art. 226—Alternative remedy — Existence of—Not a bar to issue of writ—Discretion of High Court —Punjab Passengers and Goods Taxation Act (16 of 1952)—Order of assessment demanding additional payment of tax —Appeal against, dismissed for not depositing tax — Writ petition challenging order of assessment on merits — High Court refused to interfere.

The existence of an alternative remedy is not per se a bar to the issue of a writ by the High Court which is a matter depending on its discretion to be judicially exercised on the facts and circumstances of each case. AIR 1962 S C 1694 and A I R 1958 S C 86 and A I R 1957 S C 882 and AIR 1961 S C 372 and A I R 1954 S C 207, Rel. on.

The petitioner Company had paid passenger tax by affixing adhesive stamps on the tickets issued to the passenger during the relevant years. A notice in form **P. T. T. 10** was issued to the petitioner Company by the assessing authority under the Punjab Passengers and Goods Taxation Act, 1952 and the rules thereunder and an order demanding additional tax was passed. The petitioner appealed against the order praying for stay of the order or payment of tax pending the appeal but the prayer was refused. The petitioner having failed to deposit the tax demanded, the appeal stood dismissed. This order was confirmed in revision. The petitioner filed a writ petition challenging the order on the merits as well as on other grounds.

Held (i) that in the circumstances of the case the High Court would not exercise its extraordinary powers under Art. 226 of the Constitution as the orders passed by the authorities were fully within their competence and were not shown to have resulted in grave injustice; (ii) that the High Court could not be invited to go into the merits of the assessment. This matter should be gone into and adjudicated upon under the statutory machinery prescribed and it was not possible to allow the petitioner to by-pass the appellate and revisional tribunals and the machinery provided by the statute, no special ground having been made out for adopting this course. Such points should properly be agitated before the departmental authorities : AIR 1963 Punj 549, Rel. on; (iii) that in the peculiar circumstances of the case it was not open to the High Court to direct the Appellate Tribunal to hear the appeal without insisting on

payment of tax assessed, because orders passed by the appellate and revisional authorities have not been shown to be tainted with any such serious infirmity which would justify interference with them on the writ side. 66 Pun L R 683 : ILR (1964) 2 Punj 181 : AIR 1964 Punj 438 (440, 441, 442) (Pt A) (Prs 9, 10, 14, 15) (DB).

——Art. 226 – Quo warranto — Election dispute — Existence of alternate remedy by way of election petition—Relief by way of writ not barred.

Existence of an alternative, adequate or suitable remedy is not per se an absolute bar to a petition under Article 226. It is only a material circumstance to be taken into account on the facts of each case, it being in the judicial discretion of the Court whether or not to afford the extraordinary relief. High Court has power under Article 226 to determine the validity of the impugned election by means of a petition for a writ of quo warranto or other suitable writ or direction. Even where there is an alternative remedy by way of Election petition it is within the discretion of the High Court to grant relief if the existence of such remedy is not an insuperable bar. 62 Punj L R 679, Foll.; 62 Punj L R 377 and AIR 1961 Punj 429 (FB), Rel. on. 1962 Cur L J 264 : 64 Punj L R 547: I L R (1962) 2 Punj 583 : A I R 1962 Punj 498 (502, 503) (Pt B) (Pr 12) (DB).

——Art. 226 — Quo warranto — Another remedy — Remedy by means of an election petition in the circumstances of the present case held even if available can hardly be considered to be equally efficacious, convenient and speedy. Besides the expenses and delay in its trial is another factor which has to be taken into account in considering the efficiency of alternative remedy. ('60) ILR (1960) 2 Punj 192.

[Overruled on another point in AIR 1961 Punj 429 (FB).]

[See however AIR 1965 Punj 361.]

——Art. 226—Other remedy open—Election disputes —No bar to writ proceedings before election is held.

Even if it be assumed that the petitioner, who sought election as fellow of the Punjab University from the Constituency of Registered Graduates, can challenge the election after the election is held, by an election petition before the Tribunal, the existence of an alternative remedy is no insuperable bar to the exercise of jurisdiction by the High Court under Art. 226 of the Constitution to interfere, if a proper case is made out even before the election is held. It is entirely a different matter that while exercising discretion, the High Court must bear in mind the existence of a tribunal to which normally resort should be had before any relief is granted under Art. 226. Where the point raised is of fundamental character and affects the elections as a whole, the High Court can interfere in a suitable case in exercise of its extraordinary jurisdiction conferred by Art. 226. A I R 1958 Punj 356 and I L R (1960) 2 Punj 192 and A I R 1957 S C 242 and A I R 1957 Raj 383, Rel. on. AIR 1952 SC 64 and A I R 1957 Madh B 38, Disting. 63 Pun L R 142 : AIR 1961 Punj 194 (196, 197) (Pt A) (Pr 6).

——Art. 226 – Where right claimed is creation of statute and is not related to fundamental rights remedy should generally be pursued under that statute.

Where the writ claimed by the petitioner does not relate to a fundamental right and the right claimed by the petitioner is created by statute, it has to be enforced in accordance with the provisions of the same statute; redress against erroneous decisions of the departmental authorities must, therefore, generally be had by recourse to the higher departmental authorities on appeal or revision as the case may be. A writ cannot be granted to quash the decision. A I R 1960 Punj 58 (61, 62) (Pt E) (Pr 5).

——Art. 226 – Other remedy open — Issue of writ — (Sales Tax—Bengal Finance (Sales Tax) Act (6 of 1941) (as applied to Delhi), S. 21).

Held, that a petition for writ against the order of the Sales-Tax Officer without exhausting all the remedies under the Bengal Finance (Sales-Tax) Act, 1941, was not maintainable. (1959) 10 S T C 45 (Punj).

——Art. 226—Other remedy open—Election dispute —Quo warranto —(Punjab Municipal Act (3 of 1911), S. 240—Rules under Pepsu Municipal Election Rules (1949), Rr. 8, 9 and 10).

Where the petitioners under Art. 226 challenge the validity of certain municipal elections on the ground of non observance of the directions laid down in R. 8, Pepsu Municipal Election Rules, 1949, for the preparation of the preliminary electoral roll, without availing themselves of the remedy provided under Rr. 9 and 10, it will not be proper for the High Court in the petition proceedings to go into the merits of those objections, particularly when they involve disputed questions of fact. AIR 1958 Punj 128 (130) (Pt C) (Pr 6).

——Art. 226 – Another remedy.

A person should invoke the help of Art. 226 after all the other remedies available to him have been exhausted. ILR (1955) Punj 58 : (1955) 6 S T C (Sup) 1 : AIR 1954 Punj 264 (267) (Pt D) (Pr 13) (DB).

——Art. 226 — Income-tax Act (1922), Ss. 34, 26-A, 45 and 46 (as amended by Act 48 of 1948)—Proceeding under S 34 — Jurisdiction of Income-tax Officer to determine questions of law — Decision cannot be challenged under Art. 226, Constitution of India— Machinery provided by Act is only remedy—Constitution of India, Art. 226. See Income-tax Act (1922 as amended by Act 48 of 1948), S. 34. A I R 1953 Punj 55.

——Art. 226 – Remedy provided by Act not availed of.

An application for writ so as to short circuit the procedure provided by the Act is not allowable. Under S. 21, E. P. Sales Tax Act 46 of 1948, it is open to the assessee to go in revision to the Financial Commissioner and if he is not satisfied with the decision of the Financial Commissioner he can have the case stated to the High Court under S. 22 of the same Act. Case-law relied on.

Note: scheme of E. P. Sales Tax Act explained. 55 Punj L R 70 : AIR 1953 Punj 27 (28) (Pr 5) (DB).

——Art. 226 – Other remedy available – Order of Industrial Tribunal granting interim pay and allowance to dismissed workmen — Industrial Disputes (Appellate Tribunal) Act, S. 7.

An application for a writ of certiorari quashing an order granting interim pay and allowances passed by an Industrial Tribunal to which a dispute in respect of wrongful dismissal of workmen and their re-instatement is referred for adjudication, is not maintainable, as S. 7 of the Industrial Disputes (Appellate Tribunal) Act, gives a specific and adequate legal remedy by way of an appeal to the Appellate Tribunal. (1952-53) F J R 36 : (1952) 1 Lab L J 371 : 54 Pun L R 218 : AIR 1952 Punj 134 (138) (Pt E) (Pr 29) (DB).

——Art. 226—Section 8 (5) of the Taxation on Income (Investigation Commission) Act (1947) provides a specific remedy to the assessee against the orders of the Investigation Commission and the remedy cannot be said to be wholly illusory or inefficacious and hence the High Court will not issue a writ of certiorari or prohibition in regard to such orders. Case law rel. on. 53 Pun L R 57 : 1951-20 ITR 77 : ILR (1951)

Punj 165 : AIR 1951 Punj 74 (78) (Pt B) (Pr 21) (DB).

[Reversed on another point in AIR 1954 S C 207].

——Art. 226—Other remedy — Discretion — Exercise of — When can be interfered with in writ petition — Adequate alternative remedy available — Writ cannot be issued. See Income tax Act (1922), S. 45. 1961 Raj L W 557.

——Art 226 – Other remedy open—Members having no right to vote taking part in election – Municipalities — Rajasthan Town Municipalities Act (23 of 1951), S. 19.

Where certain members who had no right to vote have voted at an election, the proper procedure for determining the validity of such election is under S. 19 of the Rajasthan Town Municipalities Act and not by a writ of quo warranto. When there is a remedy by way of an election petition, a writ of quo warranto is displaced. ILR (1959) 9 Raj 1084 : A I R 1960 Raj 152 (165) (Pt J) (Pr 44) (DB).

——Art. 226 — Another remedy open—Remedy by way of election petition — Candidate withdrawing from contest after nomination — Whether defeated candidate — Panchayats — (Rajasthan Panchayat Election Rules (1954), R. 19).

A candidate who enters the arena after his valid nomination and who loses the election thereafter does come within the meaning of a defeated candidate If he withdraws from the contest after his nomination on account of weakness then he accepts his defeat and is therefore, a defeated candidate and, as such can file an election petition. If he is wrongly shown as withdrawn by the Returning Officer, then the defeat is wrongly foisted upon him and in that case also he can file an election petition as a defeated candidate. Hence it cannot be said that his remedy is only by way of a writ application. AIR 1957 Raj 163, Disting. 1959 Raj L W 587 : ILR (1959) 9 Raj 461.

——Art. 226 — Another remedy open — Remedy by way of election petition — (Panchayats – Rajasthan Panchayat Election Rules (1954), R. 19).

Where the petitioner has a remedy to question the validity of the election by an election petition, the High Court should never interfere before that remedy is exhausted. AIR 1956 Raj 185, Foll. 1959 Raj L W 587 : ILR (1959) 9 Raj 461.

——Art. 226 — Another remedy open—Remedy by way of election petition – Objection relating to counting of votes – (Elections – Rajasthan Panchayat Election Rules (1954) R. 19).

Where in a writ petition the objections were that the Returning Officer did not count and record the votes of the contesting candidates in his ward and that the counting of votes in a ward was not done correctly.

Held, that the High Court could not interfere in the matter in its extraordinary jurisdiction since the proper course for the petitioners was to file an election petition. 1959 Raj L W 587 : ILR (1959) 9 Raj 461.

—Art. 226—Other remedy—(University of Rajputana Act (1946), Ss. 8-A and 12).

Generally speaking the Visitor of the University should first be approached for redress before a question concerning the alleged failure to observe the statutory provisions relating to the appointment of a person as Vice-Chancellor of the University is agitated before the Courts. (1950) 2 All E R 741, Rel. on. ILR (1958) 8 Raj 893 : 1959 Raj L W 348 : AIR 1959 Raj 260 (261) (Pt A) (Pr 4) (DB).

——Art. 226 — Other remedy open — Election of individual panch challenged. See Panchayats—Rajasthan Panchayat Election Rules, R. 19. ILR (1958) 8 Raj 177.

——Art. 226—Other remedy open – Non-compliance with R. 14 of Rajasthan Town Municipal Election Rules—Application by one elector under Art. 226—(Elections—Rajasthan Town Municipalities Act (23 of 1951), S. 19).

As it is open to ten electors to challenge the election from a ward after it is held, if the provision of R. 14 of the Rajasthan Town Municipal Election Rules is not complied with, the High Court would not in its extraordinary jurisdiction go into that very matter in the application of one elector even before the election is held. It can only go into a matter of this kind after the Election Tribunal has decided the matter. 1957 Raj L W 609 : I L R (1957) 7 Raj 742 : AIR 1957 Raj 293 (295) (Pt D) (Pr 9) (DB).

——Art. 226—Panchayat—Rajastban Panchayat Act (21 of 1953), Rules framed under, Rule 20 (as amended on 12 9 1955) — Panchayat—Election of Sarpanch — Irregularity committed by Returning Officer –Remedy now open to candidate – No writ.

The provision in R. 20, as now amended on 12-9-1955, refers to an irregularity committed by the Returning Officer in the conduct of elections, and if the irregularity is of such a nature that it has influenced the result of the election, an election petition will lie. Whether an irregularity has or has not influenced the result of the election is a matter of fact with which the Collector will deal in disposing of the election petition. Hence, an aggrieved petitioner should now pursue that remedy before the Collector and not the remedy by invoking the powers of the High Court under Art. 226 (1956 Raj L W 311, Expl. 1958 Raj L W 51 : ILR (1957) 7 Raj 220.

——Art. 226—Another remedy open—Misconduct in election to Panchayat — Remedy is by election petition—(Panchayats – Rajasthan Panchayat Election Rules (1954), Rr. 19 and 20).

The conduct of a sarpanch in making a false declaration before the Returning Officer about his residence will amount to misconduct. And as the candidate, who desires to question the election of the sirpanch on this ground has a remedy by way of an election petition under Rr. 19 and 20, the High Court will not give him any relief in its extraordinary jurisdiction till he has exhausted that remedy 1956 Raj L W 311 : ILR (1956) 6 Raj 797 : A I R 1956 Raj 188 (190) (Pt E) (Pr 9) (DB).

—Art. 226—Another remedy open—Misconduct in election to Panchayat—Remedy is by election petition —Panchayat — Rajasthan Panchayat Election Rules (1954), Rules 19 and 20—(Election). 1956 Raj L W 311 : AIR 1956 Raj 188 (190) (Pt E) (Pr 9).

——Art. 226 — Another remedy — (Municipality – Rajasthan Town Municipalities Act (23 of 1951), S. 19).

The improper rejection of a nomination paper is, as a rule, a material irregularity which affects the result of the election So far as the rejection of a nomination paper is concerned, S. 19 does not contain anything to preclude an election petition from being filed against such improper rejection. An error made by a Returning Officer in improperly rejecting a nomination paper is one which falls within the four walls of the explanation to S. 19 (5) and can be made a foundation for an election petition. The High Court should never interfere before the remedy by way of an election petition is exhausted. AIR 1955 Madh B 179, Dissented from. 1956 Raj L W 297 : ILR (1956) 6 Raj 910 : AIR 1956 Raj 185 (186, 187, 188) (Pt A) (Prs 7, 14, 16, 19, 20) (DB).

——Art. 226 – Writ of Prohibition — Industrial Tribunal—Writ against — Alternative remedy open—Writ when will be issued.

An Industrial Tribunal is quasi-judicial tribunal and if it is working without jurisdiction, a writ of

prohibition strictly so called can issue to such a tribunal. It is well settled that the existence of an alternative remedy is no bar to the issue of a writ of prohibition.

It is a matter for decision in each case whether the High Court should exercise its power of issuing a writ of prohibition, where an alternative remedy exists. Generally speaking, where the statute itself provides an appeal or a revision from the tribunal which is acting in excess of or in absence of jurisdiction, the High Court will not interfere under its extraordinary powers under Art. 226. But where there is no provision in the statute by way of appeal or revision and the alternative remedy is of a different kind, the High Court would interfere if the want of jurisdiction is established, provided the remedy is not equally efficacious, convenient and beneficial. ILR (1955) 5 Raj 214: 1955 Raj L W 224: AIR 1954 Raj 274 (276) (Pt A) (Pr 5) (DB).

——Art. 226 — Certiorari — Other remedy open—Person aggrieved by order of Assistant Custodian of Evacuee Property cannot be allowed to invoke the jurisdiction of High Court under Art. 226—Their remedy lies under Ss. 26 and 27 of the Evacuee Property Act. 1954 Raj L W 664.

——Art. 226 — Land Acquisition Act (1 of 1894), Ss. 18, 30 - Order under, refusing to make reference—Nature of - Proper remedy — (Specific Relief Act (1877), S. 45) — (Constitution of India, Art. 226) — (Jaipur Land Acquisition Act (28 of 1943), Ss. 18, 30) —(Jaipur Specific Relief Act, S. 45)—See Land Acquisition Act (1894) S. 18. AIR 1953 Raj 111.

7 (s). Suit, remedy of.

● ——Art. 32 — Scope of — Powers of Supreme Court.

The Supreme Court has power under Art. 32 of the Constitution to issue directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari whichever may be appropriate for the enforcement of any of the fundamental rights. The relief claimed by the first petitioner in the instant case for assessing the liability of the respondents (the State Government) and Court guardian of minor petitioners 2 and 3 may be obtained in a properly constituted suit and not in a petition under Art. 32 of the Constitution. The property to which the minors are or may be entitled may be ascertained in a proceeding under the Guardians and Wards Act or in a suit in the civil Court and not in a petition under Art. 32 of the Constitution. Sahibzada Saiyed Muhammad Amirabbas Abbasi v. The State of Madhya Bharat, 1960 Mad W N 774: (1960) S C J 713: (1960) 2 M L J (SC) 25: (1960) 2 Andh W R (SC) 25: 1960 M P C 424: 1960 All L J 617: 1960 B L J R 492: 1960 All W R (HC) 478: (1960) 3 S C R 138: AIR 1960 S C 768 (769, 770) (Prs 7, 8).

——Art. 226—Issue of writ under — Other remedies open—Effect.

Orders under Art. 226 of the Constitution of India are after all discretionary, and no application for a writ under that article lies when the aggrieved party has yet another almost equally efficacious remedy open to it by way of a regular suit. AIR 1952 Ajmer 39 (39) (Pr 3).

——Art. 226 — Title can be established by regular suit, rather than by way of writ petition. See Tenancy Laws—U. P. Consolidation of Holdings Act (5 of 1954), S. 27. 1965 All L J 516: 1965 All W R (HC) 416.

——Art. 226 — (Mukerji J.) — Other remedy open — Sale held by Collector under U. P. Zamindari Abolition and Land Reforms Act (1 of 1951) mala fide — Judgment-debtor has another equally efficacious remedy by way of a regular suit for damages — Remedy by way of a petition for a writ under Article could not lie. 1962 All W R (HC) 515: 1962 All L J 616: ILR (1962) 1 All 922.

——Art. 226—Other remedy—Government servant — Supersession or reduction in rank—Remedy — Question as to how much more amount Government servant was entitled to — Separate suit and not writ petition would be proper remedy. See Ibid, Art. 311. AIR 1961 All 316.

——Art. 226—Termination of private service—Question involving controversial question of fact — Proper remedy is by way of suit — No certiorari. AIR 1961 All 282 (284) (Pt C) (Pr 13).

——Art. 226 — Other remedy — Bar to writ proceedings.

Under the law a person whose services have been wrongfully terminated, is entitled to institute an action to vindicate his rights, and in such an action, the Court will be competent to award all the reliefs to which he may be entitled including some which would not be admissible in a writ petition. A writ petition by such Government servant might be, therefore, rejected on the preliminary ground that the alternative remedy by way of suit was not pursued by him. AIR 1957 S C 882, Rel. on. AIR 1960 All 647 (648, 649, 650) (Pt A) (Prs 7, 13).

——Art. 226—Other remedy — Criminal P. C. (1898), S. 146 (1-D) and (1-E)— Finding of Civil Court given on a reference under S. 146 (1) — Finding can be challenged only by a regular suit and not by means of writ petition. 1960 Cri L J 1279: A I R 1960 All 599 (600) (Pt A) (Prs 4, 5).

——Art. 226 — Specific Relief Act (1877), Ss. 12 (c) and 21 (a) — Petitioner taking building contract — Compensation in money can be adequate relief — Suit for damages would be alternative remedy for purposes of Art. 226 of the Constitution. See Specific Relief Act (1877), S. 12 (c). AIR 1960 All 72.

——Art. 226 — Other remedy — Issue of writ—Dismissal of police officer — Non-compliance with para. 486, U. P. Police Regulations — Validity of dismissal — Right of officer to file suit — Bar to writ. See Ibid, Art. 310. 1958 Cri L J 994: AIR 1958 All 584 (DB).

——Art. 226 — Other remedy by way of suit open — Petition under Art. 226 may still lie — Requisition of house — Petition under Art. 226 held could be entertained—(Constitution of India, Art. 19 (1) (f).

While it cannot be said that in all cases in which there is an infringement of a fundamental right relief under Art. 226 should be granted necessarily, nevertheless the Courts must see in each case whether in the circumstances it would be more convenient, effectual and beneficial to grant relief by means of a writ than to ask the applicant to seek it by a regular suit. Where from the facts it is plain that the petitioner had been living in Allahabad from 1943 onwards to pass her old age and widowhood in piety and with a view to continue to live here she built a house which had been requisitioned providing her with a alternative accommodation, if she is asked to file a regular suit there is bound to be a great delay, and she being an old lady it is doubtful whether in her lifetime the case will be finally decided. It would be proper in such a case to grant her relief if possible, under Art 226 of the Constitution on the ground that there is an infringement of her fundamental rights under Art. 19 (1) (f). ('52) 1952 R D (HC) 161: 1952 All W R (HC) 241: 1952 All L J 163: I L R (1953) 1 All 216: A I R 1952 All 836 (838) (Pt B) (Pr 4) (DB).

——Art 226 — Madras Estates (Abolition and Conversion into Ryotwari) Act (26 of 1948) Ss. 20, 67—

Interest on the collections — No provision in the Act compels Government to pay—Failure of Government to pay interest must be agitated before ordinary Civil Courts and not in writ proceedings. See Tenancy Laws — Madras Estates (Abolition and Conversion into Ryotwari) Act (26 of 1948), S. 20. (1965) 2 Andh L T 290 (DB).

——Art. 226—Certiorari—Futile writ — Remedy by way of suit open—Discretion of High Court.

The petitioners who were lessee of liquor shops, filed an application under Art. 226 to quash the order of the Commissioner which was confirmed by the Board of Revenue holding that the petitioners had not suffered any loss by shifting of the shops of the petitioners from the abadi site.

Held, that relief claimed being one for damages or compensation for the alleged breach of obligations of the terms of contract was an incident of contract and the petitioners remedy was to institute suits for recovering damages. The quashing of the order of the Commissioner or the Board by the High Court would not give any relief to the petitioners. **(1959) 1 Andh W R 234 : I L R (1959) Andh Pra 19 : A I R 1959 Andh Pra 394 (396) (Pt A) (Pr 7) (DB).**

——Art. 226—Other remedy—Issue of writ.

Where the petitioner has got the ordinary remedy of a suit for damages for wrongful removal, the High Court will not interfere under Art. 226. **(1959) 1 Lab L J 554 (Andh Pra).**

——Art. 226 — Other remedy — **Wrong recitals in letters or correspondence — If can be declared null and void or ultra vires.**

Wrong recitals in letters or correspondence cannot be declared null and void or ultra vires the powers of the Government nor is it within province of the High Court exercising its jurisdiction under Art. 226 to give declarations as to the incorrectness of recitals in documents or even as to the rights of parties. The determination of the rival claims to some plots of land is more appropriate to the civil Courts. A writ will not issue, be it in the nature of mandamus or other directions, if there is an effective remedy by way of a suit. **A I R 1958 Andh Pra 632 (634, 635) (Pt C) (Pr 8) (DB).**

——Art. 226—Other remedy open.

When there is an adequate remedy by way of suit, the High Court ought not to interfere by means of a writ.

Held, that if the Government had granted fishery rights in all the tanks, and it they violated the terms of the contract by modifying it, the proper course open to the petitioner would be to sue the Government for damages. **1955 Andh W R 873 : 1955 Andh L T 820 : A I R 1956 Andhra 119 (119, 120) (Pt A) (Prs 2, 3).**

——Art. 226—Petition under — Claim for compensation—**Proper remedy.**

The assessment of compensation by itself is a question for which the jurisdiction of the High Court under Art. 226 may not be utilised. A suit is far more appropriate remedy in cases where compensation is claimed for wrongful acts on the part of the Government or its officers. **A I R 1955 Assam 183 (195) (Pt F) (Pr 49) (DB).**

——Art. 226—Applicability—Other remedies available.

Where an adequate and effective relief can be obtained by a suit, a necessary condition for the exercise of this jurisdiction is lacking. Mere defect of jurisdiction in the impugned order assuming that it does exist, does not make it obligatory on the Court to exercise the jurisdiction under Art. 226. **AIR 1954 Assam 152 (154, 155) (Pt B) (Pr 8) (DB).**

——Art. 226 — **Mandamus, writ of when can be issued.**

A writ of mandamus cannot be issued when another remedy such as a suit is available : **AIR 1951 Nag 6** and AIR 1951 Pat 231, Rel. on. **ILR (1951) 3 Assam 348 : AIR 1951 Assam 163 (165, 166) (Pt D) (Pr 19) (DB).**

——Art. 226—Civil P. C. (1908), S. 47; O. 21, Rr. 58, 63 — Dismissal of suit — Execution — Objection — Separate suit — Remedy of aggrieved party under Art. 226 for issue of a writ, direction or order—(Limitation Act (1908), S. 5). See Civil P. C. (1908), S. 47. **AIR 1956 Bhopal 62.**

——Arts 226, 311—Other remedy open — **Petition under Art. 226 by dismissed Civil Servant for quashing order of dismissal and for injunction—Whether maintainable.**

Where in a petition under Art. 226, the petitioner asks for a declaration that the order of dismissal should be quashed, and secondly pending the hearing and disposal of the petition an order for an injunction be issued against the respondent.

Held, that in a suit he can ask for the same declaration and injunction and a proper consequential relief, which is not apparent of the face of the reliefs asked in the petition, namely a decree for damages for wrongful dismissal. In the result not only is there an alternative and proper remedy but that is the only remedy where all his claims can be adequately made and consequential relief granted, namely, an order compensating him for wrongful dismissal. In this view, the petition under Art. 226 is not maintainable. A I R 1956 Bom 351 (352) (Prs 3, 4).

——Art. 226 — Other remedy open—Issue of writ—Mandamus.

If a suitor can get an adequate and convenient and beneficial remedy by the normal process of a suit, the High Court will not ordinarily exercise its power under the Article. In a case in which the parties are in dispute on several points and it would be difficult to arrive at a satisfactory conclusion on mere affidavits, the remedy by way of a suit would be more convenient and effective. In such circumstances the remedy by way of an application under this Article is not a proper substitute for the remedy. **('58) 62 Cal W N 384.**

——Art. 226—Existence of other effective remedy.

Where facts are in dispute and in order to get at the truth it is necessary that the questions should be canvassed in a suit where the parties would have ample opportunity of examining their witnesses and the Court would be better able to judge which version is correct. a writ will not issue. **AIR 1953 Cal 581 (583) (Pt C) (Pr 11).**

——Art. 226—Other remedy open—Effect—Powers under—Exercise of.

The High Court will not in the exercise of its discretion under Art. 226 of the Constitution grant any relief to a petitioner who has an alternative remedy by way of a suit in a case in which facts are in dispute. Such a case can be more conveniently disposed of in a suit than in an application under Art. 226 of the Constitution. **56 C W N 539 : AIR 1952 Cal 757 (758, 759) (Prs 3, 6, 7, 8).**

——Art. 226—Does not supplant ordinary right of action or remedy—Person dismissed from service—Suit is more adequate and complete remedy.

In spite of the wide words of Art. 226 one must remember that the object of Art. 32 or Art. 226 was not to supplant the ordinary right of action or the remedy provided for by the ordinary law of the land. If a suitor can get an adequate and convenient and beneficial remedy by the normal process of a suit or by the remedy provided for by a Statute, the

High Court will not, ordinarily exercise its powers under Art. 226.

A person aggrieved by an order of removal from service has a more convenient, effective, complete and adequate remedy by way of a suit for a declaration that the order dismissing him was void and that he still remained a member of the service. Where the parties are in dispute on several questions, namely, the authority by which the petitioner was appointed, the nature of the inquiry, if any, made in the case, the denial of a right of appeal, the alleged imperfect nature of the enquiry and the alleged arbitrary conduct of certain officers of the Administration it is difficult to arrive at a satisfactory conclusion on these matters on mere affidavits. In order to get at the truth it is necessary that the questions referred to above should be canvassed in a suit where the parties would have ample opportunity of examining their witnesses and the Court would be better able to Judge which version is correct. 56 Cal W N 264 : AIR 1952 Cal 610 (613, 614) (Pt D) (Prs 26, 41).

——Art. 226 –Specific Relief Act (1877), S. 45 (d) — "Other specific and adequate legal remedy"—Remedy by way of suit. See Specific Relief Act (1877), S. 45 (d). AIR 1952 Cal 1.

——Art. 226– Other remedy open.

An application under Art. 226 for a writ of mandamus or quo warranto or for such further or other order as the High Court might think fit and proper by a Commissioner of a Municipality is not maintainable when the petitioner can file a suit for declaration that the opposite party was no longer in his office of chairman of the municipality and was not entitled to function as such and also for injunction restraining him from functioning as such. 55 Cal W N 326 : ILR (1952) 1 Cal 282 : AIR 1951 Cal 420 (421, 422) (Pt C) (Prs 21, 28).

——Art. 226 — Another remedy available — Divergence of facts necessitating evidence to be recorded which can be done only in a suit — Petition held cannot be entertained as the question of compensation cannot be decided in summary proceedings under Art. 226—(Land Acquisition Act (1894), S. 17). AIR 1956 Him Pra 55 (57, 58) (Prs 6, 8, 9).

——Art. 226—Order superseding Municipality under S. 238, Punjab Municipal Act — Propriety of — Matter cannot be decided in a summary manner under a writ petition — Suit is the proper remedy where evidence can be recorded. AIR 1955 Him Pra 11, Rel. on. AIR 1956 Him Pra 7 (8) (Pt B) (Prs 8, 9).

——Art. 226—Other remedy.

Order impugned, referring only to the extent of the appointment of a person to the post of village officer, a matter entirely within the jurisdiction of the Revenue Court — Parties having a right to go to a Civil Court and get their rights as regards watan property settled after full investigation — Decision of revenue officer on the question of appointment only tentative and liable to be altered if party succeeds in obtaining a recognition of her title to the watan from a Civil Court – Party has in the case a more satisfactory and adequate remedy under ordinary law and therefore the extraordinary jurisdiction of the High Court will not be exercised. ILR (1954) Hyd 632 : AIR 1954 Hyd 210 (211) (Pt B) (Pr 6) (DB).

● ——Art. 226—Other remedy—Order of premature retirement in 1953 –Right to challenge not barred—Availability of remedy under S. 103, Constitution of Jammu and Kashmir—Issue of writ. See Constitution of Jammu and Kashmir (1956), S. 108. AIR 1958 J & K 11 (FB).

——Arts. 226 and 311– Other remedy open –Dismissal of civil servant—Complaint that enquiry was not properly conducted—Interference –Remedy by way of suit.

Where a civil servant, who has been dismissed by the Government, feels that the enquiry in regard to charges framed against him was not properly conducted his remedy is by way of suit where he can show by, producing evidence that enquiry was not properly conducted against him, and not by way of petition under Art. 226. AIR 1957 J & K 1 (3) (Pt B) (Pr 10).

——Art. 226– Other remedy open.

The petitioner under Art. 226 had been granted a lease for tapping rubber trees from Government plantation. The right granted to the petitioner was subsequently cancelled by the Government whereupon he applied under Art. 226 for quashing the order of cancellation.

Held, that the remedy by way of suit is adequate and the mere fact that the petitioner will have to wait till the expiry of period of notice under S. 80, C P. Code is not a sufficient reason for taking action under Art. 226. 1957 Ker L T 402 : AIR 1957 Ker 113 (113, 114) (Pt A) (Prs 3, 4, 6).

——Art. 226—Other remedy open — Relief claimed obtainable in regular suit — Court cannot assume existence of right—Writ not competent.

Where the reliefs claimed by the petitioners can be obtained by them in a regular suit provided that they are able to adduce the necessary proof for establishing the right claimed by them, there is no justification for the High Court to invoke its extraordinary jurisdiction under Art. 226 for granting relief to the petitioners. The Court cannot assume the existence of the right as claimed by them and then issue the necessary orders and directions for the protection of such a right. 1957 Ker L J 217 : I L R (1957) Ker 59 : 1957 Ker L T 198 : A I R 1957 Ker 22 (25) (Pt C) (Pr 8) (DB).

——Arts. 226 and 228 — Another remedy open — (Madhya Bharat Police Act (76 of 2007), S. 12).

Where the petitioner applying under Art. 226 for quashing the District Magistrate's order posting additional police in the village at the cost of the petitioner and other residents, has already paid his share of the cost, the right which he can claim to enforce under Art. 226 is not a right to restrain the opponents from recovering from him any portion of the cost, but it is the right to the refund of the amount already realised from him on the ground that it was an illegal exaction. The challenge to the order and the proclamation is plainly incidental to the establishment of the applicant's right to the refund of the money paid by him and if he thinks that the amount paid by him was illegally recovered from him, he has the remedy of a suit for the refund of the amount already paid by him. This remedy is equally effective, beneficial and convenient. A suit for such a remedy lies in the Civil Court and the fact that in the suit the validity of S. 12, Police Act, would be questioned and the question would be referred in the High Court under Art. 228 cannot be regarded as a valid ground for short-circuiting the proper remedy of a suit and holding that the remedy of suit is not as effective, beneficial and convenient as the one this Court can give under Art. 226 of the Constitution. I L R (1953) Madh B 383 : A I R 1953 Madh B 222 (223, 224) (Pr 4) (DB).

——Art. 226—Mandamus—Writ of—Writ cannot be issued to enforce money-claim.

A writ of mandamus cannot be granted for the execution of a decision. Mandamus does not lie for the enforcement of the general law of the land which

may be enforced by action ; and where the applicant has the ordinary legal remedy of execution, a writ of mandamus cannot be issued.

Therefore, a claim for refund of tax arising out of a decision of Supreme Court, cannot be enforced by a petition for mandamus. The remedy for the same is to file a suit A I R 1962 Madh Pra 10, Rel. on. 1965 M P L J 690 : 1965 Jab L J 892.

——Art 226—Other remedy open — Application for writ of certiorari — Competency — Madras Hindu Religious and Charitable Endowments Act (19 of 1951), S. 62—Person 'aggrieved'.

Where there is a right of suit in respect of a matter, that is the proper course for the party to pursue ; a writ can be applied for only in special circumstances.

The existence of a remedy by way of a suit under S. 62 of the Madras Hindu Religious and Charitable Endowments Act, 1951, for the purpose of challenging an order of the Commissioner for Hindu Religious and Charitable Endowments, setting aside an order of the Deputy Commissioner declaring certain persons to be hereditary trustees of a temple, is a bar to the maintainability of an application for a writ of certiorari for quashing the order. (1958) 2 Mad L J 139 : 1958 Mad W N 134 : 71 Mad L W 449 : A I R 1958 Mad 501 (501) (Pts A, B) (Prs 2, 3).

——Art. 226 – Remedy of suit — (Land Acquisition Act (1894), S 6).

Prayer for writ of certiorari to quash notification under S. 6, Land Acquisition Act—Suit being proper remedy, writ will not be issued. 66 Mad L W 1034 : (1953) 2 Mad L J 744 : 1953 Mad W N 831 : A I R 1954 Mad 362 (365) (Pt C) (Pr 10).

——Art. 226—Other remedy open—Petitioner's contentions that grant in their favour being of less than a village, Mad. Act 26 of 1948 did not apply and that the proceeding under colour of Act are not legal —Proper and adequate remedy of the petitioner held was by way of a suit and not by a petition under Art. 226 —(Madras Estates (Abolition and Conversion into Ryotwari) Act (26 of 1948), S. 9). 65 Mad L W 684 : 1952-2 Mad L J 194 : I L R (1952) Mad 680 : A I R 1953 Mad 60 (61) (Pr 1) (DB).

——Art. 226 — Mandamus – Other specific remedy by way of independent suit open – Maintainability of petition. See Specific Relief Act (1877), S. 45. A I R 1953 Mad 556.

——Art. 226 — Madras Estates Land (Reduction of Rent) Act (1947), S. 3 (2) — Rent cannot be reduced under Act in respect of property which is not 'estate' within meaning of S. 3 (2), Madras Estates Land Act, 1908 – Rent reduced in respect of property which is not estate—Remedy of aggrieved owner is by way of suit in civil Court—S. 8 does not prohibit such suit—Remedy under Art. 226 Constitution of India, will not be granted when there is another adequate remedy —(Civil P. C (1908), S. 9). See Madras Estates Land (Reduction of Rent) Act (30 of 1947), S. 3 (2). A I R 1952 Mad 589 (DB).

——Art. 226 – Should not be construed so as to replace the ordinary remedies available to the litigant under the general law of the land. Directions in the nature of a writ of mandamus should not issue under this article except to a public, a quasi public body or officer which is under an obligation, statutory or otherwise to do or refrain from doing anything which is likely to interfere with the rights of persons. Where the remedy of the petitioner would be by way of a suit and an application for injunction in the suit the fact that the Court in which the suit should have been filed is closed for the summer recess would not render Art. 226 applicable. 64 Mad L W 665 : 1951-2 Mad L J 171 : A I R 1952 Mad 112 (112) (Pt A) (Pr 1) (DB).

——Art. 226 — Other remedy open — No ground for issue of writ — Remedy by way of civil suit available —Order which will influence the Civil Court for or against the petitioner cannot be made. A I R 1961 Manipur 28 (31) (Pt D) (Pr 12).

——Art. 226 — Disputed question of facts — Other remedy open.

When the facts are not only in dispute, but the material placed before the High Court is not at all sufficient on which the questions in dispute, can be adjudicated upon the High Court in a proceeding under Art 226 will not enter into such an enquiry, when the remedy of a suit is open to the parties, and when the relief under Art. 226, as regards rights other than fundamental rights is an extraordinary and discretionary remedy. A I R 1959 Manipur 17 (19) (Pt D) (Pr 18).

——Art. 226—Other remedy open—Civil P. C. (1908), S. 9 – Eviction—Existence of relationship of landlord and tenant is jurisdictional fact—Finding thereon of Rent Control Authority can be challenged in Civil Court by regular suit — Finding challenged as incorrect—Remedy is by way of suit and not by way of writ petition. See Houses and Rents — Orissa House Rent Control Act (31 of 1958), S. 7. I L R (1965) Cut 574 (Orissa).

——Arts. 226, 227 — Powers of High Court — Writ petition under Scope and nature of — Alternative remedy open—Petition not maintainable.

The scope of writ petitions under Arts. 226 and 227 of the Constitution of India is very limited. It is not a substitute for a proceeding which is available to the parties for seeking remedies which they can take recourse to in a Civil Court. Disputed questions of fact necessarily cannot be gone into a writ petition. It is only fundamental that where there is an alternative remedy open to the parties, a writ petition does not lie and the application is not maintainable.

In course of hearing writ petitions, High Courts have been at times confronted with jumble of facts— One party disputing the correctness of such facts, namely as to the measurement of plots, the correctness of the site plan, the alleged omission of or scoring through of certain plot number in the application for permission. etc. That apart, the facts relevant for the purpose of the applicability of the different building rules are also in dispute. It is not within the scope of writ application to go into all these facts. The question whether on the facts, which are disputed, a particular building rule is applicable or not in this particular case,—is not a matter for High Court to decide in a writ Petition These and other questions, which have been directly or incidentally raised by the parties, can only be decided in an appropriate proceeding in a Civil Court. The scope of the present petition, over which High Court can decide, is whether or not the order of the Revenue Divisional Commisioner is on the face of it correct. There must be some error apparently manifest on the face of the record which can invoke the jurisdiction of the Court under Arts. 226 and 227. (1963) 5 Orissa J D 97.

—— Art. 226 — Bihar and Orissa Excise Act (2 of 1915) S 28 (1) (a) – Excess amount unlawfully collected as countervailing duty on foreign liquor—

Petitioner not admitting or establishing in spite of repeated opportunities given to him that he had not passed on the increased duty to the customers by increasing sale price -Investigation of disputed facts necessary to hold that petitioner an aggrieved party —Court cannot undertake an investigation and give relief by way of a direction to refund excess amount already collected and to refrain from further collection — As petitioner has another remedy by way of civil suit wherein he could establish that he has not passed on the duty to the customers and therefore he is really an aggrieved party the Court would not grant him relief under Art. 226 on the meagre materials before it. 29 Cut L T 76 : ILR (1963) Cut 93 : (1963) 5 Ori J D 168.

—Arts. 226 and 227 — Extraordinary jurisdiction of the High Court under -If can be exercised when an alternative remedy by way of a regular suit is available -The order of the Additional Agent under the Agency Tracts Interest and Land Transfer Act if a mere executive order or one of a judicial nature —Effect of the 1948 amendment of the aforesaid Act.

Even if a remedy by way of a regular suit is open to a petitioner under Constitution Arts. 226 and 227, it cannot be said that that alternative remedy is equally convenient, beneficent or effective.

The Additiional Agent or the Special Assistant Agent exercising powers under the Agency-Tracts Interest and Land Transfer Act exercises judicial functions. Section 4 (2) of the Act expressly says that the order of the authority concerned is in the nature of a decree for ejectment of the person found in the unlawful possession of the property. An appeal has also been provided by the recent amendment made in Orissa Act (2 of 1948). The order is of a final nature subject to a right of appeal. The parties were heard, evidence was recorded and then a decision was given. All the trappings of a regular Court are to be found in the case and in view of the finality of the order of the Special Assistant Agent or the Additional Agent as the case may be it is clear that he functions as a tribunal. 1950 S C R 459, Ref. to.

It is true that by virtue of the amendment of 1948 it is not necessary that there should be two parties before a revenue officer when he takes action under the Act. But this is for the purpose of initiating a proceeding under the Act. In subsequent stages he has to take evidence, to pass a decree for ejectment and give reasons for his order in view of the right of appeal conferred on the aggrieved party. The mere fact that proceedings can be started by him on his own motion will not render the proceedings executive proceedings as distinct from judicial proceedings ILR (1952) Cut 615 ; 18 C L J 267 ; AIR 1953 Orissa 238 (239) (Pts A, B) (Prs 5, 6) (DB)

—Art. 226 -Other remedy open—(Bihar Religious Trusts Act (1 of 1951).

The High Court will not entertain an application under Art. 226 for quashing the proceedings under the Bihar Religious Trusts Act, where the question at issue between the parties is as to whether the Math in question is public or private trust because such a question is one of fact depending on oral and documentary evidence. A proceeding under Art. 226 is not a proper machinery to investigate such questions of fact. If the petitioner contends that the property is not trust property and the Math is not a public Math he is at liberty to institute a properly framed suit claiming the relief he seeks in a Court of competent jurisdiction. A I R 1954 Pat 233 (234, 235) (Pt B) (Pr 5) (DB).

—Art. 226 — Scope of enquiry.

A proceeding under Art 226 is hardly the appropriate machinery for the purpose of deciding the question of benami and the title of the petitioner to certain property. The proper remedy for the petitioner is to institute a title suit where the question of benami may be put in issue and evidence offered on the question. A I R 1953 Pat 127 (128) (Pt A) (Pr 4) (DB).

—Art. 226 — The remedy provided by Art. 226 in respect of rights other than fundamental rights is an extraordinary remedy, and is not intended to supersede the ordinary procedure under which a person aggrieved can obtain relief by means of a suit in a civil Court. A I R 1950 Pat 387 and A I R 1952 Pat 23, Foll. 1953 Cri L J 799 ; A I R 1953 Pat 103 (104) (Pr 4) (DB).

—Art. 226 -Auction of bushes and trees on Government land — Auction price is revenue payable to Government and recoverable as arrears of land revenue -Dispute as to area — Remedy open in ordinary Court—Petition under Art. 226 of Constitution held not maintainable as requiring hearing of evidence—See Tenancy Laws — Punjab Land Revenue Act (17 of 1887), S. 42. ('62) 64 Punj L R 602.

—Art. 226 -Enforcement of claim against Government -Alternate remedy -Proceeding for writ.

Where in substance the petitioner's claim is that the Government wrongly cancelled the mining concession previously granted to him or in the alternative the Government wrongly refused to grant him the prospecting licence it amounts to a claim that the license in question which had already been granted to the petitioner must be specifically enforced against the Government or in the alternative the Government must be ordered to grant a license to him. This relief should more appropriately be subject-matter of a regular suit and not that of a proceeding under Art. 226. 61 Punj L R 140 ; AIR 1959 Punj 54 (58) (Pt D) (Pr 12).

—Art. 226 — Rajasthan Tenancy Act (3 of 1955), S 5 (28)—Other remedy open -Pasture land - Question of facts -High Court will not exercise its jurisdiction —Allottee has other remedy by way of suit.

From the definition of the term "pasture land" it will be evident that if the land is recorded in settlement records or is reserved as such in accordance with the rules then no further proof of it being a pasture land is necessary, otherwise for any land to be pasture land it has to be shown that it is a land used for grazing of the cattle of a village or villages. Whether the land allotted by the Tehsildar to the petitioners was or was not used for grazing cattle is but a question of fact. In exercise of its extraordinary jurisdiction under Art. 226 of the Constitution the High Court is in no position to make any pronouncement one way or the other, whether the Government were justified in treating the land as pasture land. If the petitioners feel that by virtue of the allotment in their favour by the Tehsildar and by their cultivating it and paying rent to the Government they have lawfully acquired tenancy rights in it, then it will be for them to establish their rights in a competent Court. The remedy of a suit is available to the petitioners and consequently the High Court will not be inclined to deal with the matter in exercise of its extraordinary jurisdiction under Art. 226 of the Constitution. I L R (1965) 15 Raj 880 (DB).

—Art. 226 -Mere error of law or fact not a ground —Two views of law possible on facts - Inferior tribunal taking a particular view — Remedy by way of suit though open not availed of — Order cannot be quashed—Tenancy Laws — Rajasthan (Protection of Tenants) Ordinance (9 of 1949), Ss 7 and 10—Rajasthan Tenancy Act (3 of 1955), S. 183.

Where in proceedings for reinstatement under S. 7, Rajasthan (Protection of Tenants) Ordinance 1949, the order of the Ejectment Officer refusing to grant

relief to the applicants was confirmed by the Board of Revenue in revision under S. 10 of the Ordinance on the finding that the petitioners were in possession merely as cosharers and not as tenants, the High Court in the exercise of its extraordinary jurisdiction under Art. 226 should not interfere with the above finding after examining the evidence for itself. The order of the Board of Revenue is not final and it is open to the petitioners to institute a suit for declaration of their right or title to the land in question under S. 183 of the Rajasthan Tenancy Act. A I R 1958 Raj. 74, Rel. on. **1961 Raj L W 42 : ILR (1960) 10 Raj 1638.**

——Art. 226—Other remedy open — (Marwar Land Revenue Act (40 of 1949), S. 79 (3).)

Section 79 (3) of the Marwar Land Revenue Act (40 of 1949) provides that the order of the Settlement Officer passed under sub-ss. (1) and (2) of S. 79 making entries in the revenue record and putting a person in possession would be open to review by a proper civil or revenue Court. Where therefore the order passed by the Settlement Officer making revenue entries during settlement operations give rise to disputes regarding proprietary right to possession, the party which feels aggrieved by such an order can go to the civil Court to have his title determined, and the High Court should not interfere under Art. 226. **1956 Raj L W 453 : I L R (1956) 6 Raj 686 : A I R 1957 Raj 136 (137, 138) (Pr 5) (DB).**

——Art. 226—Other remedy.

Held, that where the facts were not in dispute, and the remedy by way of a suit could not have been equally beneficial, effective and convenient, the application for a writ of mandamus was maintainable. **1954 Raj L W 524 : I L R (1954) 4 Raj 733 : A I R 1954 Raj 207 (211) (Pt E) (Pr 12) (DB).**

——Art. 226—Another remedy open—Administration of Evacuee Property Act (1950), Ss. 46 and 47.

Where a usufructuarily mortgaged property which is taken back on lease by mortgagor himself is taken possession of by a Custodian as evacuee property the custodian is liable to pay rent of the property and as an adequate remedy by way of suit for recovery of arrears of rent against the custodian is not barred by Ss. 46 and 47 of the Evacuee Property Act, the High Court cannot exercise its extraordinary powers under Art. 226 to grant relief to the mortgagee in respect of the arrears of rent. **1953 Raj L W 113 : I L R (1952) 2 Raj 534 : A I R 1954 Raj 77 (78) (Pt B) (Prs 4, 5) (DB).**

——Art. 226—Party not satisfied with entries made by Settlement authorities in connection with settlement operations — Remedy by way of suit open to party under S. 101, Jaipur Tenancy Act, read with Sch. I, Group B, Item 13, Rajasthan Revenue Courts (Procedure and Jurisdiction) Act, 1951 — High Court will not grant relief under Art. 226. I L R (1952) 2 Raj 869 : AIR 1953 Raj 151 (152) (Pr 5) (DB).

——Art. 226—Scope of powers under—Another adequate remedy open — Petition for writ of certiorari against requisitioning of house — Title of petitioner to house challenged — Petitioner held should pursue his remedy by suit and establish his title — Power under Art. 226 not exercised.

The powers of the High Courts under Art. 226 to issue directions, orders or writs are not confined to those cases only where fundamental rights are infringed. They can be issued for any other purpose, which means even for a purpose other than the enforcement of the fundamental rights. But extraordinary powers under Art. 226 will be exercised only in clear cases of infringement of fundamental or legal rights. Ordinarily it would not be exercised when another adequate and efficacious remedy by ordinary legal process exists. An application under Art. 226 is and must remain an extraordinary remedy to be used where ordinary legal process cannot give adequate and prompt relief. Though Art. 226 makes no mention as to who shall apply for an appropriate order under the Article, other writs, directions or orders cannot be placed on the same footing as the writ of habeas corpus and only those persons whose interests are directly affected by a Statute or an order can apply for redress under the Article.

(It was held that the petitioner for a writ of certiorari against an order requisitioning a house of which he alleged to be the owner should be left to pursue his ordinary remedy by way of a regular suit and establish his title to the property.) Case law Ref. **1952 Raj L W 456 : I L R (1952) 2 Raj 243 : A I R 1953 Raj 33 (35) (Prs 8, 9, 10, 11) (DB).**

——Art. 226—Other remedy available.

Ordinarily a writ of mandamus is not granted where an effective remedy by regular suit is available to a petitioner. **AIR 1951 Sau 73 (76) (Pt A) (Pr 5).**

——Art. 226—Other remedy open.

The extraordinary jurisdiction of the High Court under Art. 226 may be invoked in cases where no adequate remedy is available to an aggrieved party and a writ or order under Art. 226 alone affords a convenient and effective mode of redress. Thus, where an adequate and effective relief can be obtained by a suit, a necessary condition for the exercise of this jurisdiction is lacking. Mere defect of jurisdiction in the impugned order, does not make it obligatory on the Court to exercise the jurisdiction under Art. 226. Whether the alternative remedy is equally efficacious or adequate is a question of fact to be decided in each case. **AIR 1956 Tripura 9 (13) (Pt C) (Prs 20, 24, 25).**

7 (t). Other remedy barred or exhausted or not taken or not available.

● **——Arts. 226 and 136—Other remedy open but not availed of—Does not oust jurisdiction of High Court—Alternative effective remedy—What is—Exercise of discretion by High Court — No interference by Supreme Court unless exceptional circumstances exist.**

Per Subba Rao and Bachawat, JJ.—The Supreme Court would not interfere with the discretion of the High Court in exercising the jurisdiction when there are no exceptional circumstances. A remedy by way of an appeal against the order of confiscation and imposition of a large penalty under the Sea Customs Act is not an effective remedy, when no appeal can be filed unless the large penalty imposed upon the petitioner has first been deposited. Abrol, Additional Collector of Customs, Bombay v. Shantilal Chhotelal and Co., (1965) 2 S C W R 1032: **AIR 1966 S C 197 (202) (Pt B) (Pr 15).**

● **——Art. 226 — Alternative remedy — Petitioner's failure to avail it within prescribed time due to his own fault—Cannot be urged as a ground to exercise discretion in his favour.**

If a petitioner has disabled himself from availing himself of the statutory remedy by his own fault in not being so within the prescribed time, he cannot certainly be permitted to urge that as a ground for the Court dealing with his petition under Art. 226 to exercise its discretion in his favour. A. V. Venkateswaram, Collector of Customs, Bombay v. Ramchand Sobhraj Wadhwani, (1962) 1 S C J 170 : (1962) 1 Mad L J (SC) 83: (1963) 1 Andh W R (SC) 83: 64 Bom L R 386 : (1962) 1 S C R 753 : (1961) 2 S C A 622 : **A I R 1961 S C 1506 (1510, 1511) (Pt C) (Prs 11, 15).**

● **——Art. 226 — Other remedy — Certiorari if and when can issue — Mandamus — Distinction—(Police Act (5 of 1861), S. 7) — (U. P. Police Regulation, Regns. 308 and 512).**

There is no rule, with regard to certiorari as there is with mandamus, that it will lie only where there is no other equally effective remedy. Provided the requisite grounds exist, certiorari will lie although a right of appeal has been conferred by statute. Ordinarily the superior Court will decline to interfere until the aggrieved party has exhausted his other statutory remedies, if any. But this rule is a rule of policy, convenience and discretion rather than a rule of law.

If an inferior Court or tribunal of first instance acts wholly without jurisdiction or patently in excess of jurisdiction or manifestly conducts the proceedings before it in a manner which is contrary to the rules of natural justice and all accepted rules of procedure the superior Court may, quite properly exercise its power to issue the prerogative writ of certiorari to correct the error of the Court or tribunal of first instance, even if an appeal to another inferior Court or tribunal was available and recourse was not had to it.

Orders made on departmental 'trial' held by an officer in the department without any legal training and orders passed by his superior officers in the same department on appeal or in revision, can hardly be equated with reasonable propriety with the orders passed by a Special Tribunal and on appeal therefrom by the High Court. A I R 1951 S C 217, Disting. The State of U. P. v. Mohammad Nooh, 1958 S C J 242 : I L R (1957) 2 All 422 : 1958 S C A 73 : 1958 Mad L J (Cr) 197 : 1958 S C R 595 : AIR 1958 S C 86 (92, 93, 94) (Pt B) (Prs 9, 10, 11).

——Art. 226—Exhaustion of other remedies.

Petitioner cannot approach Court for writ unless he exhausts all remedies available departmentally. A I R 1953 Ajmer 26 (27) (Pt B) (Pr 8).

——Art. 226—Alternative adequate remedy open — Tenure-holder's objection under S. 10(2), U. P. Imposition of Ceilling on Land Holdings Act — Authority rejecting his claim—Act providing for appeal against Authority's decision — Yet tenure-holder allowing period of limitation to expire and filing writ petition —Petition also belated — Petition must be dismissed. 1964 All W R (HC) 555 : 1964 All L J 896.

——Art. 226 — Certiorari — Grant of relief discretionary — Party having chosen a particular mode of relief cannot be allowed to reagitate against it — Proceedings under U. P. Consolidation of Holdings Act (5 of 1954), Ss 21 (5) and 48.

Relief by way of writ is discretionary and it would not be fair to allow a party to reagitate a matter where such party itself has chosen a particular mode of relief. Where, therefore, a party has given a revision application under S. 48 of the U. P. Consolidation of Holdings Act and has, up to the end, insisted on seeking the remedy by way of revision, it could not be allowed to retrace its steps if the order in revision eventually goes against that party and claim that the proceedings ought to have been disposed of as second appeal. AIR 1954 All 447 and Spl. Civ. Appeal No. 81 of 1961 (All), Foll. AIR 1963 All 421 (422) (Pr 2).

——Art. 226—Writ petition—Maintainability—Alternative remedy not availed — Writ cannot be issued.

In a writ petition a petitioner has to make out a case, not only of an error of law, having been committed by the subordinate authority or officer, however grave the error might be, or of want of jurisdiction, even though there may be total absence of jurisdiction, but he has, in addition, to show that manifest injustice has been done to him, and injustice will be perpetrated if relief is not granted to the petitioner.

The jurisdiction of the High Court under Article 226 cannot be invoked by the petitioner without exhausting the remedies open to him under the Act, such as a revision under S. 33A (2) of the Income Tax Act to the Commissioner of Income Tax. (1963) 47 I T R 453 (All).

——Art. 226— Other remedy open — Petitioner not availing himself of remedy of appeal open to him — High Court will not interfere in the matter in its writ jurisdiction. AIR 1962 All 574 (576, 577) (Pt C) (Pr 6).

——Art. 226 — Assessment under U. P. Large Land Holdings Tax Act — Whether objection regarding exclusion of areas was not considered or decided is question of fact —Relief under Art. 226 not open — Other remedies abandoned — Jurisdiction of High Court cannot be invoked.

Where the assessees raised objections regarding the exclusion of certain areas in the computation of areas of land holdings for the purpose of assessments under U. P. Large Land Holdings Tax Act in writs to challenge the assessment orders of the assessing authority:

Held, that since the allegation that the assessee's objections were not considered or decided had been denied, that raised a question of fact which could not be gone into in petition under Art. 226.

Held further that it was open to the petitioners to have taken all such objections as they were minded to, in appeals provided by the Act against the assessment orders. A party cannot be allowed to abandon recourse to remedies provided under an Act and invoke the jurisdiction of the High Court under Art. 226 of the Constitution. A I R 1961 S C 809, Rel. on. 1962 All W R (H C) 147.

——Art. 226 - Other remedy —Remedy of appeal not availed of —No writ petition lies.

Where a person aggrieved by an order of the Assistant Custodian of Evacuee properly, does not avail himself of the remedy by way of an appeal provided by the Administration of Evacuee Property Act, for a long time cannot be heard after such a long time in writ jurisdiction. AIR 1961 All 299 (300) (Pt B) (Pr 5).

——Art. 226 — Other remedy — U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 7-A —Order under — Revision not filed—Petition under Art. 226.

Filing of a revision is not an alternate and efficacious remedy. Revision being not a matter of right in which a person filing the revision can claim relief non-availing of an alternate remedy by way of revision against an order under S. 7-A, U. P. Act (3 of 1947) will not be a bar to filing of writ petition under Art. 226 of the Constitution. 1960 All WR (HC) 406; 1960 All L J 546.

[Overruled in AIR 1966 All 57 (FB)].

——Art. 226—Other remedy.

It is true that the existence of alternative remedy by itself is not an absolute bar to the exercise of its jurisdiction by the High Court under Art. 226. It is however, a matter to be taken in consideration while deciding whether the powers under the Article are to be exercised in a particular case. Where keeping in view the fact that an alternative remedy was open to the appellant but had not been followed by him the Judge declined to interfere with the impugned order, the order of the Judge in writ proceedings cannot be said to be unjustified. I L R (1959) 1 All 354 : 1959 All L J 382 : 1959 All W R (H C) 352 : A I R 1959 All 717 (718) (Pt B) (Pr 6)(DB).

——Art. 226 — Other remedy open —Payment of Wages Act (1936), S. 17 —Remedy of appeal doubtful — Whether bar to writ petition.

The existence of another remedy which the petitioner did not avail himself of, is not an absolute bar to the entertainment of a writ petition. Hence, where on the order as it stood it was not clear whether an appeal lay or not under S. 17, Payment of Wages Act, against the impugned order, the omisssion of the petitioner to file an appeal against that order should not lead to

the dismissal of the writ petition. 1958 All W R (HC) 367 : AIR 1957 All 363 (365) (Pt A) (Pr 7).

——Art. 226—Other remedy.

Where the petitioner has already sought an alternative remedy by filing a revision in the High Court challenging the validity of an order, it is not open to the petitioner to come to the High Court in the writ petition and therefore he is not entitled to any relief under Art. 226. 1957 All L J 891 : 1957 All W R (HC) 820.

——Art. 226 — Other remedy open — Remedy of appeal under S. 17, Payment of Wages Act not availed of and becoming time-barred — Petition under Art. 226 is not maintainable — (Payment of Wages Act (1936), S 17).

Under the Payment of Wages Act an appeal lies under S. 17 against a direction under S. 15 (3). Where the petitioner has not availed himself of this remedy and the appeal is time barred he cannot maintain an application under Art. 226, Constitution of India. He cannot say that the petition under Art. 226 should be heard because his appeal under S. 17, Payment of Wages Act, would be barred by time. It is due to his own fault that the appeal has become barred and he cannot take advantage of his own fault. AIR 1955 All 702 (703) (Pt B) (Pr 4).

——Art. 226 - Another remedy open —Remedy under S. 27, Administration of Evacuee Property Act not availed of —Petition under Art. 226 will not lie. AIR 1955 NUC (All) 1412.

——Art. 226 —Alternative remedy — Remedy under S. 7-F, U. P. (Temporary) Control of Rent and Eviction Act — (Houses and Rents — U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 7-F).

S. 7-F does not afford any alternative remedy to a landlord. A landlord has not been given any right to approach the State Government to revise the order passed by the Rent Control and Eviction Officer. S. 7F just empowers the State Government to call for the record and make suitable orders. The landlord, therefore, cannot approach the State Government by way of appeal or revision against the order of the Rent Control and Eviction Officer. I L R (1954) 2 All 239 : 1954 All W R (H C) 156 : 1954 All L J 172 : AIR 1954 All 428 (431) (Pt B) (Pr 16) (DB).

[Overruled in A I R 1968 All 57 (FB),].

——Art. 226—Another remedy open.

Suit against order of attotment of accommodation under U. P. Temporary Rent Control and Eviction Act, 1947, asking for injunction restraining allottee from taking and Rent Control authority from giving possession —Application in suit for temporary injunction refused on ground that suit did not lie because notice under S. 80, C. P. Code, was not given —Withdrawal of suit by plaintiff—He cannot be said to have availed of another remedy and failed so as to be prevented from seeking remedy under Art. 226 —Decision on issue of temporary injunction leads to inference that he had no other such remedy open 1953 All L J 151 : 1953 All W R (H C) 125 : AIR 1953 All 458 (459) (Pt D) (Pr 7) (DB).

——Art. 226— Other remedy — Existence — Facts showing other suitable remedy not available —Necessity to prove by affidavit.

If there is nothing in the affidavit of the petitioner nor in the application to satisfy the Court that no other remedy is open to him the petition must fail. 1953 All W R (H C) 113 : 1953 All L W 21 : 1952 A L J 733 : AIR 1953 All 109 (110) (Prs 2, 3) (DB).

——Art. 226—Other remedy—Quo warranto — Writ of —(Municipalities— Hyderabad Municipal Corporations Act (2 of 1956), S 678 (2)).

S. 678 (2) Hyderabad Municipal Corporations Act is clearly designed to enable the Government only to suspend execution of a resolution or prohibit the doing of any act and to give an opportunity to the corporation to get revised, modified or revoked any order by the Government under Cl. (a). The suspension of a resolution electing a person cannot be said to be an alternative remedy and the object in having the election declared illegal cannot be achieved by the suspension of resolution. (1958) 1 Andh W R 22 : ILR (1958) Andh Pra 17.

——Art. 226—Hyderabad Tenancy and Agricultural Lands Act, 1950, Ss. 89 and 90 — Only where landlord seeks to take possession of land from tenant or protected tenant that he can proceed in manner provided in the Act — Otherwise the proper forum is civil Court — An enquiry into merits of rival claims of title to property in dispute set up by petitioner and the respondent is a field of investigation by a civil Court in a properly constituted suit rather than for a Court exercising the prerogative of issuing writs — See Tenancy Laws—Hyderabad Tenancy and Agricultural Lands Act (XXI of 1950), S. 98. 1958 Andh L T 824.

——Art. 226—G. O. Ms. 26, D/- 12-1-1954 directing general amnesty to all prisoners to celebrate inauguration of Andhra State — Applicability of order — "Amnesty", meaning of — Effect of pardon on office holder — Right to office not forfeited — Dismissal from office — Alternative remedy available but not availed of —Writ could be issued it being a fit case — See Ibid, Art. 161. (1956) 2 Andh W R 682.

——Art. 226—Other remedy — Availing of — Filing appeal out of time.

Filing appeals out of time is not availing of the remedy provided by the law. It is more a failure to avail of the remedy than anything else (1957) 8 STC 417 : ILR (1957) 9 Assam 167: AIR 1957 Assam 61 (64) (Pt C) (Pr 13) (DB)

——Arts. 226, 227 — (Sales Tax—C. P. and Berar Sales Tax Act (21 of 1947), Ss. 23 (1) and 22-B)— Appeal against revised assessment order dismissed— Application for review dismissed — Express remedy under S. 22 (1) not availed of — Writ petition challenging the order not entertained.

An order of assessment passed against the petitioner was revised by the Commissioner under S. 22 B of the C. P. and Berar Sales Tax Act, by which certain transactions excluded by the Sales Tax Officer were included. An appeal filed before the Sales Tax Tribunal was dismissed. A review application was also dismissed—Petitioner filed a petition under Art. 226 of the Constitution.

Held, that the petitioner having failed to avail of the remedy applying for making a reference under S. 23 (1) he was not entitled to invoke the discretionary jurisdiction under Art. 226 or 227 of the Constitution. 1963 Mah L J (Notes) 23.

——Arts. 226 and 227—Other remedy open — Interference — Grounds.

In a petition for a writ the High Court may, in an appropriate case, take into consideration the fact that there is another remedy available to the petitioner of which he may take advantage but of which he has not taken advantage and the Court may, in certain circumstances, refer a party aggrieved to the specific remedy provided by the statute. To this principle there may possibly be one exception and, that is, if an authority makes an order without jurisdiction it would be open to a party to come up by a writ petition under Art. 226 or 227 of the Constitution. ('58) 60 Bom L R 210.

——Art. 226—Other remedy open—Failure to appeal does not necessarily disentitle petitioner from seeking relief under Art. 226.

Petitioner's failure to appeal from an order by which he is aggrieved will not disentitle him to relief under Art. 226 of the Constitution provided he is otherwise found entitled. His failure to avail of the

ordinary remedies under the statute by way of appeal or revision will not disentitle him to relief when he seeks the High Court's assistance for a writ, but that it is a circumstance which may well be taken into consideration in deciding whether by the discretionary relief provided by Certiorari can be given to the petitioner. AIR 1958 S C 86 and AIR 1961 S C 1506, Rel. on. **AIR 1963 Cal 26 (35) (Pt D) (Pr 43) (DB).**

——**Art. 226—Assessment proceedings — Defects in— Remedy of appeal to Tribunal not pursued — Relief under Art. 226 is not open.** AIR 1961 S C 609, Rel. on. **(1963) 50 ITR 87 (Cal).**

——**Art. 226 — Other remedy — Entry in record of rights—Issue of writ—(Tenancy Laws—West Bengal Estates Acquisition Act, 1953 (1 of 1954), S. 44 (2), (3) and (4).)**

Under sub-s. (4) of S. 44 of Bengal Act I of 1954, every entry in the record of rights finally published under sub-s. (2) of S. 44 shall, subject to any modifications made by any order on appeal under sub-s. (3), be presumed to be correct until it is proved by evidence to be incorrect. Since the petitioners did not make any objection during the settlement of the records of rights and allowed the final publication to be made without mention of the right claimed by them, it was impossible in the writ application to grant any relief to the petitioners. The entries had become final and conclusive, and the High Court cannot go beyond them. ('59) 63 Cal W N 933.

——**Art. 226 — Other remedy — Issue of writ — Remedy under special Act pursued in all stages without success — Effect on writ application filed thereafter.**

Where a party has availed himself of the ordinary remedies provided for by a special Act, he cannot thereafter turn round and begin once again from the bottom by challenging the original order under Art 226 of the Constitution. 60 Cal W N 1042, Foll. **62 Cal W N 278 : ILR (1959) 1 Cal 140 : AIR 1958 Cal 203 (208) (Pt C) (Pr 11).**

——**Art. 226 — Remedy available at law allowed to be barred by— Applicant misled by provision of law if ground for interference.**

When an applicant has an alternative remedy which he has allowed to be barred by lapse of time, it is no argument to say that he should be granted relief under Art. 226, as his legal remedy is barred. **61 Cal W N 11:AIR 1957 Cal 164 (169) (Pt F) (Pr 10).**

● ——**Art. 226 - Other remedy—Party taking advantages of — (West Bengal Bargadars Act (2 of 1950) —Validity).**

Although the existence of an alternative remedy is not an absolute bar to the entertainment or maintenance of an application under Art. 226 of the Constitution, still, if a party had availed himself of the alternative remedy, he could not after having exhausted those remedies or gone a certain way in their pursuit, switch round to Art. 226 of the Constitution and start a fresh line of proceeding under that provision. Abindra Kumar Maity v Majumdar, **60 Cal W N 299 : AIR 1956 Cal 273 (274) (Pt A) (Prs 8, 9) (FB).**

——**Art. 226 — Other remedies open — Motor Vehicles Act, 1939, S. 64.**

Where no order of refusal as required by S. 57 (7) of the Motor Vehicles Act was passed by the Provincial Transport Authority and no copy of any such order was given to the party there is no order against which the party could have gone up in appeal and in such a case it cannot be said that petition under Art. 226 of the Constitution of India did not lie because other remedies were open. **AIR 1951 Him Pra 36 (40) (Pt B) (Pr 10).**

——**Art. 226 -Other remedy open—Issue of writ.**

If a remedy is provided under a statute that remedy first should be exhausted before a writ petition could be presented; but that does not preclude the High Court in exercising jurisdiction in a fit case where grave injustice is being caused and if not remedied immediately would cause hardship and harassment to the party. **ILR (1956) Hyd 358 : (1956) 7 S T C 762: AIR 1956 Hyd 124 (125, 126) (Pt A) (Pr 3) (DB).**

——**Art. 226 — Other remedy open — Such remedy not availed of — Extraordinary remedy by way of writ not available.** AIR 1959 J & K 141 (144) (Pt E) **(Pr 27) (DB).**

——**Art. 226—Other remedy—Jammu and Kashmir Village Panchayat Act (V of 2008), S. 7 (b).**

The remedy under an Act cannot be said to be adequate and is indeed nugatory or useless if the Act is itself ultra vires and void and the principle of another remedy can therefore have no application to the case. Thus where a petitioner has invoked the extraordinary jurisdiction of the High Court on the ground that S. 7 (b) of the Panchayat Act is ultra vires of the powers of the legislature, the remedy of appeal provided by that Act cannot be said to provide an adequate relief and the petitioner has a right to come directly to the High Court for the purpose of securing a writ under Art. 226. A I R 1955 S C 661, Rel. on. **A I R 1957 J & K 38 (39) (Pt A) (Pr 3) (DB).**

——**Art. 226 — Other remedy — Dismissal of civil servant — Fundamental rights violated inasmuch as servant denied equal opportunity—Remedy of appeal allowed to become time barred — Writ petition is maintainable.** AIR 1957 J & K 11 (12) (Pt C) **(Pr 6).**

——**Art 226—Other remedy—Constitution of Jammu and Kashmir, Art. 32 (2-A) —Issue of writ—General rule—Alternative remedy not availed of — Petition not maintainable.**

As a general rule the power under Art. 32 (2-A) of the Constitution of Jammu and Kashmir (which corresponds to Art 226 of the Constitution of India) will not be exercised by the High Court when another effective and adequate remedy exists but if an aggrieved party satisfies the Court if he is not granted an immediate relief he will suffer an irreparable loss and the allernative remedy is onerous and not likely to give him that immediate relief, the Court will be fully justified in exercising its powers under Art. 32 (2-A) of the Constitution.

Held, that the petitioner did not avail of the alternative remedy within the prescribed period and allowed the order of the Registering and Licensing Authority to become final. There was no satisfactory explanation to show as to why the remedy available under the Act was not availed of by him. He, not being diligent himself, could not ask the Court to grant him an extraordinary remedy under Art. 32 (2-A) of the Constitution. AIR 1957 J & K 5 (6) **(Pr 7).**

● ——**Arts. 226 and 32 (2-A) (as applied to Jammu and Kashmir State) —Other remedy open - Cancellation of allotment under J and K. State Evacuees' (Administration of Property) Act (2006)—Remedy under S. 30-A not availed of—Writ petition whether can be entertained —(J. and K. State Evacuees' (Administration of Property) Act (2006), S. 30-A)**

The remedy provided in Art. 32 (2-A) of the Constitution of India as applied to the State of Jammu and Kashmir cannot be used as a substitute for ordinary remedies. If a statute provides a remedy for a wrong, resort must be had to that remedy. It is, therefore clear that where there is another remedy open to a party, the High Court should be very reluctant in granting extraordinary remedy by way of a writ but in exceptional circumstances where a party is likely to suffer irreparable loss due to delay which may occur by pursuing the ordinary remedy, the High Court may in extraordinary circumstances grant a speedy remedy by way of a writ. In Jammu and

Kashmir State Evacuees' (Administration of Property) Act there is remedy provided under S. 30-A by way of revision to the Custodian General. In face of the remedy provided under the Act, the High Court will not entertain a writ petition against an order cancelling an allotment except in extraordinary circumstances where the petitioner satisfies the Court that the remedy provided will not be effective and that he will suffer irreparable loss if remedy by way of a writ is not granted. AIR 1954 Punj 165, Rel. on. Gain Kour v. Provincial Rehabilitation Officer, **AIR 1958 J & K 33 (35) (Pt G) (Pr 12) (FB).**

● **——Art. 226—Another remedy open—Such remedy followed by petitioner—High Court will still interfere.**

Where the petitioner has preferred a revision against an order of Sales Tax authority and has also filed a writ petition against the same order in the High Court, the revision by itself does not debar the High Court from giving appropriate relief, if otherwise the petitioner is entitled to such relief. Brillant Traders, Ltd. v. Board of Revenue. **1962 Ker L J 1304 : 1961 Ker L T 1098 : (1962) 13 S T C 176 : I L R (1962) 1 Ker 301 : AIR 1962 Ker 132 (133) (Pt B) (Pr 12) (FB).**

——Art. 226—Other remedy—Award of Industrial Tribunal — Special leave to appeal against awards, under Art. 136, refused by Supreme Court—Jurisdiction of High Court to entertain application under Art. 226 to quash award.

A High Court cannot refuse to entertain an application under Art. 226 of the Constitution to quash an award of the Industrial Tribunal on the ground that the aggrieved party could move the Supreme Court under Art. 136 of the Constitution. That the Supreme Court declined to exercise its discretion in favour of the petitioner cannot affect the jurisdiction vested in the High Court under Art. 226 of the Constitution. But the fact that the Supreme Court declined to exercise its discretion in favour of the petitioner is a factor that ought to be taken into account and given due weight. AIR 1958 Mad 338, Foll. **1959 Ker L J 96 : 1959 Ker L R 35 : (1959-60) 16 F J R 45 : (1959) 1 Lab L J 504 : AIR 1959 Ker 291 (292, 293) (Pt A) (Pr 9).**

——Art. 226—Other remedy open.

(Per Dixit, J.)—Where an Excise Commissioner has forbidden a licence holder from bidding at an auction sale of excise shops, the licence holder has the remedy of appealing to the Chief Revenue Authority against the decision of the Excise Commissioner. If he omits to avail himself of this remedy, he is not entitled to invoke Art. 226 for a declaration that he was wrongly debarred from bidding at the auction and for a direction for quashing the order. **Madh B L J 1955 H C R 1253 : Madh B L R 1956 Civ 688 : AIR 1956 Madh B 21 (23) (Pt E) (Pr 9) (DB).**

——Art. 226 — Other remedy open — Nomination papers of all candidates rejected — No notification of election under S. 20 of M. P. Panchayats Act can be issued — Election petition under S. 357 (1), M. P. Panchayats Act not competent—Remedy under Constitution of India, Art. 226, available. See Panchayats—M. P. Panchayats Act (7 of 1962), S. 357 (1). AIR 1965 Madh Pra 256 (DB)

——Art. 226—Petitioner failing to avail alternative remedy under S. 64-A of Motor Vehicles Act—Existence of alternative remedy is not absolute bar to exercise of writ jurisdiction by High Court.

Held, complex nature of question raised in the petition and entirely discretionary nature of revisional jurisdiction of Authorities under S. 64-A Motor Vihicles Act, would justify the High Court to exercise jurisdiction under Art. 226. **1965 M P L J 265 : 1965 Jab L J 498 : AIR 1965 Madh Pra 132 (136) (Pt B) (Pr 9) (DB).**

——Art. 226—Another remedy open—C. P. and Berar Municipalities Act (2 of 1922), S. 25 (6) — Rules framed under Rule 2—"Drawing Rs. 50 or more" in R. 2 (ii)—Refers to total emoluments and not merely to substantive salary—Departmental punishment—Dismissal of teacher drawing more than Rs. 50 per month—Order reinstating teacher passed in appeal, by Sub Divisional Officer—Remedy by way of second appeal though open not availed of by Municipality—No good grounds shown for interference—No interference by High Court in Writ petition filed by Municipality. AIR 1957 S C 882, Foll. 1961 Jab L J 969 : ILR (1959) Madh Pra 715 : 1961 M P L J 777 : 1961 M P C 536 : AIR 1962 Madh Pra 6 (7) (Pr 7) (DB).

——Art. 226—Another remedy not exhausted — Adequate material to determine facts not placed before the Court—High Court will not interfere in writ proceedings. 1962 M P L J (Notes) 91.

——Art. 226—Other remedy—Irregularities in Municipal elections—Remedy by way of election petition not availed of—Relief under Art. 226 not granted—(Municipalities—C. P. and Berar Municipalities Act (2 of 1922), S. 20-A).

The existence of an alternative remedy is not an absolute bar to give relief under Art. 226 of the Constitution. Such a relief can be given if the alternative remedy is not equally speedy or efficacious or some other exceptional circumstances make it just and convenient to grant it.

Any complaint regarding irregularities at the time of scrutiny or regarding the allotment of symbols would therefore be a matter pertaining to elections and should, under S. 20-A of C. P. and Berar Municipalities Act, 1922, be challenged by an election petition. The High Court therefore did not think it proper to exercise discretion in granting relief in writ proceedings. **1960 M P L J 106 : 1960 Jab L J 185 : 1960 M P C 142 : ILR (1959) Madh Pra 367.**

——Art. 226—Other remedy—Issue of certiorari.

The Income-tax Act provides an appeal against an order of assessment and further remedies in case the assessee is aggrieved by the order of the appellate authority.

Where the petitioner applied for a writ of certiorari to quash the order of assessment under S. 47 of the Travancore Income-tax Act, 1121 without resorting to any of the three alternative remedies available to him under that Act long after the period within which the reassessment proceedings could be initiated had expired.

Held, that the Court would decline to issue the writ sought, even if the petitioner was otherwise entitled to it. **(1960) 38 I T R 325 : (1960) 1 Mad L J 439 : AIR 1960 Mad 320 (321) (Pt A) (Pr 6) (DB).**

——Art. 226—Other remedy open.

The power vested in President under S. 128, States Reorganisation Act, could by no stretch of language be termed a remedy available to the petitioner applying for a writ of prohibition restraining the chairman of the Legislative Council from specifying under S. 35 (3) of the States Reorganisation Act. The President cannot treat any provision of the Act as unconstitutional and proceed on the basis therefrom of its being non existent in the eye of the law and therefore inoperative. **(1956-57) 12 Ele L R 345 (Mad).**

——Art. 226 — Limitation not condoned and appeal rejected — No appeal lies under S. 31 of Orissa Sales tax Act—No reference is maintainable — Remedy of assessee is under S. 33-A or Art. 226 of the Constitution. AIR 1955 Orissa 1 (DB).

—— Art. 226 — Certiorari — Other remedy open — Panchayat—Bihar Panchayat Election Rules (1956), R. 72 — Election of Mukhiya — Writ petition by a candidate against rejection of his nomination paper —Application for stay of election rejected—Election taking place—Writ petition, if maintainable.

Where a candidate for election of Mukhiya of a Gram Panchayat filed writ petition against rejection of his nomination paper under S. 79 (1) of Bihar Panchayat Raj Act on allegations of corrupt practices, but his application for stay of election was rejected and the election of Mukhiya took place within three days thereafter, it was the duty of such candidate to have filed an election petition for setting aside the election of returned candidate. Having failed to avail of this alternative remedy under R. 72 of the Bihar Panchayat Rules, it was not competent for the candidate to move the High Court for grant of a writ under Art. 226 of the Constitution. 1963 B L J R 710.

——Arts. 226 and 227—Availability of other remedy —Other remedy not pursued—Effect.

Where the petitioner fails to avail himself of the right of appeal to a Full Bench from an order of the Gram Cutchery convicting the petitioner in spite of the fact that it has no jurisdiction to do so his prayer for issuing a writ under Art. 226 must be rejected on this ground. But that does not mean that the High Court cannot interfere with the order of the Court below by virtue of the powers conferred on the High Court by Art. 227 of the Constitution. 1954 B L J R 594 : 1955 Cr L J 501 : 33 Pat 996 : A I R 1955 Pat 118 (120, 122) (Pt C) (Prs 5, 11) (DB).

——Arts. 226, 227—Alternative remedy availed of.

The petitioner had availed himself of the alternative remedy by way of a suit. The question of issue in the civil suit was essentially the question of jurisdiction of the House Rent Controller and of the Commissioner in appeal. The question raised in this application involved precisely the same matter as to the jurisdiction of the House Rent Controller to order eviction of the petitioner under the provisions of S. 11 of the Bihar Act (3 of 1947).

Held, that the application for a writ under Art. 226 of the Constitution or for interference by the High Court under Art. 227 of the Constitution could not be obviously entertained and the petitioner must prosecute his remedy in Civil Court where he had already instituted a suit for precisely the same relief. AIR 1954 Pat 476 (477) (Pr 2) (DB).

——Art. 226—Other remedy open — Cancellation of licence under S 18, Arms Act—Petitioner not appealing to the Commissioner — Whether he can apply under Art. 226.

Where the District Magistrate is influenced by the order of the Chief Secretary in passing the order of cancellation of licence under S. 18, Arms Act, an appeal to the Commissioner is not a proper remedy as the Chief Secretary is in a way in a superior position even to that of the Commissioner. Hence a petition under Art. 226 against the order of cancellation is maintainable and cannot be dismissed on the ground that the petitioner has not availed himself of the remedy provided by the statute in the shape of an appeal. ILR (1956) Patiala 110 : AIR 1956 Pepsu 37 (38) (Pt B) (Pr 5).

——Art 226—No law providing for election petition on date of announcement of impugned election. —Subsequent law providing for such election petition —Remedy by way of election petition is not available —Subsequent law providing for remedies by way of election petition, not retrospective - Does not serve as alternative remedy. See Panchayats—Punjab Panchayat Samities and Zilla Parishads Act (3 of 1961), S. 121 (3). AIR 1964 Punj 62 (DB).

——Art. 226 — Other remedy open — Alternative remedy per se no bar to issue of writ.

Ordinarily, in the presence of an alternative remedy, the High Court would feel disinclined in the exercise of its discretion to interfere on its writ side. But this is not a matter of jurisdiction and per se an alternative remedy would not stand in the way of the High Court's power to interfere in a fit case. The writ Court must consider each case on its merits and determine whether or not the alternative remedy is adequate and effective. The nature of the right invaded, the grounds of challenge and the conduct of the petitioner are also relevant factors The fact that the aggrieved applicant has by choosing to come to the High Court allowed the alternative remedy to be barred by time may also by itself not be conclusive, though in certain circumstances it may not be wholly irrelevant.

Where in a writ petition directed against the levy of purchase tax under the Sales Tax legislation, a Single Judge had, in view of the importance of the question raised, considered it fit to refer the case to a larger Bench for authoritative decision and the petitioner had submitted that his arguments would be confined to the abstract question of law arising on admitted facts and it had further been stated that the petitioner was out of time for approaching the higher departmental authorities.

Held, that in view of those circumstances it would be desirable that the instant case be considered on the merits. ILR (1962) 2 Punj 830 : (1963) 14 S T C 252 : 1962 Cur L J 591 : A I R 1963 Punj 28 (30, 31) (Pt A) (Prs 5, 6) (DB).

——Art. 226—Existence of alternative remedy—Discretion of Court to grant relief under Art. 226.

The legal position is well settled that in spite of the existence of adequate alternative remedy a discretion vests in the High Court to entertain a petition for writ etc. and to grant requisite relief. The broad lines of the general principles are no longer in dispute; their application to a given case however depends on the variety of individual facts and peculiar circumstances and no inflexible or rigid rule has ever been laid down or is possible to lay down which would control and govern all cases. AIR 1961 S C 1506 and 1962 P L R 586 Ref.

Where the so-called alternative remedy came into existence only long after the writ petition was admitted and the petitioner did exhaust the only remedy available before the alternative remedy came into existence.

Held, to decline relief under Art. 226 on the existence of an alternative remedy would be defeating the cause of justice. 64 Pun L R 1005 : 1962 Cur L J 436.

——Art. 226—Certiorari — Grounds on which it can be issued.

If a party has availed himself of the ordinary remedy provided by a special Act, he cannot thereafter turn round and begin once again from the bottom by challenging the original order under Art. 226 of the Constitution. AIR 1963 S C 1124; A I R 1958 S C 868 : 60 Cal W N 1042 and A I R 1957 Cal 638, Rel. on. ILR (1965) 15 Raj 1114 : 1966 Raj L W 66.

——Art. 226 — Other remedy — Applicant availing himself of remedy of revision before High Court but allowing it to be dismissed as not pressed—Right to file writ petition. 1958 Raj L W 420.

——Art. 226 — Other remedy open — Order under S. 20, Minimum Wages Act, 1948—Suit by employer barred on the question of payment of wages—Application under Art. 226 — Competent. 1957 Raj L W 93 : I L R (1957) 7 Raj 74 : A I R 1957 Raj 35 (36) (Pt A) (Pr 7) (DB).

——Art. 226 — Alternative remedy open but not availed of.

Where the action of the Custodian is without jurisdiction regarding the recovery of the amount from the petitioner as arrears of land revenue, the mere fact that the petitioner has a remedy by way of a regular suit under S. 4 of the Revenue Recovery Act, 1899, is not sufficient to disentitle him to an order or direction in the nature of a writ of prohibition under Art. 226 of the Constitution of India. A I R 1953 Raj 71, Rel. on. I L R (1953) 3 Raj 336 : 1953 Raj L W 581 : AIR 1953 Raj 185 (188) (Pt C) (Pr 8) (DB).

——Art 226 (1)—Writ of prohibition—Issue of when alternative remedy is not availed of — (Houses and Rents—Rajasthan Premises (Requisition and Eviction) Ordinance (11 of 1949) S 5).

Where an authority or tribunal is acting without or in excess of its jurisdiction, the Court would issue a writ of prohibition, even though there might have been an alternative remedy which might not have been availed of, for the Court having come to know of want of or excess of jurisdiction would not allow the authority or tribunal to carry on further in the same manner. (1907) 1 K B 145 and (1914) 3 K B 429, Rel. on.

Where, therefore, the Collector has acted without jurisdiction, in that he has not laid the foundation of his jurisdiction by any valid notice under the Ordinance, and the order of requisitioning has not been carried out, even if the landlord has not appealed against the order a writ of prohibition would be issued to the Collector not to proceed further on the notice. 1952 Raj L W 71 : I L R (1951) 1 Raj 853 : AIR 1952 Raj 137 (141) (Pt G) (Pr 16) (DB).

——Art. 226—Another remedy open—Application on ground that Rajasthan Food Grains Control Order 1949 was ultra vires and freezing of grain improper — Remedy by way of suit held barred by S. 16 of Essential Supplies (Temporary Powers) Act (1946) — Hence application could not be dismissed on ground of another remedy being open. ILR (1951) 1 Raj 692 : AIR 1952 Raj 79 (80) (Pt B) (Pr 7) (DB).

——Art. 226 — Remedy available but not availed of —Travancore Medical Practitioners' Act (7 of 1119), Ss. 22 (1) (iii), 23, 25, 32.

The petitioner who was a medical practitioner applied under the Act for registration in Part A for Ayurveda and then applied for registration in Part B for Allopathy. The former was allowed while the latter was rejected. No appeal was filed thereupon but after about six years an application was presented to the Medical Council. The same was rejected and also the appeal to the Government. On petition to the High Court under Art. 226.

Held, that while the Medical Council is bound to register an applicant who holds a registered certification it is in the discretion of the Medical Council to register or not to register him under the other provisions of S. 22. Notwithstanding that it was in the discretion, if the petitioner felt aggrieved by the Council's order he had a remedy of appeal. Not having availed of it the Council's order became final and conclusive. The subsequent application presented to the Council several years thereafter was rightly disallowed. The circumstances that the ground given for rejecting application was not the expiry of the period within which the applicant should have been registered was immaterial. A I R 1954 Trav-Co 201 (202) (Pt A) (Pr 3).

——Art 226—Other remedy available—Issue of writ under Article—(Obiter).

Obiter. — When a party has other adequate legal remedy available to him and has sought such remedy, he is not entitled to invoke the extraordinary jurisdiction of the High Court under Art. 226. Case law discussed. 1951 Ker L T 701 : AIR 1953 T C 26 (28, 29) (Pt B) (Pr 8).

——Art. 226—Alternate remedy—All remedies must be first exhausted. AIR 1955 N U C (Vin Pra) 684.

8. "Any other purpose".
See also Notes 71 and 81.
(a) Ejusdem generis, rule of.
(b) Non-fundamental rights, enforcement of.
See Notes 71 and 81.

8. "Any other purpose".
See also Notes 71 and 81.

● —Art. 226 -'For any other purpose'—Expression does not confer untrammelled power on High Court.

Though even administrative orders passed by an executive authority might be upset if they are without jurisdiction as being contrary to the express provisions of law or in excess of the power conferred by law on such an authority, the phrase 'for any other purpose' does not give the High Court an untrammelled right to pass any order that it pleases and has to be read in the context of what precedes the same. A I R 1952 S C 12 and A I R 1952 Orissa 344, Rel. on.

Held, that the orders by the District Inspector of Schools and the Deputy Director of Education asking manager of an educational institution to cancel an order of dismissal passed without the prior approval of the Educational authorities and suspending the grant in-aid of the institution if it failed to do so were not without jurisdiction. Sri Durga Gita Vidyalaya v. State of U. P., 1962 All L J 329 : 1962 All W R (HC) 243 : ILR (1962) 1 All 737 : A I R 1962 All 187 (192, 193) (Pt F) (Pr 22) (FB).

——Art. 226 — 'For any other purpose' — Scope of expression—Aid of High Court — Grounds to invoke —Writ to satisfy sentiments cannot be issued.

The expression 'any other purpose' in Art. 226 of the Constitution suggests that the aid of the High Court may be invoked by a person for the protection of his or her ordinary legal rights, interests and privileges or for the prevention of legal wrongs or injuries to him or her. But a writ order or direction cannot be issued to satisfy the sentiments. (1962) (1) Cri L J 241: 1962 All W R (HC) 225 : 1962 All Cr R 144 : A I R 1962 All 151 (152) (Pt B) (Prs 3, 4).

——Art. 226—Petition under—Powers of High Court — Not confined to enforcement of Fundamental rights—Purpose for exercise of power—Tests.

The power conferred on the High Courts by Art. 226 is not confined to the enforcement of the fundamental rights alone conferred by Part III of the Constitution but is sufficiently wide. It can be exercised for 'any other purpose also.' The test for its exercise is the existence of some legal right vested in the individual who is complaining that the same is threatened or otherwise endangered. If the Court is convinced that the party aggrieved is entitled to such a right it will not grudge to invoke its controlling jurisdiction under the Article which in its ambit is not limited by name mentioned in it but it may issue such other further writ or direction as shall secure the ends of justice. 1961 All L J 226 : ILR (1961) 1 All 252.

——Art. 226—Applicability—If confined to enforcement of public rights — Private right — Writ of mandamus or certiorari to enforce

This Article is not confined to the enforcement of public rights and there is no bar under Art. 226 of the Constitution to the High Court enforcing private rights by means of a writ of mandamus or certiorari or any directions suitable to the circumstances of the case. A I R 1957 All 234 (235) (Pt A) (Pr 6).

——Art. 226—Selection of Text Books for use in the Schools—Administrative rules or instructions framed by Government for selection—State Text Books Com-

mittee constituted under — Text Books "ordered to be prescribed" subject to execution of agreement in favour of Government — Subsequent cancellation — —Validity – Power of Director of Public Instruction or Government to cancel text books prescribed by Text Book Committee — Imputation of mala fides — Proof — Principles of natural justice — Absence of concluded contract and enforceable legal right — Issue of certiorari and mandamus—Powers of Court.

Under the rules framed by the Government regarding the selection of text books for use in the schools in the State, the final right and duty of prescribing the books rest wholly on the Government; the State Text Book Committee is not the final arbiter in the matter, but only an adviser. This is as it should be because the Government are performing a governmental function in prescribing text books for schools. A governmental function is not ordinarily, and perhaps cannot be, parted with completely in favour of a non-statutory outside body, like the State Text Book Committee. The intention of the Government must appear with unmistakable clearness before a Court is able to say that the Government has given up its power or function in favour of a body like the Text Book Committee. In the instant case, it cannot be said that the Government wholly relinquished its powers and functions regarding the prescription of Hindi text books. The true position appears to be that the Government only intended to have the benefit of the opinion of the committee and did not surrender its right of final decision to the committee. The Government should at least be treated on a par with a private individual. If so the Text Book Committee in the instant case have no higher right or status than an agent of the Government. Before the action of an ordinary private agent creates legal rights in third parties the principal is entitled to revoke the action of the agent Even so, after the Text Book Committee selected the books and before such selection created legal rights in the publishers or others, the Government was entitled to rescind that selection. The prescription of text books of a particular publisher, under the Government Orders, is a matter of contract between that publisher and the Government. The agreement has to be entered into with the Governor of Andhra Pradesh by the chosen publisher. It is not the case of the petitioners that even without executing this agreement they would get a right to have their text books prescribed for the schools in the State. It is only when such contracts emerge that a legal right will reside in the petitioners, and it is only a person who has an existing and specific legal right that can maintain a petition for a writ of certiorari or mandamus or ask for an order or direction under Art. 226.

There are well understood limits set to the exercise of judicial review under Art. 226 These limits recognise the necessity to allow the Government a reasonable amount of discretion to enable it successfully to carry on the administration of the country. Therefore, even marking the area of the Court's powers rather widely, only those administrative acts and orders which disregard or contravene a statute or statutory rules, which are in excess of the authority of the Government, which constitute a fraud on the statute or on the powers of the Government and which fail to observe the rules of natural justice where binding provisions require them to be observed will be amenable to the jurisdiction of the High Court under Art. 226. In the instant case, no question of non-compliance with law or statute arises; nor is there any foundation laid for the animadversion of improper conduct; what is even more important is that, there is no infraction of any vested right of the petitioners. In a case like the present, the question of natural justice as embodied in audi alteram partem cannot arise. This doctrine has application only to quasi judicial determinations and not to purely administrative orders. **(1965) 2 Andh W R 383 : A I R 1965 Andh Pra 425 (428, 429, 430, 431) (Pts A to D) (Prs 5, 7, 10, 12, 14).**

——Art. 226 — Issue of writ for any other purpose— Interim relief. 1956 Andh W R 1044 : 1956 Andh L T 911 : A I R 1957 Andh Pra 489 (491) (Pt B) (Pr 8) (DB).

——Art. 226 — Vested right under S. 31, Assam Act 17 of 1947 not taken away by amendment of 1954 — Refusal to entertain petition under S. 31 in view of amendment—Remedy under Art. 226 of Constitution— Petitioner has no other remedy except to come to the High Court and get a direction for the hearing of his revision application by the Commissioner See Sales Tax — Assam Sales Tax Act (17 of 1947) S. 31 (as amended by Assam Act 12 of 1954). AIR 1956 Assam 114.

——Art. 226 — 'For any other purpose' — Infringement of legal rights—Settlement of fishery—Bidders invited—Fishery not put up for sale—Right of bidder to invoke jurisdiction under Article — (Assam Land and Revenue Regulation (1 of 1886), R. 12 (framed under S. 155).

Redress under Art 226 may be obtained not only for the enforcement of fundamental rights conferred by Part 3 but also for other legal rights. The words 'for any other purpose' would surely include infringements of other rights. Infringement of a right involves an injury of some kind. Where there is an injury and there is no other mode of obtaining redress, relief may be given under Art 226. A I R 1951 S C 41 Foll. Notice issued inviting bidders to sale of fishery—Petitioner going for bidding at sale—Petitioner deprived of opportunity of taking settlement of fishery as it was not put up for sale under R. 12 — Petitioner applying under Art. 226 challenging validity of R. 12 — Relief held could not be refused to petitioner on ground that he had no locus standi to apply for relief under Art 226. A I R 1951 S C 41, Applied. A I R 1952 S C 12; A I R 1953 Assam 145 and A I R 1953 Assam 155, Distinguished. **I L R (1955) 7 Assam 510 : A I R 1956 Assam 48 (52, 53, 54) (Pt D) (Prs 14, 15, 17) (DB).**

——Art. 226—"Any other purpose."

Article 226 is not confined to the infringement of rights conferred by Part III of the Constitution. Relief may be given by the High Court for 'any other purpose' which means in cases where the petitioner has a legal right or where legal duty is not performed. **I L R (1953) 5 Assam 263 : A I R 1953 Assam 145 (147) (Pt B) (Pr 9) (DB).**

——Art. 226—'For any other purpose'—Existence of legal right not essential.

Ordinarily the High Courts will not interfere, unless there is an infringement of some fundamental or legal right or there is an imminent danger of the infringement of such right. But in special cases the High Courts can interfere even though no such right exists but it is just and expedient for the Courts to interfere with the order passed. This will always be at the instance of an interested person who is able to prove that there exists a right not necessarily fundamental or legal entitling the interference by the High Court. But it will not be proper for the High Courts to interfere with an order of a public authority calling upon a licensee, a displaced person, who is allowed to occupy a building in certain area temporarily for purposes of residence and business, to shift his business to a locality which is being earmarked for the displaced persons. **A I R 1956 Bhopal 27 (31, 32) (Pt C) (Prs 14, 16a).**

——Art 226—Application for writs of certiorari and prohibition — "Any other purpose' in the Article—Interim injunction—Maintainability.

Petition by the President and a member of a Municipal Board under Art. 226 of the Constitution for writs against a notification superseding the Board was filed and an interim injunction petition was also filed. The opposite party in the injunction petition objected on the ground that the notification published was legal and the Collector and the executive officer have taken charge under it and that the main petition itself was not maintainable.

Held : The interim petition has to be decided on the consideration of tenability or otherwise of the main petition.

The basis of the right to the main petition is that a legal right under the Municipal Act has been infringed. A petition under Art. 226 is tenable only to the enforcement of fundamental rights. The expression for "any other purpose" in Art. 226 means a purpose ancillary to the enforcement of such fundamental rights; no petition for the enforcement of merely a legal right is tenable. A I R 1952 Bhopal 16, Foll ; AIR 1952 S C 12, Rel. on.: AIR 1951 Nag 47 (1): AIR 1951 Vin Pra 3; A I R 1951 Orissa 81; AIR 1952 Cal 315; AIR 1952 Punj 58 and 176; AIR 1952 Trav Co 1 and AIR 1952 Him Pra 35, Not foll.)

The petition which makes a grievance not against any fundamental right under Chap. 3 of the Constitution but against a mere legal right under a local statute is not tenable under Art. 226 and as such the interim petition falls through. AIR 1952 Bhopal 35 (36) (Pts A, B) (Prs 6, 13).

——Art. 226 — Applicant not possessing any fundamental right—If entitled to any writ.

Article 226 deals with writs to enforce the fundamental rights under Art. 19 of the Constitution. Where the applicant does not possess any such right, no writ of mandamus can be issued to enforce any other right under Art 226. 1952 Cri L J 57 : AIR 1951 Bhopal 5 (9) (Pt C) (Pr 21).

——Art 226—Power of High Court—Extent of—No infraction of fundamental right—Writ can be issued even to enforce legal right.

Under Art. 226 of the Constitution the High Court has the power to issue writs and directions not only for the enforcement of fundamental rights but also for other purposes. The High Court may issue writs and directions for the enforcement of a legal right or the performance of a legal duty even though there is no infraction of a fundamental right. AIR 1957 S C 733, Distinguished. 65 Cal W N 153 ; ILR (1961) 2 Cal 265 ; A I R 1961 Cal 636 (640) (Pt C) (Pr 17) (DB).

——Art. 226 — Construction — "For any other purpose"—Meaning of—Teacher in Government Aided School—Application for writ to compel recognition of right to improved scales of pay.

Where the petitioner, a confirmed teacher in a Government aided school, was called up for an interview before a Selection Committee appointed by the Public Service Commission, for testing her suitability as a teacher, for selection by the Committee entitling her to improved scales of pay announced by the State Government, she has a legal right to maintain a petition under Art. 226, challenging the legal competency of the Public Service Commission to test her suitability. If the petitioner ignores the direction or order for interview, she does so at her peril The right to improve scales of pay or a right to be prevented from being jeopardised or discriminated against, by one's colleagues under similar conditions of service, is equally a right which the law will respect and recognise. A I R 1952 S C 12 and AIR 1952 S C 16, Rel. on. 62 Cal W N 429 : A I R 1958 Cal 845 (848) (Pt A) (Prs 13, 14).

——Art. 226—Scope of Art. 226.

Article 226, is not confined only to the enforcement of the fundamental rights conferred under Part 3 of the Constitution. No doubt the writs mentioned therein would be available for the enforcement of such rights but they are available for the enforcement of other rights which do not come within the scope of Part 3 of the Constitution. AIR 1950 Bom 363, Ref. AIR 1955 Cal 581 (583) (Pt A) (Pr 4).

——Art. 226 — The words "and for any other purpose" must mean "for any other purpose for which any of the writs mentioned would, according to well-established principles, issue" 87 Cal L J 149 : AIR 1952 Cal 315 (318) (Pt D) (Pr 11).

——Art. 226—"For any other purpose"

The words 'for any other purpose' contemplate only the enforcement of a legal right or performance of a legal duty. (A I R 1950 Pat 387 (FB), Rel. on.) I L R (1953) Hyd 374 ; A I R 1953 Hyd 228 (228) (Pt A) (Pr 3) (DB).

——Art 226 and (as applied to Jammu and Kashmir), Art. 32 (2-A) — Writ jurisdiction of High Court — When can be invoked.

For successfully moving the High Court by means of writ petition under Art. 32 (2-A) of the Constitution of India (as applied to Jammu and Kashmir) it is not necessary for an aggrieved petitioner to establish violation of his fundamental right under Part 3 of the Constitution of India. A writ can properly be entertained on other grounds also. Where the Sales Tax Officer has taken steps to levy and collect sales tax, without jurisdiction and in contravention of Art. 285 and the error of law is apparent on the face of the proceedings, a writ petition preferred by the petitioner-assessee is competent. 1962 Kash L J 83 : AIR 1962 J and K 89 (96) (Pt H) (Pr 26) (DB).

[Reversed on another point in AIR 1966 S C 1350.]

——Art. 226 — Construction — "For any other purpose" — Meaning of — Right sought to be enforced must be a legal right.

Held, on facts that the fact that the authorities chose to act against law in some cases did not mean that High Court should force them to act against law in similar cases. He should have no grievance if the law is enforced in his case. AIR 1957 J & K 47 (1) (Pr 1).

——Art. 226 — Clause (2 A) added in Art. 32 by Constitution (Application to Jammu and Kashmir) Order, 1954—"And for any other purpose" — Difference between the two provisions pointed out. A I R 1955 N U C (J & K) 1550 (DB).

——Art. 226—Scope—(Madhya Bharat Police Regulations, Part 6, Chap. 8, S. 3—Order under).

The words 'for any other purpose' in Art. 226, refer to the enforcement of any legal right. Therefore, unless there is an infringement of a fundamental right conferred by Part 3 of the Constitution of India or any other legal right, no petition can be entertained under Art. 226.

The mere fact of passing a surveillance order under M. B. Police Regulations does not give the petitioner any right under Art. 226, because the surveillance order does not infringe any fundamental rights.

Per Dixit, J. — The manner in which the order of surveillance should be carried out is entirely in the discretion of the police officer whose duty is to carry out the order. A direction under Art. 226 cannot be issued to control this discretion of the police officers. A I R 1950 Pat 387 (FB); A I R 1950 Bom 363 (FB); AIR 1951 Madh B 121 (FB), Ref. ILR (1953) Madh B 162 : AIR 1954 Madh B 63 (63, 64) (Pt A) (Prs 3, 7) (DB).

——Art. 226—And for any other purpose — Meaning —Does not allow petitions for agitating public questions.

The expression "and for any other purpose" in Art. 226 does not lend support to the contention that even for the purpose of agitating public questions, the applicant can resort to the process of quo warranto, mentioned in the Article. The expression cannot be interpreted to mean a purpose other than protection of the legal rights of a person. Courts are only for the purposes of adjudicating upon legal rights of persons and it is not their province to decide questions of academic importance. The jurisdiction under Art. 226 can be invoked only by or at the instance of a person, who has suffered a legal injury at the hands of the executive Government of the State or some tribunal and the rights under the Article are personal and direct. (1952) 2 Mad L J 779 : AIR 1953 Mad 96 (97) (Pt B) (Pr 9).

[Overruled on another point in AIR 1957 Mad 17.]

——Art. 226—Scope and exercise of the powers conferred by—Lawful detention of member of Legislative Assembly under Preventive Detention Act, 1950 —Permission to attend the sitting of the Assembly during detention — Right to correspond with the Speaker of the Assembly.

Article 226 confers on the High Court extremely wide powers of interference and a corresponding extremely heavy burden of responsibility. The framers of the Constitution could never have contemplated High Courts constituting themselves on applications by all sorts of aggrieved persons into inquisitorial tribunals supervising, criticising, modifying or cancelling the actions and orders of different departments of executive authority, institutions, public bodies and last but not least of the Legislatures as regards their internal affairs which are controlled by the Speaker of the House and its committees. It is only in exceptional cases that writs under the wide powers "for any other purpose" can be issued, such as for instance where there has been a clear violation of statutory law, when principles of natural justice have been violated or perhaps where there has been mala fide discrimination against an individual to the detriment of his rights.

If a member of a Legislative Assembly is arrested and lawfully detained, though without actual trial under any Preventive Detention Act and the detention is lawful, bona fide and for proper grounds, he cannot be permitted to attend the sittings of the House. But if a party in power detains a political opponent or continues his detention with the mala fide object of stifling opposition and prejudicing the party to which he belongs in a forthcoming election there would be an undermining of the basis of the Constitution.

During the period of his detention under the Preventive Detention Act a member of the Legislative Assembly has a right to correspond without let or hindrance with the Speaker and Chairman of the Committee of Privileges of the House. This right flows not merely from principles of natural justice which will be violated by such letters being withheld, but as a continuing member of the House, he would be entitled to this privilege under Art. 194 (3) of the Constitution. 64 Mad L W 1031 : (1952) 1 Mad L J 1 : I L R (1953) Mad 93 : 1951 Mad W N 838 : 1951 Mad W N (Cri) 258 : A I R 1952 Mad 117 (118, 119) (Pt A) (Prs 4, 7) (DB).

——Art. 226—Scope — Power to issue writ for purpose other than enforcement of fundamental rights.

Under Art. 226 power is conferred upon the High Court to issue not only writs in the nature of various categories specified in that article but those writs themselves as also 'directions' and 'orders' and they may be issued not only for the enforcement of fundamental rights but for any other purpose. 1951 Raj L W 56 : (1951) 20 I T R 214 : ILR (1951) 1 Raj 96 : AIR 1951 Raj 94 (2) (104) (Pt I) (Pr 27a).

[Overruled on another point in AIR 1954 S C 158.]

——Art. 226—Scope—"Any other purpose"

The words 'any other purpose" were embodied in Art. 226 in order to remove any doubt that the High Court's jurisdiction to issue the writs was confined merely to the enforcement of fundamental rights, because the High Court could issue a writ otherwise than for the enforcement of fundamental rights, and that power of the High Court is saved and safeguarded by providing in Art. 226 that the writs can be issued not only for the purposes of enforcement of fundamental rights but also for any other purpose ; A I R 1950 Bom 363, Foll. 1951 Raj L W 280 : ILR (1951) 1 Raj 59 (DB).

8 (a). Ejusdem generis, rule of.

——Art. 226—'For any other purpose'—Existence of right essential for exercise of jurisdiction under Art. 226.

The words "for any other purpose" in the Article have got to be construed in the context of what precedes the same. Those words necessarily imply "for the enforcement of any other right." The foundation for the exercise of powers under Art. 226 of the Constitution is the existence of a right in the petitioner and in the absence of any such right possessed by the petitioner, the High Court cannot grant any relief to the petitioner under Art. 226 of the Constitution. I L R (1956) 1 All 712 : A I R 1956 All 503 (505) (Pt A) (Pr 7) (DB).

[Overruled on another point in A I R 1960 All 477 (FB)].

——Art. 226—"For any other purpose"—Meaning—Jurisdiction of Judicial Commissioner's Court to issue writs.

Applying the principle of ejusdem generis to the expression "for any other purpose", it would appear that the generality of this expression is restricted by the preceding expression "for the enforcement of any of the rights conferred by part 3." The expression limits the jurisdiction of the Judicial Commissioner's Court of Bhopal to issue only the writs as mentioned under Art. 226 only for the enforcement of any of the rights conferred by Part 3 or for any other ancillary purpose. Consequently an application for issue of a writ of certiorari to the Custodian General of Evacuee Property, New Delhi and a writ of prohibition to the Custodian of Evacuee Property of Bhopal, being outside the scope of Art. 226, the Judicial Commissioner's Court of Bhopal has no jurisdiction to entertain and decide it. A I R 1949 Bom 277 and AIR 1950 Bom 363, Disting. AIR 1950 Pat 387, Rel. on. A I R 1942 Cal 343, Ref. to. A I R 1952 Bhopal 16 (18) (Pt A) (Pr 11).

——Art. 226—"Any other purpose"—Meaning of.

The words "any other purpose" in Art. 226 of the Constitution mean no more than any other purpose ancillary to the enforcement of any of the rights conferred by Part 3 of the Constitution. A I R 1950 Pat 387, Not Foll. 1952 Cri L J 660 : AIR 1922 Bhopal 1 (3, 4) (Pt B) (Prs 9, 10, 12, 17).

——Arts. 226, 19 — 'And for any other purpose' — Interpretation of—Legal right is very foundation of application under Article 226—Foreigner though he has no fundamental right under Art. 19 has locus standi to claim legal right under Art. 226 — Held, petitioner having not even any legal right under S. 39. Calcutta Police Act, for renewal of licence petition must be dismissed.

Per P. B. Mukherji J.—Article 226 is expressly clear about the two fold purposes for which writs or

orders can be issued thereunder and that is (i) for the enforcement of any of the rights conferred by Part III of the Constitution and (ii) for any other purpose. One way of looking at this Article is that the word 'and' is not disjunctive but conjunctive. But the trend of decisions where the point was incidentally discussed appears to be against this view. The authorities seem to indicate that the expression 'and for any other purpose' in Article 226 of the Constitution should be taken disjunctively and the word 'and' should be read as 'or' and the words 'any other purpose' should be read as distinct and separate not connected with the enforcement of fundamental rights and not even as ejusdem generis. But this much is quite clear that a legal right is the very foundation of an application under Article 226. If there is a legal right then a person can move the High Court under Art 226 for appropriate order or writ: AIR 1952 S C 12, Rel. on; AIR 1956 Bhopal 27 Dissent. from. Therefore, even if a foreigner has no locus standi to claim a fundamental right under Art. 19 he can still have a locus standi to claim a legal right, if he has any, and attempt to enforce it by a writ or order or direction under Art. 226. But since the petitioner in the case has not any legal right he is not entitled to any relief.

Per Laik, J. — Though the main purpose of our Constitution is to protect the freedom of each individual citizen to carry on his trade or business throughout the territory of India in current times the policy of the demotratic State is bound to be flexible. The needs of the country, the invasion of the Indian territory by a Foreign State and subsequent agreements between two Border States, the position of other contiguous Foreign States the need to protect national industries and such and all other relevant considerations have no doubt to be examined by the Government from time to time and provisions have to be made and rules to be suitably adjusted Therefore it is idle, to suggest, that there may be an unfettered and unrestricted freedom of running a business in this country even by a foreigner or that the policy of the Government must be fixed and not changed, according to the requirements of the country. In the never ending race, the law must keep pace with the realities of the social and political evaluation of the country, as reflected in the Constitution. The State is to give effect to these avowed purposes of our Constitution to promote the welfare of the people in preference to the Foreigners, from the point of view of unity of possession, unity of interest, unity of title and unity of time.

The equal protection of law does not mean that every law must have uuiversal application for all persons who are not by nature, attainment or circumstances in the same position but the varying needs of the different classes of persons often require separate treatment, the argument that the theory of equal protection of law should also be extended in the case of foreigners, cannot be accepted: AIR 1951 S C 41, Rel. on.

Pakistan must be regarded as a foreign power though not a foreign State in view of the Declaration Order (Foreign States) of 1950. If a person be a Pakistani national he would be a foreigner. Art. 19 (1) guarantees to Indian Citizens only the right to carry on trad ; it does not apply to foreigners. Citizenship has a reference to the political status of a person but not to his civil rights. Pakistani national may be a Commonwealth citizen but the word 'citizen' in the said context is only an echo of the phrase.

Therefore, the appellant, a Pakistani National, is not entitled to move the application under Art. 226 of the Constitution. Again under S. 39 of Calcutta Police Act there is no inherent right of any citizen of India, far less of a non-citizen to run an eating house. There can be no question of any right being infringed, the cancellation of the licence being under a valid law: AIR 1960 S C 415, Rel. on.

The right of the appellant to get the licence for the eating house renewed is like a mere chance or prospect of having an interest in an undertaking. This right cannot thus be measured by the yardstick of the principles of the legal rights, It might utmost be like a hyphen which joins fundamental right and the legal right or a buckle which joins both; therefore the appellant has got no legal right. even by the process of strained construction: AIR 1955 S C 549, Rel. on.

The expression 'Any other purpose' in Art. 226 does not mean that there would be no existence of right which is the foundation of exercise of jurisdiction under Art. 226. The petitioner in the case having no fundamental right, inherent right or any legal right is not entitled to move the application under Art. 226 of the Constitution. 1965 (1) Cri L J 679: AIR 1965 Cal 312 (322 to 327) (Pt G) (Prs 34, 35, 43, 51, 58, 59, 60, 64, 65, 68 69) (DB).

—Art. 226—The expression 'for any other purpose' has to be read in the light of the context in which it appears. Where the rule is issued for the limited purpose of the issue of writs of mandamus, certiorari or prohibition and the order of supersession under S. 131 of the Bengal Local Self Government Act (1885) does not call for interference by the issue of these prerogative writs with a view to quash the order of supersession, the High Court cannot restrain the opposite parties from giving effect to the order of supersession. AIR 1952 Cal 610, Rel. on. AIR 1952 Cal 901 (904, 905) (Pt C) (Pr 25).

—Art. 226—"For any other purpose"—"Shall have power"—Meaning of.

The words "for any other purpose" necessarily presuppose the infringement of some right or the other, though not any of the rights conferred by Part III, as a condition precedent to the issue of the writs or orders There could be no question of the grant of a relief by a Court without the infringement of a legal right. Further the determination of that right should not depend upon the elaborate procedure which is only possible in a suit but not in the summary proceedings under the Article. The use of the words "shall have power" in the Article emphasises the fact that the issue of the writs, directions and orders in question is entirely a matter for the discretion of the Court. And one of the grounds against the exercise of that discretion would be that the right claimed by the petitioner is not capable of being established in the summary proceedings under the said Article.

—Held, it was not possible for the Judicial Commissioner's Court on the material placed before it, or which could possibly be placed in the summary proceedings, to come to a finding whether the petitioner had the right to claim the reliefs prayed for by them. I L R 62 Cal 598, AIR 1949 Bom 229, Rel on. AIR 1952 Him Pra & B 35 (36, 37, 38) (Prs 12: 13, 15).

—Arts. 226 & 32 (3) — "Any other purpose" — Words, if to be read ejusdem generis with purpose mentioned in Article—Interpretation of statutes.

The words "any other purpose" in Article 226 should not be read as ejusdem generis with the purpose specially mentioned before. The power to issue directions, orders or writs under Art. 226 is discretionary and the rule of ejusdem generis has but little, if any value in construing a provision conferring discretionary powers on the juidiciary. Secondly, the rule being one of mere construction and not an inflexible one, it cannot be applied where its application would defeat the general intent of the instrument

to be construed. The object of the article in giving to the High Court the discretionary jurisdiction to issue certain directions or writs is to secure the protection of the rights of the public and to ampliate justice and redress grievances in any matter which the ordinary course of law is too defective to reach. Its purpose is not merely to prevent the infringement only of those rights mentioned in Part III. Consistently, therefore, with the object of the article the words "any other purpose," must be construed to refer to all purposes for which in English Common Law the high prerogative writs are issued, to wit, for the protection of the rights of the individuals, to check excess or abuse of powers. I L R (1952) Madh B 231 : AIR 1950 Madh B 46 (50, 51) (Pt E) (Pr 11) (DB).

● ——Art. 226 (1)—"For any other purpose" — Meaning of -Issue of mandamus in matters of discretion—Mandamus upon State Governments directing it to refer dispute under S. 10 (1), proviso, Industrial Disputes Act—Industrial Disputes Act (1947), S. 10 (1) proviso.

Article 226 contemplates the issue of writs and directions for purposes other than the enforcement of the fundamental rights. At the same time the words "for any other purpose" in the article can hardly mean that the High Court can issue writs for any purpose it pleases. The correct interpretation is that the words mean for the enforcement of any legal right and the performance of any legal duty.' To that extent the words must be read ejusdem generis, which is the ordinary principle of construction. Moreover, it could never have been intended that resort could be had to this extraordinary procedure where an adequate remedy is available by ordinary legal process, for example, by suit, otherwise the ordinary legal procedure, including the payment of court-fees, would be abrogated. An application under Art. 226 is and must remain an extraordinary remedy to be used where ordinary legal process cannot give adequate and prompt relief.

It is well settled that mandamus will not issue in a matter of discretion. Under sub-s. (1) to S. 10, Industrial Disputes Act, 1947 and the proviso thereto, it" is a power or discretion that is given rather than a duty or obligation. The word "inexpedient" in the proviso is very wide and despite the use of the word "shall" it gives complete discretion to Government. Where, therefore the State Government refuses to refer the industrial dispute under the proviso writ of mandamus under Art. 226 cannot be issued directing the Government to refer the dispute under the proviso Bagaram Tuloule v. State of Bihar, 1951 Cri L J 1509 : (1950-51) 2 F J R 71 : ILR 29 Pat 491 : A I R 1950 Pat 387 (388 to 391) (Prs 5, 6, 8, 9, 10, 11, 15) (FB).

8 (b). Non-fundamental rights, enforcement of.

See Notes 71 and 81.

9. "Any person" meaning of.

——Art. 226—Against whom writ can issue—No independent order passed by Divisional Superintendent, Northern Railway—No relief can be granted against him. AIR 1955 NUC (All) 5818.

——Art. 226 — The words "any person or authority" include Courts and tribunals whether under the appellate jurisdiction of the High Court or not. 1952 Cri L J 1695 : I L R (1952) 1 All 558 : AIR 1952 All 963 (966) (Pt D) (Pr 21) (DB).

——Art. 226 – Application against corporate body like State Medical – Faculty by its name is legal — State Medical Faculty as such is a person against whom direction and order of writ can issue. I L R (1953) 2 Cal 107 : 56 Cal W N 861 : A I R 1953 Cal 212 (213) (Pt B) (Pr 11) (DB).

——Art. 226—"Any person."

The power of the High Court to issue a writ under Art. 226 to "any person" can only mean the power to issue such a writ to any person to whom, according to well established principles, a writ lay. A writ may issue to the General Manager of Indian Railway. 87 Cal L J 149 : AIR 1952 Cal 315 (318) (Pt C) (Pr 11).

10. Appeal from order in.

● ——Art. 226 — Assessment without jurisdiction validated by U. P. Act (14 of 1956) — Assessee given right to apply for review of orders made under U. P. Act (3 of 1949) — Assessment order set aside under Art. 226—Review of order under Art. 226 under U. P. Act 14 of 1956 is not maintainable — Review application dismissed by single judge — Order is judgment under Cl. 10 of Letters Patent (All) and Chap. 8, R. 5 of Allahabad High Court Rules and appealable. See U. P. Agricultural Income Tax Act, 1948 (3 of 1949), S. 2. AIR 1963 SC 946.

● ——Arts. 226 and 227—Interlocutory orders by High Court in writ proceedings—Interference by Supreme Court.

Although ordinarily the Supreme Court would not entertain an appeal against an interlocutory order passed by the High Court in the writ proceedings pending before it, yet it would interfere with such orders when exceptional and unusual features in the case presented before it warrant such interference. Nagendra Nath Bora v. Commissioner of Hills Division and Appeals, Assam, 36 Mys L J 389 : 1958 S C J 798 : 1958 S C A 572 : 1958 S C R 1240 : AIR 1958 SC 398 (413, 414) (Pt G) (Pr 31).

——Arts. 226, 133 — Order holding that proceedings under Art. 226 were not appropriate — (Civil P. C. (1908), Ss. 109 (b) and 110)—AIR 1956 Pat 175, Doubted—No adjudication upon right of applicant to obtain writ — Article 226 gives power to High Court without giving any one right to invoke that power. See Ibid, Art. 133. AIR 1958 All 800.

——Art. 226—Petition by employer—Union of Employees made respondent — Appeal by Union against decision given in petition—Employer could not question maintainability of appeal on ground that appeal was by the Union and not by employees individually. (1965-66) 29 F J R 170 : AIR 1964 Cal 80 (91) (Pt D) (Pr 36) (DB).

● ——Art. 226 -Order passed in writ proceedings under Art. 226—Nature of—Order disposing of writ petition is final and amounts to judgment — Effect of the order on proceedings before lower tribunal not material. See Ibid, Art. 133. A I R 1964 Mad 194 (FB).

——Arts. 226 and 133 (1) (a)—'Judgment'—Meaning —Order refusing to issue writ under Art. 226 is not judgment or final order. See Ibid, Art. 133 (1) (a). AIR 1955 Nag 257.

● ——Arts. 226 and 227—Powers under — Art. 227 does not give power to hear appeal where it does not lie. See Ibid, Art. 227. AIR 1953 Nag 89 (FB).

——Art. 226—High Court can look into documents referred to in the order sought to be quashed.

In exercise of its jurisdiction in a writ of certiorari, the High Court can look into any of the documents referred to in the order itself or the pleadings which initiated the proceedings. (1965) 1 Lab L J 349 (Orissa).

——Arts. 226, 133 (1) and 227 — Nature of Proceedings – 'Final Order' 'Civil proceeding' — (Income-tax Act (1922), S. 23)– (Civil P. C. (1908), S. 109)– (Words and Phrases — 'Civil Proceeding'). See Ibid, Art. 133 (1). AIR 1956 Pat 175 (DB).

——Art. 226—The word "Judgment" in S. 369 Criminal P. C. means judgment of conviction or acquittal. A decision on a writ petition is neither a case of conviction nor that of acquittal. See Criminal P. C. (1898), S. 369. ILR (1954) Patiala 31.

● ——Art. 226—Nature of proceedings under Art. 226 —Order of assessment to sales tax—Writ petition challenging order — Petition allowed and assessment quashed—Order of High Court is judgment, decree or order in a 'Civil Proceeding' within Art. 133—High Court competent to grant certificate under Art. 133 (1) (c). See Ibid, Art. 133. **A I R 1965 Punj 459 (FB).**

Supreme Court

● ——**Arts. 226, 133**—Taxation proceedings—Appeal to Supreme Court from High Court—Infringement of civil rights by taxing Act—Proceeding for relief initiated by way of suit or prerogative writs—Falls within the scope of 'Civil Proceedings'—Orders of High Court — Appealable to Supreme Court as any other civil proceedings—Income-tax Act (11 of 1922), S. 18-A (6), Fifth Proviso added by Act 25 of 1953) —Penal interest — Advance tax — Estimated tax less than the statutory percentage — Officer obliged by statute as it stood then to charge penal interest — No levy made at the regular assessment — Conferment of power on officer in prescribed circumstances to waive or reduce interest with retrospective effect—Rectification proceedings — Prescribed circumstances existing in the case of the assessee — Penal interest added in rectification proceedings — Failure to take note of law deemed to be in force — Order illegal, liable to be quashed—Interpretation—Taxing statutes — Proviso enacted with retrospective operation in circumstances prescribed — Prescription made subsequently by rules — Retrospective operation of the rules. See Ibid, Art. 133. **AIR 1965 S C 1818.**

● ——**Art. 226**—Madras Hindu Religious and Charitable Endowments Act (19 of 1951) (as amended in 1959 and 1961), S. 64 (4) — Notification under — Validity challenged by a writ petition — High Court not issuing writ under the impression that notification would shortly expire — Subsequent legislation extending its life not considered — Rejection of petition by High Court held erroneous and set aside. ILR (1962) Mad 449, Reversed. Sri-la Sri Subramania v. State of Madras, **1965 S C D 918 : (1965) 2 S C J 711 : (1965) 2 Andh W R (S C) 167 : (1965) 2 Mad L J (SC) 167 : AIR 1965 S C 1578 (1582, 1583) (Pt C) (Pr 18).**

● ——Art. 226—New point in appeal before Supreme Court against High Court order upon writ petition. See Ibid, Art. 132. **AIR 1965 S C 1167.**

● ——**Art. 226—Jurisdiction—Power of High Court to interfere.**

The High Court observed that the petitioner had challenged the authority of the State Government to enact a law whereby tax on the sale of goods outside the State could be levied and the application of the law itself to the circumstances of the case. The petitioner had also averred in his petition that he had a fundamental right of free trade and any such imposition infringed that right of the petitioner. So the High Court did not entertain the plea in bar. In appeal by Special Leave ;

Held, that the High Court had given good reasons for interference. State of Rajasthan v Karamchand Thappar, **(1965 16 S T C 412 : AIR 1965 S C 913 (916) (Pt B) (Pr 16).**

● ——**Art. 226 — Supreme Court — Practice — Trial Court refusing to issue a rule nisi on application under Art. 226—Appellate Court reversing the order —Appeal to Supreme Court under Art. 136—Contention that appellate Court should not have interfered with discretion exercised by trial Court—Held, that orders of both Courts are interlocutory — Though powers under Art. 136 are very wide, Supreme Court does not interfere with such orders—Secondly, order of appellate Court merely being that rule nisi should issue, there was no reason to interfere with it.** See Ibid, Art. 136. **AIR 1964 S C 1636.**

● ——**Arts. 226, 136—Appeal against order of High Court under Art. 226—Question of jurisdiction can only be argued.**

Where the appeal has been brought against the decision of the High Court and the appellant had moved the said High Court under Art. 226, and that too against the order of the Collector of Customs, the only point which could be argued by the appellant would be one of jurisdiction. British India Steam Navigation Co., Ltd. v. Jasjit Singh, Addl. Collector of Customs, Calcutta, **(1965) 1 S C A 424 : (1964) 1 S C W R 463 : (1964) 34 Com Cas 689 : (1964) 2 SCJ 543 : AIR 1964 S C 1451 (1453) (Pt B) (Pr 7).**

● ——**Arts. 226, 136, 32 — Other remedies open — Jurisdiction of Supreme Court to interfere.**

The Supreme Court generally does not entertain appeals against the orders passed by a Tribunal unless the alternative remedies provided by the relevant Act by way of appeals or revisions have been pursued by the aggrieved party. Against the order of confiscation and fine passed by the Collector of Customs under the Sea Customs Act an appeal is competent, and against the decision of the appellate authority, a revision also lies. The rule that a party who applies for the issue of a high prerogative writ should, before he approaches the Court, have exhausted other remedies open to him under the law, though not one which bars the jurisdiction of the Court to entertain the petition or to deal with it, is a rule which Courts have laid down to the exercise of their discretion. (Where, however, the writ petitions were presumably admitted because they raised a question of some importance which had already been raised by some appeals properly brought before the Supreme Court under Art. 136, the Supreme Court allowed the counsel to argue these writ petitions on the question of construction alone). AIR 1961 S C 1506, Rel. on. British India Steam Navigation Co, Ltd. v. Jasjit Singh, Addl. Collector of Customs, Calcutta, (1965) 1 S C A 424 : (1964) 1 S C W R 463 : (1964) 34 Com Cas 689 : (1964) 2 S C J 543 : A I R 1964 S C 1451 (1453) (Pt C) (Prs 7, 8).

● ——Art. 226 — Application filed after filing of appeal against order of assessment to Sales Tax Appellate Tribunal — Supreme Court granting Special Leave to appeal against order of High Court refusing to issue writ—Dismissal of Sales Tax Appeal by Sales Tax Appellate Tribunal subsequently—High Court also dismissing application for direction to tribunal to refer a question of law raised in that appeal Held, that order did not bar the appeal against the order in the writ petition. Chandra Bhan Gosain v. State of Orissa, **1963 Ker L T 1063 : 30 Cut L T 145 : (1963) 14 S T C 766 : 1964 S C D 195 : (1964) 1 S C J 575 : (1963) 2 S C W R 151 : (1964) 2 SCR 885.**

● ——Art 226—Certificate under Art. 132 (1)—High Court holding that case involves substantial question of law as to interpretation of Art. 226 and not Art. 311 —Effect is to enable appellant to appeal to Supreme Court on ground that question of interpretation of Art 226 has been wrongly decided by High Court and if appellant wishes to appeal on any other ground he can move Supreme Court for necessary leave as required by Art. 132(3). See Ibid, Art. 132(1). **AIR 1958 S C 325.**

● ——Art. 226—Order of High Court under Art. 226 — Appeal to Supreme Court—Enquiry into merits of rival claims. See Ibid, Art. 136. AIR 1957 S C 529.

● ——Art. 226—Applicability — Decision of Deputy Collector under S. 20, Minimum Wages Act—Application under Art. 226 — Objection to jurisdiction of Deputy Collector on ground that determination involved complicated question of law—Supreme Court refused to entertain objection hence High Court under Art. 226 and also Supreme Court in appeal arrived at the same conclusion as did the Deputy Collector, whatever infirmities might have attached to the Collector's orders. See Ibid, Art. 133 (1)(c). AIR 1957 SC 227.

● —— Art. 226 — Appeal — Orders under Art. 226— Interference. See Ibid, Art. 133 (1) (c). AIR 1957 S C 227.

● ——Arts. 226, 133 (1)—"Judgment or final order" —"Civil proceedings" —Meaning —Order dismissing proceedings under Art. 226 — Whether can be judgment or final order in civil proceeding within Art. 133. See Ibid, Art. 133 (1). AIR 1962 Ker 1 (FB).

● ——Arts. 226, 133(1)—Criminal P.C. (1898), S. 491 —Petition for writ of habeas corpus — Decision on is a judgment or at least final order within Art. 133 (1).

When in a petition for writ of habeas corpus decision is given on merits after hearing arguments, whether the petition is allowed or is refused, it determines the right of the detenu or person in illegal custody to be released from the same or not, and at the same time the right of the party having the custody to maintain the same or not. Such a decision is a judgment, or, in any case a final order. Ram Kumar Pearay Lal v. District Magistrate, Delhi, ILR (1965) 2 Punj 853 : 1966 Cr L J 153 : AIR 1966 Punj 51 (54 to 58) (Pt C) (Pr 8) (FB).

——Arts. 226 and 132 (1) — Substantial question — Question of extent of power under Art. 226 to issue certiorari — Leave should be granted — Writ — Certiorari—Scope.

Where the question involved in the case was whether the High Court can, in exercise of its powers under Art. 226, Constitution of India, call up an order of an inferior tribunal, where no other remedy exists, examine it on its face and see there what the tribunal took into account and what it disregarded and if error be found quash it.

Held, that though the case itself was not of great importance or magnitude an important and substantial question as to the interpretation of Art. 226 is involved and leave should be granted. 1951 Nag L J (Notes) 193 (DB).

Letters Patent.

——Arts. 226 and 227 — Appeal — Order of single Judge dismissing petition — Appealability — (High Court Rules and Orders — Allahabad High Court Rules, Ch. 8, R. 5).

Supervisory power, which expression has been used to indicate the nature of the power exercisable by the Court under Art. 226, partakes of the nature of a power of judicial review and scrutiny; not so the power of superintendence, as stated in R. 5 of Ch 8 of the High Court Rules, which partakes of the nature of administrative or quasi-administrative control. An appeal, therefore, lies from the decision of a single Judge of the High Court dismissing a petition under Arts. 226 and 227. AIR 1955 All 165 and AIR 1957 All 414 (FB), Rel. on. AIR 1957 All 671 (675) (Pt A) (Pr 26) (DB).

——Art. 226—Petition for certiorari dismissed—L. P. Appeal—Interference. (1958) 2 Andh W R 515 : ILR (1958) Andh Pra 829 : AIR 1959 Andh Pra 174 (176) (Pt D) (Pr 11) (DB).

——Art. 226—Letters Patent (Mad), Cl. 15—Order of single Judge in writ proceedings — Appeal — Power of Court to interfere. See Letters Patent (Mad), Cl. 15. AIR 1958 Andh Pra 140.

——Art. 226—Letters Patent (Cal.), Cl. 15 — "Judgment" — Test to determine — Proceeding arising out of income-tax assessment—Application under Art. 226, Constitution of India — Disposal of application whether judgment. See Letters Patent (Cal.), Cl. 15. AIR 1959 Cal 420.

● ——Art. 226—Judgment of single Judge of High Court on application under — Appeal, if lies — Limitation for appeal. See Letters Patent (Calcutta), Cl. 15. AIR 1953 Cal 433 (SB).

——Art. 226—Jurisdiction of High Court — Nature of — Appeal against order under Article — Limitation — (Letters Patent (Cal), Cls. 11, 13, 16, 22, 24 and 27) — (Limitation Act (1908), Art. 151 and S. 5) — High Court Rules —(Calcutta) High Court (Appellate Side) Rules, Chap. II, R. 8 and Chap. VIII, R. 2).

In exercising the power under Art. 226 the High Court does not exercise any of the jurisdictions vested in it under Cls. 11, 13, 16, 22, 24 and 27 of the Letters Patent

In exercising such power the High Court exercises only an original and not an appellate jurisdiction, for the applicant in such proceedings asks in effect for a decision of the dispute between himself and the inferior tribunal or the public official, who is one of the respondents in the application, for the first time, there having been no decision of that dispute previously by any other tribunal.

Therefore Art. 151, Limitation Act, applies to an appeal from an order under Art. 226 of the Constitution.

Rule 8, Chap. II, (Calcutta) High Court (Appellate Side) Rules, which when read with R. 2 of Chap VIII of those Rules has the effect of prescribing a sixty days' period of limitation for such appeals, is ultra vires, invalid and ineffective in law.

(It was, however, held in this case that the appellant, who was misled by the Rules in computing the period of limitation, had sufficient cause within the meaning of S 5, Limitation Act.) AIR 1952 Cal 753 (754, 755) (Pt A) (Prs 4, 5, 8, 9, 10) (DB).

——Art. 226—Letters Patent (Madras), Cl. 13—Jurisdiction of High Court to receive plaint which had to be filed in inferior Court in mofussil — (Civil P. C. (1908), S. 151) — S. R. No. 145247 of 1957 (Mad), Dissent from, See Letters Patent (Madras), Cl. 13. AIR 1958 Mad 284.

——Art. 226—Order of single Judge under Art. 227 and not Art 226 — Letters Patent Appeal is not maintainable. See Letters Patent (Madras), Cl. 15. AIR 1955 Mad 287 (DB).

——Art. 226 — Letters Patent Appeal — Interference in case of discretionary order. See Letters Patent (Madras), Cl. 15. AIR 1954 Mad 1144 (DB).

——Art. 226 — Proceedings under, for writ of certiorari are of the nature of Ordinary Original Civil Jurisdiction and not revisional jurisdiction — Orders in such proceeding are judgments — Appeal lies from decision of Single Judge to Bench of two Judges — Letters Patent (Mad.), Cl. 15.

An appeal lies from an order passed by a single Judge of the High Court, sitting under R 4 of the Rules framed by the High Court under Art. 225 of the Constitution, and added as Appendix VII to the Appellate Side Rules and published in Fort St. George Gazette dated 28-4-1951, upon a petition for a writ of certiorari, to a Bench of two Judges under Cl. 15 of the Letters Patent, the order being a judgment. The bar under Cl. 15, that no appeal will lie

from the decision of a Single Judge made in the exercise of revisional jurisdiction has no application to proceedings under Art. 226.

The matter involved in the proceeding for writ of certiorari under Art. 226, is a civil proceeding. It is not a criminal proceeding nor is it in the nature of miscellaneous proceedings such as matrimonial, testamentary, admiralty or other jurisdictions of the High Court. The jurisdiction of the High Court under Art. 226 is in the nature of its Ordinary Original Civil Jurisdiction.

The revisional jurisdiction contemplated under Cl. 15 of the Letters Patent refers to revisions from Subordinate Courts and not from inferior quasi-judicial tribunals. Neither under S. 115, Civil P. C. nor under S. 107 of the Government of India Act, 1919, did the High Court have any jurisdiction to interfere in revision against any order passed by a quasi judicial tribunal or authority. Such being the case, when Cl. 15 of the Letters Patent speaks of an order made in the exercise of revisional jurisdiction it can only be understood as a jurisdiction exercised by the High Court over a subordinate Court. **ILR (1952) Mad 698 : 64 Mad L W 1021 : 1951-2 Mad L J 597 : AIR 1952 Mad 300 (302, 303) (Pt A) (Prs 6, 8, 9) (DB).**

——**Art. 226 — Appeal — Decision of single Judge quashing order — Further direction added under Art. 227 — Appeal — If barred.** See Letters Patent (Punjab) (1919), Cl. 10. **AIR 1961 Punj 24 (DB).**

——**Arts. 226 and 227 — Supervisory jurisdiction of High Court over Rent Control Tribunals —Order by Single Judge—Appeal under Cl. 10, Letters Patent (Punjab) — Whether competent — (Letters Patent (Punjab), Cl. 10)—(Houses and Rents — Delhi and Ajmer Merwara Rent Control Act (1947), S. 7-A).**

The Rent Controller and the District Judge appointed as an appeal Court under the Delhi Rent Control Act are required to act judicially and, therefore they are subject to supervisory jurisdiction of the High Court under Art. 226 of the Constitution and a writ of certiorari can be issued quashing their orders if the orders have been made in disregard of the principles of natural justice, etc.

Where the landlord applied under Arts. 226 and 227, Constitution of India, seeking to quash the order of the appellate authority (District Judge) under the Delhi Rent Control Act dismissing the landlord's appeal against the order of the Rent Controller fixing standard rent and the single Judge of the High Court treating the petition as one under Art. 227 of the Constitution, dismissed it and the landlord filed a Letters Patent appeal under Cl. 10.

Held, in substance the landlord appellant's application was both under Art 226 and Art. 227 of the Constitution and that the judgment of the single Judge amounted to dismissal of the petition under both the articles.

In this view, an appeal under Cl. 10, Letters Patent against the order of the single Judge of the High Court was competent. **61 Punj L R 315 : ILR (1959) Punj 859 : A I R 1959 Punj 291 (294) (Pt A) (Pr 9) (DB).**

——**Art. 226 — Limitation Act (1908), Art. 151—Application under Art. 226 heard and accepted by Single Judge of High Court — Appeal from order to Division Bench—Limitation — Article 151 applies — Appeal barred if filed beyond 20 days.** See **Limitation Act (1908), Art. 151. AIR 1958 Punj 365.**

● ——**Art. 226—Appeal — Order dismissing petition under Art. 226, whether "judgment, decree or final order".** See Ibid, Art. 133. **AIR 1957 Punj 173 (FB).**

Notice.

——**Art. 226—Appeal—Procedure in — Rules framed by High Court, R. 43 — Application made under Art. 226 dismissed in limine — Appeal from such order—Appeal need not be heard ex parte.**

An appeal from an order under Art. 226 of the Constitution dismissing an application in limine has to be heard upon notice being served and not ex parte. The Rules framed by the High Court in this respect provide that an appeal has to be disposed upon notice to the respondent. The obvious purpose of such notice is to enable the respondent who is the party affected by it to exhibit to the Court the grounds upon which he opposes the appeal. **A I R 1963 Cal 152 (156, 160) (Pt B) (Prs 13, 34) (DB).**

Procedure.

——**Art. 226—Writ appeal—Appeal —Fresh vakalat whether necessary for filing appeal.**

Where the original vakalath contains an authorisation for filing the appeal also, if the decision, in the writ application went against the client, no fresh vakalath is necessary for filing the appeal. **1958 Ker L J 484 : 1958 Ker L T 387 : I L R (1958) Ker 870 : AIR 1958 Ker 338 (339) (Pt B) (Pr 1) (DB).**

New plea or new point.

● ——**Arts. 226 and 133—Appeal from order on writ petition—New objection—Objection not raised before the High Court — Cannot be raised in appeal — Supreme Court — Practice,** Sarju Prasad Saha v. State of U. P., **(1965) 2 S C W R 1061 : (1965) 2 S C A 794 : (1965) 2 S C J 411 : A I R 1965 S C 1763 (1766) (Pt B) (Pr 6).**

——**Art. 226—New plea—Writ appeals.**

In an appeal from an adverse order made on an application for a writ of mandamus, the appellant is not entitled to a consideration of new point involving an investigation into facts. **A I R 1959 Cal 128 (131) (Pt C) (Pr 13) (DB).**

——**Art. 226 — Appeal — New plea — (Civil P. C. (1908), S. 100).**

Before the trial judge it was not contended by the employees that on an application for a writ of certiorari he was not entitled to go into and revise the finding of the Appellate Tribunal that the appeal before it was maintainable. Nor was any such ground taken in the memorandum of appeal. In opening the appeal, however, the counsel for the appellants put the ground in the forefront of the points which he wished to argue.

Held, that the appellant should be allowed to take it because it was a pure question of law going to the root of the jurisdiction of the trial judge and because it was clear that the hearing would go over the day so that the Respondents would have sufficient time to consider it. **(1956) 2 Lab L J 328 : 60 Cal W N 802 : AIR 1957 Cal 560 (563) (Pt A) (Pr 11) (DB).**

——**Art. 226—Appeal—New point — (Letters Patent Cl. 15).**

Where the existence of a standing order of the Government to supply the respondent with a monthly quota of cement, which was a question of fact was neither alleged in the petition under Art. 226 nor raised in the proceedings on the petition, so that the opposite party had no opportunty to meet it, the respondent was not allowed to raise it in an appeal against the order passed in these proceedings. **57 Cal W N 790 : AIR 1954 Cal 159 (162) (Pt B) (Pr 10) (DB).**

——**Art. 226—New point.**

Entirely new point, particularly not being a pure point of law, not even hinted at in the petition under Art. 226 cannot be urged in appeal. **58 Cal W N 209 : AIR 1954 Cal 151 (154) (Pt B) (Pr 8) (DB).**

——**Arts. 226 and 311—Writ appeal — New plea— Departmental enquiry — Allegation of bias against**

enquiring officer cannot be allowed to be raised for the first time. A I R 1957 S C 425, Rel. on. 1961-3 A E R 621, Ref. ILR (1965) 1 Mad 487.

——Arts. 226, 20 (3), 14 — Practice — Appeal from decision on a writ petition — Validity of a section challenged on ground of contravention of Arts. 14 and 20 3) of the Constitution — Plea under Art. 14 neither taken before lower Court nor mentioned in grounds of appeal—Question allowed to be raised in view of importance of the matter. 1963 (2) Cri L J 636 : ILR (1964) 1 Mad 451 : (1965) 1 Mad L J 465 : AIR 1963 Mad 434 (435) (Pt D) (Pr 1) (DB).

Abatement.

——Art. 226—Petition challenging order of dismissal of election petition—Dismissal—Appeal — Supersession of Municipality — Effect—Appeal, if abates

The appellant filed an election petition in which he challenged the election of the first respondent on the ground that the latter was disqualified under S. 13-D (j) read with S. 43 (1) of the U. P. Municipalities Act, 1916, for being chosen as the President of a Board. The petition was dismissed and the appellant then questioned the correctness of the Tribunal's order by a writ petition which was also dismissed. During the pendency of appeal against the order the Municipality was superseded and the question was whether the appeal had become infructuous.

Held, that the supersession of the Board did not deprive the appellant of his right to appeal against the order dismissing his petition, and as an important question had been raised as to the eligibility of the person who had been elected as President, a final decision by High Court on the question was desirable. AIR 1955 S C 610, Rel. on. 1957 All L J 895 : I L R (1957) 2 All 235.

Limitation.

——Art. 226—Limitation Act (1908), Art. 151—Is applicable to an appeal against the decision given under Art. 226 — (Letters Patent (Cal), Cl. 15). See Limitation Act (1908), Art. 151. AIR 1953 Cal 433.

Court-fees.

● ——Art. 226—Appeal to Supreme Court from order of High Court in a single petition under Art. 226 of the Constitution challenging the validity of various assessment orders – Court-fees and other charges payable — If to be as on a single appeal or several appeals in respect of each assessment order.

Where a person filed a petition under Art. 226 of the Constitution challenging the validity of various assessment orders there is only one proceeding. It could not be said that there were as many proceedings as there were assessment orders, for the petitioner had by a single petition challenged them all together. When an appeal is taken to the Supreme Court from the judgment of the High Court in such a petition, it is impossible to contend that there are more appeals than one. Therefore such an appellant is liable to pay one set of Court-fee and other charges as in a single appeal. Petition for Special Leave No. 673 of 1959 and Civil Appeals Nos. 462 to 465 of 1960, Disting. Chandra Bhan Gosain v. The State of Orissa, (1963) 2 S C J 713 : (1963) 2 S C W R 342 : (1963) 50 I T R 195 : (1963) 2 Ker L R 207 : (1963) 14 S T C 918 : (1963) 2 I T J 467 : 1964 S C D 415 : 30 Cut L T 261 : (1964) 2 S C R 879.

——Art. 226 — Court-fees Act (7 of 1870), Sch. 2, Art. 11 - Travancore-Cochin Court-fees Act (1125), Sch. 2, Art. 6 — Order on application under Art. 226 of Constitution — Appeal — Court fees payable on memorandum of appeal. See Court-fees Act (1870), Sch. 2, Art. 11. AIR 1958 Ker 338.

Remand.

——Art. 226 — Appeal — Procedure in — Power of remand, High Court can remand where necessary matter to trial Court.

The powers of the appellate Court in dealing with a writ appeal are in no way circumscribed by the writ Rules. These rules are purely procedural; they do not have the effect of limiting or enlarging the Court's power to dealing with and disposing of appeals. That power is defined elsewhere; it is to be found in the Civil P. C., which by S. 107 gives the appellate Court the power, inter alia, to determine a case finally or to remand it for further consideration. It is always for the appellate Court to decide what form the interference will take in a given case. There is nothing to prevent the appellate Court from determining finally an appeal from an order of summary rejection of a writ petition if no further investigation is called for. However, if that test is not fulfilled, the High Court can remand the matter to the trial Court with direction to determine it after giving notice to the other party. A I R 1954 Cal 60 and A I R 1958 Cal 559 and A I R 1957 S C 354, Rel. on. A I R 1963 Cal 152 (157, 161) (Pt C) (Prs 16, 17, 40) (DB).

11. Application for.

See also Note 98.

(a) Affidavit in support of.
(i) Who can make.
(b) Affidavit in opposition.
(c) Contents of.
(d) Amendment.
(e) Delay in applying, explanation for. See Note 35.
(f) Suppression of or falsity of facts.
(g) Joint application.

11. Application for.

See also Note 98.

——Art. 226 — Order which is challenged not filed along with writ petition — Petition is not maintainable. AIR 1961 All 299 (300) (Pt C) (Pr 5).

——Art. 226—Award by Industrial Tribunal—Union of workmen — Moving under Art. 226 against such award—Cause title—Form of, indicated. 66 Cal W N 395 : (1962) 4 F L R 89 : (1962) 2 Lab L J 62 : (1962-63) 23 F J R 592 : A I R 1962 Cal 649 (653, 654) (Pt A) (Prs 11, 12, 14).

——Art. 226 - Application by minor — Applicant attaining majority during pendency of his application —Whether application cannot be dismissed— Quaere. 61 Cal W N 717 : A I R 1957 Cal 524 (526, 527) (Pt B) (Pr 8).

● ——Art. 226—Application not mentioning Art. 226 in cause title and asking for writ of mandamus.

The application had been instituted in the matter of writs of mandamus and not for writs in the nature of mandamus:

Held, that the High Court should not be justified in not treating the application as an application under Art. 226 on such technical ground The application was in substance an application under Art. 226 of the Constitution. Merely because in the cause title Art. 226 had not been specifically mentioned and the proper writ or direction had not been prayed for it would not be said that the application was not one under Art. 226. A I R 1951 S C 41, Foll. Nihar Kumari v. Commissioner of Police, AIR 1953 Cal 179 (180, 184) (Pt C) (Prs 10, 25) (FB).

——Art. 226—West Bengal Sales Tax Act (4 of 1954) —Notification under—Notification No. 2348 F. T. D/-1-12-1954 — Held, that Writ petition was defective in so far as it did not annex assessment order made under Bengal Finance (Sales Tax) Act — But since there was no dispute that assessment order was made including sale price of goods mentioned in notification under West Bengal Act, and certain sum

was demanded by way of sales tax. Court would not make much of this technical defect. 70 Cal W N 152: (1966) 17 S T C 35.

——Art. 226—Jurisdiction — Application for writ by share holders of company under liquidation—Forum—High Court or company Court having seisin of liquidation proceedings. See Travancore Cochin High Court Act (1123), Ss. 8 and 18 (2). A I R 1952 Trav-Co 14.

11 (a). Affidavit in support of.

(i) Who can make.

11 (a). Affidavit in support of.

——Art. 226—Affidavit in support of writ petition—Allahabad High Court Rules, Chap. 22, R. 1 (2)—Compliance with—Defective affidavit—Petition cannot be dismissed in limine—Reasonable opportunity to file better affidavit should be given

'Deponent's own knowledge' in R. 1 (2) of Chap. 22 of the Rules is wide enough to comprehend the knowledge of the writ petitioner derived from a perusal of the relevant documents.

Held, on facts, that it could not be said that the facts stated in the affidavit were not based on the deponent's personal knowledge. Moreover, if the affidavit was defective in any manner, the High Court, instead of dismissing the petition in limine should have given the petitioner a reasonable opportunity to file a better affidavit which would comply with the provisions of R. 1 of Chap. 22 of the Rules. Dwarka Nath v. Income tax Officer, Special Circle, D. Ward, Kanpur, (1965) 2 S C A 868 : (1965) 2 I T J 218 : (1965) 2 S C J 296 : (1965) 57 I T R 349 : (1965) 2 S C W R 391 : AIR 1966 S C 81 (88) (Pt D) (Pr 9).

—— Art. 226—Allahabad High Court Rules, Chap 22, R. 1 (ii) — Writ petition — Dismissal of, for non-compliance with R. 1 (ii)

A writ petition is liable to be dismissed for non-compliance with R. 1 (ii) of the Allahabad High Court Rules, as the decision in a writ petition necessarily rests on the facts stated upon affidavit, and, if the affidavit filed is not of any value it cannot constitute any foundation for invoking the writ jurisdiction of the High Court. Even where an objection as such is not taken, it is the duty of the petitioner who comes to Court to lay a proper and firm foundation on facts on which the petition is based. Relevant facts have to be stated on affidavit from personal knowledge. The facts cannot ordinarily be sworn by a Pairokar as on information from the petitioner. It is, primarily, for the Court to see whether the writ jurisdiction, in favour of such a petitioner will be exercised. A I R 1951 Cal 456; A I R 1959 All 795; A I R 1982 All 70 and A I R 1952 S C 317, Ref. (1965) 2 I T J 704 (All).

——Art. 226 — Natural justice—Ground taken in petition not supported by the true facts in affidavits—Effect.

Where in writ petition itself, no doubt, a ground was taken specifically that the Election Tribunal had done the counting after scrutiny of the rejected votes without any notice to the successful candidate or his counsel or in their presence and though this ground was taken in the petition, the assertions made in the affidavit did not support it.

Held, that the ground taken was actually not supported by true facts. The procedure adopted by Election Tribunal was not defective or violative of any principles of natural justice. 1963 All L J 634 : ILR (1963) 2 All 828.

——Art. 226—Pleadings — Affidavit — Contents of.

The allegations in an affidavit in proceedings under Art. 226 must be confined to statements based on the personal knowlegde of the person swearing it, and must not contain any expression of opinion or submissions of law. AIR 1960 All 304 (307) (Pt A) (Pr 8).

——Art. 226 — Affidavit — Verification — Clients are guided by counsel in the matter of verification of the affidavit and an allegation should not be made by counsel without ascertaining whether the client was telling the truth or not and should not be permitted to be sworn as true to the personal knowledge of the client. AIR 1960 All 164 (168) (Pt E) (Pr 11).

——Art. 226—Pleadings—Affidavits—Contents of.

Allegations in an affidavit in proceedings under Art. 226 must confine to statements based on the personal knowledge of the person swearing it and must not contain expression of opinion or submission of law. W. P. No. 1263 of 1957 (All), Foll. AIR 1959 All 795 (797) (Pt B) (Pr 11).

——Art. 226—Evidence—News-items appearing in press—Admissibility—(High Court Rules and Orders—Allahabad High Court Rules, Chapter 22, R. 1 (2)) —(Evidence Act (1872), S. 60).

Chapter 22. R. 1 (2) of the Allahabad H. C. Rules clearly requires that the affidavit filed in support of the writ petition should contain only such matter which is in the personal knowledge of the deponent.

If the petitioner wants to raise the question of fact that there was ill-will between him and the railway administration and he was actually removed and for that purpose wanted to rely upon certain piece of evidence his proper remedy is to file a regular suit and not to come to the High Court under Art. 226 of the Constitution of India. AIR 1959 All 643 (647, 648) (Pt A) (Prs 3, 4).

——Art. 226 — Pleadings — Allegation of mala fide exercise of power—Facts to be given in affidavit.

If in a petition under Art. 226 the exercise of a power by the State Government is challenged on the ground of mala fide the facts are to be given in details in the affidavit. AIR 1958 All 126 (135) (Pt L) (Pr 26).

——Art. 226 — Pleadings — Allegation of fact not based on personal knowledge—Permissibility.

In a writ petition an allegation not based on the personal knowledge of the person making the allegation but based on the information received by him from others cannot be accepted. Any allegation which is not based on personal knowledge cannot be taken to be a part of the pleadings of a writ petition. (1957) All W R (HC) 204 : (1957) All L J 56.

——Art. 226 — Municipalities — U. P. Municipalities Act (2 of 1916), S. 87-A—Notice of motion of no-confidence — Grievance about its publication — Affidavit as to—It must contain definite statement whether notice of motion was published or not — Mere statement of knowledge is not enough. AIR 1955 N U C (All) 1713.

——Art. 226—Procedure — Affidavit.

(Per Mootham J.)—Where the application of one of applicants is accompanied by an affidavit of a considerable length but the other applications are accompanied by short affidavits in which the applicants state that they rely upon the facts set forth in the affidavit of the first application, it is an unsatisfactory practice as it is likely to result in one or more of the deponents deposing to matters not within his or their personal knowledge. The better course is for a joint

affidavit to be filed. ILR (1952) 1 All 880 : AIR 1953 All 739 (740) (Pt A) (Pr 1) (DB).

——Art. 226—Affidavits — (High Court Rules (All): Ch. 22).

Affidavits filed along with a petition filed under Art. 226 should be prepared in accordance with the the rules to be found in Chap. 22 of the Rules of the High Court and must be restricted to matter of fact. They must not be used as vehicles for the expression of matters of argument or opinion. 1953 All W R (HC) 420 : 1953 All L J 405 : ILR (1954) 1 All 280 : AIR 1953 All 664 (665) (Pt A) (Pr 4) (DB).

——Art. 226—Procedure.

Parties to an application or proceeding should not be allowed to address letters to an officer of the Court, but they should show cause through their counsel and by means of affidavits or petition filed in the proceeding. Where the Deputy Commissioner, and the Chairman of the Local Board who were opposite parties to the petition under Art. 226 and had shown cause had not filed any counter-affidavit controverting the allegations but were content to send their replies through letters addressed to the Deputy Registrar :

Held, this procedure must be deprecated. ILR (1954) 6 Assam 487 : AIR 1955 Assam 97 (99) (Pt A) (Pr 4) (DB).

——Art. 226—Affidavit by petitioner — Verification —(C. P. C (1908), O. 19, R 3).

Verification of an affidavit by petitioner under Art. 226 ought not to be slipshod and should invariably be modelled on the lines of O. 19, R. 3 of the Civil P. C. whether the Code applies in terms or not; and when the matter deposed to is not based on the personal knowledge of the deponent, the source of information should be clearly disclosed. Omission to observe those formalities may be visited with the consequence of rejection of the affidavit. The Court would be justified in throwing out the application on this ground in limine. But where a rule nisi had already been obtained and the defect could be cured by giving an opportunity to the petitioner to swear a fresh affidavit clarifying the position, the Court decided to hear the application on merits. AIR 1952 S C 317. Rel. on. ILR (1954) 6 Assam 161 : AIR 1954 Assam 161 (164) (Pt B) (Pr 7) (DB).

——Art. 226—Affidavits—Vagueness.

In writ matters affidavits are the only pieces of evidence which are before the Court. If such affidavits are vague and uninformative or merely make general allegations devoid of particulars, their value becomes negligible. (1965) 2 Com L J 152 : 70 Cal W N 280 : AIR 1966 Cal 151 (160) (Pt C) (Pr 19).

——Art. 226—Affidavit—Contents.

Those to whom it may fall to speak on behalf of bodies like a University and those to whom it may fall to act for them in litigation should take greater care in affirming facts and greater care to avoid statements and forms of expression which are bound to compromise the great institutions they represent. ILR (1959) 1 Cal 28 : 62 Cal W N 259 : AIR 1958 Cal 131 (135) (Pt B) (Pr 16) (DB).

——Art. 226—Affidavit.

In high prerogative writs, the affidavit supporting the petition should be by the petitioner. After all, high prerogative writs are matters of discretion, and if the petitioner has not the courage to verify his own petition, then, the Court should be extremely reluctant to grant relief. AIR 1952 Cal 16, Rel. on. A I R 1956 Cal 456 (458) (Pt C) (Pr 6).

——Art. 226—Application — Addition by affidavit.

An applicant for a writ cannot add to his case as made in the petition by means of subsequent affidavits. ('56) 60 Cal W N 24.

——Art. 226—In an application under Art. 226 it is not possible to enforce the provisions of O. 19, R. 3(1) C. P. C. by considering proceedings as a full-pledged suit. These proceedings are entirely decided upon affidavits and to a certain extent take on the characteristics —Everything contained in affidavits need not be of personal knowledge of deponent. AIR 1955 N U C (Cal) 4499.

——Art. 226—Proceedings under — Who can verify pleadings and affidavits. See Civil P. C. (1908), O. 6, R. 15. AIR 1954 Cal 159 (DB).

——Art. 226—Affidavit in proceeding under Art. 226 of the Constitution. See Civil P. C. (1908), O. 19, R. 3. AIR 1954 Cal 41.

——Art. 226—Petition disputing validity of taxing order —Allegation of want of jurisdiction— Material not placed before Taxing Authority — If admissible.

Where an assessee challenges by a petition under Art. 226 of the Constitution the validity of certain orders by the Sales-Tax Authority on the ground of want of jurisdiction, it is open to him to place before the High Court the necessary material to show that the orders of assessment are without jurisdiction, even though it was not first placed before the taxing authorities. 1958 Ker L J 1228 : 1959 Ker L T 311 : (1959) 10 S T C 459.

——Arts. 226, 227—Procedure —Affidavit— Reliability.

Where an affidavit in support of a petition for setting aside an election to the municipality on the ground that the elected candidate was disqualified under S. 14 (1) (i) read with S. 94 of the M. B Municipalities Act (I of 1954) as there were tax dues outstanding against his name for more than one year, merely stated that paras. 1 to 20 which contained these allegations, were true to his personal knowledge but did not mention the source of his knowledge or the particular tax to which he wanted to refer.

Held, that such an affidavit can hardly be taken as the basis for upsetting an election which is duly declared and upheld even after an election petition. 1963 Jab L J 795.

——Art. 226 — Rules under —R. 11 (a)—Absence of affidavit.

Where the respondents have not filed any affidavit, their return is not a valid return which need be taken into consideration. I L R (1954) Nag 935 : 1955 Nag L J 332 : AIR 1956 Nag 27 (31) (Pt C) (Pr 13) (DB).

——Art. 226—Writs under — Affidavit to be signed by petitioner himself —Discretion of Court.

In all applications it is essential that the affidavit in support of the petition should be signed by the petitioner himself and in the absence of such affidavit, the application ought to be rejected. This defect should be brought to notice of the High Court, when matter came up to it for admission on previous notice, given by the applicant to the opposite party which had been accepted by him and before the Court posted the case for final disposal. The writs under Art. 226 are comparatively new to the Orissa Court and the practice in respect thereof is not properly understood

and has not got sufficiently crystallised. Under these circumstances, while the Court should insist upon the observance of the correct practice and procedure in such matters, and while it may be true that the Court is entitled to dismiss the application on the preliminary objection raised, the Court has the discretion not to do so in a case, having regard to the consideration that all the facts alleged in the affidavit are matters of record which are indisputable and undisputed. AIR 1952 Cal 72, AIR 1951 Cal 396, AIR 1947 Cal 307, (1917) 1 K B 486 Rel. on. **A I R 1952 Orissa 251 (254) (Pt C) (Pr 6) (DB).**

● ——**Art. 226—Absence of material.**

All the applications under Art. 226 which relate to land covered by sub-cls. (d) and (f) of S. 2 (ii) of Bihar Act 31 of 1950 should be allowed. It is immaterial to consider whether the petitioners have or have not made out their claims as to adverse possession. The sub-clauses being unconstitutional are void under Art. 13 of the Constitution, and no proceedings can be taken under them. The High Court cannot allow a proceeding to continue and orders to be passed thereupon when it has held that the proceeding was commenced under a piece of legislation which is wholly void in the sense of its being unconstitutional.

(Per Contra) :— An Act can be declared unconstitutional or invalid only on the contention of a person against whom action has been taken under the Act and who feels aggrieved by the action taken. Where in the affidavit of the petitioners there is nothing except a challenge to the Act, there being no statement whatsoever indicating as to how the petitioners are affected by the action taken under the Act the Court will not be justified in allowing the applications on the scanty material which the Court possesses. Brij Bhukan v. S. D. O. Siwan, **I L R 33 Pat 690 : 1954 BLJR 513 : A I R 1955 Pat 1 (33, 38, 39, 40) (Pt X) (Prs 23, 42, 43) (SB).**

——Art. 226—Affidavit — Document to be produced as evidence not specified in affidavit —Document cannot be admitted at late stage of arguments. See Civil P. C. (1908), O. 19, R. 1. **67 Pun L R 452 : 1965 Cur L J 279.**

——**Art. 226—Pleadings.**

An affidavit in order to have any probative value should set forth matters of fact only and not declare the merits of a particular cause and base conclusions on the private opinions of the maker. It must consist of statement of fact which is being sworn to as the truth. An affidavit which embodies arguments has hardly any evidentiary value. An affidavit is of no assistance if the nature, quality and the source of information are not set forth so as to enable the Court to ascertain whether there is a good foundation for the depositions. An affidavit is a voluntary ex parte statement. **63 Punj L R 465 : 1961 (2) Cri L J 542 (2).**

——**Art. 226 – Scope —Person appearing as witness—** Meaning — Wider interpretation not permissible — Person making affidavit in writ proceedings is not a person appearing as witness— Rajasthan High Court Rules, R. 383 See Criminal P. C. (1898), S. 479-A. **1961 (2) Cri L J 796 : AIR 1961 Raj 268 (DB).**

11 (a) (i). Who can make.

● ——Art. 226—Parties to petition—Applicant applying for certain person to be made respondent — No relief claimed against such person, only ground mentioned for impleading him being to make it incumbent on him to file affidavit - Order rejecting application not wrong as person was not legally obliged to file affidavit if he was not a party. S. Pratap Singh v. State of Punjab, **(1965) 1 S C A 259 : A I R 1964 S C 72 (100, 101) (Pt T) (Pr 73).**

——**Art. 226—Writ proceedings—Procedure — Affidavits—Filing of.**

The affidavit supporting a petition under Art. 226 of the Constitution must be sworn by a person who can relate facts from his personal knowledge. When a person swears an affidavit in a case which does not concern him, it is not enough for him to make the formal verification that he is personally acquainted with the facts deposed to in his affidavit: he must explain how he becomes acquainted with events and happenings which ordinarily did not appear to concern him. **(1961) 2 Fac L R 421 : (1961) 1 Lab L J 686 : (1962-63) 22 F J R 468 : A I R 1962 All 70 (71) (Pt C) (Pr 1).**

——Art. 226—Writ petition—Affidavit in support of —Anyone personally acquainted with facts can file an affidavit—Need not be by applicant himself.

The Rules of the Court nowhere provide that the party or his Pairokar must file an affidavit in support of the writ application moved by or on behalf of the party. Any one personally acquainted with the facts can file an affidavit. **1962 All W R (HC) 157 : 1962 All L J 226.**

——**Art. 226—Petition under — Affidavit in support of application by whom to be made — High Court Rules — Calcutta High Court, Appellate Side Rules, Ch. II, Part II, R. 43.**

Rule 43, Chap. II, Part II of the Appellate Side Rules lays down that the procedure in applications on the Appellate Side must conform to the procedure which is adopted in Civil Revision cases on the Appellate Side. There are no specific rules on the Appellate Side which require that the petition should be supported by the affidavit of the petitioners themselves.

Where the requisitioned land which was the subject matter of dispute was situate outside the ordinary original jurisdiction of the High Court and the prayer for derequisition and restoration of possession had also to be complied with at a place outside the said jurisdiction, it was held that the petition could not be thrown out on the mere ground that the petition was not supported by the affidavit of the persons swearing the petition. The affidavit of the husband of one of the petitioners was held to be a valid compliance with the law. A I R 1947 Cal 387, Dist. **88 Cal L J 172 : 56 Cal W N 306 : I L R (1953) 1 Cal 155 : A I R 1952 Cal 16 (18, 19) (Pt C) (Pr 14).**

——Art. 32 (2-A)—**Pleadings and procedure — Petition for issue of writ of habeas corpus — Allegations in affidavit against Prime Minister—Latter whether should deny allegations personally — (Constitution of Jammu and Kashmir, S. 103).**

It is not necessary for the Prime Minister personally to deny the allegations made by a petitioner in his affidavit made in support of his petition for the issue of a writ in the nature of habeas corpus. If an under-secretary to the Government, files an affidavit controverting the allegations made by the petitioner, the fact that official sources are mentioned by the deponent from which he has received information shows that he has consulted the concerned persons against whom allegations are made by the petitioner. **1959 Cri L J 709 : A I R 1959 J & K 56 (59) (Pt F) (Pr 28) (DB).**

——Art. 226 — Practice and Procedure — Writ proceedings — Return — Government Officer concerned must himself file an affidavit - He cannot ask any one else to do so for him. **1964 Jab L J 652.**

——**Art. 226 - Coffee Act (1942), S. 48 - Coffee Board Office Manual Vol. II, Item 9, Vol. I, Part II para 57** — Secretary of Board has power to sign and verify writ petition in labour disputes — Constitution of India, Art. 226. See Coffee Act (1942), S. 48. **1962 Mys L J (Sup) 344 (DB).**

——Art. 226 — Proceedings under Bihar Town Planning and Improvement Trust Act questioned — State of Bihar made respondent — Counter-affidavit sworn by Bench Clerk of Land Acquisition Officer is not defective— He being the Bench Clerk the facts stated were true to his knowledge. 1963 B L J R 254 : AIR 1963 Pat 201 (205, 206) (Pt D) (Pr 11) (DB).

11 (b). Affidavit in opposition.

——Art. 226 — Allegations in petition and affidavit of applicant with respect to matters concerning certain persons not accepted by respondent—It is not improper or irregular or illegal for respondent to have secured affidavits from such persons and to have filed them in Court. S. Pratap Singh v. State of Punjab, (1965) 1 S C A 259 : A I R 1964 S C 72 (101) (Pt U) (Pr 74).

——Arts. 226 and 32 — Procedure—Chief Minister made party-respondent to petition — Serious allegations made against him—In view of such allegations Chief Minister held, owed a duty to the Supreme Court to file an affidavit stating the correct position regarding the allegations so far as he remembered it and not to leave the refutation of the allegations to Secretaries and other officers who could only speak from the records. R. P. Kapoor v. Sardar Pratap Singh Kairon, (1963) 2 S C J 1 : 1963 Mad L J (Cri) 289 : 1961 (2) Cri L J 161 : (1961) 2 S C R 143 : A I R 1961 S C 1117 (1125) (Pt B) (Pr 19).

——Art. 226 — Reply affidavit by State by assistant having no personal knowledge of facts, deprecated. (1963) 7 Fac L R 30 (All).

——Art. 226 — Pleadings — Facts within knowledge of Government officials—Affidavits by clerks—Propriety.

The tendency among Government officials to send their clerks or pairokars to swear affidavits in regard to facts is contrary to law and improper. A I R 1959 All 795 (798) (Pt A) (Pr 13).

——Art. 226 — Procedure — Allegations of personal nature against Government officer — Filing of affidavit in reply.

In a petition under Art. 226, the High Court expects an officer of the Government, against whom allegations of a personal nature have been made, to come forward and clear his position by an affidavit sworn by himself. 1958 All W R (HC) 752 : 1958 All L J 695.

——Art. 226—No counter-affidavit—Effect.

Where no counter-affidavit has been filed on behalf of any of the opposite parties the facts alleged in the affidavit filed in support of the petition have to be accepted as true. A I R 1956 All 147 (148) (Pt A) (Pr 3).

——Art. 226 — Procedure — Failure to file counter-affidavit — Stay of proceedings before Panchayati Adalat obtained under S. 85, U. P. Panchayat Raj Act from Sub-Divisional Magistrate — Adalat informed and panchas assuring accused persons that case would not be taken—In spite of it Adalat convicting accused persons—On application under Art. 226 controversy raised as to whether Adalat was informed of stay order — Notice of writ petition issued to Adalat but no counter affidavit led by them controverting allegation — In absence of counter-affidavit by Adalat fact that Adalat was informed held was established — Order of conviction therefore held was illegal — (U. P. Panchayat Raj Act (26 of 1947), S. 85). A I R 1955 N U C (All) 5285.

——Art. 226 — Counter-affidavit in writ petition need not state question of law — Respondent can raise question of law for first time during hearing.

It is not necessary to state questions of law in a counter-affidavit filed in a writ petition. It must ordinarily be devoted to statements of fact and not of law. The fact that the respondent did not set up the question of law in the counter affidavit cannot disentitle him from raising it at the hearing. (1964) 1 Andh L T 53 : (1964) 1 Andh W R 29 : A I R 1964 Andh Pra 357 (359, 360) (Pt B) (Pr 10).

——Art. 226—Pleadings and procedure — Writ petition — Allegations of mala fides against officers — Duty of officers to answer.

When in a writ petition allegations of mala fides are made against officers, it is proper that the individuals against whom those allegations are directed must themselves answer them and it should not be left to some other officer to do so. 1958 Andh L T 528 : (1958) 2 Andh W R 358 : (1958) 34 I T R 216.

——Art. 226 — Petitioner asserting that Government had issued certain instructions in the matter of strike by Government servants — No averment in the return filed on behalf of respondents either denying or affirming of such instructions — On normal rules of pleading it must be held that the issuing of such instructions, as alleged by the petitioner, had not been denied and therefore, must be taken to have been accepted. 65 Bom L R 65 : I L R (1962) Bom 664 : 1963 Mah L J 205 : (1963) 1 Lab L J 428 : AIR 1963 Bom 121 (132, 133) (Pt D) (Pr 44) (DB).

——Art. 226 — Affidavit in opposition not properly affirmed — Objection should be taken at beginning when Court can direct re-affirmation — Defect, however, held technical and not of fatal character. See High Court Rules and Orders — Calcutta High Court Writ Rules, R. 14. (1965) 2 Com L J 152 : AIR 1966 Cal 151.

——Art. 226 — Person filing in affidavit in-opposition examined as witness — Petitioner not heard nor given opportunity to cross-examine — Procedure held irregular—Order can be set aside on that ground. A I R 1963 Cal 563 (565) (Pt B) (Pr 5) (DB).

——Art. 226 — Pleadings — Counter-affidavit — Authority to swear to.

The counter-affidavit in proceedings under Art. 226 is a solemn document and ought not to be taken lightly. It is only those who personally could vouch for the details that should come forward. 1959 Ker L J 93.

——Art. 226—Affidavit—Privilege—Allegation that a person was recommended to the post of a Judge of High Court but the recommendation was turned down on ground that he had no judicial experience—Allegations not denied in counter affidavit but privilege claimed on ground that it related to affairs of State — Held, that there was no duty on Government to claim privilege in case of this kind — They had duty to speak truth — Affidavits are not excepted from scope of this rule—Evidence Act (1872), S. 123. AIR 1951 Bom 72, Ref. ILR (1961) Mad 553 : A I R 1961 Mad 450 (461) (Pt C) (Pr 50) (DB).

——Art. 226—Procedure—Writ petition for direction to Registrar of Co-operative Societies to register petitioner Society — Counter affidavit by Assistant Registrar is not in order — It has to be filed by Registrar—Assistant Registrar is not a person who knew personally of any of matters referred to in petition. AIR 1965 Manipur 1 (3) (Pt C) (Pr 8).

——Art. 226—No counter-affidavit—Effect.

In writ proceedings the facts alleged in the affidavit filed by one party have to be accepted as true when no counter affidavit is filed on behalf of the opposite party. A I R 1953 Trav Co 146, Foll. AIR 1957 Manipur 1 (2) (Pt A) (Pr 4).

——Arts. 226 and 14 — Fixation of minimum wages under Minimum Wages Act — Petitioner's affidavit disclosing necessary information to sustain charge of discrimination — Statement in counter affidavit that allegations were vague not sufficient.

Where the petitioner, complaining of hostile discrimination by the Government in the fixing of minimum wages for workmen under his employment, has given detailed information in his affidavit as to the minimum wage fixed for one class of employment as contrasted with the minimum wage fixed in respect of a similar class of workmen in another class of employment it is the clear duty of the State to state in its counter-affidavit what was the reason why the discrimination against which there was a complaint was in fact made and why and how it does not amount to a hostile discrimination between one class of employment and another. It is not enough for the State Government to merely state that the petitioners' allegations were vague and that considerations such as the nature of employment, quantity of work turned out and so forth formed the basis for the distinction made in the determination of the minimum wage. 1963 Mys L J (Supp) 223 (DB).

——Art. 226 — Affidavit imputing oblique motive to opposite party, Government servant — Opposite Party held owed a duty to file counter affidavit stating true facts — Public duty which the members of Regional Transport Authority performed was quasi-judicial in nature. 39 Mys L J 544 : ILR (1961) Mys 560 : AIR 1962 Mys 27 (30) (Pt B) (Pr 17) (DB).

——Art. 226—Procedure—Writ petition admitted — Citizen arrested on ground alleged to be unjust — Return not filed by Government even after long time—Conduct deprecated.

Where the fundamental right of a citizen is infringed, he having been arrested in pursuance of a demand which is alleged to be wholly unjust and contrary to law, the Government should not adopt an attitude of indifference towards his writ petition filed under Art. 226. Governed as the citizens are by the rule of law under the Constitution which guarantees certain fundamental rights to the citizens of his Republic, it is incumbent on the State to take prompt steps to submit returns to the writs issued by the High Court within a reasonable time and not to sleep over the matters for a long time. A I R 1962 Punj 45 (46) (Prs 3, 4).

——Art. 226 — Pleadings — Application arising on Election dispute — Counter-affidavit by Returning Officer—Advisability.

Upon an application under Art. 226 arising on an election dispute while the Government may not be interested in the result of the election, it would be proper for the Returning Officer, who is a party to the case, to give his version of the facts, so that the High Court may be in a position to know how far the facts stated by the petitioner are correct. In the absence of any counter-affidavit the High Court has to proceed on the assumption that the facts stated in affidavit by the petitioner are correct. 1957 Raj L W 285 : ILR (1957) 7 Raj 345 : A I R 1957 Raj 383 (384) (Pt D) (Pr 4) (DB).

11 (c). Contents of.

● ——Art. 226 — Practice — Admitted allegations of fact — Permission to go back on — When may be given.

Normally, there is no doubt that where allegations of fact are admitted, a party would not be allowed to go behind them but where parties do not seem to have paid attention to the details of the facts, but rather concentrated on what they considered to be points of law, it would not be proper to hold the party, to the admission made in his affidavit before the High Court and in view of such peculiar circumstances, the party may be permitted to go back on his admission. Deputy Director of Consolidation, Azamgarh v. Deen Bandhu Rai, (1965) 1 S C J 360 : 1964 All L J 247 : ILR (1964) 1 All 355 : AIR 1965 S C 484 (491) (Pt C) (Pr 18).

● ——Art. 226—Writ petition — Allegations of mala fides or of improper motives on part of persons in authority — Duty of Court — Persons in authority should place on record their version or denial.

It is true that allegations of mala fides and of improper motives on the part of those in power are frequently made and their frequency has increased in recent times. It is also somewhat unfortunate that allegations of this nature which have no foundation in fact, are made in several of the cases which have come up before the Supreme Court and other Courts and it is found that they have been made merely with a view to cause prejudice or in the hope that whether they have basis in fact or not, some of it at least might stick. Consequently it has become the duty of the Court to scrutinise these allegations with care so as to avoid being in any manner influenced by them, in cases where they have no foundation in fact. In this task which is thus cast on the Courts it would conduce to a more satisfactory disposal and consideration of them, if those against whom allegations are made came forward to place before the Court either their denials or their version of the matter, so that the Court may be in a position to judge as to whether the onus that lies upon those who make allegations of mala fides on the part of authorities have discharged their burden of proving it. In the absence of such affidavits or of materials placed before the Court by these authorities, the Court is left to judge of the veracity of the allegations merely on tests of probability with nothing more substantial by way of answer. C. S. Rowjee v. State of Andhra Pradesh, (1964) 6 S C R 330 : (1964) 2 Andh L T 48 : AIR 1964 S C 962 (969, 970) (Pt A) (Pr 20).

● ——Art. 226 — Applicant to make definite and specific statements in his petition — (Per Raghubar Dayal and Mudholkar, JJ.).

It is really for the applicant in the first instance, to make definite allegations in his petition. If he makes indefinite allegations, there is nothing for the other party or the persons concerned to deny. They can take advantage of the vagueness of the applicant's own allegations. Their reticence in that regard cannot give an advantage to the applicant when he himself is in default in not making definite allegations. S. Partap Singh v. State of Punjab, (1965) 1 S C A 259 : AIR 1964 S C 72 (101) (Pt V) (Pr 77).

● ——Art. 226—Duty of Court.

It is always desirable, when relief under Art. 226 is sought on allegations of infringement of fundamential rights, that the Court should satisfy itself that such allegations are well founded before proceeding further with the matter. State of Bombay v. United Motors (India) Ltd., 1953 S C J 373 : (1953) 1 Mad L J 743 : 55 Bom L R 536 : 86 Mad L W 577 : 1953 S C A 408 : 1953 S C R 1069 : AIR 1953 S C 252 (256) (Pt I) (Pr 8).

[Overruled on another point in AIR 1955 S C 661.]

——Art. 226—Procedure—Application under, should be concise and to the point.

An application under Art. 226 should be concise and to the point, should clearly indicate the facts on which it is based and the grounds on which the relief is sought and the nature of the relief desired with due realisation of the position that High Court hearing application under Art. 226 is not a Court of revi-

sion or appeal. AIR 1955 Raj 19, Rel. on. AIR 1956 Ajmer 41 (42) (Pt A) (Pr 4).

——Art. 226 — Order of Assistant Custodian cancelling lease — Objection on ground of lack of competence — Duty of objector — (Administration of Evacuee Property Act (1950), Ss. 5 (3) and 12 (1)).

Where the Assistant Custodian passed an order cancelling a tenancy, held that it must be presumed that the Assistant Custodian cancelled the lease in the exercise of his jurisdiction under S. 5 (3) read with S. 12 (1). The objection questioning his competence to cancel the lease should be expressly raised in the writ petition and it must be shown that the order cancelling the lease was in any manner in violation of the principles of natural justice. A I R 1955 Ajmer 41 (43) (Pt C) (Pr 9).

——Art. 226 — Pleadings — Contents of — Duty to state facts fully.

It is the duty of the petitioner to state fully the facts upon which he relies in the affidavit or affidavits accompanying the petition, and the practice of disclosing the facts which the petitioner deems to be relevant only in the rejoinder affidavit is one which the High Court will discourage. 1956 All W R (H C) 262 : 1956 All L J 357 : A I R 1956 All 433 (433, 434) (Pt A) (Pr 3) (DB).

—Art. 226—Procedure—Rules of Allahabad High Court — Petition not giving brief statement of facts —Maintainability.

According to the rules framed by Allahabad High Court the application under Art. 226, Constitution of India, must contain brief statement of facts supported by an affidavit and the grounds on which relief is claimed. Where the petition does not give a brief statement of the case but all the necessary facts have been stated in the affidavit filed in support of the petition, it cannot be said that the application is not maintainable on account of the non-compliance with the provisions of the rules. AIR 1955 All 541 (542) (Pt A) (Pr 3).

——Art. 226—Procedure—Alternative cases on question of nature of proceedings initiated — (Civil P. C. (1908), O. 6, R. 2).

The question as to the nature of the proceedings initiated is a question of fact and on such a question no party can be allowed in writ proceedings to put forward alternative cases. I L R (1955) 2 All 600 : (1955) 28 I T R 211 : AIR 1955 All 515 (517) (Pt B) (Pr 5) (DB).

——Art. 226—Petition under—Scandalous allegations without justification—Effect of.

A person who comes to invoke the discretionary power under Art. 226 of the Constitution must come with clean hands and must not try to throw mud on others without sufficient grounds and unless he is prepared to substantiate his allegations. If he does so he is not to be heard.

Where though the allegation in support of the petition was not directed against any particular officer, it contains scandalous insinuations against the officers which should not have been made without any justification and that by itself would be a ground of refusing to entertain this writ petition. 1955 All L J 665 : (1957) 1 Lab L J 37 : ILR (1956) 2 All 627 : AIR 1955 All 496 (501) (Pt F) (Pr 10).

——Art. 226—Petition under — Nature and contents of.

A petition under Art. 226 is a pleading in an extraordinary proceeding. Facts must be stated in it with precision. In the absence of any rules on the point, principles of the Civil Procedure Code governing pleadings should be followed as far as possible. The petition should contain only a statement in a concise form of the material facts on which the party relied for his claim—Arguments should not form part of the petition. Comments based on impressions or opinions are compeletely out of place. Any tendency to scandalise should be scrupulously avoided. AIR 1955 Assam 183 (194, 195) (Pt E) (Pr 47) (DB).

——Arts. 226 and 227 — Petitioner must file all relevant documents—If complaint is that a plea was not enquired into or opportunity was not given, all circumstances must be specifically pleaded. 1964 Mah L J (Notes) 61.

——Art. 226—Petition not signed—Procedure.

With regard to the signing of the petition, whatever be the rules obtaining in the Original Side of the Calcutta High Court, it seems that in the Appellate Side it is not necessary for the petitioner to sign the petition provided that the proper vakalatnama is there on record. A I R 1956 Cal 456 (458) (Pt B) (Pr 6).

——Art. 226 — Statement of grounds in petition for writ.

The grounds on which Rules are obtained in matters of application for prerogative writs under the Constitution must be stated with sufficient particularity in the petition and if that is not done they cannot be allowed to be agitated at the hearing. AIR 1955 NUC (Cal) 401.

——Art. 226—Certiorari—Procedure— Petition, contents of.

In proceedings under Art. 226 of the Constitution challenging certain acts as discriminatory it is necessary to plead that the impugned action or the act was both intentional and purposeful. In other words, it has to be shown and established that the act in question was, not only discriminatory in nature, but also done with a certain bias and prejudice. A I R 1961 Guj 38 Rel. on. (1963) 4 Guj L R 945 : (1964) 2 Lab L J 253 : ILR (1963) Guj 968.

——Arts. 226 and 19 (1) (f)—Frame of and contents in petition under Art. 226.

Where in the petition under Art. 226 not merely certain Articles of the Constitution have been mentioned, but also specific allegations have been made, which, would make out a case of infringement of the fundamental right guaranteed under Art 19 (1) (f), and also the prayers were specific and precise, the mere fact that mandamus, certiorari or prohibition have not been mentioned is immaterial, for it is for the Court to decide what, in view of the facts and circumstances established, is the proper writ, direction or order that should be issued under Art. 226. A I R 1953 Assam 61; A I R 1953 Madh B 54, Disting. A I R 1953 Him Pra 95 (99) (Pt C) (Pr 16).

——Art. 226—Pleadings — Full and true disclosure of all facts necessary.

A petitioner who comes for relief under Art. 226 of the Constitution should make a full and true disclosure of all the circumstances bearing on the case. (1917) 1 K B 486, Foll. 1958 M P L J (Notes) 98.

——Art. 226 — Procedure — All facts to be stated.

The obligation of a person invoking the special writ jurisdiction of the High Court under Art. 226 is to make a full and true disclosure of all relevant facts, leaving it to the Court to decide whether it is a case where the rule nisi that is asked for should issue in the circumstances of those facts. (1917) 1 K B 486; and other cases, Rel. on. 1956 Mad W N 140 : 69 Mad L W 58 : (1956) 1 Mad L J 324.

——Art. 226—Procedure — Allegations of mala fides against the State—Full particulars in clearest possible terms must be given. See Ibid, Art. 311. (1963) 2 Mys L J 248 (DB).

——Art. 226—Procedure — Writ petition containing references as to infringement of fundamental rights—But petitioner not asserting those rights in a very precise form in his writ petition — High Court should not be technical and throw out writ petition on that ground. 1962 Raj L W 317 : I L R (1962) 12 Raj 406 : A I R 1962 Raj 196 (203) (Pt C) (Pr 32) (DB).

[Reversed on another point in AIR 1963 S C 1638.]

——Art. 226—Petition under—Contents.

Petitioner should mention all the facts in his petition under Art. 226. 1957 Raj L W 146 : I L R (1956) 6 Raj 988.

——Art. 226—Application under—What it should be.

An application under Art. 226 should be concise and to the point, should clearly indicate the facts on which it is based, and the grounds on which the relief is sought and the nature of the relief desired, with due realization of the position that the High Court is not a Court of revision or appeal under that article. I L R (1953) 3 Raj 931 : 1954 Raj L W 649 : A I R 1955 Raj 19 (21) (Pt A) (Pr 2) (DB).

——Art. 226 — Petition for writ of certiorari—Duty of counsel to mention all relevant facts.

All relevant facts should be mentioned in a petition for a writ of certiorari, and counsel should not pick and choose, since it may be what he may think to be irrelevant may turn out to be very relevant in the case. Lakshmi Lal v. Bhagwat Singh, I L R (1951) 1 Raj 570 : 1951 Raj L W 484 : A I R 1952 Raj 22 (24) (Pt A) (Pr 13) (FB).

11 (d). Amendment.

——Art. 226—Writ petition—Amendment—Opposite party not opposing amendment — Case of bona fide mistake—Amendment being of technical nature and not changing nature of dispute raised on merits of the petition—Amendment allowed. (1965) 11 F L R 388 (All).

——Art. 226 — Order allowing amendment of particulars in list. See Representation of the People Act (1951), S. 83 (3). A I R 1954 All 245 (DB).

——Art. 226 — Prayers — Power of High Court to amend.

It is true that the prayers in the petition for a writ under Art. 226 should be specific but the High Court has power to amend the relief at the hearing. A I R 1951 S C 53, Rel. on. 87 Cal L J 391 : 1953 Cri L J 1745 : A I R 1953 Cal 753 (754) (Pt B) (Pr 15).

——Art. 226 — Petition under — Amendment of, to include new and different reliefs.

An application for amendment of a petition under Art. 226 should not lightly be allowed. An altogether new and different relief, not thought of at the time the petition was made and arising out of changed circumstances, must be claimed by another petition, and it would be wrong in practice to allow applications under Art. 226 to be freely amended to include such reliefs. 1956 Nag L J 20 : I L R (1955) Nag 932 : A I R 1956 Nag 128 (128) (Pr 2) (DB).

——Art. 226—Procedure — Amendment of petition—Provisions of Civil P. C. do apply—Civil P. C. (1908), O. 6, R. 17 and S 151. A I R 1953 Mad 39 and A I R 1938 Mad 722, Rel. on. ('65) 67 Pun L R 576.

——Art. 226 — Petition by office holders on behalf of unregistered social club—Legality — Amendment may cure defect—(Civil P. C. (1908), O. 29, R. 1).

Unregistered social clubs for relaxation and recreation of its members are societies, the members of which are perpetually changing and are merely aggregates of individuals. Where such a club files a petition under Art. 226 through its managing committee of some of its members who are alleged to have been authorised by all the members to file the petition and acting as representatives of all the members if the procedure adopted is defective, then it is merely a case of misdescription and an amendment might be allowed to cure the defect.

Held, that all that was required to be done to regularise the petition was to permit the petitioner to amend the petition and to implead all the existing members as petitioners or as respondents. I L R (1958) Punj 210 : A I R 1959 Punj 220 (221) (Pt A) (Pr 3).

11 (e). Delay in applying, explanation for.

See Note 35.

11 (f). Suppression of or falsity of facts.

——Art. 226—Suppression of material facts.

The petitioner would be disentitled to a consideration of his petition on merits only if the suppression is of a material fact and he attempts to mislead the Court. A I R 1956 Ajmer 25 (28) (Pt D) (Pr 10).

——Art. 226 — Suppression of facts must be of relevant facts, in order to disentitle petitioner to remedy under Art. 226. A I R 1964 All 395 (401, 402) (Pt A) (Prs 14, 17, 18).

——Art. 226 — Duty of petitioner to state facts truly and correctly.

A petitioner who misleads the Court by stating facts incorrectly or suppressing material facts or stating them in the manner of half truths will be disentitled by his own conduct from having his case considered on merits or getting any relief. If the person places all the relevant material to enable the Court to make its own assessment of the evidence, he cannot be said to have misled the Court merely because the Court prefers to believe the version of the respondents. A I R 1951 All 746 (FB), Dist. A I R 1960 All 323 (327) (Pt A) (Pr 18).

——Art. 226—Misleading statements by petitioner—Petitioner not to be heard on merits.

A petitioner who misleads the Court by making false or misleading statements renders himself disentitled to be heard on merits. Where, however, the petition as it stood before its amendment becomes infructuous but the petitioner who becomes entitled to file a fresh petition is allowed to amend the old petition and ask for a new relief the Court will hear the petitioner on merits unless the false or misleading statements are repeated in the affidavit supporting the new relief. (AIR 1951 All 746 (FB), Rel. on.) AIR 1960 All 164 (171) (Pt A) (Pr 23).

——Art. 226—Habeas corpus — Affidavit—Falsity of facts which are not material—Writ petition will not be thrown out. 1960 All Cr R 374 : 1960 All W R (HC) 591 : 1960 All L J 776.

——Art. 226 — Suppression of facts — Petitioner not coming to Court with clean hands—Right to relief—Ex turpi causa non oritur actio—(Maxims).

A petitioner who comes into Court founding his cause of action on an illegality, will not get any assistance from the Court. Ex turpi causa non oritur actio (out of a turpitude, no cause of action arises). No polluted hand shall touch the pure fountains of justice. These principles have been extended to the jurisdiction of the High Court under Art. 226 of the Constitution. Where the petitioner has not been candid with the Court in his presentation of facts in the affidavit supporting the petition, it is a ground for holding that the petitioner has disentitled himself to any relief from the High Court. AIR 1959 All 440 (452) (Pt J) (Prs 35, 36, 38).

——Art. 226—Pleadings — Suppression of material facts—Effect.

A petitioner. who invokes the aid of the Court under Art. 226 of the Constitution must state the facts correctly and fairly. He must not suppress material facts. Moreover his presentation of facts must be candid. He must show the utmost good faith. If he misleads the Court, he will be disentitled to be heard on merits when his fraud or misrepresentation or lack of candidness is revealed at the time of the final hearing 1959 All W R (HC) 163 : AIR 1959 All 433 (434) (Pt B) (Pr 13).

——Art. 226—Duty of applicant — Suppression of material facts by applicant.

A petitioner who does not come out with true facts before Court but suppresses the truth and makes a wrong statement is not entitled to its assistance under Art. 226. The Court will in its discretion refuse to extend help to such a litigant on this ground alone. 1959 All L J 159 : 1959 All W R (HC) 186.

——Art. 226—Duty to disclose all facts.

It is the duty of a petitioner who seeks relief under Art. 226 of the Constitution to be very frank and candid in his relation to facts and to keep back no facts which would throw light on any material point. 1958 All L J 853.

——Art. 226 — Suppression of material facts by applicant — Petitioners entitled to relief in spite of alternative relief — Omission of fact held not material.

The omission to mention a particular fact does not necessarily disentitle the petitioner to get a relief under Art. 226 unless the fact which has been omitted to be mentioned is material to the relief claimed by the applicant. Where the case of the petitioners was that they were entitled to a relief under Art. 226 in spite of the existence of an alternative remedy and in spite of the fact that the alternative remedy had been availed of, and the High Court also held that the existence of an alternative remedy was no bar to the relief being granted,

Held, that the omission to mention the fact that a suit was pending was no omission of a material fact and the writ could not be rejected on that ground. 1955 A L J 755 : AIR 1956 All 324 (325) (Pt B) (Pr 5).

——Art. 226—Suppression of material facts.

It is true that the power given under Art. 226 is a discretionary power and it has not to be exercised in favour of the petitioner who has suppressed the material facts of the case; but where the opposite party has not been able to point out any material fact which the petitioner failed to mention in his petition and which, if pointed out would not have entitled him to get a preliminary order in the case, the application could be granted. 1955 All W R (HC) 610 : 1955 A L J 853 : AIR 1956 All 103 (104) (Pt B) (Pr 3).

——Art. 226 — Suppression of material facts by applicant.

If the petitioner makes certain material suppression of facts in his petition and on the strength of such suppression he obtains an interim order he is disentitled to any relief under Article 226 of the Constitution.

(Held that it could not be said that there was any misrepresentation or suppression of material facts in this case by the applicant). (1956) All L J 655 : 1956 All WR (HC) 604.

——Arts. 226 and 14—Presumption as to existence of state of facts—Evidence Act (1872), S. 114.

If any state of facts can reasonably be conceived to sustain a classification, the existence of that state of facts must be assumed. No grievance can, therefore, be made of the fact that in the counter-affidavit filed on behalf of the State the reasons have not been set out which prompted the State Government to exclude the petitioners from re-appointment. AIR 1951 SC 41, Ref. to. 1954 All L J 618 : AIR 1955 All 33 (36) (Pt B) (Pr 15) (DB).

——Art. 226—Person entitled to apply.

On the authorities cancelling a coal quota licence an application was filed for the issue of a writ of mandamus directing the authorities to withdraw the order of cancellation and to allot hard and soft coke to the petitioner to enable her to continue to carry on the business of a coal depot holder. While the petitioner asserted in the petition that she was the licensee the Court found as a matter of fact that she was not the licensee but an institution represented by her was the licensee. The petition did not disclose facts from which it was possible to say that she was acting on behalf of and for benefit of the institution. On the other hand all facts which were material for Court to know in order to determine the rights of the petitioner and grant her the appropriate relief were suppressed.

Held, (i) that the petition was liable to be thrown out on the ground alone of the suppression of material facts. AIR 1951 All 746 (FB). Rel on.

(ii) that the petitioner was not entitled to the relief on merits also as she was not the holder of the permit or licence and as such had no right to challenge in her own right the order cancelling the licence.

(iii) that it was not possible to treat the application as one on behalf of the institution when the petition failed to disclose facts from which it could be said that the petitioner was acting on behalf of and for the benefit of the institution. 1954 All L J 276 : 1954 All W R (HC) 376 : AIR 1954 All 492 (493) (Prs 8, 9) (DB).

——Art. 226 — Application for writ—Suppression of material facts—Effect.

Where a party makes an application for a writ under Art. 226 of the Constitution and suppresses material facts he forfeits his rights for a writ. AIR 1952 Cal 72, Rel. on. 1952 All L J 353 : 1953-1 Lab L J 1 : (1952-53) 4 F J R 479 : AIR 1952 All 992 (994) (Pt B) (Pr 8) (DB).

——Art. 226—Ex parte interim order obtained by suppression of facts—Effect.

A person obtaining an ex parte order or a rule nisi by means of petition for exercise of the extraordinary powers under Art. 226 of the Constitution must come with clean hands, must not suppress any relevant facts from the Court, must refrain from making misleading statements and from giving correct information to the Court. Courts for their own protection, should insist that persons invoking these extraordinary powers should not attempt, in any manner, to misuse this valuable right by obtaining ex parte orders by suppression, misrepresentation or misstatement of facts. If the facts are stated in such a way as to mislead and deceive the Court, there is a power inherent in the Court, in order to protect itself and to prevent an abuse of its process to discharge the interim order and to refuse to proceed further with the examination of the merits of the application. (Held in this case, the petitioner disentitled itself to ask for a writ of prohibition by material suppression, misrepresentations and misleading statements.) 1917) 1 K B 486 (1850) 2 Mac. & G. 231, Ref. Asiatic Engineering Co. v. Achhru Ram, 1951 R D (HC) 241 : I L R (1952) 2 All 838 : 1951 All L J 576 : AIR 1951 All 746 (767) (Pt A) (Pr 51) (FB).

——Arts 226 and 227—Person invoking writ jurisdiction must make a full and candid disclosure of all the material facts and refrain from deliberately keeping material circumstances from the Court. (1917) 1 K B 486, (1850) 2 Mac and G 231, (1876) 1 A C 611

(1870) 39 L J Q B 86, Rel. on. (1964) 2 Andh W R 155.

——Art. 226– Suppression of facts.

If a material fact had been suppressed, the petitioner would forfeit his right to invoke a prerogative writ. But the Court would be loath to favour such an argument unless the facts actually justified it. 58 Cal W N 54 : ILR (1954) 6 Assam 528: AIR 1954 Assam 65 (68) (Pt D) (Pr 13) (DB).

——Art. 226 — Suppression of relevant facts by petitioner disentitles him to prerogative writ—He cannot take advantage of suppression of facts by opposite party. AIR 1953 Assam 137 (141) (Pt C) (Pr 18) (DB).

——Art. 226—Certiorari — Parties — Suppression of facts — Held that non-impleading of party or suppression of facts did not disentitle petitioner to relief.

Where the petitioners prayed for issue of wril of certiorari to quash the orders of the District Council taking over the management of a market, on the ground that the market was a private market and that the order of the District Council infringed the petitioners' fundamental rights, the petition will not be thrown out on the ground that the lessee to whom the District Council subsequently leased out the market was not impleaded and the fact of this lease was not mentioned in the petition. ILR (1960) 12 Assam 26.

——Art. 226—Suppression of material facts.

When the petitioners do not come to the Court with clean hands, intentionally suppress material facts, knowingly make misleading statements and do not give correct information to the Court and thereby abuse the process of the Court, it becomes a fit case in which the discretionary powers under Art. 226 of the Constitution should not be exercised in favour of such a party. AIR 1956 Bhopal 43 (45) (Pt C) (Prs 8, 9).

——Arts. 226, 227—Suppression of material facts by applicant—Petitioners under Arts. 226, 227—Duties of.

Petitioners who invoke the extraordinary jurisdiction of the High Court under Art. 226 and/or Art. 227, of the Constitution are required to exercise utmost care, inform themselves fully of every stage of the proceeding that has taken place upto the date the petition is filed, give a full and true account of those proceedings file all the necessary documents in support of their averments and then claim relief on the basis of facts disclosed in the petition. It is not open to a petitioner under Art. 226 or Art. 227 of the Constitution to pick and choose his own facts or to determine in advance what is relevant and material, omit to mention all material facts and proceedings and orders and then claim that he has acted bona fide even though he has made untrue statements, omitted to inform the Court of all the proceedings and the orders passed at different stages in the proceedings upto date and claim indulgence (1964-65) 27 F J R 132 : ILR (1964) Bom 822 : 66 Bom L R 588 : (1964) 2 Lab L J 595 : 1965 Mah L J 50 : AIR 1965 Bom 24 (25, 26) (Pt A) (Pr 7).

——Art. 226 – Suppression of material facts — What amounts to

A party can be said to be guilty of practice of suppressing material facts if it be found that it had kept back from the Court something which was material for the Court to know to appreciate the correct position.

Held that as the High Court was not bound by the determination of a jurisdictional fact by the Industrial Tribunal in another case, and as the petitioners had taken the point as to jurisdiction before the Labour Court there was no suppression of any material fact. (1965t66) 29 F J R 170 : AIR 1964 Cal 80 (89) (Pt B) (Pr 28) (DB).

——Art. 226 — Duty to disclose all material facts and circumstances.

A petitioner is under an obligation to place before the Court all circumstances relative to his case before he can reasonably ask for the Court's assistance in a writ application. All necessary facts have to be disclosed in a straightforward manner and any attempt to keep from the Court any material circumstance is bound to be visited with penalty in the shape of instant dismissal of such application. (1917) 1 K B 486 and AIR 1952 Cal 496, Rel. on. 1963 (2) Cri L J 210 (Cal).

——Art. 226 — Writ petition — Failure to disclose relevant facts — Petition liable to be dismissed in limine. 66 Cal W N 273 : 1962 (1) Cri L J 317.

——Art. 226 — Pleadings — Suppression of facts — Mis-statements by petitioner — Effect. 64 Cal W N 126 : AIR 1960 Cal 416 (417) (Pt B) (Prs 5, 6).

——Art. 226—Duty of applicant.

A person invoking the assistance of a Court by way of one of the high prerogative writs is required to exhibit complete candour and if he withholds from the Court some fact which if disclosed, would have stood in the way of the Judge issuing the Rule nisi, his application becomes liable to be dismissed without any further consideration. AIR 1957 Cal 447 (448) (Pt A) (Pr 6) (DB).

——Art. 226—Suppression of material facts—Effect.

If a person is informed that a particular matter affecting him would be heard and determined by a competent authority on a particular date and, in spite of being so informed, he does not care to appear and then he approaches a higher Court for relief against the order passed against him and, on being notified of the date on which his application would be heard, again fails to appear and the decision goes against him, it can hardly lie in his mouth to say that he had been given no hearing and had been denied natural justice. If to make matters worse, he comes to the High Court and makes a statement on oath in those circumstances that the order had been made against him without giving him any opportunity for making any representation, he does not pursue a course of conduct which entitles him to any consideration at the hands of a Court. (1957) 8 S T C 517 (Cal).

——Art. 226 — Procedure — Affidavit in support of application — Suppression of facts—Applicant is not entitled to any relief—His illiteracy cannot be accepted as explanation. AIR 1955 NUC (Cal) 2875.

——Art. 226—Suppression of material facts.

The prerogative writs are not writs of right and it is of the utmost importance to preserve the rule of the Court that no writ would issue in favour of a person who would not state all the facts and would be found lacking in uberrima fides.

Held, that the applicant's petition was liable to be thrown out at sight, because it had deliberately suppressed material facts which, it disclosed, might have dissuaded Court from issuing a rule nisi at all. (1917) 1 K B 486, Rel. on. 58 Cal W N 209 : AIR 1954 Cal 151 (156, 157) (Pt H) (Pr 14) (DB).

——Art. 226—Petition for ex parte order — Failure to disclose material facts—Effect.

A petitioner applying for an ex parte order or rule must set out with the fullest disclosure the material facts in his petition. Where this is not done the petition must fail on this ground alone. (1917) 1 K B 486, Rel. on. AIR 1952 Cal 496 (498) (Pt B) (Pr 9).

——Art. 226 — Application for writ — Suppressing material facts—Effect.

If an applicant for a writ of mandamus under Art. 226 of the Constitution suppresses material facts in his petition he disentitles himself to get any relief. 56 Cal W N 302: AIR 1952 Cal 72 (72) (Pt A) (Pr 8).

——Art. 226 — Applicant concealing facts — Application will be dismissed. AIR 1953 Him Pra 125 (126) (Pt B) (Pr 5).

——Art. 226—Deliberate misstatement of facts.

Where the petitioner makes a deliberate misstatement of facts, in his writ petition in order to mislead the Court and on the basis of unfounded allegations succeeds in obtaining a rule nisi from the Court prohibiting the opposite party from taking certain action, it would by itself be a sufficient ground for rejecting the writ petition. AIR 1952 Him Pra and B 43, Rel. on. AIR 1953 Him Pra 41 (44) (Pt A) (Prs 16, 17).

——Art. 226 (1)—Deliberate concealment of fact.

Where there is a deliberate concealment of a material fact in the application for issue of a writ with a view to misleading the High Court, it would be an abuse of the process of the Court to allow an application for a writ. AIR 1952 Him Pra & B 43 (45) (Pt B) (Pr 8).

——Art. 226 — Suppression of material facts by Applicant — Proceedings for issue of writ are discretionary — Suppression of vital details disentitles petitioner from getting relief. AIR 1955 NUC (Hyd) 5928.

——Art. 226 — Duty of applicant — Relevant facts not stated correctly and candidly—Effect.

Where the petitioners under Art. 226 have not stated the relevant facts correctly and candidly this is by itself sufficient to entail an outright dismissal of the writ petition without going into its merits. And even if the petitioners have a good case on merits, the Court will be entitled to decline to go into the merits and dismiss their petition. AIR 1960 J & K 19 (21) (Pt B) (Pr 8).

● ——Art. 32 (2-A) (as applied to the State of Jammu and Kashmir) — Suppression of material facts.

A petition under Art. 32 (2-A) as applied to the State of Jammu and Kashmir is maintainable and cannot be thrown out where there is no deliberate suppression of facts made by the petitioner in his petition. Ghulam Rasul v. State of Jammu and Kashmir, AIR 1956 J & K 17 (19, 20) (Pt A) (Pr 15) (FB).

[Reversed on another point in AIR 1961 S C 1301].

——Art. 226—Suppression of material facts.

If an applicant under Art. 226 suppresses material facts, the Court will refuse the writ prayed for without going into the merits of the case. AIR 1953 Madh B 58, Foll. ILR (1955) Madh B 154 : Madh B L R (1955) Civ 5 : Madh B L J 1955 H C R 284 : AIR 1955 Madh B 33 (34) (Pt A) (Pr 4) (DB).

——Art. 226 — Petitioner in affidavit stating facts which are false beyond doubt—Petition deserves to be rejected. Misc. Petn. No. 46 of 1950 (Nag); AIR 1951 Nag 16; AIR 1951 All 746; AIR 1952 Cal 72; (1917) 1 K B 486, Rel. on. ILR (1953) Madh B 175 : AIR 1953 Madh B 58 (59) (Pt A) (Pr 4) (DB).

——Art. 226 — Application against order granting stage carriage permits to rival bus owners — Statement of applicant that the applications on which permits were granted were not published and hence he was deprived of opportunity to object found to be false—Held application was liable to be dismissed on that ground alone without going into merits : AIR 1951 Nag 38; 1960 M P L J 633 and Misc. Petn. No. 289 of 1959, D/- 15-11-1960 (Madh Pra), Rel. on. 1964 M P L J 541 : 1965 Jab L J 821 : ILR (1964) Madh Pra 496.

——Art. 226 — Petitioner to approach Court in good faith — Petitioner making false statement to secure admission of petition—Court will decline to consider petition on merits — AIR 1951 Nag 16, Foll. 1964 M P L J (Notes) 7.

——Art. 226—Relief under Art. 226 will be refused if applicant suppressed material facts — Applicant not availing alternative remedy within limitation—High Court will not interfere in writ proceedings.

Where an applicant suppresses material facts in his application under Art. 226, the High Court will refuse to give him any relief under the Article and will also reject the petition without going into the merits of the case. AIR 1951 Nag 16, Foll.

Applicant had also the alternative remedy of a suit against the Corporation. He failed to avail himself of that remedy within the prescribed time. When he has lost that remedy by his own fault, he cannot be allowed to urge that as a ground for the High Court dealing with his petition under Art. 226 to exercise discretion in his favour and it would not be proper for the High Court to grant him any relief when the suit itself is barred by time. AIR 1961 S C 506, Rel. on. 1963 M P L J (Notes) 162.

——Art. 226—Pleadings—Duty of petitioner.

If the Court came to the conclusion that the affidavit in support of the application was not candid but stated the facts in such a way as mislead the Court as to the true facts, the Court ought, for its own protection and to prevent an abuse of its process, to refuse to proceed any further with the examination of the merits. In proceedings under Art. 226 the Court requires uberrima fides on the part of the petitioner. That being absent in the instant case the petition was dismissed with costs : AIR 1951 Mad 16, Foll. 1961 M P L J (Notes) 33.

——Art. 226 — Conduct of petitioner — Misleading statement made — Suppression of material facts — Petitioner not entitled to any relief. 1960 Jab L J 678 : 1960 M P C 325 : 1960 M P L J 633 : ILR (1960) Madh Pra 216.

——Art. 226—Suppression of material facts—Effect.

A person invoking the special jurisdiction of the High Court under Art. 226 is bound to make a full and true disclosure of all relevant facts. (1917) 1 K B 486 and (1956) 1 Mad L J 324, Rel. on. 71 Mad L W 555 : 1958 Mad W N 555 : (1959) 2 Mad L J 208 : AIR 1959 Mad 460 (461) (Pt C) (Pr 10).

——Art. 226 — Pleadings—Suppression of necessary facts—Effect.

In a writ petition suppression of facts which are necessary for the Judicial Commissioner's Court to come to a decision on the points involved in the petition is itself fatal to the petition. AIR 1961 Manipur 37 (39) (Pt A) (Pr 7).

——Art. 226 — Duty of applicant — Party seeking relief must come with clean hands

A party who seeks relief from the Court must come with clean hands and cannot be allowed to play hide and seek. If allowed it would be nothing short of permitting an abuse of the process of the Court, indeed it would be permitting abuse of the jurisdiction and powers under Art. 226. AIR 1959 Manipur 24 (25) (Pt B) (Pr 7).

——Art. 226 — Suppression of material fact—Petitioner alleging wrongful dismissal by M. C. applying

to High Court — Fact of application to officer-in-charge for reconsideration, suppressed — Effect. See Municipalities — C. P and Berar Municipality Act, S. 25. 1952 Nag L J (Notes) 1.

——Art. 226 (1) — Application under — Affidavit in support of application — Facts stated in such way as to mislead Court — Rejection of application.

Where an ex parte application has been made to a High Court under Art 226 (1), if the Court comes to the conclusion that the affidavit in support of the application was not candid and did not fairly state the facts but stated them in such a way as to mislead the Court as to the true facts, the Court ought, for its own protection and to prevent an abuse of its process, to refuse to proceed any further with the examination of the merits. This is a power inherent in the Court, but one which should only be used in cases which bring conviction to the mind of the Court that it has been deceived. Before coming to this conclusion a careful examination will be made of the facts as they are and as they have been stated in the applicant's affidavit and everything will be heard that can be urged to influence the view of the Court when it reads the affidavit and knows the true facts. But if the result of this examination and hearing is to leave no doubt that the Court has been deceived, then it will refuse to hear anything further from the applicant in a proceeding which has only been set in motion by means of a misleading affidavit and reject the application. ILR (1951) Nag 64 : A I R 1951 Nag 16 (17, 18, 20, 21) (Prs 7, 22) (DB).

——Art. 226 — Motor Vehicles Act (1939), Ss. 47 (1), 64 A — Grant of permit — Orders of Appeal Board and Transport Minister, rejecting application for permit, proceeding on assumption of facts in favour of petitioner — Petition under Art. 226 — Suppression and false statement of facts — Operator held not disentitled to grant of writ, if otherwise entitled to relief sought — Motor Vehicles Act (1939), Ss. 47 (1), 64-A. 1964 B L J R 459 : ILR 44 Pat 282.

——Art. 226 — Suppression of material facts by applicant — No writ.

The grant of a writ being in the nature of a discretionary relief cannot be given when there is suppression of material facts by the petitioner. 1958 Cri L J 546 : 1958 B L J R 591 : A I R 1958 Pat 181 (181, 182, 183) (Pt B) (Pr 3) (DB).

——Art. 226 — Suppression of material facts.

Where the petitioner completely withholds the material facts from the Court in his application under Art 226 he on that ground alone forfeits his right for a writ. A I R 1952 All 992 and (1917) 1 K B 486, Rel. on. ILR 34 Pat 625 : A I R 1955 Pat 305 (316) (Pt F) (Pr 25) (DB).

——Art. 226 — Petitioner suppressing relevant facts.

Proceedings on a petition under Art. 226 of the Constitution by their very nature are of a summary character. A person who applies for a writ of high prerogative and seeks to avail himself of the exceptional remedy, is under an obligation to come to Court with clean hands and to make fully possible disclosure of all relevant and material facts within his knowledge. The Constitution provides a special and speedy remedy for the enforcement of fundamental rights and 'for any other purpose'. The very nature of the remedy enjoins that those who seek it must approach the Court in perfectly good faith, and place before it all the facts which have a direct bearing on the point in dispute and which the Court ought to know to arrive at a correct decision. Otherwise the Court may be misled to pass orders the consequences of which may be far reaching and irreparable. What facts are material in a particular case would necessarily depend upon the nature of the order, direction or writ sought.

Where the question is, whether the order appointing the petitioner as an Assistant Commissioner had the effect of reducing him in rank, what was the substantive appointment of the petitioner is not only relevant but a material factor for the determination of the question. For if the petitioner was only officiating as a Deputy Commissioner and his substantive appointment was the one to which he was reverted, the reversion would not necessarily and under all circumstances amount to a step-back in rank. The case, however, would be just the otherwise if the substantive appointment of the petitioner was in the higher grade. Where petitioner is guilty of deliberately suppressing facts which have been brought to light by the respondent State and which have a direct bearing on the point at issue that by itself may disentitle the petitioner to the relief he claims. Case-law Ref. ILR (1954) Patiala 105 : A I R 1954 Pepsu 98 (102) (Pt A) (Pr 8).

——Art. 226 — Stamp Act (1899), S. 57 — Certificate granted under S. 42 — No reference can be made under S. 57 as no case remains pending before Revenue Authority — Issuing of direction for reference will be unnecessary. See Stamp Act (1899), S. 57. AIR 1961 Punj 12.

——Art. 226 — Suppression of material facts — Effect of.

Where the petition under Art. 226 challenging the legality of the order of the custodian and of the higher authorities holding the property as evacuee property is filed 6 years after the orders were made and the petitioner is guilty of suppression of material facts, no relief can be granted to him. 61 Pun L R 475 : A I R 1959 Punj 487 (488) (Pt A) (Pr 5).

——Art. 226 — Application under — Applicant suppressing material fact — If disentitled to relief.

A suppression of a material fact in the affidavit filed by the applicant under Art. 226 of the Constitution, is alone sufficient for refusal to make the rule absolute. A I R 1951 Punj (Sim.) 1, Rel. on. 54 Pun L R 366 : AIR 1953 Punj 193 (194) (Pt B) (Pr 6) (DB).

——Arts. 226, 227 — Practice — Petitioner coming to Court with false allegations — No interference by High Court with order of lower tribunal. 1964 Raj L W 472.

——Art. 226 — Concealment of facts — Effect of.

The petitioner filed an application for a writ of prohibition while declaring that the non-petitioner had ceased to be the chairman of a municipality in consequence of the motion of no confidence passed at a particular meeting held by the members. He did not disclose in his petition that the same motion had been put to vote at another meeting called for and held by the chairman himself and was lost the day previous to the day on which he alleged that the motion had been passed at the meeting mentioned by him in the petition. In consequence of the non-disclosure he was able to obtain a certain interim order which the Court would have refused if the fact had been disclosed by the petitioner.

Held, that on the ground of non disclosure of that fact alone the petition was liable to be dismissed without hearing the petitioner on merits. A I R 1952 Raj 146, Rel. on. 1958 Raj L W 255 : I L R (1958) 8 Raj 364.

——Art. 226 — Pleadings — Incorrect statements in petition — Effect.

It is not proper to penalise a petitioner so much as to dismiss his petition altogether simply because the allegation made by him that arguments were not allowed on certain issues by the tribunal against whose order he has filed the petition, may not be correct specially when the objection on this ground is taken at a late stage. ILR (1957) 7 Raj 34 : A I R 1957 Raj 189 (192) (Pt A) (Pr 11) (DB).

——Art. 226—Issue of writ under — Motor Vehicles Act, S. 57 (3)—Application for permit —Publication not made for six months —Unreasonable—Transport authority, not passing any order — No remedy by way of appeal — Mere wrong interpretation given in the application — Not suppression of facts or mis statement —Right to writ.

S applied for permit for his transport bus in pursuance of a notification of the Regional Transport Authority and after publication of the applications made by others on a subsequent notification wrote to the authority for including his name also and also sent a telegram later for the issue of a permit and the matter not having been attended to, he applied under Art. 226 for the issue of a direction to the authority stating that no orders had been passed on his application, and that he was a holder of a permanent permit valid till January, 1952. It was contended that the application was still pending consideration by the authority, that on the allegations made he had a remedy by way of appeal, and further that the application was not maintainable because of suppression or mis-statement contained in it.

Held, that no time limit is prescribed for publication of applications under S. 57 (3) of the M. V. Act; it means that the same shall be made within reasonable time. Subsequent applications made having been published and the petitioner's application not being published for more than six months, the period is unreasonable and the petitioner has suffered thereby.

The authority has not published the application and it has not passed any order on it; the application cannot be treated as rejected and it cannot be held that the petitioner has the other remedy by way of appeal to the higher authorities disentitling him to apply under Art. 226.

The petitioner's case is that the original permit was valid till January 1952, and the action of the Transport Authority cancelling his permit and not allowing to ply his bus was illegal. A new permit had been issued valid up to Nov. 1951 only, in respect of the replaced bus under the directions of the authority. The petitioner having placed all the facts and the relevant records before the Court he could not be held to have suppressed any facts or done anything to misguide the Court. He was wrong in the interpretation he put on the original permits issued to him. The application under Art. 226 is not to be dismissed on that account. **1952 Raj LW 323 : ILR (1952) 2 Raj 265 : AIR 1953 Raj 1 (4) (Pt E) (Pr 12) (DB).**

——Art. 226—Suppression of true facts— Effect.

Parties who come to the High Court and ask it to exercise its extraordinary jurisdiction under Art. 226 should place full and true facts before it and should not word the application or affidavit in such a way as to create a completely misleading picture of the facts leading to the making of the application in order to deceive the court in passing interim orders in their favour. If the applicant deliberately suppresses material and relevant facts from the Court the applicant disentitles himself from getting any writ, order, or direction in his favour and the Court will refuse to look into the merits of the case and dismiss the application 1917 1 KB 486, AIR 1951 Nag 16, AIR 1951 All 746, Rel on. 1952 Raj L W 160 : ILR (1952) 1 Raj 958 : AIR 1952 Raj 146 (148) (Prs 9, 10) (DB).

——Art. 226—Bona fides — Suppression or falsification of facts—Effect

A petition under Art. 226 requires for its foundation a bona fide and consistent course of conduct on the part of the petitioners. Any attempt at suppression or falsification of facts will meet with a summary dismissal of the petition at the hands of the Court. AIR 1957 Trav-Co 307 (309) (Pt B) (Pr 8).

——Art. 226—Suppression of material facts.

Where the suppression of material facts was deliberate and mala fide, the rule nisi obtained as a result of such non-disclosure is liable to be dissolved and the petition dismissed. Held that the petitioner was not guilty in any manner in not having expressly made mention of the material facts. The rule nisi in this case was thus properly obtained and the application to cancel the rule or make it absolute had to be considered on its merits. Case-law discussed. I L R (1953) Trav-Co 118 : AIR 1953 Trav-Co 286 (290, 291, 292) (Pt A) (Prs 9, 10).

——Art. 226— Suppression of material facts —Effect.

The fact that the petitioner suppressed the most important fact of his having received three months' salary in lieu of discharge notice is very material and it goes very much against the petitioner. (1957) 2 Lab L J 533 : AIR 1956 Tripura 33 (35) (Pt D) (Pr 12).

——Art. 226—Application in bad faith.

Article 226 is meant to redress grievances for which either there is no other remedy or the alternative remedy is too slow, costly and uncertain. It is an exceptional equitable relief which can be granted on very good grounds. But if the applicants come in bad faith, the relief has to be refused. AIR 1952 Vin Pra 18 (19) (Pt C) (Pr 8).

11 (g). Joint application.

——Art. 226—Joint petition—Joint petition by tenants of houses sought to be acquired, challenging validity of land acquisition proceedings—Petition is maintainable as petitioners have common cause of action and right is joint and inseparable. AIR 1965 All 356 (360) (Pt B) (Pr 8).

——Art. 226— Joint petition — Two notices under two sections in respect of two separate assessment years —One petition does not lie in respect of both the notices—Income-tax Act (1961), Ss. 147 (a) and 142. (1965) 2 I T J 692 : (1966) 61 ITR 120 (All).

——Art. 226—Writ petition—Joint petition—Maintainability—Petitioners having a common cause of action and seeking a common relief arising out of identical facts—Joint petition seeking issue of single writ so as to serve the object of them all, was maintainable. AIR 1964 All 386 (389) (Pt C) (Pr 5) (DB).

——Art. 226—Joint petition—Maintainability — Joint petition by twelve petitioners—Each petitioner having distinct and separate interest — Twelve separate writ petitions held should have been filed — Irregularity however, held could be cured by requiring petitioners to pay up prescribed Court-fee for eleven other writ petitions as it was too late to drive eleven petitioners to file separate petitions. A I R 1963 All 301 (302) (Pt A) (Pr 4).

——Art. 226—Single petition by two — Question of facts exactly same—Orders concerning the petitioners same—Petition not thrown out in discretion of Court. (1963) 7 Fac L R 30 (All).

——Art. 226—Parties to petition —Multifariousness—Two notifications for acquisition of two separate parcels of land — Joint petition by several tenants challenging notifications - All of them not interested in both parcels of land — Petition is defective for multifariousness —Petitioners given option to proceed with petition with respect to one parcel of land. ILR (1962) 2 All 653 : A I R 1962 All 208 (209) (Pt A) (Pr 3).

——Art. 226—Order for payment of wages relating to several workmen challenged by single writ petition by all — Maintainability.

Where 28 applications by 28 workmen for payment of wages were heard as a single case and were disposed of by a single judgment, a single writ petition

challenging the order is maintainable especially when the issue raised is identical in all and every one of the applicants has the same interest in the impugned order. AIR 1962 All 77 (80) (Pt B) (Fr 16).

——Art. 226—Pleadings — Joint application by petitioners having separate and distinct interests—Competency.

The right of each deed-writer to practice in a registration office is separate and distinct. When licenses of several such deed writers are cancelled, a joint writ petition, by them is not maintainable. AIR 1960 All 366, Foll. AIR 1961 All 61 (61) (Pt A) (Pr 2).

——Art. 226—Joint petition — Petitioners dismissed from service by single order — Joint writ petition—Competency.

At the time when their joint petition under Art. 226 against a single order of dismissal from service was filed on the 22nd of June, 1956, there was no definite authority one way or the other on question of maintainability of a joint petition. Even afterwards there was no unanimity between the High Courts on the point. The objection to the maintainability of the petition on the ground that it had been made joint by two persons was taken for the first time at the stage of argument in an appeal from the order of the Judge dismissing the writ petition.

Held, that the objection would not be allowed to be raised at this stage. The petition should not be rejected in the circumstances of the present case on the ground that it was a joint petition and that two separate petitions were not filed : A I R 1960 All 366, Ref. 1961 (2) Cri L J 327 (All).

——Art. 226—Single petition against several persons on common ground—Competency.

A person can file a single writ petition against a number of persons on a common ground arising out of one consolidated order and involving the same points of law. AIR 1960 All 366, Disting.

If the consolidated decision is quashed the order will govern all the connected cases. (1961-62) 21 F J R 219 : 1960 All L J 537 : 1960 All W R (HC) 428 : (1960) 2 Lab L J 373 : AIR 1960 All 724 (725) (Pt A) (Pr 7).

——Art. 226—Mandamus—Writ of—Joint petition on behalf of several petitioners — Competency. I L R (1959) 2 All 33 : A I R 1960 All 484 (500) (Pt F) (Pr 88).

——Art. 226 — Joint writ petition — Common right —Joint petition — Maintainability — Order 1, Civil Procedure Code not applicable.

If one wants a redress by way of a writ petition he comes in his individual right and stands on it, not jointly with others A I R 1956 Cal 291, Diss. from. 1959 All L J 864 : 1960 All W R (HC) 664 : I L R (1959) 2 All 201 : A I R 1960 All 366 (366) (Pr 1) (DB).

——Art. 226—Procedure—Affidavit.

Per Mootham, J. — Where application of one of applicants is accompanied by affidavit of considerable length but the other applications are accompanied by short affidavits in which the applicants state that they rely upon the facts as set out in the affidavit of the first applicant, it is an unsatisfactory practice as it is likely to result in one or more of the deponents deposing to matters not within his or their personal knowledge. Better course is to file joint affidavit. AIR 1953 All 739 (Pt A) (Pr 1) (DB).

——Art. 226 — Joint writ application by several persons against whom impugned order was passed — Some of petitioners not entitled to relief as their appeal against impugned order had become time barred — Writ petition is liable to be dismissed in its entirety. AIR 1957 Andh Pra 88 and AIR 1958 Andh Pra 16, Rel. on. (1964) 2 Andh L T 292 : (1964) 2 Andh W R 310.

——Art. 226 — Several applicants — Joint petition—Maintainability — Test - (Civil P. C. (1908), S. 141, O. 1, R. 1; O 2, R. 3).

An application under Art. 226 of the Constitution of India is a proceeding in a Court of civil jurisdiction. Section 141, Civil P. C. is therefore directly attracted and the provisions of Orders 1 and 2 of the Code can be invoked as far as they can be made applicable to the proceeding in a writ application under Art 226. Ordinarily, two or more persons cannot join in a single petition to enforce separate claims. But where the right to relief arises from the same act or transaction and there is a common question of law or fact, or where, though the right to relief claimed does not arise from the same act or transaction, the petitioners are jointly interested in the cause of action one petition is maintainable at their instance. Thus where two supervisors of a Market Committee were discharged from their services by a single order of the Collector and they jointly filed a single petition under Art. 226 for quashing the order, Held that the petitioners were aggrieved by a single act of the Collector and a common question of law and fact arose and therefore a single application was maintainable. (1957) 2 Andh W R 345 : 1957 Andh L T 915 : I L R (1957) Andh Pra 678 : A I R 1958 Andh Pra 16 (19) (Pr 10) (DB).

——Art. 226—Writ applications arising out of revenue matters—Group applications should not be filed. AIR 1955 N U C (Assam) 2810 (DB).

——Arts. 226 and 227 — Joint petition containing common questions of law and fact is maintainable—(Civil P. C. (1908), O. 1, R. 1).

Several employees who were dismissed for going on illegal strike made separate applications to the Assistant Commissioner of Labour under section 16 of the Industrial Disputes Act. The applications were allowed by a common order. The employer filed separate revision applications which were allowed by a common order by the State Industrial Court. The employees jointly filed Special Application for quashing the common order of the State Industrial Court.

Held, that since common questions of law and fact would arise in the cases of all the petitioners and the right to relief in each of them arose out of the same act, namely, the order of dismissal passed by the Disciplinary Authority, a joint application was maintainable. It was not necessary to make separate applications and to pay separate court-fees. 1961 Nag L J (Note) No. 25, Rel. on. 1963 Mah L J (Notes) 8.

——Art. 226—Joint application—Applicants aggrieved by common order—Application is not bad.

It has been fairly settled that the provisions of Civil P. C. as to joinder apply to applications under Art. 226 unless excluded by the Rules made by the High Courts and that a joint application would lie where the applicants are aggrieved by a common order. A I R 1956 Cal 291; A I R 1959 Mad 137 and A I R 1960 All 366, Rel. on. (1965) 11 Fac L R 163 (Cal).

——Art. 226—Mandamus—Joint application — Common injury resulting from common declaration for land acquisition — Single petition by individual persons although interested in different plots, is maintainable. 65 Cal W N 908 and A I R 1957 Andh Pra 88 Rel. on. 67 Cal W N 460 : A I R 1963 Cal 565 (570) (Pt C) (Pr 17).

——Art. 226— Mandamus—Joint petition by persons having separate causes of action—Maintainability — Some applicants pursuing alternative remedy — Effect - Land Acquisition Act (1894), S. 18.

Two or more persons cannot join in a single application for an order of mandamus to enforce separat

claims. There must be separate applications for separate orders.

Further, in the case of a joint application if it is found that even one of the applicants is disentitled to relief, the whole application must fail. Thus where twenty persons, being dissatisfied by an award under the Land Acquisition Act, make a joint application under Art. 226 of the Constitution for a writ of mandamus but it is found that four of them have already applied for the alternative remedy provided by S. 18 of the Act and are consequently, not entitled to apply for a high prerogative writ, the entire application must fail in limine. ('61) 65 Cal W N 908.

——Art. 226—Joint writ petition—Single application by two or more persons to enforce separate claims not maintainable—Civil Procedure Code (1908), O. 1, R. 1 not applicable — Bombay High Court (Appellate Side) Rules (1960), Chap. 17, R. 1—Bombay High Court (Original Side) Rules, R 623 — Letters Patent (Bom.), Cl. 37. A I R 1950 Mad 626 and A I R 1957 Andh Pra 88, Rel. on. (1961) 2 Guj L R 635 : A I R 1962 Gui 21 (23, 24) (Pt A) (Prs 10, 11, 12, 14) (DB).

——Art. 226 — Joint petition — Maintainability — Claims of petitioners separate and distinct — Joint petition held not maintainable. AIR 1956 Mad 626; A I R 1957 Andh Pra 88, Rel. on. A I R 1965 Him Pra 47 (47, 48) (Pt A) (Pr 4).

——Art. 226 — Practice — Three petitions by three different persons against same respondents for same relief — Disposal by one judgment — One appeal against judgment — Not maintainable. 1961 Ker L J 642 : 1961 Ker L T 728 : ILR (1961) 2 Ker 326.

——Art. 226 — Petition for writ — Joint petition by several parties—Maintainability.

Though the provisions directing joinder of causes of action or charges do not apply to writ proceedings, there is no reason why the rule of practice where there be no apprehension of any miscarriage of justice, should not be followed in the writ proceedings for which the High Court is authorised to frame its own rules. It follows that, unless there be compelling grounds to exclude persons jointly invoking the jurisdiction under Art. 226, the general practice of allowing more than one person to invoke jointly the jurisdiction under Art. 226 of the Constitution should be adhered to. It further follows that several persons filing one petition should not be forbidden, and the Court may direct separate petitions and order deposit of necessary court fee, if the Court, in the circumstances of the case, feels such order to be proper. A I R 1954 S C 440 and A I R 1954 Raj 185 and A I R 1960 Raj 152 and A I R 1956 Cal 291 and AIR 1958 Andh Pra 16 and 55 Bom L R 246, Rel. on. and A I R 1959 Mad 137 and A I R 1960 All 366 and AIR 1961 All 61, Not foll. 1961 Ker LJ 1107 : 1961 Ker L T 792 : ILR (1962) 1 Ker 585.

——Art. 226 — Interest of petitioners not common — Composite petition cannot be entertained—Existence of alternative remedy — No bar to action under Art. 226.

A composite application not arising out of a common interest, cannot be entertained with regard to Prerogative writs. 1957 M P L J (Note) No. 171, Foll. High Court may, in the exercise of its discretion entertain a petition and grant relief notwithstanding the existence of an alternative remedy. AIR 1961 S C 1506, Rel. on. 1962 M P L J (Notes) 148.

——Art. 226—Composite application.

There is no reason why a composite petition under Art. 226 is not maintainable where grounds of attack for all the years of assessment to tax are the same, common questions arise for consideration and the orders of assessment in question are practically simultaneous. 1957 M P C 214: I L R (1957) Madh Pra 206: 1957 Jab L J 373; (1957) 8 S T C 429: 1957 M P L J 317; A I R 1957 Madh Pra 109 (111) (Pt C) (Pr 15) (DB).

——Art. 226—Composite application—Tenability.

A composite application not arising out of a common interest, cannot be entertained either under the rules or general practice obtaining with regard to the prerogative writs. Halsbury's Laws of England, 3 Edn., Vol. II, p. 83, Pr. 155, Rel. on. 1957 M P L J (Notes) 171.

——Art. 226 — Joinder of parties — Several persons desiring to enforce separate claims — Single petition by — Competency—Joint interest — Similar interest—Distinction.

Several persons who are aggrieved by an order of a tribunal cannot join together as petitioners in a common single Writ Petition to quash that order under Art. 226 of the Constitution even though the grievance of all the persons and the remedy sought for might be similar. Apart from cases where a number of persons have common or joint interest in the subject-matter of the controversy, persons having similar but wholly separate and distinct interests in the subject-matter in controversy should file separate applications. AIR 1958 Andh Pra 16, Differed.

The mere fact that the rights of the parties to the relief sought for arises from the same act or transaction or that there is a common question of law or fact to be decided, does not entitle the parties concerned to join in the same petition, though the Court might hear all such petitions together. 1959 Mad W N 201 : 71 Mad L W 835 : I L R (1959) Mad 74 : (1959) 1 Mad L J 53 : (1959) Mad L J (Cr) 39 : A I R 1959 Mad 137 (140, 141) (Prs 24, 32, 33) (DB).

——Art. 226—Similar disputes between seven establishments and their workers referred by single notitication to Industrial Tribunal — Single petition by establishments for writ of prohibition, maintainability of — (Industrial Disputes Act (1947), S. 10 (1) (c)—(Civil P. C. (1908), O. 1, R. 8).

Government by a single notification referred disputes between seven establishments and their workmen, to the Industrial Tribunal under S. 10 (1) (c), Industrial Disputes Act. These establishments filed a single application for a writ of prohibition against the Tribunal and the Government.

Held, that a single petition was not maintainable. The right whose violation was alleged was an individual right which inhered in each petitioner and merely because similar rights possessed by the other persons were also violated, it did not follow that their grievances had a unity. There must be as many writ petitions as there were petitioners. 70 Mad L W 485 : (1957) 2 Mad L J 54 : (1957) Mad L J (Cr) 317 : AIR 1957 Mad 616 (616) (Pr 2).

——Art. 226—Single application for relief of composite character, based on distinct causes of action—Maintainability — (Madras Court-fees and Suits Valuation Act (1955), S. 6(4)) — (Civil P. C. (1908), O. 2, R. 3)—Court-Fees Act (1870), S. 17).

Where estates owned by several devasthanams had been notified and taken over by the Government on different dates under separate notifications and the petitioner, who was the hereditary trustee of those devasthanams, filed a single petition under Art. 226 for appropriate writs.

Held, that a single petition was not maintainable. The petitioner must file as many petitions as there were institutions whose rights he sought to assert. The identity of the points to be decided could not impart unity to the right, the alleged violation of which gave rise to the writ petition. 70 Mad L W 483 :

(1957) 2 Mad L J 145 : A I R 1957 Mad 570 (571) (Pr 3).

——Art. 226 – Petitions for issue of writs to question the validity or legality of similar orders against different persons — If can be by a single petition — Civil P. C. (5 of 1908), O. 1, R. 8 — If applicable to writ petitions.

Where a petitioner desires to question the validity or legality of an order, he is entitled to apply for an appropriate writ, but this right of his flows from the order affecting him. The fact that similar orders are passed in the case of other individuals also, be it by the same officer or authority—does not mean that the injury caused is a common or class injury so as to justify a single petition with all the individuals similarly affected joining in it as petitioners. Neither the rule nor principle in O. 1, R. 8, Civil P. C., can be extended to writ petitions. Again the fact that the relief prayed for by the several petitioners, each of whose individual right is alleged to have been invaded improperly by the impugned order is grounded on a common objection the validity of the legislation, or the rule or some order interpreting or enforcing the statute or the rule does not also afford any basis for a joint writ petition by several petitioners aggrieved by similar orders. Each of them has to file independent petitions, paying separate Court-fee on each, with separate vakalat etc (1956) 2 Mad L J 23: 69 Mad L W 372: AIR 1956 Mad 626 (627) (Pr 1).

——Art. 226 — Joint writ petition — Persons having joint interest in subject-matter but possessing separate and distinct rights – Joint petition not maintainable—Civil P. C. (1908), O. 1, R. 1 — Not applicable —High Court of Mysore Rules (1959), Chap. 8 — Writ petitions

Where a number of persons have a common or joint interest in the subject-matter of the controversy they may join together and file a single writ petition but persons having similar but wholly separate and distinct interests in the subject-matter in controversy, should file separate petitions though common questions of law and fact may be involved. A I R 1958 Andh Pra 16 and AIR 1960 Raj 152, Dissent from. The jurisdiction vested in the High Court under Art. 226, of the Constitution is a special original jurisdiction. In the absence of special rules made by the High Court in exercise of its power under Art. 225 of the Constitution, in the very nature of proceedings under Art. 226 of the Constitution, the provisions of O. 1, R. 1 of the Civil P. C., are not applicable to writ petitions. (1964) 1 Mys L J 513: AIR 1965 Mys 143 (148) (Pt A) (Prs 12, 13) (DB).

——Art. 226 — Orders in various appeals arising out of one matter — One petition against — Maintainability – (Motor Vehicles Act (1939), S. 64).

Where the orders impugned by a single petition under Art. 226 are passed in various appeals which arise out of one and the same matter namely an application by the petitioner for grant of permit under the Motor Vehicles Act and are interconnected the petitioner is entitled to challenge them by one petition. 1957 M P C 344 : 1957 M P L J 488 : AIR 1957 Nag 102 (103, 104) (Pt A) (Pr 6).

Art. 226 — Single application to quash separate orders—Maintainability.

Separate applications must be made for issue of separate writs to quash separate orders ; otherwise, on one application, if it succeeds, several separate writs will have to be issued and that will lead to an absurd position. 1958 B L J R 212 : I L R 37 Pat 462 : AIR 1958 Pat 653 (654) (Pt A) (Pr 2) (DB).

——Art. 226 — Single application to quash several orders.

A joint application for quashing several orders is not maintainable. 1958 B L J R 239 : (1958) 2 Lab L J 444 : (1958-59) 15 F J R 183 : AIR 1958 Pat 314 (319) (Pt G) (Pr 14) (DB).

——Art. 226 – One application for different writs – (Civil P. C. (1908), O. 1, R. 3).

There must be separate applications for separate writs. Where in an application under Art. 226 fourteen different occupancy tenants, who have nothing to do with each other, will become party respondents to the application, and if successful, the application will result in interference with fourteen separate and independent mutation orders, one application to question the legality of orders of the revenue officers in fourteen separate cases and seeking writ to quash those orders is not proper and competent. The applicant should have filed fourteen separate applications questioning the legality of each separate mutation order and making the particular occupancy tenant concerned a party respondent in a particular application or at least disclosing his particulars in his affidavit to enable the Court to serve rule nisi upon him. Even if the Civil P. C, applies to such applications, still it cannot be taken to override a general rule applicable to such applications that there should be separate applications for separate writs. AIR 1954 Raj 185, Rel. on , A I R 1952 Raj 74 and 55 Bom L R 246, Dist. I L R (1955) Patiala 622 : A I R 1955 Pepsu 159 (160, 161, 162) (Pt B) (Prs 5, 15, 17, 18) (DB).

——Art. 226 – Notification for acquisition of land — Validity of notification challenged — Person or persons affected can jointly file writ petition — Land Acquisition Act (1894), S. 6.

Where a notification is issued for the acquisition of land in a particular village, all or any of the persons affected by the notification can jointly file a petition challenging the validity of the notification, since even if the petition could only be entertained as being on behalf of any one of the petitioners the effect in the event of its success would be the quashing of the whole acquisition proceedings once the notification was held to be invalid. A I R 1962 Punj 55, Disting. ILR (1964) 2 Punj 38.

——Art. 226 — Joint petition assailing assessment of more than one year under East Punjab General Sales Tax Act — Grounds of challenge exactly similar. Held, writ petition having been admitted, it would not be proper and just to throw it out on that ground. (1964) 15 S T C 648 (Punj).

——Art. 226—Individual grievance—Each aggrieved person must file independent petition for relief—Joint petition by several aggrieved persons for relief, although based on a common objection does not lie—Levy of profession tax by different District Boards in the State — Application by Revenue Patwaris Union challenging authority and jurisdiction of the District Boards, on the Patwaris is not maintainable. A I R 1956 Mad 626 and A I R 1957 Mad 616, Rel. on. 63 Punj L R 530 : A I R 1962 Punj 55 (55, 56) (Pr 1) (DB).

——Art. 226 — Joint application by several persons involving common questions held maintainable, ILR (1959) 9 Raj 1284 : A I R 1960 Raj 152 (159) (Pt D) (Pr 24) (DB).

——Art. 226 — One application in respect of several cases.

There were 23 separate applications pending before the Anti Ejectment Officer, in which there were different applicants. Twenty three separate applications for revision were filed by the opposite party in 23 cases although they were disposed of by the Board of Revenue by a single judgment.

Held, that it was not proper for the petitioners to file a single petition under Art. 226 in respect of all the 23 cases. In case the same questions of law and fact were involved, it may be that the High Court might consider it proper to decide all the petitions under Art. 226 by a single judgment. Still the orders directions or writs, which might be issued, would have to be issued separately in respect of each case. It would, therefore, be very inconvenient even if not altogether illegal, that writs, directions or orders, as might be felt necessary, might be issued on a single omnibus petition in respect of all the 23 cases. 1955 Raj L W 170 : ILR (1954) 4 Raj 577 : AIR 1954 Raj 185 (188) (Pt B) (Pr 12) (DB).

——Art. 226 — Application under — Two persons against whom two different orders under Cl. 25 Rajasthan Food Grains Control Order were passed joining in one petition — Application is maintainable when their case is exactly the same — Affidavit filed by one of applicants in support of application held was sufficient. 1951 Raj L W 467 : ILR (1951) 1 Raj 674 : 1952 Cri L J 732 : AIR 1952 Raj 74 (78, 79) (Pt G) (Prs 18, 19) (DB).

——Art. 226 — Civil P. C. (1908), O. 1, R. 8; O. 2, R. 3 — Joint petition by two or more — Maintainability.

In cases where writ applications are filed under Art. 226 to enforce a civil right the applications will amount to civil proceedings. To such civil proceedings, S. 141, Civil P. C. directs that the procedure in regard to suits should be followed as far as it can be made applicable. Thus it cannot be said that O. 1 and O 2, Civil P. C. will not apply at all to such proceedings.

Joint application by three petitioners for declaration that the common order of District Magistrate authorising seizure of petitioners' India-Pakistan Passports granted to them on three different dates, is illegal and ultra vires — Three distinct prayers — Joint application held was not maintainable. For applicability of O. 2, R 3, petitioners must show that they were jointly interested against same defendant. AIR 1962 Tripura 7 (9, 10, 11) (Pt A) (Prs 9, 11, 12, 13, 22).

12. Article 32, scope of.

(a) Question of fact.
See also Note 79.
(b) Jammu and Kashmir.
(c) No infringement of fundamental rights.
(d) Article 32 (3).
(e) Article 32 (4).

12. Article 32, scope of.

● ——Art. 32—Petition under—Scope of—Confined only to provisions affecting petitioner's fundamental rights.

In dealing with petitions under Art. 32, the Court would naturally confine the petitioners to the provisions of the imgugned Act by which their fundamental rights are either affected or threatened and it is not necessary for the Court to decide the question about the validity of other provisions in the Act. Khyerbari Tea Co., Ltd. v. State of Assam, (1964) 5 S C R 975 : (1964) 2 S C A 319 : AIR 1964 S C 925 (941) (Pt F) (Pr 43).

● —Art. 32 — Order illegally passed by State Government under S. 42 of East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (50 of 1948) — Adverse order affects right to property of petitioner — He can file writ petition under Art. 32. Roop Chand v. State of Punjab, (1963) Supp (1) S C R 539 : 65 Punj L R 576 : AIR 1963 S C 1503 (1508) (Pt C) (Pr 22).

● ——Art. 32—"All local or other authorities under the control of Government of India" in Art. 12 — Meaning—Quasi-judicial authority functioning outside territory of India but administered by Government of India — Order refusing permit by Appellate Authority in Pondicherry under Motor Vehicles Act, at a time when Pondicherry was under administration of Government of India but outside Indian territory —Authority not under control of Government of India, within Art. 12, being quasi-judicial authority — Writ under Art. 32 against such authority after Pondicherry has become part of India—Not available—Order held not open to attack under Art 15. See Ibid, Art. 12. AIR 1963 S C 1464.

● ——Arts. 32, 142 and 145—Supreme Court Rules (1950), O. 35, R. 12—Fundamental right to move Supreme Court under Art. 32—Infringement of—R. 12, O. 35 in so far as it relates to giving of security in proceedings under Art 32 infringes fundamental right under Art. 32 to move the Supreme Court and is invalid—Order for security cannot be sustained even under wide powers conferred by Art. 142 (1).

Per Majority : Rule 12 of O. 35 of the Supreme Court Rules and Orders in so far as it relates to the giving of security for costs in a petition under Art. 32 of the Constitution retards the assertion or vindication of the fundamental right to move the Supreme Court under Art. 32 of the Constitution and constitutes its infringement. The Rule is invalid and cannot be sustained. Such a rule cannot be justified either under Arts. 142 (1) or 145 (1) (f) of the Constitution.

An order calling upon the petitioner to furnish security would retard the assertion or vindication of his fundamental right under Art. 32 since it would impose a financial obligation on the petitioner. The order would amount to a hindrance in the further progress of the petition and cannot be said to aid a fair hearing of the petition like the order prescribing the manner in which the paper books have to be prepared or other steps in connection with the petition have to be taken. It may be that the order is intended to protect the interest of the respondent and in that sense, may be treated as fair; but the fairness of the order or of the object intended to be achieved by it will not disguise the fact that its effect is not to aid the petition but to retard it to some extent and in considering the constitutionality of the order or of the rule which permits the order to be made, the fact that the object intended to be achieved is good, just or unexceptionable would be immaterial. AIR 1954 S C 561 and AIR 1946 P C 66, Rel. on.

Such order cannot be justified on the ground that the powers conferred upon the Supreme Court under Art. 142 (1) of the Constitution are wide and cannot be controlled by Art. 32. An order which the Court can make under Art. 142 in order to do complete justice between the parties must not only be consistent with the fundamental rights guaranteed by the Constitution, but it cannot even be inconsistent with the substantive provisions of the relevant statutory laws. Consequently it would not be possible to hold that Art. 142 (1) confers upon the Supreme Court powers which can contravene the provisions of Art. 32.

The rule providing for making of an order for furnishing security in cases of petitions under Art. 32 cannot also be made under Art. 145 (1) (f).

Per Shah, J. (dissenting) : Right to move the Supreme Court under Art. 32 is not wholly unfettered or unrestricted. Art. 32 (1) guarantees a right to move the Court by appropriate proceedings. There is, therefore, in the Article itself limitation upon the exercise of the right. Appropriate proceedings would include the proceedings relating to form, conditions of lodgment of petitions, and compliance with all reasonable directions imposed which would conduce to the smooth conduct

of proceedings in the Supreme Court. Power to make rules for practice and procedure of the Supreme Court read with the guarantee under Art. 32 (1) to move by appropriate proceedings implies the power to impose procedural restrictions conducive to the orderly progress of the petition for relief for breach of a fundamental right.

There is no warrant for assuming that the exercise of the jurisdiction has to be subordinated to the exercise of the right to move the Court. Article 32 (1) is included in Chap. III and the right to move the Court is itself made a fundamental right, whereas Art. 142 falls in Part V dealing with Union Judiciary. But these being parts of a constitutional document no special sancity attaches to the provisions contained in Chap. III so as to prevail over the other provisions. Even assuming that an order made in a given case may be erroneous the jurisdiction of the Court conferred by the Constitution under Art. 142 to make such orders as may be necessary for doing complete justice is not on that account affected. Therefore, even in a proceeding under Art. 32 (1) the Supreme Court is competent to make all such orders as it deems proper including an order for security for costs of the respondent. Prem Chand Garg v. Excise Commissioner, U. P. (1963) Supp (1) S C R 885 : (1963) 2 S C A 125 : A I R 1963 S C 996 (1001 to 1007) (Prs 8, 12, 14, 15, 16, 21, 23, 24, 27, 28, 29).

● ——Art. 32—Maintainability of petition.

Where the tax has been levied by the Deputy Commercial Tax Officer not by misconstruing certain provisions of a valid Act, but is levied by him, even though he has no jurisdiction to assess the tax on account of the invalidity of the rule under which the tax is assessed, a petition challenging the rule will lie under Art. 32. AIR 1962 S C 1621, Disting. A. T. B. Mehtab Majid & Co. v. State of Madras. (1963) 1 S C W R 284: (1964) 1 Mad L J (S C) 115 : 1964 (1) S.C J 355 : (1964) 1 Andh W R (SC) 115 : (1963) Supp 2 S C R 435 : (1963) 2 S C A 68 : (1963) 14 S T C 355 : AIR 1963 SC 928 (932, 933) (Pt F) (Pr 21).

● ——Art. 32 — Pondicherry, if territory of India—Appeal under Art. 136 (1) from orders of Chief Commissisner of Pondicherry, acting as appellate authority under S. 64, Motor Vehicles Act, if maintainable —Writ petition against orders — Enforcement of orders on writ petition—Powers under Art. 32 not circumscribed by territorial limitations — Question whether Pondicherry is Indian territory, referred to Union Government under S. 4, Foreign Jurisdiction Act. See Ibid, Art. 136 (1). AIR 1963 S C 533.

● ——Art. 32—'Territories as may be acquired' — Question as to whether Pondicherry is territory of India—Question forwarded to Union Government by Supreme Court—Answer received is binding on Court —Pondicherry is not territory 'acquired' within meaning of Art. 1 (3) (c) — No appeal lies to Supreme Court—Per Majority (Sarkar and Das Gupta JJ., Contra)—No writ petition can be entertained. See Ibid, Art. 1 (3) (c). AIR 1962 S C 797.

● ——Arts. 32, 14, 19 and 31 — Interference with fundamental rights to property by executive action without any authority of specific rule of law — Issue of writ—Person building on State land with permission of Government—Suit under S. 92, C. P. Code may be brought against person in possession of — Trust property—Respondents violated the fundamental right of petitioner — Orders of respondent must be quashed. AIR 1954 S C 415 and AIR 1953 SC 215 and AIR 1927 P C 135, Rel. on. Bishan Das v. State of Punjab, 1961 S C D 824 : (1962) 2 S C R 69 : (1963) 1 S C J 445 : 1961 Andh L T 939 : AIR 1961 S C 1570 (1574, 1575) (Prs 11, 14).

● ——Art. 32—'Appropriete proceedings'—Meaning of.

Article 32 guarantees a fundamental right to a citizen to move the Supreme Court by an original petition whenever his grievance is that his fundamental rights have been illegally contravened. On a fair construction of Art. 32 (1) the expression 'appropriate proceedings' has reference to proceedings which may be appropriate having regard to the nature of the order, direction or writ which the petitioner seeks to obtain from this Court. Daryao v. State of U. P. 1961 S C D 836 : (1961) 2 S C A 591 : (1962) 1 S C J 702 : (1962) 2 Andh W R (S C) 16 : (1962) 2 Mad L J (S C) 16 : (1962) 1 SCR 574 : A I R 1961 S C 1457 (1461) (Pt B) (Pr 7).

● ——Art. 32—State collectiug tax under Central Sales Tax Act on behalf of Central Government—Threat to recover again sales tax on same turnover again on behalf of Central Government by another State—Effect—Violation of fundamental right.

Where a company has paid to the Sales Tax Officer, Bihar, tax due under the Central Sales Tax Act on its turnover including sales on which the tax is sought to be levied by the Commercial Tax Officer. West Bengal and under the Central Sales Tax Act, there is a single liability to pay tax on inter State Sales, the threat of the State of West Bengal to recover again sales-tax on behalf of the Central Government in respect of the same sales, i. e., sales, which are included in the assessment proceedings before the Bihar Sales tax authorities prima facie infringes the fundamental right of the company to hold its property and the company is entitled to approach the Supreme Court under Art. 32 of the Constitution A I R 1957 S C 790, Relied on. Tata Iron & Steel Co. Ltd., Bombay v. S. R. Sarkar, (1960) 11 S T C 655 : (1961) 1 S C A 364 : (1961) 1 S C R 379 : AIR 1961 S C 65 (68, 69, 76, 77) (Pt A) (Prs 5, 37).

● ——Art. 32—Applicability—Infringement of fundamental right to carry on business—Application for writ dismissed by High Court but judgment in favour of petitioner—Application for special leave pending —Supreme Court has power to grant relief under Art. 32 Shrinivasa Reddy v. State of Mysore, 38 Mys L J 71 : 1960 Mad W N 98 : (1960) 2 S C R 130 : 1960 S C J 1092 : AIR 1960 S C 350 (353) (Pt C) (Pr 7).

● ——Art. 32—Applicability — Petition challenging constitutionality of Madras Act 32 of 1955 on ground of infringement of fundamental rights under Art. 19 (1) (f) and Art. 31 (1)—Maintainability.

The petitioner who was a sthanam holder, filed a petition under Art. 32 praying that a writ of mandamus or any other proper writ, order or directions be ordered to issue for the purpose of enforcing his fundamental rights, directing the respondents to forbear from enforcing any of the provisions of the Madras Act (32 of 1955) against the petitioner, his Kavalappara sthanam and Kavalappara estate, declaring the said Act to be unconstitutional and invalid. The first respondent was the State of Madras and respondents 2 to 17 were the members of the Sthanee petitioner's tarwad.

Held, that the petitioner's grievance was certainly against the action of the State which, by virtue of the definition of that term given in Art. 12 of the Constitution, includes the Madras Legislature and it could not certainly be said that the subject-matter of the present petition comprises disputes between two sets of private individuals unconnected with any State action. Therefore the petition under Art. 32 was not governed by the decision in AIR 1952 S C 59 and the petitioner could not be debarred from availing himself of his constitutional right to invoke the jurisdic-

tion of the Supreme Court for obtaining redress against infringement of his fundamental right. Kochunhi Nayar v. State of Madras, 1959 Ker L J 464 : (1959) 2 S C A 248 : 1959 S C J 858 : (1959) 2 Andh W R (S C) 70 : (1959) 2 Mad L J (S C) 70 : (1959) Supp (2) S C R 316 : AIR 1959 S C 725 (730) (Pt B) (Pr 9).

● —Art. 32—Applicability—Law taking away or abridging fundamental right—Absence of overt act by State — Right of person aggrieved to apply—(Madras Marumakkathayam (Removal of Doubts) Act (32 of 1955), S. 2).

An enactment may immediately on its coming into force take away or abridge the fundamental rights of a person by its very terms and without any further overt act being done. In such a case the infringement of the fundamental right is complete eo instanti the passing of the enactment and, therefore, there can be no reason why the person so prejudicially affected by the law should not be entitled immediately to avail himself of the constitutional remedy under Art. 32.

Held, that in view of the language employed in S. 2 of Madras Marumakkathayam (Removal of Doubts) Act, 1955 and its effect the petitioners can legitimately complain that their fundamental right to hold and dispose of the sthanam properties has been injured by the action of the Legislature which is "State" as defined in Art. 12 of the Constitution and the petitioners are prima facie entitled to seek their fundamental remedy under Art. 32. Kochunni Nayar v. State of Madras, 1959 Ker L J 464: (1959) 2 S C A 248 : 1959 S C J 858 : (1959) 2 Andh W R (S C) 70 : (1959) 2 Mad L J (S C) 70: (1959) Supp (2) S C R 316 :AIR 1959 S C 725 (731, 732) (Pt C) (Pr 10).

● —Art. 32—Applicability — Jagirdar giving contracts to cut forests in jagir — Unauthorised extension of period of contracts by forest officers —Confiscation of forest goods by Government—Petitions under Art. 32, on ground that right to hold and dispose of property was infringed—Maintainability. See Ibid, Art. 19 (1) (f). AIR 1959 S C 498 : (1959) S C J 621.

● —Arts. 32, 19 (1) (g)—Scope of — Imposition of tax without due authority.

If a tax is levied without due legal authority on any trade or business, then it is open to the citizen aggrieved to approach the Supreme Court for a writ under Art. 32, since his right to carry on a trade is violated, or infringed by the imposition and such being the case, Art. 19 (1) (g) comes into play. Kailash Nath v. State of U. P., (1957) 8 S T C 358 : AIR 1957 S C 790 (792, 793) (Pt C) (Pr 9).

[Overruled in AIR 1962 S C 1621]

● —Art. 32 — Applicability — Orissa Hindu Religious Endowments Act (2 of 1952) as amended in 1954), S. 79-A—Validity—(Orissa Hindu Religious Endowments Act (2 of 1952 as amended in 1954), S. 79-A).

The result of S. 79-A is to treat the schemes framed within the specified period as schemes framed immediately after the commencement of the present Act and to impute thereto, by a fiction, compliance with the various procedural and other steps which are requisite under S. 42. Such a provision is within the competence of the Legislature. The right of any person to seek remedy under Art. 32 of the Constitution in respect of any violation of his fundamental rights is in no way curtailed or affected by the fact that an actual decision of the Supreme Court on an application under Art. 32 is, in effect, nullified by appropriate and competent legislative measures. Section 79-A, therefore, is not open to any objection on the ground of legislative incompetence. Sadashiv Prakash Bramchari Trustee of Mahiparakash Math v. State of Orissa, 1956 S C J 397 : 1956 S C C 478 : 22 Cut L T 235 : 1956 S C A 794 : 1956 S C R 43 : AIR 1956 S C 432 (439, 440) (Pt C) (Pr 8).

● —Art. 32 — Petition under, is not maintainable unless there has been a violation of some fundamental right. M/s. Bhagwandas Gangasahai v. The Union of India, AIR 1956 S C 175 (175, 176) (Pt A) (Prs 3, 5).

● —Art. 32—Mill producing Cotton yarn closed—Thereafter orders handing over management of mill to authorised controller passed—Orders held were invalid — There was deprivation of property within Art. 31 of the Constitution—Petitioner was within his rights in applying under Art. 32. See Ibid, Art. 13 (1). AIR 1955 S C 624.

● —Art. 32—Scope—An illegal impost must at all times be an unreasonable restriction and will necessarily infringe right of the citizen to carry on his occupation, trade or business under Art. 19 (1) (g) and such infringement can properly be made the subject-matter of a challenge under Art. 32. Mohammad Yasin v. Town Area Committee, Jalalabad, 1952 S C J 162 : 1952 S C R 572 : 1952 S C A 237 : AIR 1952 S C 115 (117) (Pt B) (Pr 7).

● —Art. 32—Scope and object—Question of legislative competency—When can be raised.

Article 32 is not directly concerned with the determination of constitutional validity of particular legislative enactments. What it aims at is the enforcing of fundamental rights guaranteed by the Constitution no matter whether the necessity for such enforcement arises out of an action of the executive or of the legislature. To make out a case under this Article, it is incumbent upon the petitioner to establish not merely that the law complained of is beyond the competence of the particular Legislature as not being covered by any of the items in the Legislative lists, but that it affects or invades his fundamental rights guaranteed by the Constitution, of which he could seek enforcement by an appropriate writ or order. The rights that could be enforced under Art. 32 must ordinarily be the rights of the petitioner himself who complains of infraction of such rights and approaches the Court for relief.

A proceeding under this article cannot really have any affinity to what is known as a declaratory suit. A prayer for relief in the shape of a declaration is inappropriate to an application under Article 32. Charanjit Lal Chowdhury v. Union of India, 1951 S C J 29 : 1951 Mad W N 111: (1951) 21 Comp Cas 33 : 1950 S C R 869 : 53 Bom L R 499 : I L R (1951) Hyd 461 : 64 M L W 47 : AIR 1951 S C 41 (52, 53, 60) (Pt E) (Prs 44, 45, 73).

● —Art. 32—Scope and extent of—Jurisdiction of Supreme Court under Art. 32 whether concurrent with that of High Court under Art. 226 — Constitution of India, Art. 226.

Article 32 does not merely confer power on the Supreme Court, as Art. 226 does on the High Courts, to issue certain writs for the enforcement of the rights conferred by Part III or for any other purpose as part of its general jurisdiction. Article 32 provides a "guaranteed" remedy for the enforcement of those rights, and this remedial right is itself made a fundamental right by being included in Part III. The Supreme Court is thus constituted the protector and guarantor of fundamental rights and it cannot, consistently with the responsibility so laid upon it, refuse to entertain applications seeking protection against, infringements of such rights. The jurisdiction thus conferred on the Supreme Court by Art. 32 is not concurrent with the one given to High Courts by Art. 226. Romesh Thappar v. The State of Madras, 1950 Mad W N (Cri) 115 : 1950 Raj L W 387 : 1950 All L J 485 : 1950 S C J 418: (1950) 2 Mad L J 390 : 63 Mad L W 929 : 51 Cri L J 1514 : 1950 S C R 594 : AIR 1950 S C 124 (126) (Pt A) (Pr 5).

● —Art. 32—Petition to Supreme Court.

The wording of Art. 32 shows that the Supreme Court can be moved to grant a suitable relief mentioned in Art. 32 (2) only in respect of the Fundamental Rights mentioned in Part III of the Constitution. A. K. Gopalan v. State of Madras, 1950 Mad W N 495 : 1950 Mad W N (Cri) 127 : (1950) 2 Mad L J 42 : 63 Mad L W 638 : 1950 S C J 174 : 51 Cri L J 1383 : 1950 S C R 88 : AIR 1950 S C 27 (33) (Pt Zm) (Pr 4).

—Art. 32 -Scope — Revisional powers of the High Court under S. 439 are certainly wider in scope than the writ jurisdiction under Art. 32 of the Constitution. See Cr. P Code (1898), S. 439. 1961 (1) Cr L J 676 : AIR 1961 Manipur 12.

12 (a). Question of fact.

See also Note 79.

● —Art. 32 –Powers of Supreme Court–Disputed questions of facts–If can be gone into.

Clause (2) of Art. 32 confers power on the Supreme Court to issue directions or orders or writs of various kinds referred to therein. But the proposition that, on an application under Art. 32, the Supreme Court may decline to entertain the same on the simple ground that it involves the determination of disputed questions of fact or on any other ground cannot be countenanced. Questions of fact can and very often are dealt with on affidavits. The Court may, in some appropriate cases, be inclined to give an opportunity to the parties to establish their respective cases by filing further affidavits or by issuing a commission or even by setting the application down for trial on evidence, as has often been done on the original sides of the High Courts of Bombay and Calcutta, or by adopting some other appropriate procedure. Kochunni Nayar v. State of Madras, 1959 Ker L J 464 : 1959 S C J 858 : (1959) 2 Andh W R (S C) 70: (1959) 2 M L J (S C) 70 : (1959) 2 S C A 248 : (1959) Supp (2) S C R 316 : AIR 1959 S C 725 (733, 734, 735) (Pt E) (Pr 12).

● —Art. 32–Powers of Supreme Court.

It is only on facts admitted or taken as proved that the question of the violation of a fundamental right can be decided by the Supreme Court under Art. 32, because when facts are in dispute, the matter has to be enquired into and decided by proper legal proceedings. Kailash Nath v. The State of U. P., (1957) 8 S T C 358 : AIR 1957 S C 790 (792) (Pt B) (Pr 8).

[Overruled on another point in AIR 1962 S C 1621.]

● —Arts. 32 and 226–Finding of fact — Interference–(Sea Customs Act (1878), S. 167).

If a party's grievance was that the view taken by the appropriate authorities was erroneous, that was not a matter which could be legitimately agitated before the Supreme Court in a petition under Art. 32. If the goods had been seized in accordance with law and they had been seized as a result of the findings recorded by the relevant authorities competent to hold enquiry under the law (the Sea Customs Act) it was not open to the petitioner to contend that the Supreme Court should ask the authorities to exercise discretion in favour of the petitioner and allow his licences a further lease of life. Bhatnagars and Co. v. Union of India, 1957 S C J 546 : 1957 S C A 810 : 1957 S C R 700 : AIR 1957 S C 478 (483, 484) (Pt B) (Pr 8).

—Art. 32 — Scope — Disputed questions of fact — High Court's powers under Art. 226 — Distinction. AIR 1960 Madh Pra 282 (285) (Pt A) (Pr 10).

12 (b). Jammu and Kashmir.

● —Art. 32 (2-A) (as applied to Jammu and Kashmir)—Applicability — Claim on basis of violation of Art. 14—Breach of law—Effect.

The High Court of Jammu and Kashmir can act under Art. 32 (2-A) only to enforce a fundamental right. Where the only fundamental right on the violation of which the applicant relies is the right to the equal protection of the laws under Art. 14 of the Constitution on the ground that the procedure prescribed by the Kashmir Civil Service Rules was not followed before the order demoting him from certain post was made all that can be said to have happened is that the State has acted in breach of the law. But that does not amount to a violation of the right to the equal protection of the laws. The High Court has, therefore, no power to act under Art. 32 (2-A) in such a case. AIR 1956 J & K 17, Reversed State of J. & K. v. Ghulam Rasool, 1961 S C D 289 : (1962) 1 S C J 552 : (1961) 3 S C R 969 : AIR 1961 S C 1301 (1302) (Pr 6).

● —Art. 32 (2-A) as applied to the State of Jammu and Kashmir)–Disputed question of fact.

A petition under Art. 32 (2-A) as applied to the State of Jammu and Kashmir is maintainable where the questions of fact are not so seriously disputed as cannot satisfactorily be determined in the proceedings under Art. 32 (2-A). Gulam Rasul v. State of Jammu and Kashmir, AIR 1956 J & K 17 (20) (Pt B) (Pr 17) (FB).

[Reversed on another point in AIR 1961 S C 1301.]

12 (c). No infringement of fundamental rights.

● —Arts. 32 and 19 (1) (f) and (g) – Confiscation of imported goods and penalties imposed by order made under S 167 (8), Sea Customs Act, 1878 — Order passed by authority with jurisdiction under valid Act — Order cannot be challenged as being repugnant to Art. 19 (1) (f) and (g) on sole ground that it is based on misconstruction of provision of law –Petition questioning validity of order does not lie under Art 32.

Per Majority (Das Gupta, J. dissenting.)—Where an order imposing confiscation and penalties under S. 167 (8) of the Sea Customs Act 1878, is made by a quasi judicial authority acting with jurisdiction under the said taxing Act which is intra vires, the order is not open to challenge as repugnant to Art. 19 (1) (f) and (g) on the sole ground that it is based on a misconstruction of a provision of the Act inserted therein by a valid Order (in this case by para. 6 of the French Establishments (Application of Laws) Order, 1954). And the validity of such an order cannot be questioned in a petition under Art 32 of the Constitution. A I R 1962 S C 1621, Applied; A I R 1957 S C 790, held not valid law. Pioneer Traders v. Chief Controller of Imports and Exports, Pondicherry, (1963) 2 S C A 243 : 1964) 1 S C J 595 : (1963) Supp (1) S C R 349 : A I R 1963 S C 734 (741, 743) (Pt A) (Prs 15, 21).

● —Art. 32 — Scope — Publication of scheme and cancellation of permits of existing operators - Effect —Right of operators to ply buses is extinguished— There is no infringement of fundamental right even if State plies its buses without obtaining permits under S. 42. See Motor Vehicles Act (1939), S. 68 F (1). (1963) 2 S C J 188 : AIR 1963 S C 640.

● —Art. 32 — Procedure laid down in the Act for settlement of disputes between Patiala State Bank and its customers — No infringement of Art. 19 (1) (f) (g). See Constitution of India Art. 19 (1) (f). AIR 1963 S C 222.

● —Arts. 32, 136, 13 and 19, 226—Assessment order under taxing statute — Statute intra vires— Order based upon misconstruction of provisions of statute and notification thereunder — Validity of such order cannot be questioned under Art. 32— Proper remedy is by way of appeal or under Art. 226

—Sales Tax — U. P. Sales Tax Act (15 of 1948), S. 4 (1) (b).

Per Majority (Subba Rao and N. Rajagopala Ayyangar JJ. Contra):—An order of assessment made by an authority under a taxing statute which is intra vires and in the undoubted exercise of its jurisdiction cannot be challenged on the sole ground that it is passed on a misconstruction of a provision of the Act or of a notification issued thereunder. Nor can the validity of such an order be questioned in a petition under Art. 32 of the Constitution. The proper remedy for correcting an error in such an order is to proceed by way of appeal, or if the error is an error apparent on the face of the record, then by an application under Art. 226 of the Constitution. Article 32 of the Constitution does not give the Supreme Court an appellate jurisdiction such as is given by Arts. 132 to 136 AIR 1957 S C 790, Overruled.

Held, Per Majority (Subba Rao and N. Rajagopala Ayyangar JJ., Contra) : that there was no violation of any fundamental right and no writ petition under Art. 32 was maintainable.

Per S. K. Das, J., (Subba Rao, J. Contra) : that there was no misconstruction of the notification, dated December 14, 1957, and the resultant action of the assessing authority could not be challenged.

N. Rajagopala Ayyangar, J. - It was possible reasonably, to uphold the construction adopted by an inferior tribunal and therefore it would be a case of mere error of law and not a patent error, or an error apparent on the face of the record which should justify the issue of a writ of certiorari. Ujjam Bai v. State of Uttar Pradesh, (1963) 1 S C R 778 : (1963) 1 S C A 1 : AIR 1962 S C 1621 (1626, 1627, 1632, 1636, 1637, 1659, 1660, 1669, 1679, 1680, 1685, 1686) (Pt A) (Prs 8, 21, 38, 95, 100, 128, 154, 156, 181, 182, 184)

● —Arts. 32, 133, 136 — Right of person to maintain appeal and petition under Art. 32—No fundamental right infringed—Right of appellant to ply buses extinguished—Effect.

If the right of the appellant to ply his buses is lawfully extinguished, under the provisions of the Motor Vehicles Act he is not entitled to maintain an appeal challenging the right of the State Transport Undertaking to ply their buses with or without permits. Nor is any fundamental right of the appellant infringed by the State Transport Undertaking plying its buses without permits, and a petition under Art. 32 of the Constitution cannot be maintained. Kalyan Singh v. State of U. P., (1963) 1 S C J 50 : 1962 Supp (2) S C R 76 : ILR (1962) 1 All 906 : 1962 All L J 523 : AIR 1962 S C 1183 (1189) (Pt G) (Pr 17).

● —Art. 32 — S. 16, Durgah Khawaja Saheb Act (1955)—Validity — Provision does not offend against Art. 14 read with Art. 32. AIR 1959 Raj 177, **Reversed.** See Ibid, Art. 14. AIR 1961 S C 1402.

● —Art. 32 - S. 18, Durgah Khawaja Saheb Act (1955) —Validity—Provision does not contravene Art. 14 or Art. 32 — AIR 1959 Raj 177, **Reversed.** See Ibid, Art. 14. AIR 1961 S C 1402.

● —Art. 32 — Regional Transport Authority granting permit to State Government and not to a Co-operative Society — Decision does not offend Art. 14 of the Constitution—Regional Transport Authority acts as quasi-judicial authority — Decision in mistake if any, can be corrected by appropriate remedies available to the society. See Ibid, Art. 14. **AIR 1960 S C 801.**

● —Art. 32 — Applicability—Person holding contracts for supply of milk to Government Hospital—Tender for certain year accepted but later on cancelled—Application under Article — Maintainability. See Ibid, Art. 14. **AIR 1959 S C 490.**

● —Arts. 32, 19 (f) and (g) —Applicability—'Fundamental right' — Unregistered document granting right to cut trees in forest — Subsequent vesting of forest in State — Grantee prevented from cutting trees—Fundamental right, if infringed — (Registration Act (1908), Ss. 17 (1) (d), 49)—(Transfer of Property Act (1882), Ss. 3 and 105) — (Easements Act (1882), S. 52).

A zamindar executed an unregistered document in favour of his wife, the petitioner, granting her a right to cut and appropriate all kinds of wood from his zamindari forest. The document purported to be a lease for a period of twelve years. The proprietary rights in the zamindari estate vested in the State by virtue of a notification issued under S. 3, M. P. Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950. The petitioner filed an application under Art. 32 of the Constitution that her fundamental rights under Art. 19 (1) (f) and (g) of the Constitution have been infringed.

Held (Per S. R. Das, C. J., T. L. Venkatarama Aiyar, S K. Das and A. K. Sarkar, JJ.) that the petitioner could not complain of the infringement by the State of any fundamental right for the enforcement of which alone a petition under Art. 32 is maintainable. AIR 1953 S C 103, Dissented from.

Per Bose, J : — The document was not a lease but amounted to a licence to enter on the land coupled with a grant to cut certain trees on it. Being unregistered, it passed no title or interest and therefore, the petitioner had no fundamental right which she could enforce. Shantabai v. State of Bombay, 1958 S C A 727 : (1958) S C J 1078 : 1959 S C R 265 : AIR 1958 S C 532 (533, 534, 537) (Pt A) (Prs 5, 6, 28, 36).

● —Art. 32 — Applicability—Fundamental rights not involved — Maintainability of application under Art. 32.

The petition purported to invoke jurisdiction of the Supreme Court under Art. 32 of the Constitution and it was a valid and competent petition in so far as it challenged the vires of S. 17 of the Working Journalists (Conditions of Service and Miscellaneous Provisions) Act itself.

Held, that once S. 17 was held to be valid and in order, the competence of the petition under Art. 32 was naturally open to serious jeopardy. No question about the fundamental rights of the petitioner was involved. Kasturi & Sons (Private), Ltd. v. Salivateswaran, (1958) 1 Lah L J 527 : (1958-59) 14 F J R 174 : 1958 S C J (SC) 844 : (1958) 2 Andh W R (SC) 130 : (1958) 2 M L J (SC) 130 : 1958 Mad L J (Cr) 635 : (1959) S C R 1 : AIR 1958 S C 507 (512) (Pt D) (Pr 14).

● —Art. 32 — Scope — Orders under certain Acts challenged as erroneous on merits—Provisions of law not challenged — Applications under Art. 32 not maintainable — (Indian Tariff Act (1934), Sch. I, Item 45 (4)—(Sea Customs Act (1878), S. 188).

If the provisions of law under which the impugned orders have been passed are good and the orders passed are with jurisdiction, whether they be right or wrong on facts there is really no question of the infraction of a fundamental right. If a particular decision is erroneous on facts or merits, the proper remedy is by way of an appeal.

Thus where certain persons were aggrieved by the orders of the Customs Collector imposing a duty under Item 45 (4) instead of Item 45 (a) of the Customs Tariff, and on being unsuccessful, they moved the Supreme Court under Art. 32 of the Constitution.

Held, that unless the provisions relating to the imposition of duty were challenged as unconstitutional, or the orders in question were challenged as being in excess of the power given to the Customs

authorities and therefore without jurisdiction, no question of any fundamental right under Art. 19 (1), Cls. (f) and (g) of the Constitution could at all arise. Gulabdas and Co. v. Assistant Collector of Customs, 1958 S C A 164 : 1957 S C J 709 : AIR 1957 S C 733 (736, 737) (Prs 6, 9, 11).

● —Arts. 32, 226, 132 and 136 – Finding based on no evidence—Proof.

The contention that a finding made by a competent authority is based on no legal evidence is easy to make but very difficult to establish. Such a contention can succeed only when it is shown that there is really no legal evidence in support of the view taken by the appropriate authorities. If all the appropriate authorities on considering the circumstances, concurrently found against the petitioner, that obviously is not a matter which can be legitimately agitated in the petition under Art. 32. Bhatnagars and Co v. Union of India, 1957 S C J 546 : 1957 S C A 810 : 1957 S C R 700 : AIR 1957 S C 478 (486) (Pt E) (Pr 12).

● —Art. 32 — Order under S. 57, Bombay Police Act—Sufficiency of evidence—(Bombay Police Act (22 of 1951), S. 57).

That the order under S. 57, Bombay Police Act is based on previous orders of discharge or acquittal, and that those orders were passed because there was not sufficient evidence to bring the charge home to the accused, are all matters which cannot be examined by the Supreme Court in an objective way.

It cannot be laid down as a general proposition of law that a previous order of discharge or acquittal cannot be taken into account by those authorities when dealing with persons under S. 57; it is not for Supreme Court to examine afresh the materials and to be satisfied that the order impugned is correct. Hari Khemu Gawab v. Dy. Commr. of Police, Bombay, 1956 Pat L R (SC) 203 : 1956 Cr L J 1104 : 1956 S C J 599 : 1956 S C A 1046 : 58 Bom L R 995 : 1956 S C R 506 : AIR 1956 S C 559 (568) (Pt G) (Pr 11).

● —Art. 32 — Applicability — Freedom of inter-State and intra-State trade cannot be enforced under Art. 32.

The freedom of inter-State and intra-State trade or business embodied in Art. 301 is not a fundamental right conferred by Part III of the Constitution and therefore cannot be enforced by a petition under Art. 32. Ramchandra v. State of Orissa, 1956 S C A 346 : 22 Cut L T 171 : 1956 S C C 184 : 1956 S C R 28 : 1956 S C J 293 : A I R 1956 S C 298 (305) (Pt D) (Pr 18).

● —Art. 32—Applicability — Petition under—Not maintainable unless there is violation of fundamental right.

The Government as the owner of the land with its minerals is prima facie entitled to lease it out to any body and no person can claim that he has a right to have the lands leased out to him. A petition under Art. 32, cannot be maintained. M/s. Bhagwandas Gangasahai v. The Union of India, AIR 1956 S C 175 (175, 176) (Pt A) (Prs 3, 5).

● —Art. 32 – Scope.

Violation of the right of personal liberty by a private individual is not within the purview of Art. 21—Therefore a person whose right to personal liberty is infringed by a private individual must seek his remedy under the ordinary law and not under Art. 32. Smt. Vidya Verma, through next friend R. V. S. Mani v. Dr. Shiv Narain Verma, 1956 Cri L J 283 : 1956 S C J 121 : 1956 All W R 168 : 1956 Nag L J 200 : 1956 All L J 156 : 1956 S C A 357 : AIR 1956 S C 108 (109) (Pt A) (Pr 7).

● —Art. 32—Applicability — Application under — Maintainability — (East Punjab Evacuees (Administration of Property) Act (14 of 1947, as amended by Act (26 of 1948), S. 5-A).

Where the application of the petitioner under S. 5-A of the East Punjab Act 14 of 1947 for confirmation of the sale transaction relating to evacuee property, was rejected by the Custodian acting on the Custodian-General's circular under which a policy of not confirming transactions relating to agricultural property was enunciated, and in an application under Art. 32 the petitioner contended that the action of the Custodian in basing his decision on the circular was illegal and that it was not relevant material under S. 5-A:

Held, that even if this contention be correct this did not raise any question of violation of fundamental right and an application under Art. 32 on this ground was misconceived. Sadhu Ram v. Custodian-General of Evacuee Property, 1956 S C J 99 : 1956 S C A 70 : 1955 (2) S C R 1113 : AIR 1956 S C 43 (43, 44) (Pt B) (Prs 1, 4).

● —Art. 32—Executive Government taking upon themselves selection, printing and publishing of school text-books — Previously, Government inviting publishers to submit their books for approval and after selection leaving printing and publishing of same to such publishers — Petition under Art. 32 by private publishers alleging infringement of their fundamental right under Art. 19 (1) (g) — Private publishers if had a fundamental right in the publication of text books under Art. 19 (1) (g) – Action of executive Government how far infringes such right. See Ibid, Art. 19 (1) (g). (1955) 2 M L J (SC) 59 : 1955 S C J 504 : AIR 1955 S C 549.

● —Art. 32—Exemption under S. 20 of Act (6 of 1952) — (Rajasthan Land Reforms and Resumption of Jagirs Act (6 of 1952), S. 20).

The contention that an estate was dedicated for worship of the Devi and was therefore within the exemption enacted in S 20 of Act 6 of 1952 is not a question which can be determined in a petition under Art. 32. It will be open to the petitioner to establish in appropriate proceedings that the village or any portion thereof is within the exemption of S 20 of the Act. Amarsinghji v. State of Rajasthan, (1955) 2 S C R 303 : 1955 S C A 766 : 1955 S C J 523 : AIR 1955 S C 504 (539) (Pts ZF) (Pr 98).

● —Art. 32—Deprivation of property for recovery of tax — Art. 31 (1) does not apply — No remedy under Art. 32 See Ibid, Art. 31 (1). 1955 S C J 590 : (1955) 2 M L J (S C) 94 : 1955 Andh W R (S C) 348: AIR 1955 S C 3.

● —Art. 32—Article has no application to voluntary actions—Voluntary settlement under S 8-A of the Taxation on Income (Investigation Commission) Act, 1947 – Petitioner cannot assail the settlement on ground that certain provisions of the Act were void. Gopal Das Mohta v. Union of India, ('54) 26 I T R 722: 1955 S C J 60: (1955 1 Mad L J (S C) 19: (1955) Andh W R (S C) 19 : (1955) S C A 624 : 1955 S C R 773 : AIR 1955 S C 1 (2, 3) (Pr 5).

● —Art. 32—Scope and remedy under.

The scope of the remedy under Art. 32, is restricted solely to enforcement of fundamental rights conferred by Part III of the Constitution. Any right, which the petitioners may have as ratepayers in the municipality to insist that the Municipal Board should be legally constituted and that respondents, who are not properly elected or nominated members, should not be permitted to take part in the proceedings of the Board, is outside the purview of Art. 32 as such right, even if it exists, is not a fundamental right conferred by Part III. Nain Sukh Das v. State of U. P., (1953) S C J 546 : (1953) 2 M LJ 257 :

1953 S C A 594 : 1953 S C R 1184 : AIR 1953 S C 384 (395) (Pt B) (Pr 5).

● ——Art. 32—Scope.

The protection against imposition and collection of taxes save by authority of law directly comes from Art. 265 and is not secured by Art. 31 (1). Article 265 not being in Chap. 3 its protection is not a fundamental right which can be enforced by an application to the Supreme Court under Art. 32. Ramjilal v. The Income tax Officer, Mohindar Garh, (1951) 19 I T R 174 : 1951 S C J 203 : (1951) 1 M L J 384 : 1951 All L J (S C) 16 : 64 M L W 402 : 1951 S C R 127 : (1952) S C A 107 : AIR 1951 S C 97 (100) (Pt B) (Pr 12).

● ——Art. 32—Held (per Majority, Fazl Ali, J. Contra) that imposition of pre-Censorship on a journal under S. 7 (1) (a) of the East Punjab Public Safety Act was void under Art. 19 of the Constitution and the order imposing the pre-censorship was liable to be quashed. See Public Safety — E. P. Public Safety Act (1949), S. 7 (1) (c). AIR 1950 S C 129.

12 (d). Article 32 (3).

——Art. 32 (3)—"Any other Court" — Meaning of—If includes a High Court.

The expression "any other Court" in Art. 32 (3) of the Constitution only means any Court other than a High Court since the High Courts have already been invested with powers under Art. 226, the above expression could not manifestly refer to a High Court. 1952 Cri L J 660 : AIR 1952 Bhopal 1 (3) (Pt B) (Pr 10).

12 (e). Article 32 (4).

● ——Art. 32—President ordering suspension of right to move Court for enforcing rights under Arts. 21 and 22 — Effect — Person detained under R. 30 of Defence of India Rules — Petition to Supreme Court under Art. 32 for issue if writ of habeas corpus — Petitioner held had no locus standi to enforce the right. See Ibid, Art. 359 (1). AIR 1964 S C 173.

● ——Art. 32 — Person detained under R. 30 of Defence of India Rules — Petition under Art. 32 for issue of writ of habeas corpus — Validity of Defence of India Ordinance. 1962 challenged — Effect of President's Order under Art. 359 (1) suspending right to move Court — Petition held not maintainable. See Ibid, Art. 359. AIR 1964 S C 173.

13. Articles 32 and 226 compared.

● ——Arts. 32 and 226—Distinction.

There is a distinction between Art. 32 of the Constitution which gives power to the Supreme Court to intervene where there is an allegation that fundamental rights have been violated and Art. 226 where the Court can give relief not only in such cases but also in those where, for any other reason, it may be just and expedient for the Court to interfere. Maqbunnissa v. Union of India, 1953 All L J 148 : (1953) All W R (HC) 212 : I L R (1953) 2 All 289 : AIR 1953 All 477 (478, 479) (Pt B) (Pr 7) (FB).

[Overruled on another point in AIR 1981 S C 532.]

——Arts. 32 and 226—Scope of powers under.

A comparison of Art. 32 and Art. 226 indicates that the ambit of the powers of the High Court is at present wider than the powers of the Supreme Court as regards the purposes for which the direction, order and writ can be issued but is more restricted as regards the territories wherein and the persons on whom the direction, order or writ can be issued. 56 Cal W N 264 : AIR 1952 Cal 610 (612) (Pt A) (Pr 17).

——Arts. 226 and 32 (3) — High Court's power to issue directions, orders or writs "for any other purpose" in praesenti.

Reading Art. 226 with Cl. (3) of Art. 32, the High Court has the power under Art. 226 to issue directions, orders or writs not only for the enforcement of any of the rights conferred by Part III but also "for any other purpose" and the words "shall have power' only emphasise the fact that the issue of these directions, orders or writs is entirely a matter for the discretion of the Court. The fact that Cls. (2) and (3) of Art. 32 make no reference to the power to issue directions, orders of writs for any purpose other than the enforcement of any of the rights conferred by Part III, does not in any way indicate that the words "shall have power" in Art. 226 (1) though meaning immediate conferment: of power in relation to the enforcement of any of the rights conferred by Part III, imply futurity as regards the power to issue directions, order or writs "for any other purpose." I L R (1952) Madh Bha 231 : A I R 1950 Madh Bha 46 (49, 50) (Pt B) (Prs 10, 11) (DB).

[This case was overruled in A I R 1950 Madh Bha 60 which was itself overruled in A I R 1951 Madh Bha 121 (FB).]

● ——Arts. 226 and 32—Scope of Art. 226 and Art. 32 and the nature of writs of certiorari and mandamus indicated. Bhailal Jagadish v. Additional Deputy Commissioner, Akola, I L R (1953) Nag 839 : 1952 Nag L J 613 : A I R 1953 Nag 89 (97, 98, 99, 100) (Pt E) (Prs 44, 45, 49, 56, 60) (FB).

● ——Arts. 226 and 32 (3) — Power of High Court under Art. 226—Effect of Art. 32 (3).

Per Hidayatullah J. :—The exercise of powers by High Court under Art. 226 need not await legislation by Parliament in that behalf under Art. 32 (3). In fact, the very opening words of Art. 226 read with Cl. (2) of Art. 32 show that the High Court's powers under Art. 226 are not postponed and that the High Courts are excepted from operation of Art. 32 (3).

Per Mangalmurti and Mudholkar JJ. :—No doubt, the words of Cl. (3) of Art. 32 are wide enough to include a High Court, but it is equally pertinent to note that the powers conferred by Art. 226 are "notwithstanding anything in Art. 32" from which it would follow that the High Courts do not come within Cl. (3) of that Article. What the Constituent Assembly had apparently, in view while enacting that clause was Art. 247 which empowers Parliament to provide for the establishment of additional Courts for the better administration of laws made by Parliament or of any existing law with respect to a matter enumerated in the Union list.

Furthermore, the words in Cl. (3) of Art. 32 which are sufficient for enabling Parliament to confer jurisdiction on the High Court are "may by law empower". But this is precisely what the Constitution itself has done by using the words "shall have power" in the Art. 226. Sheoshankar v. State Government of Madhya Pradesh, 52 Cri L J 1140: I L R (1951) Nag 646: AIR 1951 Nag 58 (65, 78) (Pt A) (Prs 34, 137, 139) (FB).

——Art. 226—Exercise of power—Discretion of High Court.

Article 226 of the Constitution confers only powers on the High Court which it is left to its discretion when to exercise and when not to exercise while the remedy conferred by Art. 32(2) imposes a duty on the Supreme Court. AIR 1950 S C 124, Rel. on. 1951 Nag L J 79.

——Arts. 32 and 226—Relative scope and distinction—Powers of High Court to give protection against invasion of proprietary right of citizen — Powers of Supreme Court—Distinction.

It cannot be held that if a person holding a public office, or a corporation, interferes with the proprietary right of a citizen, it is the duty of the High Court under Art. 226 to give adequate relief by issuing a writ of mandamus to the wrongdoer. It is clear from a comparison of Arts. 32 and 226, that while the right to move the Supreme Court under Art. 32 for the enforcement of the fundamental rights is guaran-

teed to the citizen, such a right is not guaranteed under Art. 226 although the High Court has a wider field assigned to it, in that it can issue writs for the enforcement of any of the fundamental rights conferred by Part III as well as for "any other purpose". No provision corresponding to Art. 32 (1) finds a place in Art. 226. Therefore, even if there is an invasion of any fundamental right of a citizen his right to move the High Court is not guaranteed. Article 32 provides a guaranteed remedy for the enforcement of the fundamental rights, and this remedial right is itself made a fundamental right by being included in Part III. A I R 1950 S C 124, Ref I L R 30 Pat 287 : AIR 1952 Pat 23 (26) (Pts C, D) (Prs 14, 15) (DB).

——Arts. 32 and 226—Distinction.

Per Lekshmikanta Jha, C. J.:—A comparison of the provisions of Art. 32 with those of Art. 226 of the Constitution clearly shows that though the right to move the Supreme Court under Art. 32 for the enforcement of the fundamental rights is guaranteed to a citizen, such a right is not guaranteed under the provision of Art. 226, although the High Court has a wider field assigned to it in that it can issue writ for the enforcement of any of the fundamental rights conferred by Part III as well as for "any other purpose". No provision corresponding to the provision of Art. 32, Cl. (1), finds place in Art. 226. Therefore even if there is an invasion of any fundamental rights of a citizen, his right to move the High Court is not guaranteed. 30 Pat 287 : AIR 1952 Pat 23 (26) (Pt C) (Pr 14) (DB).

——Arts. 32 and 226—Distinction.

The powers of High Court under Art. 226 of the Constitution are wider than those of the Supreme Court under Art. 32. Under Art. 32 the Supreme Court can issue a writ only in enforcement of fundamental rights. But under Art. 226 the High Courts have got the power of issuing writs not only for the enforcement of rights which are recognised as fundamental rights by the Constitution but also "for any other purpose". I L R (1951) Trav. Co 808 : 1951 Ker L T 714 : A I R 1952 Trav Co 1 (4) (Pt B) (Pr 12) (DB).

14. Articles 226 and 227.

——Arts. 226, 227—Remedy by way of certiorari open for quashing conviction — Petition under Art. 227, is not maintainable.

When a remedy by way of an application for certiorari under Art. 226 for the purpose of quashing a conviction on the ground of lack of jurisdiction in the Court is open to an applicant, he is not justified in invoking the High Court's supervisory power and a petition under Art. 227, is not maintainable in such a case. 1963 All L J 488 : 1963 All W R (HC) 380 : 1963 All Cr R 208 : 1963 (2) Cri L J 595 : I L R (1964) 1 All 178 : AIR 1963 All 585 (587) (Pt B) (Pr 7) (DB).

——Arts. 226 and 227—Scope.

Articles 226 and 227 of the Constitution are very wide in their scope but the very plenitude of the power conferred by them requires a cautious exercise of it. I L R (1957) 1 All 109 : (1957) 1 Lab L J 603 : AIR 1956 All 644 (649) (Pt C) (Pr 23) (DB).

——Arts. 226 and 227—Applicability — Motor Vehicles Act (1939), S. 47 — Words 'public interest'—Meaning—Power of Transport Authority to grant or refuse permit — Order rejecting petition on ground beyond S. 47—Quashing of order and issue of proper direction.

The discretion of the Regional Transport Authority in granting or refusing permit is to be exercised in accordance with the provisions of S. 47, Motor Vehicles Act. Any exercise of discretion which goes beyond the provisions of S. 47 will be ultra vires and liable to be set aside by the High Court in the exercise of its powers under Art. 226 of the Constitution. The words "public interest" in S. 47 mean interest of the public which uses the stage carriage and not the public in general. When the number of applicants is not more than the vacancies the fact that the applicant is a new-comer and he is not a displaced person is no ground for rejecting the application. The order of the Regional Transport Authority rejecting the application on this ground is without jurisdiction and is liable to be quashed. A I R 1951 All 257 (FB), Foll. In suitable cases, the High Court can issue a direction to the Regional Transport Authority to grant a permit. Apart from Art. 226 after having quashed the order of the Regional Transport Authority under Art. 226 it is open to the High Court to issue a direction under Art. 227 directing the Regional Transport Authority to grant a permit. A I R 1955 S C 233 and A I R 1956 All 564, Rel. on. 1956 All L J 375 : 1956 All W R 505 : A I R 1956 All 594 (595, 596, 597) (Pt A) (Prs 1, 3).

——Art. 226 — Municipalities — U. P. Municipalities Act (2 of 1916), S. 23, Proviso (e) — Bar of revisional jurisdiction of High Court under S. 115, Civil P. C.—Jurisdiction under Arts. 226 or 227 cannot be invoked —(Civil P. C. (1908), S. 115). See Municipalities—U. P. Municipalities Act (2 of 1916), S. 23. A I R 1955 N U C (All) 2681.

●——Arts. 226, 227 — Scope of articles — Powers under Art. 227—When exercised.

Articles 226 and 227 are supplementary to each other. The emphasis under Art. 227 is on administrative control and the limited judicial powers contemplated by it are intended for and merely ancillary to such administrative control. Articles 226 and 227 are not intended for identical situations. Though Art. 227 can be said to be not merely administrative superintendence, the power of superintendence conferred by Art. 227 must be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors. A I R 1954 S C 215 and A I R 1952 All 963, Rel. on.

The existence of a remedy through an appropriate writ bars an aggrieved party's invoking powers of superintendence of the High Court under Art. 227; this necessarily follows from the propositions which are beyond controversy now, that the superintending jurisdiction exists to correct only such errors as can be corrected through a writ of certiorari, etc., and that the superintending jurisdiction is exercised through the issue of one of such writs.

If a party is aggrieved by an order of a subordinate Court or tribunal, against which he has no statutory remedy, he must apply for an appropriate writ or he would have no remedy from a High Court. If, under the superintending jurisdiction a High Court can issue an order or direction, it can only be in co-operation with or ancillary to a writ of certiorari, mandamus or prohibition. Only to this extent can a High Court in exercise of its superintending jurisdiction issue an order or direction which is not of the nature of a writ of certiorari, etc. Bhagirathi v. State, I L R (1954) 2 All 591 : 1955 Cri L J 296 : 1955 All L J 6 : 1955 All W R (H C) 70 : A I R 1955 All 113 (116, 122) (Pt C) (Prs 11, 26) (FB).

——Arts. 226 and 227 — Interference with illegal conviction by Panchayati Adalat (U. P. Panchayati Raj Act (28 of 1947), S. 52 (1) (a)).

Panchayati Adalat has no jurisdiction to entertain a complaint and try a case where the allegation in the complaint clearly make out an offence under Penal Code which is not mentioned in S. 52 (1) (a) of the U. P. Panchayati Raj Act. Where in such a case it entertains the complaint and convicts the accused for a different offence under the Penal Code which is

mentioned under S. 52 (1) (a) of the Act, the conviction is illegal and requires to be set aside when an application is made by the accused under Art. 227 of the Constitution. 1953 All L J 559 : 1953 All W R (H C) 483 : 1953 Cri L J 1852 : A I R 1954 All 8 (8, 9) (Pr 3).

——Arts. 226 and 227—Scope — (Abducted Persons (Recovery and Restoration) Act (1949), S. 8).

Section 8 of the Abducted Persons (Recovery and Restoration) Act does not affect the High Court's power to issue writs or orders or directions to the tribunal under Art. 226 or 227 of the Constitution. 1953 All W R (H C) 257 : 1953 All L J 273 : I L R (1953) 2 All 735 : 1953 Cri L J 1384 : A I R 1953 All 613 (614) (Pt A) (Pr 5) (DB).

——Arts. 226 and 227—Distinction.

According to the interpretation given by Allahabad High Court to the word 'superintendence' the scope of Article 227 would seem to be of a more limited character than that of Art. 226. Articles 226 and 227 are supplementary to each other. The emphasis under Art. 227 is on administrative control and the limited judicial powers contemplated by it are intended for and merely ancillary to such administrative control. Thus Arts. 226 and 227 are not intended for identical situations. Their purpose, though complementary, is somewhat different and it is by remembering this that overlapping can be avoided. The power of superintendence cannot merely be described as an administrative power for, in addition to the administrative powers specifically enumerated a power partaking of a limited judicial character has been added. That power essentially is meant only to see whether a Court or tribunal has acted within its bounds or not and is ancillary to the administrative powers conferred by the article. Case law discussed. 1952 Cri L J 1695 : I L R (1952) 1 All 558 : A I R 1952 All 963 (972) (Pt F) (Prs 61, 62, 63) (DB).

——Arts. 226 and 227—Nature and scope of jurisdiction under—Jurisdiction under Art. 227 can be exercised by Single Judge.

Article 227 lays down that every High Court shall have superintendence over all Courts and tribunals throughout the territories in relation to which it exercises jurisdiction ; and that without prejudice to the generality of foregoing provisions the High Court may act in the manner specified in the article. In exercise of the power of superintendence under Art. 227, the High Court cannot exercise the powers exercisable under Art. 226. The Court can exercise, only in a limited manner, "the power to interfere with judicial orders of subordinate Court" "to check the assumption, or excess, of jurisdiction or to compel the exercise of jurisdiction wrongfully declined, and not to substitute its own judgment, whether on a question of fact or on a question of law, in place of the subordinate Court's. The power conferred on the High Court under Art. 227 is not in any way controlled by the power exercisable by the Court under Art. 226. Under the rules of the Allahabad High Court, applications under Art. 226 and those under Art. 227 of the Constitution are treated and dealt with differently. There are special rules for the institution and disposal of applications under Art. 226, while there are no such rules for applications under Art. 227. An application filed in the High Court for the exercise of power under Art. 226 is, no doubt, cognizable by a Bench of this Court but an application for the exercise of power of superintendence under Art. 227 is cognizable by a Single Judge. 1951 All L J 305, Rel. on. ('52) 1952 All W R (H C) 165 : 1952 R D (H C) 101 : 1952 All L J 161 : 1952 All Cri R 55 : 1952 Cri L J 1520 : A I R 1952 All 843 (844) (Pt A) (Pr 4).

——Arts. 226 and 227 — Scope of the power given under — Trial of suit by one Court rather than by another—Interference.

The power given under Arts. 226 and 227 of the Constitution should be restricted to interference in cases of grave dereliction of duty for which no other remedy is available and which would have serious consequences if not remedied.

It cannot be said that any such grave consequence would follow if a suit is tried by one Court rather than another and in any case, if any such serious consequence does follow, then under S. 21 of the Civil P. C., the Court of appeal will have the right to correct any such error. A I R 1951 All 514 (515) (Pr 2) (DB).

——Arts. 226 and 227 — Scope — Dismissal of writ petition if bar to maintainability of application under Art. 227.

The scope of Art. 227 is entirely distinct and different from Art. 226. Article 227 confers upon the High Court a power of supervision over all judicial matters decided by any Court or Tribunal within the State. Hence the dismissal of a writ petition under Art 226 cannot operate as a bar to the maintainability of an application under Art. 227. A I R 1953 Mad 362 and A I R 1954 S C 215, Foll. (1955) All W R 22 : (1955) 1 Mad L J (AP) 22 : 1954 Andh L T (Civ) 179 : A I R 1955 Andhra 40 (44) (Pt B) (Pr 9).

——Artr. 226 and 227 — Exercise of jurisdiction under Articles.

Whether the High Court quashes the order or dismisses the petition under Art. 226 it exercises a limited jurisdiction and that jurisdiction under no circumstance can be comparable to the jurisdiction exercised by the High Court on the Appellate side or even in its revisional powers under C. P. C. — When the High Court exercises its jurisdiction under Art. 227 of the Constitution it is exercising a supervisory jurisdiction and although it may be loath to interfere lightly with the decisions of Courts and Tribunals which are made final by law, it has undoubtedly the power not only to quash the orders made by these Courts and Tribunals but to pass substantive order in place of the orders it has quashed or set aside. 57 Bom L R 1148 : (1956) 1 Lab L J 246 : ILR (1956) Bom 37 : AIR 1957 Bom 46 (48) (Pt B) (Prs 2, 3) (DB).

——Arts. 226 and 227—Discretion —Tribunal allowing party to add to his case — Interference by High Court.

Whether the High Court is acting under Art. 226 or Art. 227, it is an impossible contention to put forward that the Court can interfere with the discretion exercised by a tribunal in permitting a party to add to his case or amend his case or alter it in certain particulars. The only ground on which the Court can interfere is that a reasonable opportunity was not given to the other party to meet the new case. 57 Bom L R 1148 : (1956) 1 Lab L J 246 : I L R (1956) Bom 37 : AIR 1957 Bom 46 (49) (Pt C) (Pr 6) (DB).

——Arts. 226 and 227—Powers under.

Powers of High Court under Art. 227 of supervision are much wider than powers to issue writ under Art. 226 I L R (1954) Bom 438 : 55 Bom L R 911 : AIR 1954 Bom 171 (174) (Pt D) (Pr 6) (DB).

[Reversed on another point in A I R 1957 S C 73].

——Arts. 226 and 227— Right to apply — (Madhya Pradesh Public Trusts Act (30 of 1951), Ss. 4, 5 and 8—Scheme of — Order declaring certain institutions not to be public trusts passed by Registrar of Public Trusts — State Government if can challenge order under Arts. 226 and 227).

Per Hidayatullah, C. J.: The State Government has no locus standi to apply under Arts. 226 and 227, challenging an order of the Registrar of Public Trusts declaring certain institutions not to be public trusts for purposes of M. P. Public Trusts Act, 1951. Where the working trustee does not apply for registration, and no person interested in the public trust moves the Registrar, and the Registrar, has, after such inquiry as he thought necessary, convinced himself that no public trust exists, the State Government cannot be described as an aggrieved party. In these circumstances, the extra-ordinary powers of High Court under Arts. 226 and 227 of the Constitution cannot be invoked by the State Government to impugn an order made by the Registrar, who is given full powers and discretion to determine whether a public trust exists or not, subject only to a suit to be filed either by the working trustee or by person interested in the public trust. 1958 M P L J 611 : 1958 M P C 586 : 1958 Jab L J 713 : I L R (1957) Madh Pra 599:: AIR 1958 Madh Pra 362 (365, 366) (Pt A) (Prs 16, 22, 23) (DB).

——Arts. 226, 227— Scope —In exercise of writ jurisdiction illegal order coming to notice of High Court —High Court can set it aside under Art. 227. A I R 1962 Manipur 14 (17) (Pt B) (Pr 15).

——Arts. 226, 227—Jurisdiction of High Court under —Nature of.

The High Court, while exercising its jurisdiction under Articles 226 and 227 of the Constitution, acts in a supervisory capacity. It is not for the High Court to review or reweigh the materials on which the conclusions of the inferior Tribunal are based. A I R 1958 M. P. 397, Rel. on. (1963) 5 Orissa J D 97.

——Arts. 226, 227—Scope of—Order of ad hoc tribunals.

The limitations imposed on the High Court in exercising its powers of issuing a writ of certiorari under Art. 226 may not apply with full force when the Court exercises its powers under Art. 227. Art. 227 seems to be wide enough to enable the High Court not only to set aside the order of the inferior tribunal in appropriate cases but also to give adequate relief where the circumstances of the case justify the exercise of this extraordinary power. The fact that the Tribunal is an ad hoc Tribunal and ceases to exist after giving its decision does not make any difference as regards the exercise of this power. ILR (1953) Cut 682: AIR 1954 Orissa 67 (71) (Pt F) (Prs 16, 17) (DB).

——Arts. 226 and 227—Finding by Civil Court under S. 146 (1-D) can be interfered with by High Court under S. 439 after finding is adopted by Magistrate and final order is passed by him under S. 146 (1-B) — S. 146 (1.D) has not the effect of taking away powers of High Court under Art. 227 of the Constitution— The scope of power of interference by High Court is co-extensive with the exercise of its power under its writ jurisdiction under Art. 226. See Criminal P. C. (1898), S. 145. 1963 (2) Cri L J 25 : 1963 B L J R 496 : AIR 1963 Pat 243 (FB).

——Arts. 226 and 227 — New point — Objection to jurisdiction not taken before Tribunal.

The question of want of jurisdiction of a tribunal must first be raised before that tribunal if it is to be permitted to be taken in a petition asking for a writ under Art. 226, unless the party shows that at the time of the proceedings impugned he was not aware of the facts which indicated the want of jurisdiction in the tribunal. There is however difference in the nature of powers under Arts. 226 and 227. The jurisdiction under Art. 227 is more in the nature of revisional jurisdiction and where it is a patent case of want of initial jurisdiction it would be a proper case for interference under Art. 227. In such a case the High Court has power to grant relief in spite of the question of want of jurisdiction not having been raised before the tribunal whose order is under question. (Relief was given under Art. 227). ILR (1954) Patiala 310 : A I R 1954 Pepsu 190 (192) (Pt A) (Prs 8, 9).

——Art. 226—Power of superintendence—Comparison with powers under Art. 226 — No interference under Art. 227 merely on technical ground. See Ibid, Art. 227. (1964) Cur L J 324 (Punj).

——Arts. 226 and 227—Nature of proceedings under—Distinction—Tribunal against order of which proceedings are taken under Art. 227 not a necessary party to the same. See Ibid, Art. 227. AIR 1962 Punj 467.

——Arts. 226 and 227 — Jurisdiction — Nature and scope—Petition under Art. 227 — Grant of relief in the nature of writ of certiorari — Permissibility — Omission to implead authority whose order sought to be assailed —Not fatal.

Although Art. 227 of the Constitution is wider than S. 107 of the Government of India Act, 1915, inasmuch as it brings within its fold all the tribunals within the territorial jurisdiction of the High Court and is not confined merely to Courts subordinate to it, this by itself, is not sufficient to attract all the incidents which attach to applications for prerogative writs etc., under Art. 226 such as, the imperative necessity of impleading the authorities whose orders are assailed in the High Court under Art. 227. Every petition under Art. 227 may not be liable necessarily to be thrown out on the sole ground of non-impleading of the authority concerned. In the absence of a clear and well-recognised practice applicable to petitions under Art. 227 of the Constitution, the High Court should not refuse to grant relief to a citizen merely on the ground of omission to implead the authorities concerned. Moreover, since suo motu interference under Art. 227 is also legally permissible without any formal application, in a fit case the High Court should not hesitate to allow impleading of parties if notice to them is considered necessary. AIR 1952 All 843, Rel. on; AIR 1960 S C 137 and AIR 1933 Lah 259 and AIR 1933 Lah 327 and A I R 1933 Lah 605 and A I R 1934 Lah 156 and A I R 1930 Lah 889 and A I R 1959 Punj 291 and A I R 1961 Punj 374 and A I R 1959 Punj 189, Dist.; A I R 1960 Punj 432, Not foll. A I R 1962 Punj 117 (119, 120) (Pt A) (Pr 7).

——Arts. 226 and 227—Jurisdiction — Distinction—Power under Art. 227 limited to restrain excessive jurisdiction by inferior tribunals — Errors apparent on face of record — Cannot be corrected under Art. 227,

The powers of judicial interference under Art. 227 with orders of judicial or quasi-judicial nature are not greater than those under Art. 226. Under the latter Article the power of interference may extend to quashing an impugned order on the ground of a mistake apparent on the face of the record, but under Art. 227 the power of interference is limited to seeing that the tribunal functions within the limits of its authority. Moreover, power under Art. 227 is always to be exercised most sparingly and only in appropriate cases, and is clearly not meant for correcting mere errors of fact or even of law. Where it has not been shown that the Officers concerned have in any way travelled beyond the scope of their jurisdiction or have erroneously refused to perform their duty imposed upon them by law then orders are erroneous, that would not by itself warrant correction of the error under Art. 227 of the Constitution. AIR 1958 S C 398, Rel. on. AIR 1962 Punj 117 (121) (Pt B) (Pr 12).

——Art. 226 — Revision filed before Financial Commissioner — No period of limitation prescribed by law — Revision dismissed as filed beyond 90 days of the communication of the Order— Order not actually communicated— Revisional order is vitiated — Order set aside — Case remanded under Art. 227 of the Constitution. See Sales Tax — East Punjab General Sales Tax Act (46 of 1948), S. 21 (3). ('61) 63 Pun L R 495.

——Art. 226—Panchayats — Punjab Gram Panchayat Act (1953), S. 66 — Order or sentence under Act — High Court cannot exercise revisional powers under S. 439, Criminal P. C. but under Arts. 227 and 226 of the Constitution — (Criminal P. C. (1898), S. 439). See Panchayats — Punjab Gram Panchayat Act (4 of 1953), S. 66. AIR 1960 Punj 160.

——Arts. 226 and 227 — C. P. Code (1908), S. 92 — Advocate-General acting under S. 92 - Nature of his function — AIR 1944 Trav Co 331, Dissented from.

The function of the Advocate-General under S. 92, Civil P. C. cannot be called a judicial or quasi-judicial function. Hence, there is no question of revising it under Art. 227, or issuing a writ under Art. 226 compelling him to do anything. AIR 1954 Trav Co 331, Diss. from. 1956 Raj L W 50 : ILR (1955) 5 Raj 324 : AIR 1955 Raj 166 (167) (Pt A) (Pr 3) (DB).

——Arts. 226 and 227—Applicability.

When a statutory tribunal (like the Transport Appellate Tribunal) confirms part of the order of an executive authority like the P. T. A., and the confirmed part of the order is attacked, the High Court is competent to direct either or both. But it is obviously convenient to treat the application as one against the later order, and to give the proper direction to the Tribunal, which it should, in its turn, embody in its revised order to the authority.

A proceeding to challenge the order of the Transport Appellate Tribunal passed in the exercise of its jurisdiction as a judicial body would attract Art. 227 rather than Art 226 of the Constitution. Misc. No. 62 of 1952 dated 19-1-53, Rel. on. AIR 1953 Vind Pra 49 (50) (Pt A) (Prs 3, 4).

——Art. 226—Applicability— Conflict of jurisdiction between Civil and Revenue Courts — Power of Judicial Commissioner's Court of V. P. to resolve conflict —Art. 226 is not applicable — The matter has to be dealt with under the general supervisory powers under Art. 227, (Civil P. C. (1908), S. 90 — (Tenancy Laws — Rewa Land Revenue and Tenancy Code, S. 239 (g)). See Ibid, Art. 227. AIR 1952 Vind Pra 74.

15. Assessment, illegal, writ against.

See Note 59.

16. Authority not duly constituted, writ against.

See Note 5.

17. Bar to.

(a) Jurisdiction subject to other provisions of Constitution.
(b) Legislative provisions.
(c) Other provisions of Constitution.
(d) Statutory bar.
(e) Other remedy available.

See Note 7.

17. Bar to.:

——Art. 226—Jurisdiction of High Court — Arbitration clause in contract — If bar to application for writ.

It is well established that limitations cannot be placed upon the powers granted to the High Court under Art. 226 of the Constitution except those which are provided by the Constitution itself, e. g., Art. 329. That being so, it is not possible to hold that the jurisdiction of the High Court is barred under Art. 226 of the Constitution because of the existence of an arbitration clause. AIR 1954 All 393, Foll. AIR 1960 All 72 (79) (Pt G) (Prs 18, 19).

——Art. 226—Object of.

The object of the inclusion in the Constitution itself of a specific Art. 226 with regard to the powers of the High Courts is to secure that these powers of the High Courts shall not be in any way affected by any law, made by the Parliament or by the legislatures of States. ILR (1952) Madh Bha 231 : AIR 1950 Madh B 46 (50) (Pt D) (Pr 10) (DB).

17 (a). Jurisdiction subject to other provisions of Constitution.

■ ——Art. 226—Constitution (17th Amendment), Act (1964)—Effect of amendments made in Art. 31-A and Sch. 9, on High Court's powers under Art. 226, is only incidental and insignificant. See Ibid, Art. 368. AIR 1965 S C 845.

■ ——Art. 226—Kerala Education Bill (1957), Cl. 3 (5) — Constitutional validity — Right of minorities to establish and maintain educational institutions — Right to State aid and recognition — Restrictions on —Validity — Held clause 33 of the Bill was subject to Art. 226 of the Constitution and did not offend Art. 226. See Kerala Education Bill (1957), Cl. 3 (5). AIR 1958 S C 956.

■ ——Art. 226—Scope.

Even when the Legislature states that the orders of the Tribunal under an Act are conclusive and final, High Court and the Supreme Court may interfere under Arts. 226 and 136 respectively. See Ibid, Art. 136. AIR 1954 S C 202.

■ ——Art. 226—Provision in State Act making decision of inferior tribunal final — Effect on power to issue writs— (Madras Shops and Establishments Act (56 of 1947), S. 51).

Whether or not certiorari is or can be taken away by the provision like S. 51 of the Madras Act, 56 of 1947, which makes the decision of the inferior tribunal final and incapable of being challenged in any court of law, it is clear that in spite of such statutory provisions the superior court is not absolutely deprived of the power to issue a writ, although it can do so only on the ground of either a manifest defect of jurisdiction in the tribunal that made the order or of a manifest fraud in the party procuring it. (1875) 5 P C Appeals 417, Rel. on. Parry & Co, Ltd., Dare House, Madras v. Commercial Employees Association, Madras, 1952 Mad W N 429 : 1952 S C R 519 : 65 Mad L W 491 : 1952 Mad W N 429 : 1952 S C J 275 : 1952-1 Mad L J 813 : AIR 1952 S C 179 (180, 181) (Pt B) (Pr 11).

——Arts. 226 and 225 — Scope of — Powers under Art. 226 not to be exercised in derogation of Art. 225 — Final order passed by High Court in exercise of revisional or appellate jurisdiction — Finality cannot be upset in exercise of powers under Art. 226.

Article 226 only confers on the High Court the right to issue prerogative writs and other directions in order to do justice. It does not deal with the circumstances in which those writs or directions can be issued. The provisions of Art. 226 cannot be read in a manner which would be completely destructive of the provisions of Art. 225. The two have got to be harmoniously interpreted. The effect of Art. 226 is not to abrogate the other provisions of

the Constitution or the existing laws. It is a power to supplement the powers already existing. Consequently, when because of the provisions of the Letters Patent (All.), the Constitution Acts (Government of India Acts of 1915 and 1935) and the U. P. High Courts (Amalgamation) Order, it is not possible for the High Court to upset the finality of an order already passed by it in the exercise of its revisional or appellate jurisdiction it cannot be said that by virtue of Art. 226 it is possible to do so.

Hence, where the High Court in exercise of its revisional jurisdiction under S. 115, Civil P. C., finally holds that the decree passed by the lower Court does not require any interference it cannot in exercise of its jurisdiction under Art. 226 pass another order saying that the decree is void and should be set aside. **AIR 1963 All 532 (533, 534) (Pr 6).**

——Arts. 226, 31 (6)—Writ of certiorari — Issue of, to declare Act invalid.

When Art. 31 (6) declares that an Act shall not be called in question on the particular ground mentioned, it is not open to the Court to issue a writ of certiorari or other appropriate writ practically achieving the same result. (1874) L R 5 P C 417, Ref. to. See Ibid, Art. 31 (6). **A I R 1952 Mad 835 (DB).**

——Art. 226 — Writ petition against municipallty—Failure to give notice under S. 326 of Assam Act (15 of 1957) — Does not affect jurisdiction of High Court to act under Art. 226.

Though a writ petition brought under Art. 226 of the Constitution is a legal proceeding, the powers of the High Court under Art. 226 to issue prerogative writs is an unqualified power which is not even subject to any other provisions of the Constitution. It cannot be made subject to the provisions of any Act of Parliament or of any State legislature. Hence a person who applies for such a writ cannot be nonsuited by a provision like S. 326 of the Assam Municipal Act. A I R 1952 Cal 103 and A I R 1954 Cal 131, Rel. on. **A I R 1962 Manipur 28 (30, 31) (Pt A) (Prs 8, 10).**

——Arts. 226 and 300 — Article 226 is not subject to provisions of Art. 300. **ILR (1953) Punj 472 : A I R 1953 Punj 137 (144, 145) (Pt H) (Pr 30) (DB).**

17 (b). Legislative provisions.

——Art. 226 — Jurisdiction of High Courts under Art. 226 with that of Supreme Court above them remains to its fullest extent despite S. 105. Representation of the People Act. See Ibid, Art. 136. **A I R 1955 S C 425.**

——Arts. 226 and 32 — Jurisdiction of High Court — Extent of—Determination by State Government on certain questions referred to in Ss. 5 and 6, Bombay Land Requisition Act, 1948 — Conclusive evidence — Jurisdiction of High Court under Art. 226 or of Supreme Court under Art. 32 is not impaired. Smt. Lilawati Bai v. State of Bombay, 1957 S C J 557 : 1957 S C R 721 : 1957 S C A 465 : 59 Bom L R 934 : AIR 1957 S C 521 (527, 528) (Pt D) (Pr 10).

——Art. 226—Scope.

Even when the legislature says that the orders of a Tribunal under an Act like the Representation of the People Act shall be conclusive and final the High Court and the Supreme Court may interfere under Art. 226 and Art. 136 respectively. See Ibid, Art. 136. **AIR 1954 S C 202.**

——Art. 226 — Allahabad Rules of Court (1952), Chap. XXII, R. 6 — Validity — Rule is ultra vires as it takes away power under Art. 226 in certain circumstances. See High Court Rules and Orders — (Allahabad) Rules of Court (1952), Chap. XXII, R. 6. **AIR 1966 All 57 (FB).**

——Arts. 226, 227 — Erroneous finding of Civil Court under S. 146 (1 B) Cr. P. Code—Finding may be challenged under Art. 226 or Art. 227 of the Constitution of India — S. 146 (1-D) does not affect such jurisdiction of High Court.

Obiter : The provision contained in S. 146 (1-D), Cr. P. Code, viz , that the finding of the Civil Court is not subject to appeal, review or revision, does not take away the extraordinary jurisdiction of the High Court under Art. 226 or Art. 227 of the Constitution, and in suitable cases, the High Court may consider exercising that jurisdiction. **1963 All L J 1101 : 1963 All W R (HC) 772 : 1963 All Cr R 473 : 1965 (1) Cri L J 271 : AIR 1965 All 127 (128) (Pt B) (Pr 5).**

——Art. 226 — High Court Rules and Orders — Allahabad Rules of the Court (1952), Ch. XXII, R. 6 — Validity — Rule curtailing discretion of Court in writ petition — **Held ultra vires—See High Court Rules and Orders — Allahabad Rules of the Court,** Ch. 22, R. 6. **AIR 1964 All 534 (FB).**

——Art. 226 — Municipalities — U. P. Municipalities Act (2 of 1916), S. 135 (3) — Notification under — Effect—Tax not imposed in fact — Notification is no proof — Such legal provisions as to notification does not take away the jurisdiction of High Courts vested under the Constitution. See U. P. Municipalities Act (2 of 1916), S. 135 (3). **1962 All L J 226.**

——Art. 226 — Bar to writs — Matters relating to acquisition of citizenship of foreign country — Jurisdiction of High Court—S. 9 (2), Citizenship Act —If bar.

Even if it be conceded that S. 9 (2), Citizenship Act, must be deemed by implication to preclude the ordinary Courts from considering them, it cannot operate to debar the High Court from dealing with such questions in the exercise of its special jurisdiction under Art. 226 of the Constitution. The powers conferred by Art. 226 for the enforcement of the fundamental rights incorporated in Part III to the Constitution are as sacrosanct as the fundamental rights themselves. Civ. Misc. Appln. (O. J.) No. 6 of 1957, D/- 27-3-1958 (All), Dissent. from. **1960 All L J 461 : 1960 All W R (HC) 346 : AIR 1960 All 637 (640, 641) (Pt D) (Pr 8).**

[Overruled on another point in A I R 1962 S C 1052.]

——Arts. 226 and 227 — Powers not taken away by S. 85 (5) of U. P. Panchayat Raj Act (26 of 1947).

The Constitution is the fundamental law of the land. No law which is contrary to the provisions of the Constitution can be valid except in so far as the Constitution itself provides for the appropriate authority to make such law. Hence S. 85 (5) of the U. P. Panchayat Raj Act cannot take away the jurisdiction of the High Court under Arts 226 and 227 of the Constitution. **1952 Cri L J 1695 : ILR (1952) 1 All 558 : A I R 1952 All 963 (964) (Pt A) (Pr 9) (DB).**

——Art. 226 and 227 — Powers under—Extent of — Powers cannot be curtailed, modified or affected by any enactment.

The powers of issuing writs, directions or orders or of superintendence over inferior courts or tribunals cannot be curtailed, modified or affected by any enactment of the Indian Parliament or of the State Legislature. This is a power which has been given to the High Court by the Constitution making authorities and it can only be altered in the manner provided for in the Constitution itself. No doubt, the power of issuing a writ, direction or order, is discretionary; but in exercising that discretion the High

Court must be guided by judicial considerations. The High Court in determining whether a particular writ, direction or order will or will not issue will take into consideration the historic background of the writ, direction or order. Indeed, in cases where the citizen has been left by an Act without any remedy in the shape of an ordinary suit, it may be desirable, in the interest of safe-guarding the liberties for which these writs, directions or orders are intended to help the citizen by the issue of a proper writ, direction or order. 1952 All W R (HC) 174 : 1952 R D (HC) 122 : 1952 R D (HC) 245 : 1952 All L J 380 : ILR (1953) 2 All 184 : A I R 1952 All 822 (825) (Pt B) (Pr 12) (DB).

● —Art. 226—Administration of Evacuee Property Act (1950), Ss. 28, 46—Effect.

The High Court has the power to issue writs, directions or orders under Art. 226 of the Constitution notwithstanding anything contained in Ss. 28 and 46, Administration of Evacuee Property Act. No Act of the legislature can override, cancel or affect any power given to the High Court or any other authority by the Constitution itself. The Constitution is the paramount law of the land. Any provision in any enactment or law which is inconsistent with it is void and must be disregarded. Asiatic Engineering Co. v. Achhru Ram, 1951 R D (HC) 241 : ILR (1952) 2 All 838 : 1951 All L J 576 : AIR 1951 All 746 (768) (Pt F) (Pr 52) (FB).

—Art. 226 — Assam Rural Panchayats Act (1948), S. 135 —Powers of final adjudication given to Provincial Government—Effect on Art. 226—Section cannot affect powers of High Court to deal with any such question in an appropriate application under Art. 226. See Panchayats—Assam Rural Panchayats Act (27 of 1948), S. 135. A I R 1958 Assam 20 (DB).

● —Art. 226 — Jurisdiction of High Court is not affected by M. P. Act 1 of 1955—(Election—Madhya Pradesh Janpada Election Matters Validating Act (1955), S. 3.)

There is no provision in M. P. Act 1 of 1955 which prevents anyone from approaching the High Court under Art. 226 or the High Court passing any order under Art. 226. Thus the jurisdiction of the High Court is not taken away by the Act. See Ibid, Art. 245. A I R 1957 Bom 266 (FB).

—Art. 226—Powers of High Court—Effect of coming into force of S. 33, Industrial Disputes (Amendment and Miscellaneous Provisions) Act, on 1st September, 1956 — Jurisdiction conferred upon the High Court by Arts. 226 and 227 is not restricted. See Industrial Disputes (Amendment and Miscellaneous Provisions) Act (1956), S. 33. A I R 1957 Bom 142 (DB).

● —Arts. 226, 227—Bar to writs—Power cannot be affected by legislative provisions — (Bombay Land Requisition Act (33 of 1948), S. 6 (4)).

If the Legislature attempts to make the decision of any Tribunal final, it cannot by doing so prevent the High Court from issuing the proper writ either under Art. 226 or under Art. 227.

Hence, although the declaration made by the State Government under S. 6 (4), Bombay Land Requisition Act, may be final and conclusive, it will not prevent the High Court from interfering under Art. 226 if in the opinion of the Court a writ of mandamus would properly lie, because as the order is an administrative order, the only way the Court can interfere with such an order would be by a writ of mandamus.

The power of the Court under Art. 226 remains un-impaired notwithstanding the fact that a declaration as to vacancy has been made conclusive by S. 6 (4), Land Requisition Act. A I R 1954 S C 202; A I R 1951 Bom 303, Rel. on. Kalkhusroo Phirozshah Doctor v. State of Bombay, ILR (1955) Bom 69 : 57 Bom L R 24 : A I R 1955 Bom 220 (222) (Pt A) (Pr 3) (FB).

—Art. 226 — Administration of Evacuee Property Ordinance (1949), Ss. 28, 43 —Effect.

Article 226 in declaring the powers of the High Court and making those powers a part of the Constitution, has placed those powers beyond the challenge of the Legislature to the extent that any legislation seeks to take away the power of the High Court to issue any writ, direction or order contemplated by Art. 226, that legislation would be ultra vires of Art. 226, and therefore even if S. 28 and S. 43 are construed to bar the jurisdiction of the civil Court to challenge any order or action of the Custodian, however illegal or without jurisdiction, to the extent that these sections seek to oust the jurisdiction of the High Court to issue the appropriate writs under Art. 226, the sections must be considered to be ultra vires of the Constitution. Therefore to the extent that the petitioner seeks to correct the orders of the Custodian by a writ of certiorari the power of the High Court which now arises under Art. 226 must be exercised if the petitioner is entitled to the writ notwithstanding any provision in the Ordinance or in the subsequent Act which seeks to oust the jurisdiction of the civil Courts. ILR (1952) Bom 378 : 53 Bom L R 621 : AIR 1951 Bom 440 (445) (Pt C) (Pr 4) (DB).

—Art. 226 — Question for decision whether petitioner had migrated to Pakistan in 1949 and had never become citizen of India under the Constitution —Bar of S. 9 (2), Citizenship Act does not apply and hence Court of law and not the Central Government has to decide the question. ('62) 66 Cal W N 108.

—Art. 226 —Representation of the People Act (1951), S. 170—Bar of jurisdiction of civil Courts—Extent of. See Representation of the People Act (1951), S. 170. AIR 1953 Cal 98.

—Arts. 226, 227 — Bar to writs — Jurisdiction of High Court under Arts. 226 and 227, cannot be affected by legislative provision — Himachal Pradesh Panchayat Raj Act (6 of 1953), S. 94 — Finality attached to order of Nyaya Panchayat by S. 94—Powers of Himachal Pradesh Judicial Commissioner's Court to entertain petition under Art. 226 and Art. 227 of the Constitution against that order, not affected. 1965 (1) Cri L J 550 : A I R 1965 Him Pra 25 (27) (Pt A) (Prs 8, 9, 10).

—Art. 226—Decision of Vice-Chancellor to be final — Interference with. See East Punjab University Regulations, Reg. 23. A I R 1955 N U C (Him Pra) 4517.

—Art. 226 — S. 26 (10), Hyderabad City Police Act does not oust High Court's jurisdiction under Art. 226. See Hyderabad City Police Act (9 of 1348-F), S. 26 (10). A I R 1954 Hyd 221 (DB).

—Art. 226—Scope — Hyderabad Atiyat Enquiries Act (10 of 1952), S. 13, Cl. (2).

To the extent that any legislation seeks to take away the powers of the High Court to issue any writ, direction or order contemplated by Art. 226 of the Constitution, that legislation would be ultra vires and, therefore, even if Cl. (2) of S. 13 of the Atiyat Enquiries Act No. 10 of 1952 is construed to bar the jurisdiction of the Civil Court to challenge any order or any action however illegal or without jurisdiction, to the extent that this clause seeks to oust the jurisdiction of the High Court to issue appropriate writs under Art. 226 of the Constitution, that clause must be considered to be ultra vires. ILR (1952) Hyd 791 : A I R 1953 Hyd 79 (89) (Pt L) (Pr 62) (DB).

—Art. 226 — Industrial Disputes Act (1947), S. 9 (1) — Cannot in any way affect the powers of the

High Court under Art. 226 of the Constitution. See Industrial Disputes Act (1947), S. 9 (1). A I R 1956 Madh B 183.

——Art. 226 — Assessment to tax challenged unsuccessfully under S. 66, Income-tax Act — Writ proceeding challenging vires of S 3 of Income-tax Act started later on under Art. 226 — Writ proceedings are not barred.

An unsuccessful challenge of the validity of the assessments in the earlier reference under S. 66 of the Income-tax Act, 1922, before the High Court does not operate as a bar to the writ proceedings, under Art 226 of the Constitution challenging the validity of S. 3, I. T. Act, 1922 under Art. 14 of the Constitution. It is not the province of the Income-tax Department or even the statutory Income-tax Tribunal, which is really the creation of the statute, to entertain any objection to a piece of legislation as being ultra vires or unconstitutional, and it would be beyond the jurisdiction of the High Court, functioning under S. 66 of the Act, which is narrow in its scope and reach, to consider and determine a question not properly within its sphere. The High Court, in a reference under the Indian Income-tax Act, does not sit as an ordinary Court of appeal in the matter of assessment. 1963 ITJ (Sup) 111 : ILR (1964) 1 Mad 954 : (1964) 54 ITR 151 : AIR 1965 Mad 68 (71, 73)(Pt B) (Prs 5, 12) (DB).

——Art. 226 — Powers of High Court — (Madras Cinema (Regulation) Rules (1957), R. 4) — If binds High Court.

Rule 4 of the Madras Cinemas (Regulation) Rules, 1957, which makes the decision of the Government as to the interpretation of these Rules final, cannot bind High Court, when it exercises its powers under Art. 226 of the Constitution. 71 Mad LW 344: (1958) 1 Mad L J 410 : 1958 Mad L J (Cr) 460 : 1958 Mad W N 382.

——Art. 226 — Scope — Enactment affecting power of High Court — (Municipalities — Madras District Municipalities Act (5 of 1920), S. 351-B).

Provisions of S. 351-B, Madras District Municipalities Act, cannot in any way affect the power of the High Court under Art. 226 to issue writs in suitable cases. 66 Mad L W 53 : (1953) 1 Mad L J 88 : AIR 1953 Mad 392 (394) (Pt C) (Pr 6).

——Art. 226—Service Rules—Circular of the Government of Bombay (No. 7573/33) dated 31-10-1950 — Interpretation — Government servant on deputation —Reversion to parent department — Position of — Servant to occupy position and draw salary as that occupied and drawn by his immediate junior colleague in parent department on date of reversion — Order placing him on lower position held amounting to infraction of right created by circular — R. 3, Bombay Civil Service Rules not a bar to exercise of jurisdiction under Art. 226 of the Constitution. See Government Servants. AIR 1962 Mys 146 (DB).

■ ——Art. 226 — Powers under, cannot be affected by legislative provision—Election dispute—C. P. and Berar Local Government Act (33 of 1948), S. 221.

The powers of the High Court under Art. 226 are untrammelled by a law made by the Legislature and even though S. 22 of the C. P. and Berar Local Government Act says that elections can be challenged only by way of an election petition before a Tribunal created by the Act, the jurisdiction of the High Court which is derived from the Constitution can in no way be affected. AIR 1954 S C 202, Ref. Kanglu Baula v. Chief Executive Officer, ILR (1954) Nag 875 : AIR 1955 Nag 49 (58) (Pt A) (Pr 22) (FB).

——Art. 226—Bar to writs—Power cannot be affected by legislative provision. AIR 1955 NUC (Nag) 148 (DB).

——Art. 226 — Jurisdiction under — Curtailment of by giving finality to orders by Act of Legislature —(Sales Tax — Orissa Sales Tax Act (14 of 1947), S. 22).

The powers of the High Court under Art. 226 which are derived from the Constitution, cannot be in any way circumscribed by an Act of Legislature in India, and consequently merely because some sort of finality is given to an order under any statute, e. g. (S. 22, Orissa Sales Tax Act) the jurisdiction of the High Court under Art. 226, cannot be curtailed. 23 Cut L T 221 : I L R (1957) Cut 189 : (1957) 8 S T C 749 : AIR 1957 Orissa 240 (241) (Pt E) (Pr 4) (DB).

——Art. 226 — Nature and extent of jurisdiction — Finality referred to in Rr. 24 and 25, Orissa Gram Panchayats Rules does not affect the jurisdiction of High Court under the Article — (Orissa Panchayats Act (15 of 1948), S. 114 (2) (ii) — Gram Panchayats Rules (1949), Rr. 24, 25). AIR 1955 NUC (Orissa) 4566.

——Art. 226 — Powers of High Court—Orissa Court of Wards Act (26 of 1947), S. 52 (1).

The High Court is not controlled by the limitations imposed by S. 52 (1) of the Orissa Court of Wards Act in the exercise of its powers under Art. 226 of the Constitution. AIR 1952 Cal 656, Rel. on. ILR (1952) Cut 529 : AIR 1953 Orissa 121 (128) (Pt C) (Pr 11) (DB).

——Art. 226 — Exercise of statutory powers—(Civil P. C. (1908), S. 9).

Where the terms of the statute are permissive and where it is left to the discretion of persons empowered to determine whether the general powers committed to them shall be put into execution or not, a fair inference is that the Legislature intended that the discretion should be exercised within the strict limits of the law. ILR (1952) Cut 529 : AIR 1953 Orissa 121 (128, 129) (Pt I) (Prs 12, 13) (DB).

——Art. 226—University elections—University Act providing remedy by way of application to Chancellor — Jurisdiction of High Court is not taken away.

The jurisdiction of the High Court cannot be said to have been taken away except to the extent that a competent legislative authority takes it away or limits it by a statute. The relevant statutes of the Utkal University can have no such effect, and do not in terms, exclude the power of the High Court in a case where the election to the fellowship of the University is concerned. Merely because, it has been prescribed that the Chancellor is to decide finally all such disputes it cannot be maintained that the power of the High Court is impliedly excluded. It must, however, be remembered that whether or not, the Court has the power, in an appropriate case, to issue a writ regarding an election dispute of the University, there can be no doubt that the Court will not ordinarily assume to itself the function which has been adequately provided for by the statutes of the University, except for grave and compelling reasons. (It was, however, held, that the matter did not fall within the scope of the Chancellor's decision.) AIR 1952 Orissa 359 (375) (Pt J) (Pr 35) (DB).

——Arts. 226 and 227—Override provisions of State Law giving finality to any decision of Court or Tribunal.

The provisions of Arts. 226 and 227 of the Constitution of India, override the provision of any law made by a State giving finality to the decision of any Court or Tribunal. ILR (1951) Cut 603 : AIR 1952 Orissa 244 (246, 247, 248, 250, 251) (Pt A) (Prs 4, 5, 6, 8, 9, 10, 12, 15, 17).

——Arts. 226 and 227 — Bar to writs — Prohibition in section does not affect High Court's jurisdiction under Arts. 226 and 227 of the Constitution. See Defence of India Act (1962), S. 18 (2). 1965 (1) Cri L J 205 : AIR 1965 Punj 86.

——Arts. 226 and 368 — Jurisdiction of High Court to consider validity of appointment of Industrial Tribunal—Industrial Disputes Act (1947), S. 9.

In England the Parliament is supreme and it can take away the right of the superior Court to issue writs of certiorari and so on by express words. In India, however, the Constitution is supreme, and neither the Parliament nor the State Legislature can take away the right conferred on the High Courts under Art. 226 of the Constitution. Such rights can only be abridged by an amendment of the Constitution, as provided in Art. 368. Section 9 of the Industrial Disputes Act, even though it may be very widely worded, cannot take away the jurisdiction of the High Court under Art. 226 of the Constitution, and it is open to the High Court, therefore, to consider the validity of the appointment of a particular person as the Industrial Tribunal. 1951 Raj L W 389 : ILR (1951) 1 Raj 361 : AIR 1951 Raj 161 (163) (Pt D) (Pr 7) (DB).

17 (c). Other provisions of Constitution.

● ——Arts. 32 and 363 — Petitions challenging validity of Bombay Act 39 of 1954 on ground that State Legislature had no power to enact it in view of Cl. 5 of Letters of Guarantee —Maintainability—Bombay Merged Territories and Areas (Jagirs Abolition) Act (39 of 1954).

The petitioners who were Jagirdars and relations of the Rulers of the erstwhile States which had merged in Bombay, filed petitions under Art. 32 challenging the vires of the Bombay Merged Territories and Areas (Jagirs Abolition) Act, 1953. The petitioners relied upon Clause 5 of the Letters of Guarantee which had been obtained by the Rulers of the erstwhile State from the Dominion Government and complained that the State Legislature had enacted the impugned Act which it had no power to enact having regard to Clause 5 of the said letters of guarantee and were wrongfully depriving the petitioners of the Jagirs, the ownership of which had been guaranteed thereunder.

Held, that the whole of the petitions were nothing else except the claim to enforce the petitioners' rights under the Letters of Guarantee, and the disputes therefore were clearly in respect of the agreements of merger and the Letters of Guarantee and were covered by Article 363 (1) of the Constitution. Hence if the petitioners were deemed to be parties to the agreements of merger and letters of guarantee they would be faced with the bar to the maintainability of the petitions under Article 363 of the Constitution. If on the other hand they were deemed not to have been parties to the same they would not be the contracting parties and would certainly not be able to enforce those obligations. AIR 1951 S C 253, Ref. to. Umeg Singh v. State of Bombay, (1955) 2 S C R 164 : 57 Bom L R 709 : 1955 S C J 472 : 1955 S C A 749 : AIR 1955 S C 540 (546) (Pt A) (Prs 10, 11).

● ——Arts. 226 and 329 (b) — Jurisdiction of the High Court under Art. 226—If excluded by Art. 329 (b) in regard to order of Returning Officer rejecting nomination paper for election to the State Assembly.

The High Court has no jurisdiction under Art. 226 of the Constitution to entertain petitions regarding improper rejection by the Returning Officer of nomination papers of candidates for election either to the House of Parliament or to the State Assembly. The jurisdiction of the High Court under Art. 226 has been excluded in regard to matters provided for in Art. 329 which covers all 'electoral matter.'

The scheme of Part XV of the Constitution and the Representation of the People Act, 1951, seems to be that any matter which has the effect of vitiating an election should be brought up only at the appropriate stage in an appropriate manner before a special tribunal and should not be brought up at an intermediate stage before any Court. Under the election law, the only significance which the rejection of a nomination paper has consists in the fact that it can be used as a ground to call the election in question. Art. 329 (b) was apparently enacted to prescribe the manner in which and the stage at which this ground and other grounds which may be raised under the law to call the election in question, could be urged. It follows by necessary implication from the language of this provision that those grounds cannot be urged in any other manner, at any other stage and before any other Court. Ponnuswami v. Returning Officer, Namakkal, 1952 Mad W N 209 : 90 Cal L J 160 : (1952) S C R 218 : 65 Mad L W 760 : (1952) 1 Mad L J 775 : 1952 S C J 100 : 1952 S C A 332 : AIR 1952 S C 64 (67, 68) (Pt A) (Prs 7, 8).

17 (d). Statutory bar.

● ——Art. 226 — Remedy under — Not affected by S. 84 (3) of C. P. Municipalities Act. See Municipalities—C. P. Municipalities Act (2 of 1922), Ss. 48, 83, 84 and 85. (1965) 2 S C J 741 : (1965) 2 I T J 657 : AIR 1966 S C 249.

——Art. 226—Bar to writs—Citizenship—Matters relating to acquisition of citizenship of foreign country —Jurisdiction of High Court to decide such question under Art. 226 — S. 9 (2), Citizenship Act no bar. 1950 A L J 461 : 1960 All W R (HC) 346 : AIR 1960 All 637 (640, 641) (Pt D) (Pr 8).

——Art. 226 —U. P. Court of Wards Act (1912), S. 11 —Section does not take away High Court's jurisdiction to issue writ of certiorari—See U. P. Court of Wards Act (4 of 1912), S. 11. AIR 1952 All 99 (DB).

——Art. 226 - Certiorari — Grant of—Jurisdiction of High Court — Special Act excluding jurisdiction of Civil Courts—Effect — Assam Agricultural Income-tax Act (9 of 1939), S. 44.

The jurisdiction to High Court in a proper case to grant the relief of certiorari under Art. 226 of the Constitution is not affected by the provisions of S. 44 of the Assam Agricultural Income-tax Act. (1963) 48 ITR 797 : I L R (1962) 14 Assam 359 : A I R 1962 Assam 98 (102, 103) (Pt B) (Pr 15).

——Art. 226 - Application for issue of writ of certiorari on Custodian General, Evacuee Property—Bar of jurisdiction—(Obiter)—Administration of Evacuee Property Act (1950), Ss. 4, 28 and 46.

The jurisdiction of the High Court to entertain an application for the issue of writ of certiorari to the Custodian General and a writ of prohibition to the Custodian of Evacuee Property is not barred by Ss. 4, 28 and 46 of the Administration of Evacuee Property Act. Case law discussed. AIR 1952 Bhopal 16 (20) (Pt C) (Pr 17).

——Art. 226 — Certiorari — Bombay City Police Act (1902), S. 27 (7)—Validity—Sub-section is repugnant to the provisions of Art. 226 and is consequently void under Art. 13 of the Constitution. See Bombay City Police Act S. 27 (7). AIR 1951 Bom 432 (DB).

——Art. 226 — Certiorari—Issue of writ—Sea Customs Act, S. 198, if bar.

Section 198 of the Sea Customs Act is not a bar to proceedings under Art. 226 of the Constitution. The right to apply to the High Court for a prerogative writ given by Art. 226 cannot be taken away by any

statute because if it was, the Courts would be bound to hold such a statute to be ultra vires the Article. However the High Court may consider whether or not it should issue a writ if no notice of the intended proceedings referred to in S. 198 of the Sea Customs Act had been given. That, however, would be a matter of discretion dependent upon the facts of the case. 56 Cal W N 452 : A I R 1952 Cal 656 (659, 660, 661, 662, 666) (Pt A) (Prs 30, 34, 35, 53, 92, (DB).

——Art. 226—Certiorari, writ of—Power of Court to issue—When taken away.

In order that power of a Court to issue writ of certiorari can be taken away by any statute there must be express negative words to take away the power.

But even in cases where certiorari is expressly taken away a writ may be issued if the inferior Court or tribunal has acted without or in excess of jurisdiction. (1898) 3 Q B D 509 and AIR 1931 Mad 122, Rel. on. 55 Cal W N 528 : 87 Cal L J 201 : AIR 1952 Cal 103 (108) (Pt C) (Prs 38, 39).

——Art. 226—Electricity Act does not exclude jurisdiction of High Court under Art. 226 or of the Supreme Court under Art. 32 to interfere in proper cases. See Ibid, Art. 19 (1) (f), (g). A I R 1965 Ker 253 (DB).

——Art. 226—Certiorari—Issue of, against orders of person exercising consensual jurisdiction.

Orders passed on the basis of consensual jurisdiction are not amenable to review or correction by the High Court under Art. 226. No writ of certiorari can therefore issue against a person or body exercising consensual jurisdiction. 1957 Ker L T 739 : (1957) Ker L J 712.

——Art. 226—M. B. Zamindari Abolition Act (13 of 1951), S. 15—Validity—Section does not trench upon jurisdiction conferred on High Court under Arts. 226 and 227—Section in so far as it excludes the jurisdiction of the High Court exercisable under these two Articles is ultra vires the powers of State legislature. (Per Kaul C. J.). See Tenancy Laws—Madhya Bharat Zamindary Abolition Act (13 of 1951), S. 15. AIR 1952 Madh B 57 (FB).

——Art. 226—Bihar Buildings (Lease, Rent and Eviction) Act (3 of 1947), Ss. 11 (1) (a) and 18 (3)—Jurisdiction of Controller to decide question of non-payment of rent—Interference by Civil Court. See Houses and Rents—Bihar Buildings (Lease, Rent and Eviction) Act (3 of 1947), S. 11 (1) (a). AIR 1954 Pat 24 (DB).

——Art. 226—Habeas corpus — Jurisdiction of High Court—Exclusion under S. 6, Abducted Persons (Recovery and Restoration) Act — Initial custody and detention under Act must be legal to oust jurisdiction of High Court. 1955 Cri L J 702 : AIR 1955 Pepsu 48 (51) (Pr 9).

——Art. 226—Bar of remedy — Taxation on Income (Investigation Commission) Act (1947), S. 9 — Civil P. C. (1908), S. 9.

Full effect has to be given to S. 9 of the Taxation on Income (Investigation Commission) Act (1947) and as that section bars the jurisdiction of any Court to scrutinize, except in the manner provided in S. 8 (5), the acts or proceedings of the Commission or of any authorized official thereof the High Court should not issue a writ of certiorari. AIR 1919 P C 31, Rel. on. 2 Ex. 352, Ref. 53 Pun L R 57 : 1951-20 ITR 77 : ILR (1951) Punj 165 : AIR 1951 Punj 74 (79) (Pt C) (Pr 25) (DB).

[Reversed on another point in AIR 1954 S C 207.]

17 (e). Other remedy available.

See Note 7.

18. Board of Revenue.

See Note 5.

19. Burden of proof.

——Art. 226—Burden of proof.

Where relief under Art. 226 is sought on allegations of infringement of rights it is always desirable that before proceeding further with the matter the Court should satisfy itself that such rights do exist. AIR 1953 S C 252, Rel. on.

Held, that the petitioner had no right which could conceivably be affected by the impugned order. AIR 1960 All 438 (440, 441) (Pt A) (Pr 7).

——Art. 226—Burden of proof — Land acquisition proceedings — Attack on ground of mala fides — Proof of mala fides — Land Acquisition Act (1894), S. 6 (1).

When the land acquisition proceedings are attacked by a petition under Art. 226 on the ground of mala fides the Court is concerned only with conduct of the Government which is the acquiring authority. The existence of mala fides on the part of Government cannot be a matter of inference but must be established affirmatively. Where no want of bona fides is attributed to the Government, the motives of the persons who urge the Government to start proceedings under the Land Acquisition Act are not quite relevant. AIR 1960 Andh Pra 343 (344) (Pt A) (Pr 3) (DB).

——Art. 226—Burden of proof.

It is for the petitioner to establish a valid right for the protection of which he can invoke the extraordinary jurisdiction of the High Court for the issue of any writ under Art. 226. ILR (1953) 5 Assam 354: AIR 1953 Assam 155 (156, 157) (Pt B) (Pr 6) (DB).

——Art. 226 — Application under Art. 226, Constitution of India—Burden of proof. See Municipalities—Bengal Municipal Act (15 of 1932), S. 6. AIR 1952 Cal 753 (DB).

——Art. 226—Burden of proof — Person invoking jurisdiction under Art. 226 must show that impugned order has occasioned injustice to parties.

The writ of certiorari is not a writ of course. It is a discretionary remedy. Hence, before a person can be entitled to invoke the prerogative power of the Court under Art. 226 of the Constitution, it must be shown that the order to be set aside must have occasioned injustice to the parties.

Where the order of the R. T. A. granting renewal of permits was manifestly without jurisdiction and the order of the Appellate Authority setting aside that order was also erroneous and illegal but did not work injustice to any party the extraordinary jurisdiction under Art. 226 could not be invoked to annul it. ILR 39 Pat 392 : 1960 B L J R 282 : AIR 1960 Pat 333 (338, 339) (Pt B) (Pr 9) (DB).

——Art. 226—Employees' Provident Funds Act (19 of 1952), S. 1 (3) — Employment of fifty or more persons — Prayer for issue of writ. Burden of proof is on employers to bring on record materials on which they wanted to base their prayer for issue of writ and if they fail, it must be assumed that there must have been fifty or more employees engaged in the company; (Evidence Act (1872), Ss. 101-104). See Employees' Provident Funds Act (1952), S. 1 (3). AIR 1958 Pat 314a.

——Art. 226—Municipalities—Punjab Municipal Act (1911), S. 16 — Removal of member — Mala fides—Question of fact — Onus is on petitioner — (Evidence Act (1872), Ss. 101 to 103). See Municipalities—Punjab Municipal Act (3 of 1911), S. 16. AIR 1955 N U C (Punj) 4990.

20. Certiorari.

See under Part B, (Notes 126 to 185).

21. Circumvention of orders under Art. 226.

——Art. 226—Attempt to circumvent proceedings in Court.

If a party, knowing that his opponent has either approached the Court or is taking steps to approach it for a certain specific relief, does anything to make the grant of the relief, by way of prevention, ineffective, the Court has always jurisdiction to pass orders even in ordinary cases, in a mandatory form and to direct restoration of the status quo ante in the manner and to the extent possible. It will be a fortiori case when the relief claimed is for a grant of any of the writs or directions contemplated by Art. 226 of the Constitution of India. 1950 Ker L T 645 : AIR 1951 Trav Co 226 (2) (228) (Pr 13) (DB).

22. Civil Procedure Code, applicability of.

——Art. 226—Civil P. C. (1908), O. 2, R. 2—Applicability — Bar of O. 2, R. 2 may not apply to petition under Art. 226 of the Constitution. See Civil P. C. (1908), O. 2, R. 2. AIR 1962 S C 1334.

——Art. 226—Provisions of Civil P. C. do not govern proceeding under Art. 226—One petition for certiorari for quashing four distinct orders made by taxing authority under U. P. Sales Tax Act and Central Sales Tax Act—Petition is not maintainable — Civil P. C. (1908), S. 141—AIR 1960 All 366, AIR 1956 Mad 626, AIR 1962 Punj 55 and AIR 1954 Raj 185, Rel. on. AIR 1961 S C 372, Disting. ILR (1965) 1 All 647: 1965 All L J 308 : AIR 1965 All 517 (518, 519) (Prs 3, 4, 6, 8, 9) (DB).

——Art. 226—Order passed by Industrial Tribunal in a dispute between a canteen committee and its workers having no trade union — Application by some of the workers, on behalf of all, to quash the order —No leave of Court obtained by the petitioners to apply in representative capacity under O. 1, R. 8, Civil P. C. read with R. 11 of the High Court — Canteen committee which was not a juristic personality and not the members of the committee impleaded as respondent — Held, that the application was not properly filed—Civil P. C. (1908), O. 1, R. 8. (1964) 1 Lab L J 134 : (1963) 7 Fac L R 121 (Cal).

——Art. 226—Civil P.C. (1908), O. 23, R. 3—Provisions do not prima facie apply to writ petitions— Constitution of India, Art. 226, See Civil P. C. (1908), O. 23, R. 3. (1963) 2 Mys L J 164 (FB).

——Art. 226 — Procedure — Averments in petition not traversed—(Civil P. C. (1908), O. 8, Rr. 3 and 5).

An express denial of an allegation in a statement of claim is called a traverse. When the matter is within the knowledge of the defendant, he generally denies any statement which he disputes. When it is not within his own knowledge, he usually "does not admit" it. The proceedings under Art. 226 are civil proceedings, and, subject to the rules made by the High Court to regulate proceedings under that Article are regulated by the Civil P. C. Hence averments in petition under Art. 226 which are not traversed by the respondents must be held to be admitted. I L R (1954) Nag 935 : 1955 Nag L J 332 : AIR 1956 Nag 27 (31) (Pt B) (Pr 13) (DB).

——Art. 226—Civil P. C. (1908), O. 30, R. 1— Applicability to petition under Art. 226. See Civil P. C. (1908), O. 30, R. 1. AIR 1953 Pepsu 88.

——Art. 226—Amendment of writ petition—Application for not quoting verbatim words of amendments sought as required by O. 6, R. 17, Civil P. C. as amended by Punjab— Amended copy of writ petition filed along with application for amendment and advance copy of same served on opposite party— Application though not in strict compliance with O. 6, R. 17, allowed. Civil P. C. (1908), O. 6, R. 17 (Punj). 1965 Pun L R (Sup) 703.

——Art. 226—Writ of certiorari or mandamus—Petitioner showing slackness in prosecution of election petition —Respondent supporting the petition can be allowed to lead evidence in support of the petition— There is no provision express or implied which creates a bar to such procedure—Matter governed by O. 18, R. 2, Civil P. C. — There is no error in order of Tribunal allowing such evidence to be adduced justifying interference by issuance of writ. See Representation of the People Act (1951), S. 90 (1). AIR 1964 Punj 105.

——Art. 226 — Rule of implied admission by non-traverse—Object — Not strictly applied to pleadings in India — Facts can be proved by other evidence——Applicability to writ proceedings. See Civil P. C. (1908), O. 8, R. 5. AIR 1964 Punj 15.

——Art. 226 —Proceedings under — Ex parte order— Setting aside of — Inherent jurisdiction, See Civil P. C. (1908), S. 151. AIR 1953 Raj 201 (DB).

——Art. 226—Right to file affidavits — (Civil P. C. (1908), O. 19).

In proceedings under Art. 226 the provisions contained in O. 19, Civil P. C. except as regards cross-examination of deponents can and should be followed. To confine parties to one affidavit would be improper as there is no reason to do and as it, if done, would stand in the way of the Court getting elucidation of necessary facts. Hence an affidavit in reply and rejoinder, as the case may be as also an application for leave to amend are permissible. A I R 1951 S C 97, Ref. to. ILR (1952) Trav Co 960 : AIR 1953 Trav Co 146 (150) (Pt A) (Pr 10) (DB).

23. Civil servant, dismissal of.

See also Notes under Ibid, Arts. 310 and 311.

(a) Civil servant.
(b) Authority to dismiss or terminate.
(c) Retirement.
(d) Contract basis, person employed on.
(e) Disciplinary proceedings.
(f) Finding of enquiry.
(g) Contravention of principles of natural justice.
See also Note 78.
(h) High Court, powers of.
(i) Service Rules, enforceability of.
(j) Non-compliance with procedure.
(k) Suspension.
(l) Justiciability of punishment,
See Note 23 (h).

23. Civil servant, dismissal of.

See also Notes under Ibid, Arts. 310 and 311.

——Arts. 226, 311 — Final order of dismissal not passed — Writ cannot be issued at the stage of enquiry.

It is only the final order of dismissal which can be challenged in a writ petition. So far as the stage of enquiry is concerned, no objection can be taken because the inquiring authority need not be the punishing authority. AIR 1962 All 166 (174) (Pt G) (Pr 32).

——Art. 226 -Applicability —Wrongful dismissal in contravention of Art. 311 (2) — Remedy — Certiorari or mandamus. See Ibid, Art. 311 (2). AIR 1961 All 122.

——Art. 226—Powers of High Court.

The High Court cannot interfere with the decision of the executive authorities on any consideration of alleged injustice. An order removing an official of the State can be quashed by the High Court only if it was passed without jurisdiction, in excess of jurisdiction or without complying with the conditions laid down in Art. 311. If however the order was within jurisdiction and not otherwise illegal, it cannot be set aside by the High Court on the ground, that in its opinion, it is harsh or unjust or oppressive. AIR 1960 All 304 (309) (Pt C) (Pr 17).

——Art. 226—Interference—Conditions—Government servant refusing to carry out order of transfer—Removed from service by Governor — Order not challenged on grounds contained in Art. 310 or 311—No interference under Art. 226. See Ibid, Art. 310. 1958 All L J 218 : (1958) 2 Lab L J 673.

——Art. 226—Petitioner admitted to Service Commission Examination on the basis of particulars of marks detailed in true copies of certificates—Appointment made after passing examination — Subsequent discharge on the basis of same particulars detailed in original certificate—Principles of estoppel—Order of discharge improper.

Held there does not appear to be any rule which authorises the Secretary, Public Service Commission to accord provisional permission to appear for competitive examinations. The provisional inclusion is nothing more than requiring him to produce the original documents of which true copies had already been furnished by him to the Public Service Commission at the time of his applying for permission to appear for the competitive examination. The provisional nature, therefore, related only to the correctness of the true copies furnished by the petitioner. It is not gainsaid that the copy furnished by the petitioner to the Public Service Commission at the time of his applying to appear for the examination was a true copy of the original S. S. L. C. register. Thus, the petitioner had acquitted himself properly in this regard. When the impugned order was passed he was 27 years old, two years older than the maximum age prescribed for entering Government service. He would be barred from seeking fresh Government ministerial service, if he is now discharged. Here lies the injustice and hardship to the petitioner. The petitioner cannot legitimately be penalised for any act of commission or omission of the respondents. This is a case where the petitioner had placed all the available material truthfully before the Public Service Commission, and by their conduct, the Commission caused the petitioner to act on the faith of the existence of a state of affairs which, to his great detriment he was told, more than two years later, did not exist. In the name of the alleged correction of a mistake, the respondents cannot seek to do this amount of harm to the petitioner. (1965) 2 Andh W R 437 : AIR 1966 Andh Pra 59 (60, 61, 62) (Prs 3, 4, 5, 6).

——Art. 226 — Rules for Grant of Recognition and Aid to Elementary Schools, R. 13 (2) (ii) Proviso — Termination of service for gross insubordination — Previous approval of Deputy Inspector of Schools — Necessity — Re-instatement—Interference with. See Madras Elementary Education Act (8 of 1920), S. 53. (1959) 1 Andh WR 386.

——Arts. 226 and 311—Administrative order—Order suspending and dismissing public servant is quasi judicial order—Application under Art. 226, is maintainable.

Mere calling an order an administrative order by an executive authority does not absolve it from the jurisdiction of the High Court. If the order is required to be passed on objective consideration and standards, i. e., where the authority passing the order has to consider the case of the party, the evidence and arguments for or against him and such other matters before passing the order, it is quasi-judicial order and the High Court has power to examine and interfere with it. AIR 1952 Cal 901; AIR 1953 Mys 156 (FB), Rel. on.

The fate of a public servant cannot be decided arbitrarily by superiors merely on subjective consideration but as laid down under Art. 311 (2) of the Constitution, certain procedure is to be followed. He has to be heard after notice and then alone considering the case, the evidence and the arguments, the superior authority can pass an order on the objective consideration of the matters before him. The order suspending a public servant and dismissing him is therefore a quasi-judicial order and the Judicial Commissioner's Court can entertain the petition under Art. 226 of the Constitution. AIR 1953 All 739, Ref. AIR 1954 Bhopal 25 (27) (Pt B) (Prs 10, 11).

——Art. 226 — Jurisdiction — Government servants under former Madhya Pradesh State serving in districts now forming part of Bombay State—Dismissal prior to 1-11-56 by Madhya Pradesh State—Petitions under Arts. 226 and 227 challenging order of dismissal against Bombay State filed in Bombay High Court—Maintainability. See States Reorganisation Act (1956), S. 88 (b). AIR 1959 Bom 363 (DB).

——Art. 226 — Certiorari — Dismissal from service under Life Insurance Corporation Staff Regulation, 39 — Negligence in securing business for Life Insurance—On consideration of explanation, dismissal held proper. (1965) 11 Fac L R 196 (Cal).

——Art. 226 — Dismisal of government servant — Failure to consult Public Service Commission—Does not affect the validity of the order. See Ibid, Art. 311. AIR 1962 Guj 197 (DB).

——Art. 226—Constitution of Jammu and Kashmir, S. 126—Order of removal from service—Whether by way of punishment — Question of intention—Order discharging person on probation—Held, was by way of punishment—Section 128 applied. See Constitution of Jammu and Kashmir, S. 126. AIR 1961 J & K 7.

——Art. 226—Person employed in an officiating capacity—Employee has no right to hold the post—He can be reverted to the post which he holds permanently—Person confirmed on a post—Post abolished as not required in public interest — Confirmed employee cannot insist that the post be retained whether required or not. AIR 1962 S C 794, Rel. on; AIR 1957 Pat 555, Foll. 1965 M P L J (Notes) 179.

——Arts. 226 and 311 — Dismissal of Government servant not for "substantial misdemeanours" but for minor irregularities—Court will interfere. AIR 1965 Mad 502.

——Arts. 226 and 309—Order of dismissal against Government servant with retrospective effect—Legality. See Ibid, Art. 311. AIR 1963 Manipur 28.

——Art. 226 — Grounds for issue of writ—Government servant—Government employees appointed to substantive posts — Retrenchment — Government is obliged to provide for alternative employment of equally remunerative character—If employees are not holding substantive post, there is no such obligation—Selection of Forest Gate-keepers remunerated on commission basis to the post of Forest Gate-keepers remunerated on salaried basis — Petition under Arts. 226 and 311 by those not selected on ground of unsuitability — There is no termination of their services by way of punishment—No interference under Art. 226 justified. See Ibid, Art. 311. AIR 1957 Orissa 27 (DB).

——Arts. 226 and 311 (2) — Disciplinary action against servant—Punishment of.

Where in proceedings drawn up against the petitioner a clerk in the service of a District Board, items 1 to 3 were mentioned to show that the warnings given previously in respect of those three matters had proved abortive and he did not reform himself, and instead of improving he had committed negligence of duty as disclosed by the real and new charge No. 4 and on the admission of the petitioner himself he was guilty of negligence of duty.

Held, that in the circumstances, the grievance of the petitioner that either he had been doubly punished or that the earlier proceedings formed charge of the second proceeding was not correct. 1957 B L J R 897 : AIR 1957 Pat 333 (339) (Pt D) (Prs 40, 41) (DB).

——Art. 226 — Tripura Merger Agreement (1949), Art. 8 (1)—Former employee of Tripura State—Rights of, on merger into Union — Employee asked to get himself medically examined before being absorbed—Refusal and consequent retrenchment — Order does not amount to dismissal or removal from service — Art. 311 of Constitution not applicable. See Tripura Merger Agreement (1949), Art. 8 (1). AIR 1961 Tri 29.

——Art. 226—Dismissal of public servant—Duty of Government — Right of public servant—Infringement—Protection under Art. 226. See Ibid, Art. 311. AIR 1956 Tripura 33.

——Art. 226—Dismissal for want of necessary qualification—No Interference. See Ibid, Art. 311. AIR 1956 Tripura 33.

23 (a). Civil servant.

——Art. 226 — Applicability — Teacher in District Board School — Post is not civil — The post of a teacher in a school under the management of a District Board cannot be said to be a civil post within the meaning of Art. 311 of the Constitution. Therefore, the order of the Local Board removing such a teacher from service cannot be quashed under Art. 226. See Ibid, Art. 311. AIR 1960 Andh Pra 342.

——Art. 226 — Persons to whom Art. 311 applies—Administrator and teacher in Government aided school are not Government servants — They are not entitled to any remedy by way of writ petition. See Ibid, Art. 311. (1963) 6 Fac L R 42 (Cal).

——Arts. 226, 12, 311, Sch. 7, List 2, Entry 5 — "Other authorities" in Art. 12—Meaning of—Company incorporated under Companies Act — Chemicals and Allied Products Export Promotion Council — Not "other authority" within Art. 12—Employee of Council not "civil servant" governed by Art. 311—Council dismissing employee—Order cannot be made subject-matter of high prerogative writ. See Ibid, Art. 12. AIR 1962 Cal 10.

——Arts. 226 and 311—Civil post under State — District Judge dispensing with services of copyist—Quashing of order — (High Court Rules and Orders—Patna High Court's General Rules and Circular Orders, Civil, Vol. I, Part 4, Chap. 2, R. 4).

Per Rai and Sinha, JJ.—A copyist appointed under the provisions of R. 4 cannot be said to hold a civil post under the State of Bihar within the meaning of Art. 311 nor can the order dispensing with the services of sub-copyist amount to his dismissal, removal or reduction in rank within the meaning of Art. 311 (2). These expressions are technical terms not construable in the popular sense. The order dispensing with the services cannot therefore be quashed on the ground of its having violated the provisions of Art. 311. AIR 1953 Pat 92, Foll. 1956 Pat L R 261 : I L R 35 Pat 312 : AIR 1956 Pat 257 (258) (Pt F) (Pr 4) (DB).

——Art. 226—"Person holding a civil post"—Temporary employee of Government — Cannot be dismissed without giving him opportunity of showing cause against the action proposed. See Ibid, Art. 311 (2). AIR 1952 Sau 40 (DB).

23 (b). Authority to dismiss or terminate.

——Arts. 226, 311—Scope—Petitioner unqualified to hold post — Termination of services by person not authorised—No interference in writ jurisdiction.

It is not every technicality in which the High Court will interfere in its writ jurisdiction. The petitioner must have some fundamental right in him on which he can press his petition. If the petitioner is not qualified to hold the post even if the termination of his services is made by a person not authorised to terminate, the High Court will not interfere on that mere technical ground. AIR 1961 All 292 (293) (Pt A) (Pr 2).

——Arts. 226, 225, 227 and 311—Applicability—Petitioner serving in sarf-e-khas army in former Hyderabad State—Order of dismissal passed by H. E. Nizam in his private capacity after accession of State to Indian Union—Writ petition—Maintainability—Article 311 not applicable. See Ibid, Art. 225. ILR (1962) Andh Pra 278.

——Arts. 226, 311 (1)—Appointing authority whether had made appointment—Question of fact - Dismissed person when can obtain relief under Article. See Ibid, Art. 311 (1). AIR 1959 Cal 103.

——Arts. 226 and 311 — Petitioner removed from service by authority subordinate to authority which appointed him—Order is in clear violation of Art. 311 and must be quashed. 1959 Ker L R 1117.

——Arts. 226 and 311—Powers of High Court—Head Constable appointed by Inspector-General of Police, Gwalior—Dismissal by Deputy Inspector-General of Police, M. B. — Presumption as to rank of dismissing authority —:High Court if can be asked to call upon State to make disclosure regarding rank of authority.

Where a head constable appointed by the Inspector-General of Police, Gwalior, was dismissed by the Deputy Inspector-General of Police, Madhya Bharat, and he in his petition under Art. 226 made no averments as to whether the Deputy Inspector-General of Police, Madhya Bharat, could on any consideration be said to be an authority subordinate to the appointing authority, viz., Inspector General of Police, Gwalior, nor was it stated that on integration he was re-appointed by the Inspector General of Police, Madhya Bharat or any such authority.

Held, that under the circumstances it was difficult to make any presumption as regards the rank of an authority in the former merged State in comparison with that of any existing authority in the absence of definite materials with respect to the same and that the High Court could not be asked to call upon the State at that stage to disclose whether the petitioner was re-appointed in the integrated set-up and if so what was the authority which appointed him. 1956 Madh B L J 561 : Madh B L R 1955 Civ 258 : AIR 1956 Madh B 257 (258) (Pt A) (Prs 5, 6).

23 (c). Retirement.

——Art. 226 — Government servant compulsorily retired—He has no legal remedy. See Ibid, Art. 311. 1954 All L J 40 : AIR 1954 All 343 (DB).

——Arts. 226, 311 (2)—Order for compulsory retirement—Mention in order that conduct of Government servant not upto standard—Art. 311 (2) is not attracted—Order is not converted into order of dismissal or removal — There is no element of charge or imputation in case of compulsory retirement — Specification of ground was redundant and did not control legal

effect of the order — (Civil Services Regulations, R. 465A). See Ibid, Art. 311 (2). AIR 1958 Bom 90.

——Arts. 226, 310 and 311 — Powers of High Court —Order for compulsory retirement of Government servant — Jurisdiction of High Court—(Kerala Civil Services (Classification, Control and Appeal) Rules (1957), R. 9).

The office of a Tahsildar in the service of the State of Kerala is held during the pleasure of the Governor and an order for his compulsory retirement amounts to a removal from service within the meaning of Art. 311.

The use of the words "for good and sufficient reason" in R. 9 of the Kerala Civil Services (Classification, Control and Appeal) Rules, 1957 would not empower the Court to enquire into the sufficiency of the reason or the goodness of it because the rules framed under Art. 309 cannot possibly alter the character of the post held by the petitioner from one held at pleasure to one from which removal is possible only for "cause". 1958 Ker L J 1035 : 1959 Ker L T 137 : (1959) 1 Lab L J 144 : I L R (1959) Ker 273 : AIR 1959 Ker 201 (202) (Prs 5, 6, 10) (DB).

——Art. 226—Petitioner absent from duty — Departmental enquiry for absence held but later leave for whole period of absence granted — Grant of leave retrospectively authorised absence from duty — No action could be taken for absence—Having authorised petitioner's absence from duty, removal on ground of such absence is illegal and perverse — Order of removal quashed by certiorari. AIR 1964 SC 364, Rel. on. 1964 M P L J (Notes) 202: (1964) 9 Fac L R 93.

——Arts. 226 and 311— Interference — Compulsory retirement of Government servant — Order not infringing any legal right under the Service Rules — Application under Art. 226 misconceived— "Earned leave."

The petitioner was an officer of the Indian Police Service. The Government enquired into certain complaints against him and came to the conclusion that his compulsory retirement was necessary in the public interest. But they served a notice on him under R. 17 (2), All India Services (Death cum Retirement Benefits) Rules, 1958, informing him that he would be compulsorily retired on the expiry of three months from the date thereof (the result of which would be to deprive him of the earned leave due to him.) He challenged the order under Art. 226.

Held, (1) The petitioner had no legal right in view of the provisions of Rr. 3 and 9 of the All India Services (Leave) Rules, 1955, to any leave. (2) R. 17 (2) of the All India Services (Death cum Retirement Benefits) Rules, 1958, applied to him and therefore his retirement under the Rules was proper. (3) Rule 17 (2) was not void or inoperative inasmuch as the supposed right to earned leave was not a legal right. (4) The omission to give opportunity to show cause did not render the order unlawful, because no punishment was involved. AIR 1954 S C 369 and AIR 1957 S C 892, Rel. on. (1961) 1 Lab L J 272 : (1960) 1 Fac L R 364: ILR (1960) Madh Pra 59 : 1960 M P C 174 : 1960 M P L J 392 : 1960 Jab L J 428 : AIR 1960 Madh Pra 252 (253) (Prs 4, 5, 6, 7, 8) (DB).

——Art. 226—Rule 465-A of the Civil Service Regulations is not applicable to a Circle Inspector of Police. It is applicable to Police Officers of I. P. S. only as mentioned in R. 349-A — Note 1 under R. 465A, reserves to competent authority an absolute right to retire, without giving any reason, any officer serving under it, who has completed qualifying service of 25 years— Such a provision is not violative of Art. 311. 1958 M P L J (Notes) 115.

[Reversed in 1960 M P L J (Note) 195.]

——Art. 226 — Fundamental Rules (3rd Edn.) Ch. IX, Rr. 69 and 86 — Leave granted to Government servant preparatory to retirement—Such leave continuing after date of retirement — Right of Government servant to withdraw request for permission to retire.

Where a Government servant has been granted leave preparatory to retirement and such leave is to continue after the date of retirement within Fundamental R. 88 he can under the proviso to R. 69 withdraw his request for permission to retire before he has actually retired and not after the date of retirement. ILR (1952) Punj 562: AIR 1952 Punj 412 (414) (Pt B) (Pr 19) (DB).

——Art. 226 — R. 11 of Ajmer Merwar Municipalities Regulation does not confer upon Municipal employee right to continue in service after retirement age of 55 years — Writ petition claiming right to continue in service after that is not maintainable. See Municipalities — Ajmer-Merwar Municipalities Regulation (6 of 1925), S. 247. ILR (1963) 13 Raj 1096.

23 (d). Contract basis, person employed on.

——Art. 32 (1) — Termination of contractual service by notice — Remedy of writ held to be misconceived. See Ibid, Art. 311. (1953) S C J 323 : AIR 1953 S C 250.

——Art. 226—Termination of service according to terms of contract — Proper remedy for employee aggrieved by the termination is not a writ under Art. 226. See Ibid, Art. 311. 94 Cal L J 148: AIR 1954 Cal 561.

——Arts. 226 and 311 — Temporary employee of Government—Contract to terminate temporary service on one month's notice — Contract and condition are valid and binding. See Ibid, Art. 311. AIR 1955 All 496.

——Arts. 226, 311, 309, 310—Applicability—Civilian employed in defence service— Termination of service in terms of contract — Art. 311 does not apply— (Civilians in Defence Services (Classification, Control and Appeal) Rules (1952), Rr. 3, 13, 15). See Ibid, Art. 311. AIR 1956 Cal 532.

——Arts. 226, 310 and 311— Interference—Grounds —Railway servant — Appointment made subject to character and antecedents being verified by civil authorities — Service terminated on receipt of unsatisfactory report — Interference.

Where the terms of the contract of service which the applicant had with the Railway provided, inter alia, that his appointment was subject to his character and antecedents being satisfactorily verified by the civil authorities, in accordance with the rule in force from time to time, the High Court will not interfere with the order terminating his services. 62 Cal W N 852: (1959) 1 Lab L J 141: AIR 1958 Cal 654 (656) (Pt C) (Pr 12).

——Arts 226, 311 (2) and 16—Termination of service of Government servant — Appointment made on provisional basis terminable by month's notice on either side—Service terminated without such notice—Order of termination not for misconduct — Order also not indicating any other reason — Petitioner challenging order as capricious, arbitrary and mala fide on the ground that his juniors were retained in service and a new recruit was appointed in his own place — Government stating in its counter affidavit that the termination was due to the petitioner having been found unsuitable on the ground of character and antecedents — Record regarding verification of character and antecedents not placed before Court— Held, that the order should be quashed for the reasons that it violated the terms of appointment and it was arbitrary and mala fide — The Court has to accept the allegation of the petitioner regarding the

mala fide of the Government in the absence of proper disclosure by the Government. AIR 1960 S C 610, Rel. on. 1963 Ker L J 1168; 1963 Ker L T 1167: ILR (1964) 1 Ker 153 ; 1964 (8) Fac L R 72.

——Art. 226 — Termination of service — Petition for writ against employer — Maintainability — Proper remedy—(Master and Servant — Resignation of servant—Acceptance of, if necessary for termination of service).

The petitioner was confirmed in his appointment as an Electrical Supervisor in the Indian Institute of Science. Bangalore, with effect from 2nd May, 1950 and was to hold the appointments till the age of 60. Under the terms of employment the services could be terminated on either side with six months' notice. The petitioner wrote a letter dated 11th May, 1953 in which he tendered his resignation on account of certain charges made against him. On 17th June, 1953 he however wrote another letter by which he purported to withdraw his offer to resign. The Institute authorities however refused to allow him to withdraw his resignation and treated his employment as terminated at the end of six months from the date of letter of resignation. The petitioner thereupon filed a petition under Art. 226 for a writ to the Institute authorities declaring that he was still in service and requiring them to admit him to the post and let him work without let or hindrance:

Held, (i) that the contention of the petitioner that his letter of resignation dated 11th May, 1953 conveying notice of six months did not amount to unconditional resignation or that it required acceptance before the offer to withdraw was made, could not be accepted. From the terms of the letter of 11th May, 1953 it was clear that no acceptance of its terms was ever contemplated or required and that it was in the nature of a notice by which the petitioner said he had resigned or renounced his job and would cease to work from a date six months later. Nothing more was therefore necessary to be done either by him or by the employers in pursuance of the notice which has put an end to the contract of service in a manner stipulated between the parties themselves.

(ii) that it was not a proper case in which a writ ought to be issued. The terms and conditions of service between the Institute and the petitioner were not governed by any statute or rules having the force of law the obedience to which could be enforced through a writ. Nor did the case raise any question of any judicial enquiry or quasi-judicial enquiry by any authority which could be corrected by a writ of certiorari. AIR 1953 Cal 581, Ref. to.

(iii) that the remedy, if any, of an employee in such a case where it was alleged that a breach of contract of service had taken place would obviously be by a suit and not through an application for a writ. A I R 1952 Cal 610, Rel. on. 34 Mys L J 181 : (1957) 1 Lab L J 285; I L R (1954) Mys 259; A I R 1954 Mys 158 (160) (Prs 4, 5, 6) (DB).

——Art. 226—Action for arrears of salary for suspended period—Limitation—Claim barred by limitation — Relief cannot be granted in writ petition — High Court will not in writ jurisdiction enforce civil liability arising out of breach of contract or tort—Limitation Act (1908), Art. 102.

The petitioner who was the District Health Officer on 1st June, 1950 when he was suspended on charges of misconduct was dismissed after departmental enquiry on 12th March, 1954. The High Court quashed the order of dismissal on 13th April, 1959 and directed the State to refer the case of the petitioner to Administrative Tribunal under the Disciplinary Proceeding (Amininistrative Tribunal) Rules, 1951.

Held, (i) that when the High Court quashed the order of dismissal, the right to full salary from 1st June, 1950 to 12th March, 1954, accrued due to the petitioner with effect from 13th April, 1959 and he was entitled to the said arrears. A I R 1954 S C 245 and AIR 1962 S C 1334, Rel. on. (ii) that the claim, however, was barred by limitation and the High Court in its discretion under Art. 226, could not grant the relief. A I R 1947 F C 23 and A I R 1961 S C 1506 and A I R 1960 Orissa 79, Rel. on. (iii) (Obiter) that even if the claim had not been barred by limitation, the High Court would not ordinarily exercise its jurisdiction to grant the relief for enforcing a civil liability arising out of a breach of contract or a tort. A I R 1962 S C 1320 Rel. on. (1965) 1 Lab L J 173 ; (1965) 7 O J D 147; AIR 1964 Orissa 241 (243) (Pt A) (Pr 4) (DB).

——Art. 226—Service on contract basis — Discharge from—Legality. See Ibid, Art. 311. AIR 1957 Pat 325 (D B).

——Art. 226 — Termination of service in terms of contract of service — Notice not necessary. See Ibid, Art. 311. AIR 1957 Pat 10.

——Art. 226—Employment on contract—Discharge—Legality. See Ibid, Art. 311. 1957 B L J R 155.

——Art. 226 — Contract of service — Irregularity in termination of service—Proper remedy.

Where there is some irregularity in the matter of the notice given to an employee in accordance with the terms of his service agreement, the irregularity may give him a cause of action for claiming damages and the employee may, if he is so advised, make a claim for such compensation as he thinks he is entitled to, in a properly constituted suit. But no writ can be issued under Art. 226 directing that the employee be reinstated in his post. (1958) 1 Lab L J 324 : 1956 B L J R 49 : AIR 1956 Pat 23 (27, 28) (Pt C) (Pr 13) (DB).

23 (e). Disciplinary proceedings.

——Art. 226 — Public servant — Departmental enquiry into misconduct — Power of High Court under Art 226 to interfere with findings — Power to review evidence — Rule to prove offence in criminal trial beyond reasonable doubt — Not applied in proving misconduct — Findings of departmental authorities whether vitiated — Statement of facts accompanying charge sheet — Ground of misconduct stated in statement but not in charge-sheet — Enquiry whether vitiated. See Ibid, Art. 311. AIR 1963 S C 1723.

——Art. 226 — Disciplinary proceedings against an officer of the composite State — Non-compliance with rules. See Ibid, Art. 311 (2). (1959) 2 Lab L J 569 (Andh Pra).

——Art. 226—Disciplinary proceedings against Government servant — Proceedings started with view to take action for certain questionable acts done by said servant while serving in Bellary—Proceedings started in Madras State transferred on formation of Andhra State to that State at request of Government servant—Jurisdiction of Andhra State questioned in High Court in writ proceeding filed against order of removal of said servant by Government of Andhra State—Held, apart from inconsistent attitude of petitioner no injustice had ensued to Government servant. 1959 Lab L J 569 (Andh Pra).

——Art. 226—Master and Servant—Municipal servant—Suspension with retrospective effect not legal—No injustice caused to him. AIR 1960 Bom 274.

——Arts. 226, 311 (2)—Damodar Valley Corporation Act (1948), Ss. 7, 60 (2) (b) — Dismissal of servant of Corporation—Issue of writ of certiorari.

In order that a writ of certiorari may issue for quashing the departmental proceedings and the order of dismissal which follows as a result of such proceedings, it must be shown that an obligation or duty

has been imposed by Statute upon the employer to act judicially or quasi-judicially in relation to such inquiry.

There is nothing in the Damodar Valley Corporation Act which makes it incumbent upon the Corporation to make regulations imposing a duty on the Corporation to hold a judicial or quasi-judicial enquiry into the charges of misconduct of its officers. There is therefore no duty either express or implied in the Corporation to act judicially or quasi-judicially in matters of dismissal of its employees and hence a writ of certiorari cannot issue.

Further, the different provisions of the Damodar Valley Corporation Act, 1948, indicate that the Corporation has a separate and independent existence and is a different entity from the Union or State Governments. Its servant cannot, therefore, be treated as an officer holding a civil post under the Union and/or the State Government and as such there is no duty upon the Corporation to act judicially imposed by Art. 311 (2) of the Constitution. **A I R 1953 Cal 581** (582, 583) **(Pt A) (Prs 4, 8).**

——Arts. 226 and 311 (2) — Disciplinary proceedings —Finding of enquiring authority — High Court has jurisdiction to question whether there is no evidence in support of finding. **A I R 1966 Him Pra 13 (16) (Pt B) (Pr 16).**

——Arts. 226 and 311 — Disciplinary proceeding against Government servant — Acquittal by Criminal Court of charges on identical facts — Effect. **A I R 1965 Mad 502.**

——Arts. 226 (1) and 363 (1) — Dispute arising out of Covenant—Jurisdiction to entertain petition under Art. 226

Where in a petition for a writ quashing the State's order prematurely retiring the petitioner from service, the petitioner does not pray for enforcement of anything contained in the Covenant entered into by the Princes to form Pepsu, nor does the dispute arise out of any of its provisions, the mere fact that the State, in addition to the rules of services, also relies upon one of the articles of the Covenant to justify its action does not amount to saying that the dispute arises out of the Covenant, and does not oust the jurisdiction of the High Court to entertain the petition or to grant any relief thereon. **I L R (1955) Patiala 327 : A I R 1955 Pepsu 65 (72) (Pt F) (Pr 21) (DB).**

——Art. 226 — Departmental enquiries — Final disposal of enquiry—Re-opening of. ILR (1953) **Patiala 639 : AIR 1954 Pepsu 129.**

——Art. 226 — Assets and liabilities of State undertaking taken over by Corporation constituted under Statute—Corporation has the right to proceed with pending disciplinary proceedings against the employee transferred to its services and continuing in such services and to punish him — Whatever other remedy the aggrieved employee, who does not hold any civil post, may have, he cannot seek redress under Art. 226 of the Constitution. Misc. Petn. No. 225 of 1957, dated 19-11-1958 (M. P.), Rel. on. **1964 M P L J 432.**

——Art. 226 — Past service record used only to see whether lesser punishment could be awarded to delinquent employee and not against him—Fact that record was not made available to the employee does not vitiate punishment awarded. **1964 M P L J 432.**

——Art. 226 — Mysore Civil (Services Classification, Control and Appeal) Rules (1957), R. 10 (1) and (6) — Order of suspension under R. 10 (1)—Does not come to end after expiry of six months — Continues until vacated by Government or by other process known to law—Delay in commencement of disciplinary proceedings—Does not entitle employee to writ for quashing the order under Art. 226 of Constitution. See Mysore Civil (Services Classification, Control and Appeal) Rules (1957), R. 10 (1). **(1963) 1 Mys L J 434 (DB).**

——Art. 226—Rajasthan Civil Services (Classification Control and Appeal) Rules (1950), R. 16 — Departmental enquiry resulting in exoneration — Second departmental enquiry on same facts — Maintainability—(Justice, Equity and Good Conscience). See Rajasthan Civil Services (Classification Control and Appeal) Rules (1950), R. 16. **AIR 1958 Raj 38.**

23 (f). Finding of enquiry.

——Art. 226—Order of dismissal—Some of the findings of enquiry officer but not all being unassailable —High Court cannot ask authority to reconsider the order. See Ibid, Art. 311. **AIR 1963 S C 779.**

——Art. 226—West Bengal Government Servants Conduct Rules (1959), R. 4 — Disciplinary action against public servant on charge of unbecoming conduct — Finding challenged by writ petition — Duty of High Court—Misconduct — What amounts to. See West Bengal Government Servants Conduct Rules (1959), R. 4. **AIR 1964 Cal 503.**

——Art. 226—Disciplinary action against public servant — Finding of guilty when can be based on circumstantial evidence — Evidence not justifying such finding - Error can be corrected under Art. 226. See Ibid, Art. 311. **AIR 1964 Cal 503.**

——Arts. 226, 311—Procedure – Dismissal of civil servant after departmental enquiry—Writ proceedings —Findings of tribunal on some charges vitiated —Order—If can be upheld on other findings.

Where an order of dismissal is made by an executive authority based on the findings of an enquiry Officer and some of the findings turn out to be not sustainable, it is not desirable or proper to allow the order of dismissal to stand inasmuch as it is not possible to ascertain to what extent the bad findings operated on the mind of the dismissing authority or whether the dismissal order would have been made at all if only the remaining findings had been before them. AIR 1943 F C 1 and A I R 1954 S C 179, Rel. on. Nripendra Nath Bagchi v. Chief Secretary, Govt. of West-Bengal. **65 Cal W N 361 ; (1961) 2 Lab L J 312 : A I R 1961 Cal 1 (15, 16, 19, 21) (Pt J) (Prs 66, 89, 103) (SB).**

——Arts. 226, 311 (2) — Failure to supply report of enquiry to delinquent—Difficulty in defending case not complained of while contesting show cause notice or filing appeal and memorial — Plea raised for first time in writ application held not maintainable — Rules of natural justice not violated. See Ibid, Art. 311 (2). **(1961) 3 Fac L R 442 (Cal).**

——Arts. 226 and 311 (2) — Whether disciplinary authority is correct or not in appreciating evidence is not open to question in writ proceedings. **I L R (1965) 2 Mad 508 : 79 Mad L J 428.**

——Arts. 226 and 311—Writ petition against dismissal of civil servant — Departmental inquiry — Findings — High Court would not interfere on questions of appreciation of evidence.

It is not the function of the Court in exercising jurisdiction under Art. 226 of the Constitution to go into questions of appreciation of evidence. The Court has to see whether Art. 311 of the Constitution has been contravened and whether the petitioner had reasonable opportunity of being heard in respect of the charges framed against him. Unless it is a case of total lack of evidence, the Court will not be justified in interfering in departmental enquiries, on question of appreciation or discussion of evidence. Orders passed in departmental inquiry are not judgments delivered by Court of law. Hence the mere fact that

there is no discussion of defence evidence or that no reasons were given for rejecting it would not be ground for interference. (1965) 1 Mys L J 422 : (1965) 2 Lab L J 583 : A I R 1965 Mys 283 (284) (Pt A) (Pr 5) (DB).

——Art. 226 and Art. 311 (2)—Order of dismissal — Some of the findings of enquiry Officer but not all being unassailable — High Court cannot ask authority to reconsider order.

When a Court of fact acts on material partly relevant and partly irrelevant, it is impossible to say to what extent the mind of the Court was affected by the irrelevant materials used by it in arriving at its finding. Such a finding is vitiated, because of use of inadmissible materials. In such case, the superintending Authority, like the High Court, cannot decide whether some of the grounds wrongly rejected or wrongly accepted are good or bad. Nor can they attempt to assess in what manner and to what extent each of these grounds operated on the mind of the appropriate authority and contributed to created satisfaction on the basis of which a particular punishment is imposed. The departmental proceedings under Art. 311, of the Constitution are one continuous proceeding though there are two stages in it. The second stage is reached only if a conclusion is reached on the findings that the charges lodged against the Government servant are established. The second stage deals with the action taken against the Government servant concerned and both the stages are equally judicial. The very object with which notice is required to be given on the question of punishment is to ensure that it will be such as would be justified upon the charges established and upon the other attendant circumstances of the case. But the Court in a case in which an order of dismissal of a public servant is impugned is not concerned to decide whether the sentence imposed, provided it is justified by the rules, is appropriate having regard to the gravity of the misdemeanour established. The reasons which induce the punishing authority, if there has been an enquiry consistent with the prescribed rules, are not justiciable; nor is the penalty open to review by the Court. Therefore if the order may be supported on any finding as to substantial misdemeanour for which the punishment can lawfully be imposed, it is not for the Court to consider whether that ground alone would have weighed with the authority in dismissing the public servant. The Court has no jurisdiction if the findings of the enquiry officer or the Tribunal prima facie make out a case of misdemeanour, to direct the authority to reconsider that order because in respect of some of the findings but not all it appears that there had been violation of the rules of natural justice. A I R 1963 S C 779, Foll. (1964) 6 O J D 107.

——Art. 226 — Order of dismissal — Order based on charges, findings on some of which are vitiated — Order of dismissal is to be set aside and cannot be justified on the basis of remaining charges. See Ibid, Art. 311. A I R 1962 Orissa 78 (DB).

——Arts. 226 and 311 — Dismissal of Government servant — Petition under Art. 226 — Power of High Court to go into findings.

In exercise of the extraordinary jurisdiction under Art. 226 of the Constitution, the High Court cannot go into the merits of the findings and discuss whether the charge against the Government servant who is dismissed were fully established or whether the punishment was too severe considering the nature of the charges. These are matters regarding which the appointing authority's decision should be taken as final. ILR (1957) Cut 241 : A I R 1957 Orissa 74 (74, 75) (Pt A) (Pr 3) (DB).

——Art. 226—Enquiry against Government servant — Order of removal from service — Finding based on matters outside scope of charge sheet — Held, no reasonable opportunity was afforded and hence order was liable to be quashed. See Ibid, Art. 311. (1965) Cur L J 289 : 67 Pun L R 513.

——Arts. 226, 311 — Interference in disputed matters of fact by High Court — Permissibility—Dismissal of railway servant for misconduct regardless of contrary finding by Board of Inquiry — Total lack of judicial approach shown by dismissing authority — High Court can set aside order of dismissal. A I R 1962 Punj 482, Approved. 65 Pun L R 571 : (1964) 1 Lab L J 321 : ILR (1963) 1 Punj 862 : (1963) 7 Fac L R 58 : A I R 1963 Punj 336 (337) (Pt A) (Prs 10, 11) (DB).

——Arts. 226 and 311 — Finding in Departmental enquiry against Government servant—High Court has no jurisdiction to examine grounds upon which such findings were reached. 1962 Cur L J 120 : A I R 1962 Punj 289 (291) (Pt B) (Pr 10).

——Arts. 226, 311—Reduction in rank of Government employees — Writ application filed against Government — High Court will not go into question of fact. 1957 Raj L W 5 : ILR (1957) 7 Raj 5 : AIR 1957 Raj 81 (82) (Pt A) (Pr 4) (DB).

[Overruled on another point in A I R 1958 S C 36.]

23 (g). Contravention of principles of natural justice.

See also Note 78.

——Art. 226 — Natural justice — Disciplinary action against Government servant—Charge of participating in strike—Evidence of strike not mentioned in charge-sheet—Effect. See Ibid, Art. 311. A I R 1959 All 614.

——Art. 226—Natural justice—Disciplinary inquiry—Reasonable opportunity to defend — Absence of — Statement of witnesses not recorded in the presence of Civil Servant — Merely allowing exhaustive cross-examination — Effect. See Ibid, Art. 311. A I R 1958 All 532.

——Arts. 226 and 311—Departmental enquiry against P—Superior officer issuing instructions to Enquiry Officer to proceed in particular way—Held, fact that there were instructions to enquiry officer indicated that enquiry was not fair and officer was not unbiased: AIR 1958 S C 86, Foll. ILR (1963) Andh Pra 308.

——Art. 226 — Jurisdiction of High Court — Illegal order of dismissal of schoolmaster — Quashing of — Applicant getting employment elsewhere — If bar to issue of writ. See Madras Elementary Education Act (1920), Rules under R. 13 (2) (ii) (a) and (b). (1960) 2 Andh W R 305.

——Art. 226—Powers of High Court — Departmental enquiry held against public servant — Adverse orders — Suit by such public servant — Power to examine record to see if rules of natural justice have been followed. See Constitution of India, Art. 311 (2). (1957) 1 Andh W R 370 : A I R 1957 Andh Pra 794.

——Art. 226 — Natural Justice — Violation of—Administrative Tribunal — Quasi-judicial proceedings—Police Official — Disciplinary proceedings—Punishment confirmed in appeal—Denial of opportunity by appellate authority to appellant to be heard in person—Appellate order being quasi-judicial cannot be upheld—Constitution of India, Arts. 311 and 226.

Although the act of punishing a public servant by competent authority is in the nature of an administrative act, nevertheless it involves exercise of judgment. The proceedings would assume the character of quasi judicial proceedings.

Similarly, the power of the appellate authority would involve the exercise of a judgment as to the correctness or otherwise of the action taken, which is made the subject-matter of appeal. The functions of

the appellate authority would partake of the character of quasi-judicial functions.

Petitioner, a police official, was punished in departmental proceedings, by the order of a Superintendent of Police. The order was confirmed in appeal without allowing the petitioner to be heard. The order was challenged by a petition under Art. 226 of the Constitution.

Held, that there being nothing in R. 66 of the Assam Police Manual, Vol. III, requiring the appellant to demand personal hearing as an additional feature in his appeal, his normal right to be heard in support of his appeal, before it was rejected, prevailed. **ILR (1963) 15 Assam 373 : AIR 1963 Assam 183 (184) (Prs 2, 3) (DB).**

——**Arts. 226 and 311 — Dismissal of public servant —Interference by High Court.**

Where an order of dismissal of a public servant is found to be wholly unjustified, the High Court can interfere under Art. 226. It "is imperative on the State to frame specific charges with full particularity, intimate those charges to the Government servant concerned, give him an adequate opportunity to answer those charges and after considering his answers to take its decision". AIR 1953 Nag 138, Relied on. **1954 Cri L Jour 31 : ILR (1954) 6 Assam 107 : A I R 1954 Assam 18 (22) (Pt G) (Pr 11) (DB).**

——**Art. 226** — Order of suspension not followed by charge sheet within reasonable time—Order liable to be quashed. See Ibid, Art. 311. **AIR 1965 Cal 13.**

——**Arts. 226, 311—Disciplinary proceedings against Government servant—Proper and reasonable opportunity to defend — Inspection of documentary evidence—Proper stage for — Non-production of material witness—Whether non-observance of natural justice rule—Natural justice—Principles of — When violated and when not—Civil P. C. (1908), O. 11, R. 15—Civil Services (Classification, Control and Appeal) Rules, R. 55.**

In disciplinary proceedings under R. 55 of the Civil Services (Classification, Control and Appeal) Rules, refusal to give copies of relevant documents to the delinquent officer, at initial stage before he puts in his defence is not violative of the principles of natural justice, because ordinarily a defendant is not given an opportunity of inspecting documentary evidence in the possession of the plaintiff before the defendant puts in his written statement. But the delinquent officer is certainly entitled to inspect the evidence collected against him before commencement of the examination of witnesses against him. The failure to produce documents before cross-examination of the witnesses is, therefore, a violation of the rules of natural justice.

Similarly, non-production of a witness who is not a material witness cannot be the non-observance of the rules of natural justice. But where adjournment is asked for inspection of the depositions of the witnesses examined at the local inspection, it should be granted. If time is not granted it can be held that the delinquent was not allowed proper and reasonable opportunity of defending himself in the disciplinary proceedings taken against him. AIR 1957 S C 882; A I R 1961 S C 1623, Relied on. **68 Cal W N 203 : AIR 1964 Cal 184 (187, 188, 189) (Pt A) (Prs 15, 16, 17, 18 to 21) (DB).**

——**Art. 226** — Railway servant — Disciplinary proceedings—Natural justice—Chairman of inquiry committee replaced in the middle of inquiry by another who had not heard witnesses so far examined — Enquiry is vitiated. **('64) 68 Cal W N 1112.**

——**Art. 226** — Railway servant — Disciplinary proceedings—Natural justice—Fact finding committee finding prima facie case against servant — Member of fact finding committee appointed chairman of enquiry committee—Held that from this it could not be held that the chairman had a closed mind—The charge of bias must not be too readily assumed but must be proved by the person alleging the same. **('64) 68 Cal W N 1112.**

——**Art. 226—Writ petition — Dismissal of Government servant—Enquiry before dismissal—Necessary and relevant documents not supplied — Necessary witness not made available for examination — Statement of witness recorded without calling him as witness—Inquiry Officer using personal knowledge in arriving at finding—Effect.**

A Government servant was dismissed from service for misconduct During the enquiry against him, he was not supplied with copies of certain documents which were necessary for him to make out his defence and to enable him to cross-examine witnesses. One of the witnesses whom he wanted to examine was not made available, though the Inquiry Officer did not consider that witness to be irrelevant. The statement of a witness who was not examined was placed on record of the enquiry proceedings. The Inquiring Officer made local inspection and made use of the personal knowledge in arriving at a finding without giving opportunity to him to wipe out that impression. In a writ petition filed by him.

Held, that the principles of natural justice were not observed at the enquiry and the dismissed servant was not given proper opportuuity to defend himself and hence the order of dismissal was liable to be quashed. **(1963) 1 Lab L J 708 : (1963) 6 Fac L R 26 (Cal).**

——**Arts. 226 and 311 (2) — Departmental proceedings—Evidence Act — Applicability — Proceedings not in accordance with law—Quashing of—(Evidence Act (1872), S. 1).**

Departmental proceedings are not in the same category as criminal prosecutions or even a civil proceeding in Court and the provisions of the Evidence Act do not apply. Nevertheless, the ordinary principles of proof and also the rules of natural justice must be applied. The charges must be proved by the prosecution, and it is not the duty of the delinquent to prove any part of it. The delinquent must be given every opportunity of testing the evidence adduced. Where, in such proceedings, no witnesses are called and nothing is proved and the matter is decided on all kinds of speculation the proceedings are not in accordance with law and are liable to be quashed by a writ of certiorari along with the order of removal. **('59) 63 Cal W N 702.**

——**Art. 226—Natural justice—Requirements — Dismissal of civil servant—Departmental proceedings—Trial of charge—Evidence recorded by person other than enquiring authority—Reasonable opportunity of defence not given—Effect.** See Ibid, Art. 311. **A I R 1958 Cal 470.**

——**Art. 226—Natural justice — Dismissal of civil servant—Trial of charge—Decision based on evidence recorded by person other than enquiring authority—Interference.** See Ibid, Art. 311. **A I R 1958 Cal 470.**

——**Arts. 226 and 311 — Railway employee—Railway Administration taking disciplinary action for serious misconduct of employee—Order of removal from service—Copies of proceedings before enquiry Committee not furnished—Validity of order—Order if can be supported under R. 148 (3), Railway Establishment Code,—Indian Railway Establishment Code, R. 148 (3)—Words and Phrases—'Removal from service').**

Held, on facts that (i) it was not open to the counsel for the railway administration to make a different case on the facts at the time of hearing nor was it open to the Court to adopt a different basis for its order simply because something like a debating point was made before it; (ii) that the orders of removal actually passed could not be treated as termination of their services in accordance with R. 138 (3), Railway Establishment Code. R. 148 (3) does not contemplate or speak of removal from service which has a technical meaning; (iii) that the Railway Administration had proceeded by way of exercising their disciplinary jurisdiction and had passed the order of removal by way of imposing a penalty on the appellants. They had done so without giving a real and reasonable opportunity to the appellants to show cause against the proposed penalty, although, formally, an opportunity was offered. AIR 1956 Pat 23, Disting. (1957) 1 Lab L J 272 : 61 Cal W N 1 : AIR 1957 Cal 4 (8) (Pt B) (Prs 16, 17, 18, 19) (DB).

——Art. 226——Departmental enquiry — Enquiring officer relying on his own evidence. See Ibid, Art. 311. AIR 1956 Cal 278.

——Art. 226 — Civil Services (Classification, Control and Appeal) Rules, R. 55—Departmental enquiry—Denial of opportunity to delinquent of calling evidence—Right of enquiring tribunal to pick and choose witnesses on behalf of delinquent — Witnesses called employees of authorities—Duty of authorities to assist delinquent—Entire proceedings bad — Proper order to be passed. See Ibid, Art. 311 (2). (1956) 60 Cal W N 692.

——Art. 226—Dismissal of servant — Absence of any statutory rules — Rules of natural justice to be followed. See Ibid, Art. 311. AIR 1955 Cal 56.

——Art. 226 — Departmetnal enquiry — Reasonable opportunity — Violation of principal of natural justice. See Ibid, Art. 311 (2). A I R 1955 N U C (Cal) 3317.

——Art. 226 — Dismissal of civil servant — Departmental enquiry — Procedure — Principles of natural justice. See Ibid, Art. 311. A I R 1955 N U C (Cal) 2881.

——Arts. 226, 311 (2) — Before dismissal order is passed, civil servant must be given two opportunities of being heard- Failure is fatal — Remedy under Art. 226. See Ibid, Art. 311 (2). AIR 1955 Hyd 48.

——Arts. 226, 311 — Petitioner appointed honorary Magistrate under S. 14 (1), Cr P. Code for two years — Magisterial powers withdrawn before time on grounds of petitioner's political activity — Petitioner is entitled to 'reasonable opportunity' to show cause — Opportunity not given —Writ petition—Since withdrawal of magisterial powers caused slur or imputation on petitioner's character, the order of withdrawal was quashed, though the period of two years' tenure had expired during pendency of writ petition. A I R 1955 Cal 556, Rel. on. (1960) 1 Ker L R 486 : 1960 Ker L J 436 : I L R (1960) Ker 675 : 1960 Ker L T 708 : 1961 (1) Cri L J 657 : (1960) 2 Lab L J 407.

——Arts. 226 and 311 — Natural justice — Inquiry officer examining witnesses without notice to civil servant against whom the inquiry is held —Receipt of notice only after enquiry—Order of reversion should be quashed. AIR 1960 Ker 294.

——Arts. 226 and 311 — Removal of Government servant on ground of termination of a vacancy — Rule of relieving junior most first, ignored— Art. 311 — Issue of writ. See Ibid, Art. 311. A I R 1959 Ker 59 (DB).

——Art. 226 — Natural justice—Requirements—Government servant — Removal from service — Framing charges or opportunity to show cause — Necessity. See Municipalities — J. and K. State Municipal Act (1970), President. AIR 1958 J and K 6 (DB).

——Arts 226, 311—Applicability – Scope of inquiry —Removal from service — Writ petition — Question regarding severity of punishment awarded cannot be considered in writ jurisdiction. 1962 Jab L J 97 : (1961) 3 Fac L R 54 : I L R (1961) Madh Pra 202 : 1961 M P L J 558 : 1961 M P C 613 : A I R 1961 Madh Pra 261 (263, 269) (Pt C) (Prs 6, 27).

——Arts. 226 and 311 — Natural justice — Dismissal of servant on charge of criminal nature — No opportunity given to explain or rebut charges — Order not maintainable. 1958 M P L J (Notes) 99.

——Art. 226—Departmental enquiry by Authority in the position — If against natural justice. See Ibid, Art. 311. (1957) M P L J 469 (Nag).

——Art. 226 — Disciplinary proceedings are not governed by rules of evidence — They should, however, conform to basic principles of natural justice — Natural justice requires that accused officer should have opportunity to cross-examine witness who had given earlier statement in absence of accused, so as to test truth or otherwise of version contained in such statement — Witness stating in his chief examination that his earlier statement during investigation was taken under duress and making it unnecessary for accused to cross examine him — Even then rule of natural justice can be said to have complied with. See Evidence Act (1872), S. 1. I L R (1965) 2 Mad 508.

——Art. 226—Departmental enquiry—Enquiry officer not a person experienced or trained in law who could be expected to meet legal points if raised — Accused not represented by counsel at the enquiry — Held, that Court would permit any legal point, which even if it went to the root of the jurisdiction of the tribunal to hold enquiry and was not taken before the tribunal to be urged for the first time before it in the writ proceedings. A I R 1958 Punj 14 and AIR 1961 Cal 195 and A I R 1961 Andh Pra 528, Distinguished. A I R 1964 Manipur 46 (58, 59) (Pt D) (Pr 38).

——Art. 226 — Disciplinary action against Government servant — Departmental proceedings — Punishment indicated even in charge framed—Not sufficient to indicate any bias in the disciplinary authority. See Ibid, Art. 311. AIR 1963 Manipur 28.

——Arts. 226, 311—Fresh departmental proceedings against Government servant in respect of same matter—Dismissal order set aside by Court not on merits, but on ground that principles of natural justice were not observed—Fresh enquiry in respect of same allegations not illegal — Central Civil Service Rules (1957), R. 12 (4) — Second enquiry is covered by R. 12 (4) — No question of double jeopardy — Retrospective suspension — Validity — Constitution of India, Art. 20 (2).

Where the dismissal order passed against the petitioner (Government servant) was set aside by the Court not on the merits of the case, but only on the ground that the principles of natural justice were not observed and the petitioner was not given a chance in the enquiry to meet the charges against him, in such a case the disciplinary authority is entitled to rectify the mistake and hold a fresh enquiry in respect of the same allegation. AIR 1958 Raj 38, Disting. Again R. 12 (4) of the Central Civil Service Rules, 1957, contemplates that a second enquiry can be held in such cases. The second departmental enquiry held against the petitioner will not amount to punishing him more than once for the same offence and hence, no question of double jeo-

pardy at all arises. An order of retrospective suspension in such a case is in accordance with R. 12 (4) and it cannot be questioned in writ proceedings where the question involved is the order of dismissal following the fresh enquiry in which the order of suspension has merged, unless the Rule itself is questioned as ultra vires the Constitution. **AIR 1963 Manipur 28 (31, 32) (Pt C) (Prs 7, 8, 9, 10).**

——Arts. 226, 311 — Departmental enquiry—Offence involving moral turpitude — Meaning of — Offence under S 4 (1) (a) of Mysore Prohibition Act (37 of 1948) held involved moral turpitude—Omission to specify in notice by disciplinary authority that offence committed by delinquent involved moral turpitude — Conviction established understanding Orders—Punishment held was competent. **1962 Mys L J (Sup) 498 (DB).**

——Art. 226—Fundamental Rules—Appendix XXV, Part E—Suspension of Government servant pending criminal proceedings—Notice to him—If necessary.

There is no provision requiring a notice to be given to a Government servant before his suspension pending criminal proceedings against him. **I L R (1952) Nag 52 : 1952 Cri L J 845 : 1952 Nag L J 221 : AIR 1952 Nag 170 (172) (Pt D) (Pr 9) (DB).**

——Arts. 226 and 309 — Orissa Disciplinary Proceedings (Administrative Tribunal) Rules (1951), R. 7 (2)—Rules of equity and natural justice.

It is well settled by authority that rules of equity and natural justice require that the evidence against a person should as far as practicable be recorded in his presence and he shall be given an opportunity to cross-examine the witnesses and also to adduce evidence on his behalf. **I L R (1957) Cut 177 : AIR 1957 Orissa 70 (72) (Pt C) (Pr 7) (DB).**

——Arts. 226 and 311 — (Orissa) Rules and Orders Relating to Conduct, Discipline and other Conditions of Service applicable to Government Servants, R. 55A —Dismissal of Government servant without giving personal hearing—Whether legal—(Special Tribunal) —(Natural justice), See Ibid, Art. 311. **A I R 1956 Orissa 103 (DB).**

——Art. 226—Bias—Railway Servants—Misconduct—Departmental enquiry—Committee—Constitution of—Charges relating to conduct of railway employees in connection with strike of loco-shed staff—Fact finding enquiry committee appointed first — Member of fact finding committee not disqualified from sitting on departmental enquiry. See Ibid, Art. 310. **A I R 1963 Pat 38 (DB).**

——Art. 226—Certiorari—Natural justice—Violation of — Government servant on probation — Order of discharge — Legality — (Maxims — "Audi alteram partem").

Where a Government servant on probation, is served with a notice to show cause against discharge and he is ultimately discharged without showing him the confidential reports on which the notice of discharge is based and without giving him an opportunity of meeting the allegations, there is violation of natural justice and the order of discharge is therefore illegal and can be quashed by a writ of certiorari. (1911) A C 179; (1935) 1 K B 249; (1949) 2 All E R 131 and A I R 1955 S C 65, Rel. on. **1955 B L J R 154 : 34 Pat 179 : A I R 1955 Pat 372 (373, 374) (Pt A) (Pr 4) (DB).**

——Arts. 226 and 311 (2)— Departmental enquiries—Procedure — Principle of natural justice — Evidence must be given in presence of servant — Procedure to allow him to call any witness who had deposed against him in his absence, and examine him in his defence, is indeed a novel one. See Ibid, Art. 311 (2). **I L R (1955) Patiala 314 : A I R 1955 Pepsu 172.**

——Arts. 226 and 311 (2) — Departmental enquiry—Officer who is himself the complainant or important witness should not himself be the judge and final authority to decide fate of Civil servant. See Ibid, Art. 311 (2). **A I R 1955 Pepsu 172.**

——Arts. 226, 227 and 311 (2)—Departmental enquiry—Petitioner requiring copies of certain documents before replying to charges—Petitioner informed about offices where documents were available for his inspection and that he should apply for inspection or for copies in accordance with rules — Petitioner failing to avail of them — No grievance made by him at any stage before filing of writ petition—No prejudice held was caused to him. **67 Punj L R 404 : I L R (1965) 1 Punj 651 : A I R 1966 Punj 175 (178) (Pt D) (Pr 7).**

——Arts. 226 and 311 (2) — Government servant — Departmental enquiry against — Representation through pleader not allowed — No violation of principle of natural justice.

A person against whom a departmental enquiry is held has no inherent right to be represented by a professional lawyer. There is no rule of natural justice conferring such a right. If the statutory rule governing such enquiries gives such a right then the effect of its non-compliance would be governed by the language of the rule itself. But apart from such a provision, merely because an employee has not been afforded the facility of being represented by a professional lawyer the enquiry against him cannot be struck down as violative of the rule of natural justice. A I R 1955 Punj 118 and C. W. No. 887 of 1959 (Punj), Foll.; A I R 1957 Andh Pra 414 and A I R 1958 All 532, Disting. **1962 Cur L J 541 : A I R 1963 Punj 90 (91) (Pt A) (Pr 5).**

——Art. 226 — Departmental enquiry — Reasonable opportunity to defend against charges — Principle of natural justice — Violation of—Examination-in-chief conducted in absence of person charged — Witnesses however allowed to be cross-examined — Natural justice violated — Order liable to be set aside under Art. 226. See Ibid, Art. 311 (2). **A I R 1962 Punj 496.**

——Art. 226—Departmental enquiry—Enquiry officer refusing to summon witnesses for defence—Failure of justice. See Ibid, Art. 311 (2). **A I R 1962 Punj 355.**

——Arts. 226 and 311 (2) — Departmental enquiries—Who can hold—Natural justice—Observance of.

The question as to whether the rules of natural justice have or have not been observed in a given case depends on its peculiar circumstances. In departmental enquiries in service matters, it is the employer who has to hold the enquiry and to that extent it is inherent in the very nature of things that the Enquiry Officer cannot be so detached as Courts of law are in adjudicating upon disputes between litigants.

In the departmental enquiry against a clerk in the Bank the appointment of the nominees of and subordinate to the Managing Director of the Bank as the enquiry officer could not be said to be violative of the rules of natural justice. **A I R 1958 S C 86** and **A I R 1959 Punj 402** and **A I R 1957 Andh Pra 414** and **A I R 1961 All 45** and **A I R 1958 Punj 327**, Disting. **64 Punj L R 431 : (1962) 4 Fac L R 213 : (1962) 1 Lab L J 570 : A I R 1962 Punj 355 (358) (Pt A) (Pr 9).**

——Arts. 226, 311 — Reversion from officiating post to substantive post inspired by test of seniority-cum-merit — No interference under Art. 226. See Ibid, Art. 311. **A I R 1960 Punj 65.**

——Art. 226—Natural justice — Delinquent asked to defend himself before person who is already biassed against him — Order of dismissal—Quashing of. See Ibid, Art. 311 (2). **A I R 1958 Punj 327 (DB).**

——Art. 226—Natural justice—Proceedings of departmental enquiry. See Ibid, Art. 311 (2). A I R 1958 Punj 327 (DB).

——Arts. 226, 311 — Dismissal of public servant—Petition under Art. 226—Scope of enquiry — (Public Servants (Inquiries) Act (1850), S. 23)—Civil Services (Classification, Control and Appeal) Rules, R. 55).

When a person seeks the intervention of the High Court under the provisions of Art. 226 on the ground that the rights guaranteed to him by Art 311 have been violated all that the Court is required to see is whether he was afforded a reasonable opportunity of showing cause against the action that was proposed to be taken in regard to him. No inquiry need be held either under the provisions of R. 55 of the Civil Services (Classification, Control and Appeal) Rules or under the provisions of the Public Servants (Inquiries) Act, 1850. A I R 1954 S C 375, Rel. on. I L R (1956) Punj 236 : A I R 1956 Punj 58 (62) (Pt C) (Pr 6) (DB).

——Arts. 226 and 311 (2) — Charges against Public servant—Enquiry by Commissioner—Powers of and procedure before Commissioner—Reasonable opportunity — What is — Jurisdiction of High Court—Extent of.

In an enquiry in respect of charges against a public servant, the responsibility for excluding evidence which is irrelevant or inadmissible or which is sought to be produced at a late stage of the proceedings devolved on the Commissioner and it is for him to decide, in the exercise of his discretion whether it should or should not be called.

It is not within the competence of the High Court exercising powers under Art. 226 of the Constitution, to control matters of procedure before a Commissioner or to review the orders passed by him. They can interfere with the procedure adopted by him if they are satisfied that it is not consistent with the essentials of a fair trial and can review the orders passed by him if they are satisfied that the person charged was prejudiced to the point of having been deprived of a reasonable opportunity of being heard. In any case, the constitutional guarantee of reasonable opportunity does not require that every request made by a party, whether reasonable or otherwise, must be acceded to. I L R (1956) Punj 236 : A I R 1956 Punj 58 (63, 68) (Pt F) (Prs 10, 27) (DB).

——Art. 226—Natural justice—Departmental inquiry—Witnesses examined in absence of person charged—Opportunity only to cross-examine offered—Violation held was not only of the rule but also of principles of natural justice. See Rajasthan Civil Services (Classification, Control and Appeal) Rules (1950), R. 16. A I R 1958 Raj 1 (DB).

——Arts. 226 and 311 — Departmental enquiry — Confession not strictly in accordance with S. 164, Criminal P. C.—Use of—Rules of natural justice.

Assuming that a confession is not strictly in accordance with S. 164, Criminal P. C., and that it cannot be let in as a piece of evidence in a Criminal Court, it does not mean that it cannot be used in a departmental proceeding. Rules of natural justice which alone are applied in those proceedings will not prohibit even an extra-judicial confession being let in as evidence in such proceedings. A I R 1959 Tripura 51 (55) (Pt E) (Pr 14).

——Arts. 226 and 311 (2) — Departmental enquiry — Principles of natural justice—Servant making allegations against officer—Order of dismissal—Legality—Bias.

Held, that the question of fact which arose for decision was whether or not the Superintendent of Police had obtained a false statement from the constable under coercion which necessitated the latter to send a telegram to the I. G. of Police. Under the circumstances the Superintendent of Police himself was disqualified from acting as a judge in his own cause and the order of dismissal passed by him being vitiated by bias must be set aside. A I R 1955 Pat 131 and AIR 1955 Pepsu 172, Followed. AIR 1956 Vin Pra 14 (15) (Prs 2, 3, 5).

23 (h). High Court, powers of.

●——Art. 226 — Relief can be given on alternative basis that the impugned order of termination of service was invalid. Life Insurance Corporation Act (1956), Ss. 11, 49—Order under S. 11(2)—L. I. C. Field Officers (Alteration of Remuneration and other Terms and Conditions of Service) Order 1957, (also known as Blue Order) Cls. 10, 11, 5 — Regulations under S. 49, as envisaged by Cl. 11 of the Blue Order—Services of Field Officer, coming under Blue Order can be terminated only in accordance with Cl. 10 of the Blue Order—Para 4 (h) of circular under Cl. 4 (3) of Regulation does not give power, independent of Cl. 10 of the Order — Regulation regarding fixation of remuneration of development officers under Cl. 5 of Order — Scope of — Corporation cannot, however, demote officer under the circular — Officer claiming relief under Art. 311 (2) challenging validity of the Blue Order and Regulation — Relief can be given on alternative basis that the impugned order terminating service was invalid. See Life Insurance Corporation Act (1956), S. 11. AIR 1964 S C 847.

——Arts. 226, 311 — Question of fact—Petition for writ against order of dismissal of petitioner—Respondent alleging petitioner to be a temporary servant—Petitioner contending that he was permanent servant—It is a question of fact and cannot be entered into in writ application. A I R 1957 S C 882, Rel. on. (1961) 2 Lab L J 191 : (1961) 2 Fac L R 558 : A I R 1961 All 284 (285) (Pt A) (Pr 5).

——Art. 226—Powers of High Court — Order of suspension by Financial Adviser and Chief Accounts Officer—Question whether order was justified—Power of High Court to go into question. See Railway Establishment Code, Vol. I, R. 1711. A I R 1957 All 671 (DB).

——Art. 226 — Discretion of Governor in dismissing servant — U. P. Disciplinary Rules—Conditions inducing Governor to dismiss servant is not justiciable. See U. P. Disciplinary Proceedings (Administrative Tribunal) Rules, R. 10 (a). AIR 1954 All 629 (DB).

——Arts. 226 and 311—Disciplinary Tribunal finding civil servant guilty of charges of corruption—Government accepting findings — Compulsory retirement suggested by Tribunal as punishment—Recommendation also accepted—It is not for High Court in petition under Art. 226 to enquire into question as to reasonableness, adequacy or propriety of punishment. See Ibid, Art. 311. AIR 1961 Andh Pra 289.

——Art. 226—Scope of inquiry—Charges under Rule 12 of the Cantonment Fund Servants Rules (1937) against petitioner, a sanitary inspector—Application under Art. 226 praying that Cantonment Board as represented by its President be restrained from enquiring into the petitioner's case on ground of prejudice—It is not necessary for High Court to go into particulars of either the charges or denials of them, as such enquiry would not be germane to the scope of the application. AIR 1961 Andh Pra 37 (38) (Pt A) (Pr 3).

——Art. 226 — Power of High Court—Action under Art. 311 (2), Proviso (c) — Power of Court to enquire into question of satisfaction. See Ibid, Art. 311 (2), Proviso (c). AIR 1958 Andh Pra 619 (DB).

——Art. 226 — Powers of High Court—Disciplinary proceeding against Government Officer—Grounds for

interference. See Ibid, Art. 311 (2). AIR 1958 Andh Pra 240 (DB).

——Arts. 226 and 311 — Government servant—Appointment by Government — Temporary order of dismissal by Collector on the strength of a Government Order — Validity — Procedure under O. 33 of the Bombay C. S. Rules observed — Ex parte order — Justified — No opportunity to show cause against dismissal—Art. 311 (2) contravened — Issue of writ—Refused under the circumstances of the case.

The petitioner applied for a writ of certiorari or in the alternative a writ of mandamus directing the opponents to reinstate him and praying the issue of any other directions which the Court may deem fit and proper.

His contentions are that the Collector could not by his order terminate the services of the petitioner appointed by the Government, that before passing the order the provisions of R. 55 of the Bombay Civil Service Rules have not been complied with and no inquiry was made as prescribed thereunder, that no opportunity to show cause against the order of dismissal was given and so Art. 311 (2) of the Constitution has been contravened.

The contentions of the opponents are that the petitioner was entertained on a temporary basis, terminable on one month's notice either way, that he was served with a charge sheet in accordance with the provisions of R. 33 of the Bombay C. S. (etc.) Rules, that he filed a statement denying the charges and making the impossible demand for copies of statements of witnesses on which the charges were formulated to question the authority of the Deputy Collector to hold the inquiry and did not require an oral inquiry which he might have insisted on, that the ex parte decision arrived at by the Government was proper that the petitioner was not entitled to claim the privileges under Art. 311.

Held : The petitioner by his conduct in not demanding an open inquiry, and failing to state in his reply to the charge-sheet served on him under R. 33 that he desired to be heard in person and making impossible demands has made the Government decide ex parte and the charge that he was not given an inquiry as prescribed in R. 55 of the Bombay C. S. (etc.) Rules has to be dismissed as entirely unfounded and unjust.

The order of the District Collector, dated 27th April, 1950 terminating the service of the petitioner specially mentions the Government's orders R. O. No. 152621—4—1950 on the strength of which the order purports to have been passed. The decision to terminate the service was that of the Government and in making the order neither Government nor the Collector contravened the provisions of Art. 311 (1).

The petitioner, though a temporary employee of the Government and though the post he held is temporary, he is a person holding a civil post in the State of Saurashtra his being entertained on a contract basis makes no difference in the status. Art. 311 is applicable to the case of such employees also. Government's case is not that the petitioner was given an opportunity to show cause against the proposed order of dismissal as provided under Art. 311 (2). Therefore the order is in contravention of Art. 311 (2) though it does not offend the provisions of R. 55 as aforesaid. (AIR 1950 Lah 59, Rel. on.)

On the question of the issue of writs, the fact that the petitioner had obtained service in the state of Rajasthan and in consequence his inability to rejoin the service in Saurashtra and the possibility of his services after reinstatement being terminated as per contract on one month's notice or on payment of one month's salary without assigning any reasons therefor, having been brought to the notice of the advocate for the petitioner the prayer for a writ of mandamus for reinstatement was given up. The prayer for declaration that the petitioner's services were wrongfully terminated was unnecessary in view of the finding that the order was in contravention of Art. 311 (2) and invalid and therefore refused. AIR 1952 Sau 40 (42, 43) (Pts A, D, E) (Prs 2, 7).

——Art 226—Disciplinary inquiry against civil servant — Inquiry conducted ignoring statutory rules — Whether High Court has power to direct Government to make inquiry according to rules ? (Quaere). 1956 Andh W R 978 : 1956 Andh L T 979 : A I R 1957 Andh Pra 197 (202) (Pt G) (Pr 14) (DB).

——Art. 226—Rules under Art. 309—Assam Government Servants Conduct Rules, 1937, R. 11 (d) — Dismissal of Government servant—Possession of property disproportionate to known sources of income — Presumption by Government—Nature of—Power of High Court — It is not for the High Court to examine evidence and come to its own conclusion whether the opinion of the Government is correct. See Ibid, Art. 309. AIR 1962 Assam 17 (DB).

——Arts. 226 and 311—Letter of resignation of public servant accepted and public servant debarred from continuing service — Public servant denying that he submitted resignation—Letter of resignation not produced—Evidence of resignation not tendered —Order accepting resignation quashed.

The applicant's case was that he was removed from service without compliance with Art. 311, that all of a sudden he was informed that his resignation was accepted, that he had never tendered any resignation, that he was never informed as to why he was being dismissed, that the grounds of dismissal were never communicated to him and that he was not given any opportunity of being heard. The non-applicants did not produce the alleged letter of resignation, nor did they tender any evidence, oral or otherwise, to show that the resignation was tendered or to whom it was tendered or the date on which it was tendered. The affidavits filed on behalf of the non-applicants were vague and appeared to suppress facts

Held, that under the circumstances, the order accepting the alleged resignation should be quashed. The order was quashed and it was ordered that the applicant should be deemed to be in service since the date of the order and onwards subject however, to the result of the departmental enquiry which was then pending against him. AIR 1954 Bhopal 25 (30) (Pt F) (Pr 22).

——Art. 226—Central Civil Service (Safeguarding of National Security) Rules (1953), Rr. 3, 4—Power of High Court to interfere — Action proposed under R. 3 founded on mere suspicion — Although High Court cannot interfere with final action by President under R. 3, question whether Government servant was reasonably suspected to be engaged in subversive activities or not is capable of judicial review.

The action that is permitted to be taken under R. 3 as a result of notice under R. 4, infringes on the normal right of the public servant to continue in service till the end of his tenure and only safeguard that is available to the Government servant is an insistence that the activities of which he may be charged, namely, that he was engaged or was reasonably suspected to be engaged must be subversive activities and the rule does not commit to the exclusive satisfaction of the President the decision as to what a subversive activity is. The action is admittedly taken in the interests of national security, and to that extent is immune from challenge on merits. But what is immune is the decision of the President that it is necessary in the interests of national security to terminate the services of the public servant concerned, but it has still to be established that the subversive acti-

vities of which the delinquent servant is charged are, in fact, subversive and to that extent the opinion of the President must be grounded on material which has a rational probative value : 1957 Nag L J 75 and AIR 1956 Mad 220, Rel. on. In fact, the use of the words 'reasonably suspected' itself postulates that the term is capable of an objective assessment as to whether an activity could be called a subversive activity. **1963 Mah L J 15 : 65 Bom L R 48 : (1963) 1 Lab L J 459 : ILR (1963) Bom 425 : A I R 1965 Bom 59 (63, 64) (Pt C) (Prs 17, 18) (DB).**

——Art. 226 – Scope of inquiry — Retirement under Civil Services Regulations, Art. 465-A — Whether it was in public interest to retain him cannot be challenged before Court. See Civil Services Regulations, Art. 465-A, Note 1. **AIR 1958 Bom 90 (DB).**

——Art. 226 – Order of suspension cannot be made to operate retrospectively – Court, while declaring retrospective part invalid, may allow prospective part of the same order to stand—But Court will not do so if that amounts to passing of 'new' order. See Ibid, Art. 311. **AIR 1965 Cal 13.**

——Arts. 226, 311—Temporary employee complaining of wrongful dismissal must approach under Art 226 without delay.

Temporary employees while complaining of wrongful dismissal should really not delay proceedings under Art. 226 for the very simple reason that at best it is a challenge for a wrongful dismissal and posts and work attendant thereon cannot be left vacant for an indefinite period without detriment to administration, and a constitutional remedy should be sought with reasonable promptitude. If not then it is unwise to use the discretion in their favour in granting such rules. **(1963) 6 Fac L R 378 : (1963) 2 Lab L J 569 : AIR 1963 Cal 421** (423) **(Pt B) (Pr 7).**

——Art. 226 — Grounds for interference — West Bengal Services Rules, Rr. 151, 145.

Leave cannot be claimed as a matter of right. No writ under Art 226 should issue from the High Court to grant such leave. No question of leave, however, arises after the voluntary resignation of the Government servant concerned. A writ under Art 226 for a claim for damages at the rate of his salary on the basis of wrongful rejection of his application for leave is inappropriate : A I R 1958 Cal 654, Foll. 64 **Cal W N** 857 : **(1960) 2 Lab L J 502 : AIR 1961 Cal 164** (165) **(Pt B) (Pr 6).**

——Arts. 226, 311 — Railway Establishment Code, **R. 2046 (2) (a) — Scope — Discretion of High Court.** See Railway Establishment Code, R. 2046 (2) (a). **AIR 1958 Cal 657.**

——Arts. 226, 310 and 311—Applicability—Wrongful dismissal of public servant — Writ to earn damages.

The use of Art. 226 of the Constitution to earn damages for wrongful dismissal of a Government servant is inappropriate. 62 **Cal W N 352 : (1959) 1 Lab L J 141 : A I R 1958 Cal 654** (655) **(Pt B) (Pr 8).**

——Art. 226 – Interference — Grounds — Order of lower tribunal correct – Interference with order.

A Court of Equity ought not to interfere with the orders of inferior tribunals or bodies, if on the facts, it is itself of the opinion that the order made is correct and is in accordance with the justice of the case.

Held, applying this principle, that the petitioner, a Station Master, who was removed from service was not entitled to any relief under Art 226, because the order of removal made by his superior officer was correct inasmuch as the charge, which was proved against him, was that he had on more than one occasion, in spite of warning, indulged in impertinence and unnecessarily rude and disrespectful language in official correspondence. **(1959) 1 Lab L J 374 : 62 Cal W N 169 : A I R 1958 Cal 633** (633, 634) **(Pt A) (Pr 2).**

——Arts. 226, 311 — Dismissal of railway servant — Railway authority applying its mind to facts — Bona fide conclusion — High Court will not consider question on merits — Sufficiency of conviction is entirely for Railway authorities to decide. **A I R 1955 N U C (Cal) 1795 (DB).**

——Arts. 226 (1) and 311 — Civil servant — Action against—Reasonable opportunity given to show cause —Relief under Art. 226 — (Civil Services (Classification, Control and Appeal) Rules, (framed under S. 96B (2), Government of India Act 1915), R. 55).

Where a reasonable opportunity is in fact given to a civil servant to show cause against the action proposed to be taken in regard to him, as required by Article 311 of the Constitution or R. 55 of the Civil Services (Classification, Control and Appeal) Rules the High Court would have no jurisdiction under Article 226 of the Constitution to grant any relief to the petitioner. **AIR 1952 Him Pra & B 43 (45) (Pt A) (Pr 7).**

——Arts. 226 and 311 — Dismissal of civil servant, grounds of — In application under Art. 226, High Court will not re-assess merits of grounds.

Where the State Government dismisses its employee, on the ground that he submitted a false birth date in his application to the Public Service Commission, the High Court will not, in an application under Art. 226, reassess the merits of the grounds of dismissal. The High Court in exercise of its powers under Art. 226 does not sit as an appellate authority over such decisions. Whatever be its conclusions on the facts of the case, it cannot be substituted for those which the State Government under the Constitution are authorised to take. The Constitution, however, empowers the High Court to enforce constitutional guarantees by issuing appropriate writs or orders and such guarantees are not confined to Part III of the Constitution. **I L R (1955) Hyd 152 : AIR 1955 Hyd 48** (51) **(Pt A) (Pr 6) (DB).**

——Art. 226—Scope of inquiry — Dismissal of Civil servant—Writ petition—Plea that petitioner's appointment was itself invalid because of misrepresentation —Maintainability. See Constitution of J. & K., S. 103. **AIR 1959 J & K 13.**

——Arts. 226, 310 and 311 — Complaints as to service conditions—Not amenable to judicial review under Art. 226.

Complaints as to service conditions by servants of the Central or State Governments are not amenable to judicial review under Art. 226 of the Constitution. Except in respect of matters governed by Art. 311 all the jural relations between the State and the subject are governed by Art 310. And if under Art 310 the servant's service, is at the pleasure of the State, the servant cannot have any legal complaint on the score of mere change in the service conditions. **1959 Ker L T 492 : AIR 1960 Ker 82** (83) **(Pr 2).**

——Art. 226 — Scope of—Remedy under Art. 226—When available to dismissed Government servant. See Ibid, Art. 310. **AIR 1954 Madh B 49 (DB).**

——Art. 226—Certiorari, writ of—Dismissal of Civil Servant—Act is purely administrative — Certiorari cannot be issued to correct dismissal order—Petitioner whether entitled to any other relief—(Madhya Bharat) Civil Services (Punishment and Appeal) Rules 1950, R. 8—Art. 226, Art. 310, Art. 311.

It is evident on the language of Arts. 310 and 311 of the Constitution that an order of dismissal, removal or reduction of a Civil servant is an adminis-

trative order. There is nothing in the language of these articles to suggest that in making such an order the competent authority is obliged to act judicially. These articles recognise the principle that a Civil servant holds his employment at the pleasure of the President, Governor, or the Raj Pramukh, as the case may be, and they may put an end to the employment at any time for any reason stated or unstated, if in their opinion the continued employment of the Civil servant is detrimental to the interests of the State and the service. It is, no doubt, true that Art. 311 (2) prohibits the dismissal, removal or reduction of a Civil servant until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. But this provision of "a reasonable opportunity of showing cause against the action proposed to be taken in regard to him" cannot be treated as a condition imposing a quasi-judicial duty on the competent authority in passing an order of dismissal, removal or reduction of a Civil servant.

Nor does the fact that R. 8 of the Madhya Bharat Civil Services (Punishment and Appeal) Rules, 1950 contemplates an inquiry into such of the allegations as are not admitted by the Civil servant and entitles him to cross examine witnesses, and to lead his own evidence, import an obligation of acting quasi-judicially in the making of an order for the dismissal, removal, or reduction of the Civil servant.

Apart from the fact that the enquiry into allegations denied by the civil servant is optional with the authority, R. 8 does not cast on the authority the duty to call evidence before the inquiry and justify the charges against the Civil servant and prove them. The rule simply gives an opportunity to the civil servant to state his objections and call such evidence as he might be advised.

All service under the State being public service and for the public benefit, in making a decision, about the removal, dismissal, or reduction of a Civil servant the authority must obviously be guided by its own views as to what is expedient in the interests of the State and the service. The authority can base its opinion on whatever material it may think fit. This cannot be affected by the fact that the authority decides to hold an inquiry. The object of such an inquiry can only be to clear matters upon which the authority may like to be better informed. The inquiry cannot bind the discretion of the authority as to the material on which it may take action although it may have some bearing on the question of bona fides.

It is entirely erroneous to say that an order is quasi-judicial because it can be reviewed or is appealable. An administrative order can be subject to review or appeal by the appropriate administrative authority in much the same way as a judicial order is by judicial authorities. It is impossible to suggest that the nature of an order which is purely administrative and of the proceedings leading to it is entirely changed when it comes up before the reviewing or the appellate authority.

In this view an order terminating the services of a Civil servant cannot be quashed on certiorari. No other form of remedy under Art. 226 can be granted for the purpose of reviewing or avoiding the order of termination of his services. A mere declaratory relief that the removal of the applicant from service was illegal cannot be given under Art. 226.

Ordinarily the power under Art. 226 should not be exercised by the High Court if the petitioner has other convenient or adequate remedy. The burden lies on the applicant to show that he has no other specific and adequate legal remedy.

The question whether the applicant has been given a reasonable opportunity of showing cause as required by Art. 311 (2) is a question of fact or a question of law arising out of interpretation of facts proved. As the applicant's right to come to the High Court depends on certain facts which have to be proved the remedy under Art. 226 of the Constitution would be inappropriate. For the High Court cannot clearly enter into an investigation of the facts on which the petitioner bases his claim. They can conveniently be proved by the petitioner in a regular suit in a civil Court having the jurisdiction. In certiorari proceedings, the Court only considers the question whether the order which if challenged is on the face of it and on the material as it appears on the record returned and brought into the Court, was made by the authority acting within its jurisdiction. If, therefore, there is a dispute as to the facts constituting the material on the record it cannot be said that the error, if any, in the order appears on the record. **ILR (1952) Madh B 253 : A I R 1952 Madh B 105 (110, to 113) (Pt B) (Prs 11, 16, 18, 19, 22, 27, 28, 29) (DB).**

——Arts. 226, 311—Disciplinary proceedings against Government servant — Writ petition to quash such proceedings — Power of High Court under Art. 226 to interfere with punishment where proceedings are vitiated by contravention of Art. 311.

If there is a valid substratum of a finding of guilt against a Government servant in disciplinary proceedings upon which the inflicted punishment may rest, it would not be the province of the High Court in the exercise of its extraordinary jurisdiction under Art. 226 of the Constitution to weigh the adequacy of the punishment as against the finding of guilt. The question of punishment being one purely within the exclusive jurisdiction of the Government there should be no transgression of that jurisdiction by the Court. If on certain proved charges punishment is awarded by the Government, the Court has no jurisdiction to cancel that punishment only because in its view the finding on some of the charges cannot be sustained. But where the Court has found that the disciplinary proceedings against a Government servant resulting in his compulsory retirement, are vitiated by contravention of Art. 311 of the Constitution and has held that the Government servant cannot be punished for suspicious conduct of having received illegal gratification without proof of evidence in support of such conduct, it is open to the High Court to issue the appropriate writ under Art. 226 to quash the proceedings. It is true that the Court issuing a writ cannot usurp the functions of the disciplinary jurisdiction of the Government over their employees, but it cannot be deterred from enforcing the provisions of Art. 311, though it might have the indirect consequence of interfering with something which was within the exclusive competence of the Government. AIR 1963 S C 779, Expl. and Dist. **ILR (1964) 1 Mad 685 : (1964) 2 Mad L J 353 : (1964) 2 Mad L J (Cr) 583 : A I R 1964 Mad 166 (168) (Pt C) (Pr 9) (DB).**

——Arts. 226, 309, 311—Irregularity in observance of rules in the matter of promotion — Aggrieved servant cannot have recourse to Court of Law.

The conditions of Civil service under the Government form an elaborate code consisting of rules which are detailed and minute in character. They have the force of a statute under Art. 309 of the Constitution but they are not part of the Constitution itself. Irregularities in the observance of the rules may occur. But a civil servant aggrieved by such irregularities cannot have recourse to the Court of law either in the form of a suit or action or in the form of a prerogative writ except in cases of violation of the provisions of Art. 311 of the Constitution. **(1962) 5 Fac L R 262 : (1963) 1 Lab L J 46 : (1962) 2 Mad L J 140 : 75 Mad L W 758 : A I R 1962 Mad 485 (486) (Pt B) (Pr 5).**